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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. HARPER).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
June 28, 2012.

I hereby appoint the Honorable GREGG HARPER to act as Speaker pro tempore on this day.

JOHN A. BOEHNER,
Speaker of the House of Representatives.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

HOUSE OF REPRESENTATIVES,
Washington, DC, June 27, 2012.

Hon. JOHN A. BOEHNER,
The Speaker, U.S. Capitol, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on June 27, 2012 at 9:12 a.m.:

That the Senate concur in the House amendment to the bill S. 3187.

With best wishes, I am

Sincerely,

KAREN L. HAAS.

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 17, 2012, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties, with each party limited to 1 hour and each Member other than the majority and minority leaders and the minority whip limited to 5 minutes each, but in no event shall debate continue beyond 11:50 a.m.

GLOBALLY ENGAGED

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. DREIER) for 5 minutes.

Mr. DREIER. Mr. Speaker, I know that what I'm about to say may be seen as heresy by many—or at least counterintuitive—but, Mr. Speaker, this statement is based in fact: outsourcing is not decimating our economy. If we take a step back and look at the big picture, setting aside demagoguery and knee-jerk reactions, we see that engagement with the worldwide marketplace is a positive thing for our economy and our shared quest to create good American jobs.

Being globally engaged takes many forms. It includes exporting our goods overseas. It includes imports. It includes complex supply chains that allow us to maximize comparative advantage and productivity on a global scale. It demands innovation, creativity, and adaptability. This is all part of the dynamic worldwide marketplace, and it does not constitute a zero sum game.

If a U.S. manufacturer can lower costs by importing some of their raw materials, increasing their competitiveness and hiring more U.S. workers as a result, our job market improves. American workers benefit. By the same token, if a company can tap into other labor markets, becoming more competitive in the process and then hiring more U.S. workers as a result, we can all benefit.

This is not a hypothetical scenario. We have the data that demonstrates the clear benefits of engaging in the worldwide marketplace. The last time the issue of outsourcing became a political flash point was in 2004. We often heard this term, ''Benedict Arnold CEOs'' who were sending good U.S. jobs overseas.

The McKinsey Global Institute did an in-depth analysis of the effect of outsourcing to see what impact it was actually having on our economy. What they found was very interesting. They found that companies that utilize outsourcing as a component of their business plans enjoy new export opportunities, increased productivity, and significant cost savings, all of which support new investment in the United States and greater job creation right here at home. Furthermore, the jobs that are created by globally engaged companies tend to be higher-skill, higher-waged jobs than those created by their nonglobally engaged counterparts.

Mr. Speaker, the findings of the McKinsey report are only buttressed by my own firsthand experience. I'll never forget, several years ago I was in Kathmandu visiting one of those call centers. Now, many would have viewed that call center as a symbol of outsourced jobs, and yet when I looked around, I found U.S. companies right there. I'm not claiming that all of these products were manufactured right here in the United States, but many were manufactured here in this hemisphere. They had names on them like Carrier air conditioners. There was a Westinghouse refrigerator there, Dell computers, and AT&T telephones. Rather than stealing jobs from Americans and this hemisphere, this call center epitomized the very way that global engagement benefits us all.

It is simply inaccurate to claim that every job created overseas destroys a job here in the United States, and it completely misses the point. Rather than demonizing those who are trying to build competitive companies that grow our economy and create opportunity for Americans, we should be looking at what we can do to attract

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investment here to the United States. We should be looking at what we can do to empower entrepreneurs to revitalize our economy and restore our job market.

Mr. Speaker, attacking private enterprise won't create a single job here or elsewhere. In fact, the danger of isolationist, mercantilist rhetoric is that it can spawn bad policy that further stifles innovation and economic growth.

If we want to have a constructive debate that leads to policies that will encourage growth and job creation, we need to look at the facts, and the facts are very simple. Engaging globally through exports, imports, outsourcing, in-sourcing, and all the many ways of tapping into the dynamic, competitive worldwide marketplace is the best way to get Americans back to work.

Mr. Speaker, I urge my colleagues not to succumb to the politically expedient but economically damaging rhetoric of isolationism.

STOP MILITARY RAPE

The SPEAKER pro tempore. The Chair recognizes the gentlewoman from California (Ms. SPEIER) for 5 minutes.

Ms. SPEIER. Mr. Speaker, I rise to implore this body to finally take meaningful action to end the epidemic of rape and sexual assault in the military. For 25 years, Congress has held dramatic hearings on this issue. It has rocked the military branches. Committee members have beat their chests and demanded answers from decorated generals and military leaders who testified. Congress demanded reports. These reports were provided and are now gathering dust on shelves around Washington, D.C.

The time for reports is over. Now it's time for action to solve this problem.

The solution is to take the reporting and investigation of cases of rape and sexual assault out of the military chain of command and place them in a separate office independent of the chain of command with the authority to investigate and prosecute within the military.

Last week I called for the House Armed Services Committee to hold a hearing on the widespread sex scandal at Lackland Air Force Base in San Antonio, Texas. No hearing date has been set.

The charges of rape, assault, and sodomy leveled against six instructors at Lackland are astonishing. One instructor is accused of raping or assaulting 10 victims, and another confessed to having sexual relationships with another 10 victims of his own. Yesterday we learned that 12 instructors are under investigation for sexual misconduct with trainees and that a criminal investigation is ongoing on four different Air Force bases now.

Like many cases of rape and sexual assault, the perpetrators are not denying that they engaged in sexual misconduct; they simply contend that the sex was consensual. It comes down to the word of the accuser and the accused, the instructor against the trainee. In the military, this usually means the perpetrator gets off or receives a disproportionately small punishment, and the victim endures an arduous and humiliating legal process with little sense of justice at the end.

Every day more disgusting news is unearthed about Lackland. Everyone wants to know: What is being done about it?

This scandal is remarkably similar to the Aberdeen scandal that rocked the Army in the 1990s. Fifteen years ago, a Republican-led Senate held a hearing on a sex scandal at the Aberdeen Proving Ground in Maryland.

□ 1010

The Army brought charges against 12 instructors for sexual assault on female trainees under their command. Nearly 50 women made sexual abuse charges, including 26 rape accusations. One instructor was cleared. The remaining 11 were either convicted at court martial or punished administratively.

In an interview about the scandal, then-Assistant Secretary of Defense Kenneth Bacon said:

> The issue here is the relationship between a trainer and a trainee. The Army regulations bar intimate relationships between trainers and trainees, between drill sergeants and trainees, because they are fraught with misuse of power, with misuse of influence, or the possibilities of misuse of power and influence.

This may be hard for some in the civilian world to relate to, but it is the constant reality within our Armed Forces. It is ingrained in our military servicemen and -women to follow the orders of their chain of command and never disobey.

Here is an except from a 1996 interview with an Army recruit who was raped by her instructor at Aberdeen. The victim, a South Carolina native who joined the Army in December of 1995 as a way to pay for college, said her instructor once ordered her to the bathroom. ''A few minutes later he came in behind me, and that's when he started to tell me to do certain things,'' she said. ''To disrobe?'' Asked the reporter. ''Mm-hmm,'' she said. She said she never screamed, never said ''no,'' only that she was traumatized. ''When you had sex in the bathroom, was it something you wanted,'' the reporter asked. ''No,'' Bleckley said. Nothing has changed.

Last month in Texas, two victims were asked if they resisted when their Air Force training instructor lured them into a dark supply room to have sex. ''No,'' they said. They froze.

What is happening at Lackland Air Force Base is no different than what happened at Aberdeen Proving Ground 15 years ago. After that scandal, we heard assurances about how seriously the crimes were taken and how ''we're going to get to the bottom of this problem.'' Yet clearly the military is unable to police itself on matters of rape and sexual assault.

I called for a hearing into the Lackland scandal because we need to know once and for all why instructors have been permitted to abuse power so freely. And we need to know from top brass that the phrase ''zero tolerance for sexual assault in the military'' is a fact, not a talking point.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until noon today.

Accordingly (at 10 o'clock and 12 minutes a.m.), the House stood in recess.

□ 1200

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at noon.

PRAYER

Reverend Greg Lafferty, Willowdale Chapel, Kennett Square, Pennsylvania, offered the following prayer:

Lord God, we bless You this day for You are good. You make Your Sun rise on the evil and the good; You let Your rain fall on the just and the unjust.

You give all people everywhere life and breath and everything. Yet we recognize that in this great Nation, we are among the most blessed.

You've granted us freedom and abundance, safety and security, the rule of law, and neighborly love.

Guide us, Lord, that we may steward these good gifts for the benefit of all. And today, Lord, grant this House of Representatives the wisdom, humility, and diligence to govern well, that in some measure good might overcome evil, beauty might outshine ugliness, and love might undo hate. And in this, Lord, may You be honored and may our Nation dwell in deeper peace and safety.

Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from New York (Mrs. MALONEY) come forward and lead the House in the Pledge of Allegiance.

Mrs. MALONEY 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.

WELCOMING REVEREND GREG LAFFERTY

The SPEAKER. Without objection, the gentleman from Pennsylvania (Mr. PITTS) is recognized for 1 minute.

There was no objection.

Mr. PITTS. Mr. Speaker, it is an honor today to have Greg Lafferty, senior pastor of my home church, Willowdale Chapel, open us in prayer today.

Greg studied at Wheaton College and Golden Gate Baptist Theological Seminary. He was ordained at Saddleback Church in Mission Viejo, California, where he served as a teaching pastor under Rick Warren.

Under Greg, the church has grown dramatically. In his time as our pastor, he has made our church much more active in our community and engaged around the world. One example is the work with Hope International, touching lives in the Congo through microenterprise development. The efforts of the church have been multiplied and improved in many ways under Greg's leadership. He has helped our church show the love of Christ in our community in new ways and around the world.

Greg has been married to his wife, Deane, for 28 years. She joins us in the balcony. They have three children together: Kelsey, Krista, and Ryan.

It is a great honor to have Greg and Deane and have Greg open our Chamber today with the opening prayer.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. WOMACK). The Chair will entertain 15 further requests for 1-minute speeches on each side of the aisle.

JOBS WILL BE DESTROYED

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

Mr. WILSON of South Carolina. Mr. Speaker, today's decision by the Supreme Court is extremely disappointing, undermining limited government and expanded freedom. The decision reveals ObamaCare as a huge tax increase on middle class taxpayers, destroying jobs. We should have health care based on doctor-patient relationships rather than politician-patient relationships.

I agree with the National Federation of Independent Business that 1.6 million jobs are now at risk and small businesses cannot make plans for the future, which destroys more jobs. House Republicans will continue to work to repeal the government health care takeover law. We will remain focused on enacting commonsense legislation that will preserve the doctor-patient relationship, provide every American the access they need to health care, and promote jobs in the private sector.

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

HONOR THE CATHOLIC SISTERS

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

Mr. HIGGINS. Mr. Speaker, I recently added my name to a resolution introduced by Representative ROSA DELAURO to honor the Catholic sisters for their contributions to this country and to my community.

I grew up in the shadows of the Mercy Convent of south Buffalo, New York. The sisters came to Buffalo in 1858, started hospitals to heal the sick, schools to teach the ignorant, and to help all of us see the gifts of God's presence in a changing world.

The sisters take a vow of poverty and obedience to serve God and God's people, particularly women and children.

The Vatican says that the sisters are failing to uphold the Catholic doctrine and appointed three bishops to rein them in. The sisters reject the Vatican's assessment of their life work and vow to fight.

In scripture, Jesus says: ''Whatever you do to the least of my brothers and sisters, you do for me.'' The sisters are doing God's work with courage, conviction, and selflessness.

May God's guiding wisdom continue to inspire their good works.

WALTER ZABEL

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

Mr. ISSA. Mr. Speaker, today many will address the House here and later in the day on subjects of great current importance, certainly the upholding of the President's health care initiative and, certainly, in fact, the contempt vote we're going to hear in a few minutes.

But this moment belongs to the people of San Diego. Walter Zabel died this week at 97. Normally, when someone dies at 97, they have long since retired. He, on the other hand, was still the inspiration for Cubic Corporation, a company he founded that did so much for our national defense over his 50-plus years at its helm. We cannot forget he was in the office less than a week ago. He was still providing stewardship, still receiving the technical benefits of his engineers, and still making sure that America was safe.

Today in San Diego is Walter Zabel Day. It is not a day for the other discussions of the House.

POLITICAL SIDESHOW

(Ms. CHU asked and was given permission to address the House for 1 minute.)

Ms. CHU. If you want proof that Congress is dysfunctional, that it is putting partisanship ahead of all else, look no further than today's vote to hold Attorney General Holder in contempt.

In office, Holder has tirelessly pursued justice for all communities. He has helped prevent mortgage fraud, fought gang violence, protected intellectual property rights, and worked to ensure every American has the right to vote. We should let the Attorney General enforce our Nation's laws, not make his job harder.

The contempt vote against Holder is unprecedented, unjustified, and unfounded. Never in the 223-year history of the House have we held an Attorney General in contempt. Yet, today, we will do just that in this ridiculous partisan stunt.

Congress should be creating jobs, not wasting taxpayer money putting on a political sideshow during an election year.

CONGRATULATING EDNA YODER ON HER 101ST BIRTHDAY

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

Mr. YODER. Mr. Speaker, I rise today to take a special moment to recognize the birthday of a very special American. Today marks the 101st birthday of my grandmother, Edna Yoder.

Born in 1911, my grandmother was raised on a Kansas farm with her many brothers and sisters. Work was hard, and she did her part to raise livestock, grow wheat, and help feed America.

I take great pride in my grandmother and those in her generation. Hard work, determination, a focus on family, and deep religious conviction were the values that she and others upheld as they worked to build the most prosperous Nation the world has ever seen.

Today on her birthday, my grandmother is a vibrant and healthy 101-year-old. She has an infectious laugh, a cheery disposition, and is kind to everyone she meets. Her love of quilting, the ''Lawrence Welk Show,'' and, of course, board games and bingo keep her time occupied and keep her young at heart.

Grandma, you are an inspiration, and we are proud today to congratulate you on the celebration of your 101st birthday.

□ 1210

KITTINGER FURNITURE

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

Ms. HOCHUL. Mr. Speaker, last October, I stood here and spoke out against the new free trade agreements that would have continued to add to the damage done to the manufacturers in

my district that was done by NAFTA a decade ago. I mentioned a woman I had met at the Buffalo Airport who, after 23 years working in a textile factory, was now selling energy drinks because her jobs had been shipped south and then overseas.

That's why I am fighting for policies that support making it in America. And that is why I am so proud that a company—Kittinger Furniture, a company that makes furniture that's found today in the White House—is being recognized by the 2012 Best: Made in America Award in recognition to their strong commitment to American manufacturing.

This Congress must work together to level the playing field for domestic businesses like Kittinger Furniture against unfair competition, particularly from China. The American Government and American consumers must commit to buying American so we can have more success stories like Kittinger's.

WINDMILL OF WILLFUL WASTE

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

Mr. POE of Texas. Mr. Speaker, Secretary Clinton is giving away $2 billion of taxpayer money for green energy development in third-world countries. This isn't money for vaccines. This isn't money for clean water. This isn't money to help child hunger. This is money for green energy.

Don't we need to make sure that people have electricity before we worry about what kind of light bulb they are using? People are starving, being ransacked by terrorists, taken away as child soldiers, and dying of preventible diseases like diarrhea. So our government decided the best use of taxpayer money was to put billions in those countries for green energy.

Our government wasted millions of taxpayer dollars on phony loans for green energy right here in the United States to companies like Solyndra. Congress didn't even approve this $2 billion giveaway.

With all the problems of debt in the United States and disease in other countries, government is providing subsidies for green energy. Who would have thought? The government is out of control. More taxpayer money thrown into the windmill of willful waste.

And that's just the way it is.

THE SUPREME COURT RULING

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

Mr. GENE GREEN of Texas. Mr. Speaker, I want to say that I'm proud of the decision of the United States Supreme Court today. I was proud to serve on the Energy and Commerce Committee that actually drafted this bill. I read it many times, and I actually had a lot of amendments.

The Affordable Care Act has already benefited millions of Americans and will continue to help those who are in the greatest of need—children, young adults, people with preexisting conditions, and our seniors. In my own congressional district in Texas, this is particularly important because we have one of the highest rates of uninsured individuals in the country.

Our Constitution gives the U.S. Supreme Court the job to be the decider on what is constitutional. The Affordable Care Act is constitutional. Just like Social Security and Medicare, now it's the law of this great Nation.

TODAY IS A GREAT DAY

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

Mr. COHEN. Mr. Speaker, today is a great day. It's a great day for children who want to stay on their parents' health insurance until they're 26—or parents who want their children on their health insurance until they're 26. It's a great day for seniors that are concerned about the doughnut hole, for women who have been discriminated against in health care, for all people who don't want to have copays for preventative care. It's a great day for people who don't want lifetime caps on their insurance or to be denied because of preexisting conditions. And it's a great day for America because the rule of law has been upheld.

Justice Roberts rightfully ruled that this was appropriate and constitutional. Let us not forget Justices Ginsburg and Sotomayor and Kagan and Breyer, the five Justices who upheld the Supreme Court belief that the American people have that it is a rule of law and that the Court is not political.

It was a great day for American health care and for American law and jurisprudence.

TODAY'S VICTORY

(Mrs. MALONEY asked and was given permission to address the House for 1 minute.)

Mrs. MALONEY. Mr. Speaker, today is not a victory for one party or another. It is not a victory for an ideology. It is a victory for the American people and for the millions who had, for years, gone without access to quality health care. It is a victory for women who will no longer be discriminated against in their insurance premiums and for preexisting conditions and for women and children and seniors and families.

This is a great day for our country, as we finally join the community of economically advanced nations that see to it that all their citizens have access to quality care.

Let's get on with the unfinished business of helping create more jobs and putting a Nation of healthy Americans back to work.

A TRIBUTE TO DR. WENDY WAYNE

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

Mr. COSTA. Mr. Speaker, I rise today to pay tribute to the life of Dr. Wendy Wayne, who passed away on June 17, 2012, at the age of 64 after fighting a courageous 4-year battle with non-Hodgkin's lymphoma.

Wendy was a loving wife and mother, a committed activist and respected community leader who touched the lives of many. Wendy led a courageous and energetic life filled with love and adventure. She joined the Peace Corps at an early age and served in Kenya. As a seasoned traveler, Wendy swam the Earth's five oceans.

Her work as an educator, a nurse, and a community leader demonstrated her dedication to fostering and preserving and improving the health and safety of children throughout the world. And her compassion and concern for the community also served as a testament to her extraordinary character.

Wendy Wayne's unwavering loyalty to Kern County and her commitment to the well-being of future generations will ensure that her legacy will live on. She stands as a role model for her family, her friends, and all that knew and worked with her.

And we will all miss her. I will miss my dear friend Wendy Wayne.

IN OPPOSITION TO THE ATTORNEY GENERAL CONTEMPT VOTE

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

Ms. FUDGE. Mr. Chairman, today I rise to speak in opposition to the House resolution to hold Attorney General Eric Holder in contempt of Congress.

With total disregard of the fact that the Attorney General and the Department of Justice have cooperated with each inquiry from the House Oversight and Government Reform Committee during the last 15 months, Chairman ISSA decided to pursue this extreme and unprecedented action.

To take action on this resolution is a gross misuse of this Chamber's time and energy, given that the information requested by Chairman ISSA will shed no light on the person or persons responsible for the death of Agent Brian Terry, and that is where our time and energy should be focused.

Instead of wasting the time of the committee, the Department of Justice, and the American people with political distractions, the House should be addressing the issues important to the welfare of this country and its people, and that is jobs.

THERE HAS NOT BEEN FULL COMPLIANCE

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

Mr. CHAFFETZ. Mr. Speaker, despite what has been said here, it is the duty and obligation of this body to address a duly issued subpoena that has not been complied with. There has not been full compliance here. There has not been cooperation here. There has not been a willingness to share the information that is found within the Department of Justice.

We have a dead Border Patrol agent. We have more than 200 weapons that were used to kill people in Mexico. We have thousands of missing weapons. We have an Attorney General who said that this Fast and Furious program was fundamentally flawed. And yet here we stand today after doing more than just bending over backwards for more than a year, not having been given the documents that we need, as a body, to make a proper decision.

This should be bipartisan in our quest to right a wrong. It's not about Eric Holder, but it is about the Department of Justice and it is about justice in the United States of America. I am proud of the fact that we are bringing up this contempt.

It's sad that we got to this day. We have no other choice. But we, as a body, as an institution, as a separate branch of government, have a duty and an obligation, and we are fulfilling that here today.

WHAT CHANGES HAVE REALLY OCCURRED?

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

Ms. RICHARDSON. Mr. Chairman, I come here today because when I was 6 years old, in 1968, I saw the hate-filled work of the civil rights movement, of laws that needed to be changed. And now I'm here with an opportunity to be here in Congress, and I kind of wonder what changes have really occurred.

I see today that Chief Justice Roberts stood, and he did the right thing because he ruled on behalf of the American people. And I will say that this motion that's going to come forward will not have bipartisan support of this Member because it's not done in a bipartisan manner. It's done in a hateful manner.

And why?

Because we have an Attorney General where this has never been done—we need to stress that again—never been done in this Congress, where materials have been provided, and where this committee has failed to accept a single witness requested by the other side. That's not bipartisanship. That's politics at its worst.

I urge the American people to look and to urge us to get back to work and do what you sent us here to do, which is to take care of you.

□ 1220

WHAT PERCENTAGE OF THE TRUTH?

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

Mr. GOWDY. Mr. Speaker, my question is simply this: What percentage of the truth do you want? When we're asked to negotiate; when the Attorney General comes and asks us for an extraordinary accommodation, whatever that means; when we're asked to compromise; my question for our colleagues on the other side of the aisle, Mr. Speaker, is this: What percentage of the truth will you settle for? If you have ever sat on the other side of the table from parents who have lost a loved one, is 50 percent enough? Is that enough of the documents? Seventy-five percent? A third?

The truth, the whole truth, so help me God—that is what we ask witnesses to do, jurors to do, and that's not too much for us to ask for the Attorney General of the United States of America to do.

HEALTH CARE

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

Mr. LARSEN of Washington. Mr. Speaker, I rise today to declare that the Supreme Court ruling on the Affordable Care Act affirms there's no going back to the health care of 2009 or even to the health care of 1789. Improvements to health care are taking root right now in this country. That progress must continue. The Supreme Court decision today is a welcome victory for middle class families and bolsters the necessary changes taking place in health care today.

Now we must keep Medicare sustainable and affordable by closing the prescription drug doughnut hole and cracking down on fraud. Now we must make sure middle class families have diverse options for high-quality, affordable health care. Now we must ensure that we meet the needs of northwest Washington State seniors, veterans, and families. Northwest Washington has already seen improvement. Seniors in the Second District who were in the doughnut hole have saved more than $800 on prescription medications so far this year. More than 173,000 people in northwest Washington State have health insurance that covers preventive care without copays or deductibles.

It is time to move forward on health care. And today, America took a great step.

AFFORDABLE CARE ACT DECISION

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

Mr. BUTTERFIELD. Mr. Speaker, as a former judge of the North Carolina State Supreme Court, I've come to the well today to applaud the United States Supreme Court for its courage and for ruling on the side of constitutionality of the Affordable Care Act. This is a win, Mr. Speaker, for 48 million Americans, Democrats and Republicans alike, who will receive stable, secure, and affordable health coverage forever.

I believe that much of the public confusion surrounding the bill was because Americans outside of the Washington Beltway simply did not understand what the Affordable Care Act means for them. So to put it plainly, Americans can now enjoy coverage without worry or jeopardy, regardless of preexisting conditions. Uninsured young people up to age 26 will be able to receive coverage. If you become gravely ill, there are no limits on your benefits. If you are a woman, you can't be charged higher premiums. If you need preventive care, you won't have a copay or deductible. If you lose your job, you won't lose your coverage. And if your employer doesn't provide coverage, you will be able to buy it at affordable prices.

The political theater Republicans orchestrated around health care is over. Congress debated, the Court decided. This is done.

WE DESERVE TO KNOW WHAT HAPPENED

(Mrs. ADAMS asked and was given permission to address the House for 1 minute.)

Mrs. ADAMS. Mr. Speaker, I rise today not only as a congressional Member but also a widow of a law enforcement officer who lost his life in the line of duty. I rise to speak on behalf of all those families that have lost a loved one in the line of duty, and especially for Brian Terry and his family. The Terry family deserves to know what happened. The American people deserve to know what happened. And Congress deserves to know what happened. But let us not forget, Officer Terry's family deserves to know what happened.

I stand here on behalf of all of those families who have lost law enforcement officers throughout our great Nation in the line of duty. We must not waiver. We, as a Congress, need to find out what happened so it never happens again. And that's something that we never should lose sight of. We need to make sure that whatever took place, it doesn't happen again. We should not be losing our officers this way.

HEALTH CARE VICTORY

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

Mr. PALLONE. Mr. Speaker, today is a great day for the American people. The Supreme Court's decision to uphold the Affordable Care Act reaffirms our Nation's commitment to make sure that all Americans have access to quality, affordable health care and health insurance. For the millions of Americans who have gone without health insurance; the seniors who have struggled due to inadequate coverage; the women, children, and young adults that have been denied coverage for preexisting conditions, the Court's ruling is not only a victory but a validation that they deserve to have the most basic of human needs met—and that is access to health care.

The ACA addressed so many gaps in the American health care system, from closing the Medicare part D doughnut hole to stopping the practice of denying those with preexisting conditions insurance coverage to claiming womanhood as a preexisting health condition to allowing young adults to stay on their parents' coverage.

This law has changed the way our country manages and delivers all phases of our health care system, and I'm proud to have been part of its creation, and prouder still today to learn that the Court's decision was to uphold its constitutionality.

HEALTH CARE WIN-WIN

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

Mr. FARR. I rise today because I think everybody in this country is always worried about health care and whether they're going to be able to have access to it, whether they can afford insurance, whether the complications of that insurance will knock them off health care by putting caps on it or saying you have a preexisting condition. But those worries are over. America has health safety now. Everybody in this country will be able to have access to health care. The Supreme Court made the decision that no one without health care cannot be treated.

So I think it's a really happy day. There's going to be a lot of discussions here about pros and cons on how it's all worked out, but each individual, I think, will be able to decide: I can go to a doctor and I can get the kind of care that I need, and it's going to get paid for so doctors and hospitals will make it. That's the bottom line.

I left my office this morning, and one of my interns is 25 years old, and she says, I've got health care insurance because of the law you passed. Until I'm 26, I can stay on my parents' health care insurance, and I otherwise would have none. Because she's already graduated from college.

So this is a win-win for everyone. It's a great day for America.

RELATING TO CONSIDERATION OF HOUSE REPORT 112–546 AND ACCOMPANYING RESOLUTION, AND PROVIDING FOR CONSIDERATION OF HOUSE RESOLUTION 706, AUTHORIZING COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM TO INITIATE OR INTERVENE IN JUDICIAL PROCEEDINGS TO ENFORCE CERTAIN SUBPOENAS

Mr. NUGENT. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 708 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 708

Resolved, That if House Report 112-546 is called up by direction of the Committee on Oversight and Government Reform: (a) all points of order against the report are waived and the report shall be considered as read; and

(b)(1) an accompanying resolution offered by direction of the Committee on Oversight and Government Reform shall be considered as read and shall not be subject to a point of order; and

(2) the previous question shall be considered as ordered on such resolution to adoption without intervening motion or demand for division of the question except: (i) 50 minutes of debate equally divided and controlled by the chair and ranking minority member of the Committee on Oversight and Government Reform or their respective designees; (ii) after conclusion of debate one motion to refer if offered by Representative Dingell of Michigan or his designee which shall be separately debatable for 10 minutes equally divided and controlled by the proponent and an opponent; and (iii) one motion to recommit with or without instructions. The Chair may reduce the minimum time for electronic voting on the question of adoption of the motion to recommit as though pursuant to clause 9 of rule XX.

SEC. 2. Upon adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the resolution (H. Res. 706) authorizing the Committee on Oversight and Government Reform to initiate or intervene in judicial proceedings to enforce certain subpoenas. The resolution shall be considered as read. The previous question shall be considered as ordered on the resolution to adoption without intervening motion or demand for division of the question except: (1) 20 minutes of debate equally divided and controlled by the Majority Leader and the Minority Leader or their respective designees; and (2) one motion to recommit.

The SPEAKER pro tempore. The gentleman from Florida is recognized for 1 hour.

□ 1230

Mr. NUGENT. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts, my colleague on the Rules Committee, Mr. MCGOVERN, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Mr. NUGENT. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks.

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

There was no objection.

Mr. NUGENT. Mr. Speaker, I rise today in support of this rule and the underlying resolution it brings to the House floor.

The rule provides for consideration of two contempt of Congress charges laid against Attorney General Eric Holder. You're going to hear a lot of folks say how historic today is. That ''historicness'' is why the rule provides for debate and separate votes on both contempt charges. The rule also provides for a motion to refer the criminal contempt charges, if offered by Mr. DINGELL, as well as motions to recommit both resolutions.

I don't assume to put words in his mouth, but I'm sure and I'm willing to bet that Mr. MCGOVERN is sitting over there getting ready to tell me it's not enough time. I'm not going to disagree.

But as we all know, before we leave Friday evening to go to work in our districts, we have a lot to get done here. We need to reauthorize our Nation's highway and infrastructure systems. We need to save college students and recent graduates from student loan interest rates that are 2 days away from doubling. We need to move forward with the open amendment process and finish considering the appropriations bill to fund our transportation and housing programs. It's a lot to get done in 2 days. And, frankly, if we didn't put a time limit on today's contempt debate, we could spend days on end talking about nothing but this one issue.

But beyond all of that—beyond floor schedules and expiring authorizations, we're left with this truth: Border Patrol Agent Brian Terry was shot on December 14, 2010, and died of those injuries the next day. His family has been looking for answers about what led up to and caused his death for over a year and a half. If we can do anything to answer those questions, then we cannot and should not do anything to make them wait any longer—not another month, not another day, not another hour. Today, the House of Representatives is going to do what we can to get those answers for the Terry family.

Thanks to whistleblowers at the Bureau of Alcohol, Tobacco, Firearms and Explosives, Members of Congress were alerted to the fact that Agent Terry was killed by guns—AK–47 assault rifles, specifically—that our government allowed to walk into Mexico. When confronted with these claims, the Justice Department denied the whistleblowers' claims. What we now know all too well is just how right the whistleblowers were. However, it took the Department of Justice 10 months after their first denial, almost a year after Border Patrol Agent Terry's death, to formally retract their denial about the reckless program that contributed to the deaths of Agent Terry and hundreds of Mexican citizens.

You know, I was a cop for almost 40 years and a sheriff for the last 10. As the head of a law enforcement agency, you have two options when you make a mistake: you can hope it doesn't come out, and if it does, you go into lockdown and deny, deny, deny; or you can get out in front of it, admit you made a mistake, tell the American people you're going to investigate, and then do everything you can to make sure that this never happens again.

As sheriff, I found it was my moral imperative to always admit when we'd been wrong, hold folks accountable, and make my agency better so we wouldn't make the same mistake twice. It's the responsible thing to do, and it takes away any sting of the possibility of a coverup.

That's not what DOJ did. They've gone the other route—hide, deny, and stonewall.

They sent a letter with false information to Congress, the institution that's constitutionally mandated with government oversight, and it took them 10 months to retract that statement. It appears that in those 10 months between lying and admitting the truth, members of DOJ and the ATF colluded to intentionally cover up what happened. What we're trying to figure out is if there really was a coverup, and we need the information to determine the facts.

Yesterday at the Rules Committee, a couple of people mentioned President Nixon and Watergate. And I agree, this is like the Watergate scandal. But President Nixon didn't leave office because of the scandal itself; he was forced to resign because of the coverup.

I said it last night and I'm willing to bet, Attorney General Holder didn't know all the specifics about what was happening with Fast and Furious, but when the facts started coming to light and congressional investigators started looking for answers, he repeatedly kept us from getting information we need. And that has kept the Terry family from getting the closure they need.

Attorney General Holder is responsible for his agency, but he has essentially given his top leadership a free pass.

Mr. Speaker, a law enforcement officer who was employed by the United States Federal Government is dead. Somebody knows what happened to result in his death, and the Justice Department and now President Obama are refusing to release that information to Congress, to the American public, and to Agent Terry's family.

This institution has a duty to oversee the executive branch and to find out what happened. The answers are there. Attorney General Holder knows the answers are there because he's the one who has the documents that contain the answers we're looking for. He's the gatekeeper here, and if he won't give us the information this institution needs to do our duty, our constitutional duty, then we will use every legal and constitutional tool that we have to get to it.

I've heard some people say this is all about politics. In my heart, it's just the opposite. It couldn't be further from the truth. These contempt charges aren't about politics. They aren't about Attorney General Holder, President Obama, or anything else but this: a man died serving his country, and we have a right to know what the Federal Government's hand was in that.

It's clear this country somehow played a role in his death. We need to root it out, find the cause, and make sure this never, ever happens again. These votes today aren't about politics; they are about answers that, at the very least, this country owes Agent Terry and his family.

President Obama promised his would be the most open administration in history. When discussing executive privilege in the past, Attorney General Holder has made it clear that the DOJ won't invoke the State secrets privilege to conceal ''violations of the law'' or ''administrative error,'' avoid ''embarrassment,'' or to ''prevent or delay the release of information.''

Unfortunately, that is exactly what has happened so far with Fast and Furious. It is for this reason why the House today sees no other choice other than to charge Attorney General Eric Holder with both civil and criminal contempt of Congress charges.

I'm going to support both of these resolutions, Mr. Speaker, not because it's the political thing to do, not because it's the easy thing to do, but because it's the right thing to do.

And with that, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I want to thank my friend, the gentleman from Florida (Mr. NUGENT), for yielding me the customary 30 minutes, and I yield myself such time as I may consume.

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

Mr. MCGOVERN. Mr. Speaker, this is a sad and deeply troubling day for this House of Representatives. The Republican leadership of this body is asking us to take the unprecedented and unjustified step of holding a sitting Attorney General in contempt of Congress.

□ 1240

They are doing so based on a completely partisan ''investigation.''

This is a witch hunt, pure and simple, Mr. Speaker, and it has no place in this House. Eric Holder is a good and decent and honorable public servant. He has reinvigorated the Justice Department, especially on efforts to stop partisan voter suppression across the country.

I find it interesting that the Republican leadership has scheduled this nonsense for the floor today when it is certain to be buried under the avalanche of news and reaction to the Supreme Court's health care decision and the highway bill and the student loan bill and everything else. Is it possible that the Republican leadership doesn't really want the American people seeing what the House is doing today? Why else would they feel the need to rush this to the floor a mere week after the House Oversight Committee voted along strictly partisan lines to adopt the Republican contempt citation?

Let me say at the outset that there are certain things that all of us, Democrats and Republicans alike, agree on. We all agree that the death of Agent Terry was a terrible tragedy. We all agree that the ATF field office's embrace of gunwalking—which began under the Bush administration, by the way—was a terrible idea. We all agree that the ATF should not have sent an erroneous letter to Senator GRASSLEY in 2011. But the contempt resolution before us doesn't have anything to do with any of that.

The Department of Justice has provided thousands and thousands of documents about gunwalking. The Attorney General has testified nine times. The Department has provided over 1,000 pages of documents about the letter sent to Senator GRASSLEY. So this isn't about getting to the truth; this is about politics. It is about politics. This is about the Republicans refusing to take ''yes'' for an answer. This is about doing whatever it takes to attack the Obama administration no matter the issue, no matter the cost.

During the committee's ''investigation,'' the Republican majority refused all Democratic requests for witnesses and hearings, as well as requests to interview any Bush administration appointees. All of them were denied.

The Republicans refused Democratic requests to hold a hearing with Ken Melson, the head of ATF. You know, if you're actually interested in learning about an ATF operation, don't you think you would want to talk to the leadership of the ATF?

Republicans refused Democratic requests to hold a hearing with former Attorney General Mukasey, who was briefed on botched ATF operations in 2007. If you're actually interested in learning about these botched operations, wouldn't you want to talk to the man who was briefed about them?

I would hope that we would all agree that we should never take a step like finding a sitting Attorney General in contempt lightly, and that we should only do so based on accurate information. But Ranking Member CUMMINGS and his staff have found, in a very short time, 100 concerns, omissions, and inaccuracies in the committee report that is the foundation of this contempt resolution—100 inaccuracies and omissions and concerns. Sadly, instead of getting answers to those questions, this has been rushed to the floor.

Mr. Speaker, the American people expect us to address the issues that matter most to them—issues like jobs and the economy and education and health care—but the Republican majority refuses to listen. Instead, they bring this

resolution to the floor, and then they wonder why Congress is so unpopular.

What troubles me most, perhaps, is that under this Republican majority, everything has to be a fight—everything. Everything has to be a confrontation, everything has to be a showdown. And I get the politics. I understand this is an election year. But this goes way, way too far. It is just wrong.

I wish the Speaker of the House would have intervened here and kept this off the floor. By moving forward today on this resolution, we diminish the House of Representatives. This is not a happy day for this institution.

I urge my colleagues to reject this rule and the underlying resolutions, and I reserve the balance of my time.

Mr. NUGENT. Mr. Speaker, the gentleman from Massachusetts made a statement. This is about a contempt citation because the Attorney General has not provided all the information the committee has asked for. Out of 140,000 pages—by his own testimony in front of Judiciary—he's given a little over 7,000 pages. That's not reaching out and doing the right thing.

Mr. Speaker, I yield 2 minutes to the gentleman from South Carolina (Mr. SCOTT), a fellow Rules Committee member.

Mr. SCOTT of South Carolina. I thank the gentleman for the time.

Mr. Speaker, it seems to me that my friends on the left need some clarification on why we are here this afternoon. This is not a good day for America, and it is certainly still not a good day for the Terry family.

My friends on the left continue to talk about this as if it were a witch hunt—a witch hunt. We have a slain Border Patrol agent, and my friends on the left want to politicize this by talking about a witch hunt when in fact we all know that this, Mr. Speaker, is about justice. This is about justice.

My friend on the left just said that we Republicans refuse to hear ''yes,'' we refuse to accept ''yes'' as an answer. Well, Mr. Speaker, we want a ''yes'' for Kent Terry, we want a ''yes'' for Josephine Terry, the parents of Brian Terry. We want a ''yes'' for the American people. We want a ''yes'' as it relates to the integrity of the process, and we want a ''yes'' for justice. And, Mr. Speaker, my friends on the left continue to consistently say ''no.''

We are here, Mr. Speaker, for only two reasons. The first is because United States Border Patrol Agent Brian Terry is dead because of a Federal Government operation that allowed American guns to be walked across the border in the hands of drug lords and cartels. We are here today, Mr. Speaker, because the Department of Justice; the Attorney General, Eric Holder; and now the President refuse to comply with congressional subpoenas that will give us clarity on these questions, give us clear answers for the Terry family and for the American people.

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

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

Mr. SCOTT of South Carolina. We have been trying for 18 long months to get to the bottom of this issue, and yet we are being stonewalled.

Yes, we hear that the Federal Government has provided 7,000-plus pages; but, Mr. Speaker, there are over 100,000 pages that we have requested. We are talking about a period from February 4, 2011, to December 2011, where we were given false information. It is our responsibility, it is our duty to find the truth for the American people and the Terry family.

Let me close, Mr. Speaker, by simply saying, how are we supposed to protect and ensure the safety of our Border Patrol agents in the future if we do not know who allowed the guns to walk across the border? How are we supposed to give Brian Terry's family any sense of closure, Mr. Speaker? This is why we have no choice but to be here today. The refusal of the Attorney General to provide answers regarding Brian Terry's death leaves us no choice but to be here today.

Mr. McGOVERN. Mr. Speaker, let me yield myself such time as I may consume before I yield to the gentleman from North Carolina.

Mr. Speaker, the last time Congress dealt with a contempt resolution was in the case of Joshua Bolton and Harriet Miers. The period of time between when the committee voted out the resolution and before there was floor action was 6 months. The reason why there was time taken was to make sure that we got it right.

This is less than a week. And I'm going to say to my friends on the other side of the aisle that the minority staff has compiled a list of 100 inaccuracies—100 inaccuracies in the report that was the basis for this contempt resolution—100—and they're rushing it to the floor. So don't tell me this is not about politics. Don't tell me this is not a witch hunt. It is exactly what it is.

Mr. Speaker, I'd like to yield 2 minutes to the gentleman from North Carolina (Mr. BUTTERFIELD).

Mr. BUTTERFIELD. The gentleman from Massachusetts is absolutely correct, this is a sad and troubling day.

What we see here today, Mr. Speaker, is nothing more than using the Halls of Congress for extreme partisan political purposes.

□ 1250

This case is all about a politically motivated confrontation with the executive branch on a matter that does not even begin to rise to this level.

This case is not about gunwalking. Those documents have been provided and are not in dispute. The documents at issue are completely unrelated to how gunwalking was initiated in Operation Fast and Furious. The Department has produced thousands of pages of documents. The committee has interviewed two dozen officials, and the Attorney General has testified on nine occasions.

This is an election-year witch hunt. I say that to the gentleman from South Carolina. This is an election-year witch hunt. During this 16-month investigation, the committee refused all Democratic requests for witnesses and hearings, as well as requests to interview any Bush administration appointees.

Never in our Nation's history has the House of Representatives voted to hold a sitting Attorney General or a Cabinet member in contempt. What's different?

I will tell you what's different. It is the simple fact that Republicans have a dogged determination to discredit and defeat this President at all costs. Plain and simple, it's politics.

My Republican friends, do not use your majority to engage in a political stunt. The integrity and legacy of this institution deserve better than that. If you want to discredit and defeat this President, you need to leave this floor and leave the C–SPAN cameras, and go out and give it your best shot. This is not the place to do it.

When the history of this despicable proceeding is recorded, it will be said that your actions were politically motivated to discredit and defeat a President who has worked so hard over the past 3 years.

I encourage my colleagues to join me in refusing to vote for this gimmick and walk to the steps of the Capitol and explain the circumstances of this dark day. Do not vote for this resolution.

For those of you who choose to vote, I ask that you defeat the rule and vote against these contempt resolutions.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members are reminded to direct their remarks to the Chair.

Mr. NUGENT. Mr. Speaker, I yield myself as much time as I may consume.

You know, it's amazing that my friends forget about history because they referenced history in 2008 as related to House Resolution 979 and House Resolution 980. And you know what they did?

They passed a rule and said it's hereby adopted. You never even had discussion on the House floor like we're going to do today. Never had debate on the House floor. They just passed it in the Rules Committee and said, guess what, it's hereby adopted.

I yield such time as he may consume to the gentleman from California (Mr. ISSA), the chairman of the Committee on Oversight and Government Reform.

Mr. ISSA. I place in the RECORD at this time the statement by the Terry family concerning Congressman DINGELL's criticism of the contempt vote.

TERRY FAMILY STATEMENT WITH REGARD TO CONGRESSMAN JOHN DINGELL'S CRITICISM OF CONTEMPT VOTE

On Wednesday, Representative John Dingell invoked the Terry family name while saying he would not back the contempt resolutions but instead wants the Oversight and

Government Reform Committee to conduct a more thorough investigation into Operation Fast and Furious.

Congressman Dingell represents the district in Michigan where Brian Terry was born and where his family still resides, but his views don't represent those of the Terry family. Nor does he speak for the Terry family. And he has never spoken to the Terry family.

His office sent us a condolence letter when Brian was buried 18 months ago. That's the last time we heard from him.

A year ago, after the House Oversight and Reform Committee began looking into Operation Fast and Furious, one of Brian's sisters called Rep. Dingell's office seeking help and answers. No one from his office called back.

Mr. Dingell is now calling for more investigation to be conducted before the Attorney General can be held in contempt of Congress.

The Terry family has been waiting for over 18 months for answers about Operation Fast and Furious and how it was related to Brian's death. If Rep. Dingell truly wants to support the Terry family and honor Brian Terry, a son of Michigan, he and other Members of Congress will call for the Attorney General to immediately provide the documents requested by the House Oversight and Government Reform Committee.

Mr. NUGENT. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. ROSS).

Mr. ROSS of Florida. Mr. Speaker, today I rise to offer my support to hold the Attorney General in contempt of Congress.

In December 2010, Border Patrol Agent Brian Terry was killed with a gun that was allowed to walk across the border as a result of Operation Fast and Furious.

Mr. Speaker, some, including this Attorney General and some of my colleagues on the other side of the aisle, state that this operation began in a previous administration. This is demonstrably false, and nothing could be further from the truth.

While there was a program under the previous administration known as Wide Receiver, the differences are quite stark. Under Wide Receiver, weapons were tracked, the Mexican government was involved, and no one died as a result of that operation. In fact, Operation Wide Receiver ended in late 2007, nearly 2 years before Fast and Furious began and nearly 9 months before this President was sworn into office.

Fast and Furious allowed guns to walk across the Mexican border with no tracking, no involvement by Mexican officials. Over 2,000 firearms disappeared across the border under this failed operation. Hundreds of Mexicans are dead because of this failed operation.

An American hero and United States Marine, Agent Brian Terry, is dead because of this failed operation. Agent Terry stood his ground and told moms and dads across America that no one would hurt their children on his watch. He stood up and took that responsibility.

To this day, no one, and I mean no one, in this administration has had the guts to stand up and say, ''It was my fault.'' Attorney General Holder has refused to comply with a congressional subpoena that was issued in October of 2011.

I was a practicing attorney in the real world before I came to Congress. In the real world, Americans are expected to comply with subpoenas. Is the Attorney General any different? No, he is not.

Are we just supposed to take Mr. Holder's word that we have all the information?

That may be how Washington works, Mr. Attorney General, but that is not how Main Street works.

Mr. Attorney General, what are you hiding? What are you hiding from the Brian Terry family? What are you hiding from the American public?

I've said it before and I will say it again: you can delegate authority but you cannot delegate responsibility.

Mr. Speaker, the Attorney General can stonewall all he wants. The Attorney General can misremember all he wants. But whether he likes it or not, today responsibility will land on his desk.

Mr. Speaker, I applaud Chairman ISSA for his steadfast leadership in the pursuit of the truth. I applaud my colleagues on the other side of the aisle who are putting the search of the truth before party.

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

Mr. NUGENT. Mr. Speaker, I yield another 15 seconds to the gentleman from Florida.

Mr. ROSS of Florida. Mr. Speaker, I applaud all of those, like Agent Terry, who wear the uniform of the Armed Forces or stand on the border and guard our Nation. Agent Terry knew a thing or two about duty. He died while on duty.

It is now the duty of this Congress to hold those responsible and accountable for this failed operation. We will not forget, and we will always stand with you.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Once again, Members are advised to direct their remarks to the Chair.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

My friend from Florida (Mr. NUGENT) talked about obstructionism, and I want to say a couple of words about that because I think this whole process has obstructed justice.

During the committee's 16-month investigation, the committee refused all Democratic requests for witnesses and hearings, which is unprecedented. For instance, the committee refused to hold a public hearing with Ken Melson, the head of ATF, the agency responsible for this operation, after he told committee investigators privately that he never informed senior department officials about gunwalking because he was unaware of it.

The committee also refused a hearing, or even a private meeting, with former Attorney General Mukasey, who was briefed on botched efforts to coordinate interdictions with Mexico in 2007, and was informed directly that these efforts would be expanded during his tenure; refused the opportunity to have the Attorney General as a witness.

Mr. Speaker, this partisanship was demonstrated by the committee's vote along strictly partisan lines to hold the Attorney General in contempt and to vote along strictly partisan lines on every amendment. This is about politics. This is not about the truth. This is not about justice. This is about politics, and that is why this is such a sad day for this institution.

Mr. Speaker, I yield 2 minutes to the gentleman from Vermont (Mr. WELCH).

Mr. WELCH. Mr. Speaker, I thank the gentleman from Massachusetts.

Mr. Speaker, the investigation that's being conducted by the Committee on Oversight and Government Reform is a legitimate investigation. But the recommendation to this House to hold the Attorney General in contempt is reckless, irresponsible, unnecessary, and will actually get in the way of the pursuit of truth.

Why do I say that?

If you're going to do an investigation, you have to begin at the beginning, and the beginning of Fast and Furious and gunwalking began in the Bush administration. There's no evidence that President Bush was aware of it. There's some questions about what his Attorney General knew, what and when.

But if you are sincerely interested in trying to find out what happened, how it happened, how in the world do you not begin at the beginning?

And despite that fact, the requests of many of us on the committee who support an investigation, who support the use of a subpoena, who support the aggressive right of Congress to get access to documents that it needs, have been denied the opportunity to bring in witnesses about what happened and how it happened during the Bush administration.

We've been denied the opportunity to bring in Attorney General Mukasey, despite the fact that there was evidence that he was personally briefed on the botched efforts to coordinate interdiction with Mexican authorities. Then-Attorney General Mukasey was also told that the ATF field office in Phoenix planned to expand these operations during his tenure. So our question really quite simply is, begin at the beginning.

That foundation of an open and exhaustive search is what this committee, the Committee on Government Reform, owes to this House of Representatives before it asks the Members of this House to vote on the extraordinary measure of finding a sitting Attorney General in contempt.

Secondly, we've got to do our job with care. The original subpoena that went out and was there until the Friday before the Wednesday in which we voted was demanding that the Attorney General turn over documents that

would have been illegal for him to turn over—transcripts of the grand jury.

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

Mr. MCGOVERN. I yield the gentleman an additional 15 seconds.

□ 1300

Mr. WELCH. So transcripts of the grand jury, transcripts of wiretap applications, which is not only a violation of the U.S. Code, but would jeopardize law enforcement officials if that word got out. That is an irresponsible and overbroad subpoena.

So the bottom line is to let the investigation continue, but let's acknowledge that the job that the committee needs to do before it asks for a vote of contempt has not been done.

Mr. NUGENT. Mr. Speaker, I yield 2 minutes to the gentleman from Texas, Judge POE.

Mr. POE of Texas. I thank the gentleman.

Mr. Speaker, we are here today because of an ill-conceived, dangerous, illegal, gun-running scheme called Operation Fast and Furious.

This operation has resulted in the death of at least one—maybe two—Federal agents and in the deaths of hundreds of Mexican nationals; yet we still cannot get a straight answer from the Justice Department as to what happened. The Attorney General says he doesn't know who authorized this nonsense, but he won't let Congress help him find out the facts.

In December of last year, Attorney General Holder testified before the House Judiciary Committee and told me that Operation Fast and Furious was ''flawed and reckless'' and that it was ''probably true'' that more people were going to die.

Now, isn't that lovely?

Why is the Attorney General being so obstinate? After months of delay, delay, delay, today is the day of reckoning.

This administration claims to be the most transparent administration in history. So why won't the administration let the American people know what happened during Fast and Furious? What are they hiding?

This contempt resolution is about one thing. It's about finding out how such a stealth and dangerous operation could ever be authorized by the Government of the United States. Why would our government help smuggle guns to our neighbor and put them in the hands of the enemy of Mexico and the United States—the violent drug cartels?

And no wonder the Attorney General of Mexico wants those in the United States who are responsible to be extradited to Mexico and tried for those possible crimes. Mexico is more interested in Fast and Furious than is our own government.

As a former judge, I can tell you that contempt is used as a last resort to let individuals know they will comply with a lawful order whether they like it or not. Even the Attorney General cannot evade the law.

Time for America to find out the truth about gun smuggling to Mexico. Time for a little transparency. Today is judgment day.

And that's just the way it is.

Mr. MCGOVERN. Mr. Speaker, let me remind my friend that this gunwalking program started under President Bush. And that's just the way it is.

I would like to yield 15 seconds to the gentleman from Texas (Mr. GENE GREEN).

Mr. GENE GREEN of Texas. Members, I'm from Texas. We believe it's our constitutional right to own every gun that was ever made, and we don't want to export them to anywhere—but this resolution is pure politics.

Mr. Speaker, today I rise in opposition to the resolution recommending that the House of Representatives find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in contempt of Congress for refusal to comply with a subpoena duly issued by the committee on Oversight and Government Reform.

In 2005, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) initiated Project Gunrunner that focused on stemming the flow of firearms into Mexico. This would stop guns from being obtained by drug cartels and criminal organizations that have killed thousands in Mexico in recent years.

Part of Project Gunrunner was Operation Fast and Furious, which has come under scrutiny over the past year due to reports that the ATF allowed the sale of hundreds of assault weapons to suspected straw purchasers, who then allegedly transported these weapons through the Southwest and into Mexico. In December 2010, suspected firearms linked to Operation Fast and Furious were found at the murder scene of Border Patrol Agent Brian Terry.

This resolution is not about Project Gunrunner or Operation Fast and Furious because the Department of Justice has produced thousands of pages of documents, two dozen officials have been interviewed, and the Attorney General has testified nine times, to show it was not responsible for these operations. The Attorney General has continually offered to provide even more information, including documents outside of the Committee's original subpoena. The documents that are now at the center of the resolution are completely unrelated to how Project Gunrunner or Operation Fast and Furious were initiated.

This investigation is nothing more than a hyper-partisan, election-year effort. The Committee vote was strictly along partisan lines and every amendment passed or failed on party-line votes. During this investigation, the Committee refused all Democratic requests for witnesses and hearings, as well as requests to interview any Bush Administration appointees.

Attorney General Eric Holder has produced sufficient evidence, through thousands of pages of documents and testifying nine times before the committee, to confirm that once he learned about Operation Fast and Furious, he took action to bring it to a close. The denial of Democratic requests to interview officials of the Bush Administration on this matter only further proves this is strictly a partisan political game to hold the first sitting Attorney General in contempt.

Mr. NUGENT. Mr. Speaker, I yield 2 minutes to a former law enforcement officer who lost her husband in the line of duty, the gentlewoman from Florida (Mrs. ADAMS).

Mrs. ADAMS. I am going to come to you from a different angle, one of a law enforcement officer.

I served over 17 years as a law enforcement officer, and I worked many undercover operations. As a law enforcement officer, you knew you didn't give guns to bad guys. The drug cartels, they're bad guys. You know if you let a gun walk with a bad guy that you're going to see that gun whether it's at a crime scene, or you're going to be looking down the barrel of it.

So when the Attorney General came to our committee, I asked him, Who approved this operation? Why was it approved? And he just wouldn't answer. He didn't know.

Okay. Well, what rises to the level of the Attorney General? If an international operation that allows guns to walk to another country and that are then used to kill one of our agents and that are used to kill and maim their citizens doesn't rise to his level of approval, who approved it?

This is something that is just normal procedure in any operation in a law enforcement agency.

So now you have an Attorney General who won't tell us or can't tell us who approved this international operation. You have others saying, Well, this is something that started under another administration.

It didn't. That was a different operation, and they realized they couldn't keep up with those guns, so they stopped it. When this one started, it was flawed from the beginning. The Attorney General said it was flawed from the beginning.

Yet we still have no answers. We don't have answers. The American people don't have answers, and most importantly, the Terry family doesn't have answers. That's just unacceptable.

I've heard from the other side of the aisle and from my colleagues here today that this is political. This isn't political. To me, it's personal. We have a law enforcement officer who was doing his job and who was killed by a flawed operation that no one will take ownership of in the Attorney General's Office; and the Attorney General, himself, won't tell us what rises to the level of his knowing what's going on in his agency if an international operation does not.

So I will tell you that it was not political when I started looking into this and when we started looking into it. It is not political today. The way that it became political was when there was asserted, right before the gavel dropped in the committee, an executive privilege.

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

Mr. NUGENT. I yield the gentlelady an additional 15 seconds.

Mrs. ADAMS. I ask you today to approve this resolution. Bring some credibility back to our Department of Justice. If this had happened in another agency throughout this Nation and if one of our officers had died and if the Department of Justice were involved in the investigation, they would be asking for the same documents that we are asking for.

Mr. MCGOVERN. Mr. Speaker, let me just say to the gentlelady that if she is interested in why the United States pursued this gunwalking program, she should talk to the Attorney General under the Bush administration, Attorney General Mukasey, when this thing started 5 years ago.

Unfortunately, notwithstanding the fact that the Democrats have asked that he be called before the committee, the request has been denied. She wants to know why this is political? The request for every single witness that the Democrats asked to be brought before the committee was denied, the request for every single witness.

That is unprecedented in this House in any committee, the fact that the Democrats have been locked out of having any of their witnesses come forward. This is not about gunwalking. This is not about finding the terrible truth about what happened to Agent Terry. This is about politics, plain and simple; and it diminishes this House.

I would like to yield 2 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. I thank the gentleman for yielding.

Any doubt that today's contempt resolution is political was put to rest when the NRA joined in to blowtorch vulnerable Democrats to vote for contempt today.

The gun lobby is directly responsible for the gap in Federal law that allowed the straw purchases of guns here that were taken to Mexico, ultimately resulting in the tragic death of a border agent. Yet because of a political mandate from the gun lobby, our committee spent no time on the root cause of this tragedy. Instead, after the majority failed to get the documents it requested that were under court seal and documents related to ongoing investigations, it asked for internal communications that no Republican or Democratic administration has ever given up.

Instead of sparing no effort to give law enforcement the tools it must have to protect our border agents, our committee has spared no effort to get to today's contempt resolution over issues unrelated to the tragic killing. After 16 months, the committee found no evidence that the Attorney General or other top Justice Department officials knew about the ATF gunwalking. And the committee resolutely refused to hear from top ATF officials who said that they, in turn, had given the Justice Department no such information.

□ 1310

It is Attorney General Holder who stopped the gunwalking authorized and started by the Bush administration. The contempt today, Mr. Speaker, is for the truth.

Mr. NUGENT. Mr. Speaker, I just want to make it very clear that the House rules of article XI talk about, specifically, j(1) as it relates to the rights of the minority. But you have to ask for that. A majority of the minority has to ask for it. It has to be focused on the issue at hand. They were talking about issues as it related to, I guess, gun ownership, and that was not germane to that issue.

With that, I yield 2 minutes to the gentleman from Arizona (Mr. QUAYLE).

Mr. QUAYLE. I thank the gentleman for yielding.

Mr. Speaker, today's vote is long overdue. For months, my colleagues and I have worked to uncover the truth about Operation Fast and Furious, which cost the life of Border Patrol Agent Brian Terry in my home State of Arizona.

Congressional efforts to get to the bottom of this tragedy and bring accountability to those responsible were met with derision by Attorney General Holder. At hearings, when we questioned Mr. Holder, he evaded. When we requested documents, he obfuscated. When I questioned Mr. Holder on June 8, he looked me in the eye and stated plainly that there was nothing whatsoever in the wiretap applications that suggested the existence of a gunwalking program. Yet, all I had to do was review those same applications to see that what the attorney general had said to me, my colleagues, and to the American people, was nothing but a boldfaced lie. Mr. Speaker, I will repeat that again. It was a boldfaced lie.

Today, let Congress' vote be a signal to Mr. Holder that dishonesty on the part of administration officials will never be tolerated.

Today, let this vote be a signal to President Obama that the security of the American people must always come before his own job security and the job security of his Cabinet officials.

Let this vote be a reminder to Mr. Holder and to President Obama that despite their executive overreach, there are, in fact, three coequal branches of government.

Let this vote demonstrate that Congress has not forgotten its right or its responsibility to provide oversight and to bring accountability.

I urge my colleagues to support the rule and the underlying resolution.

Mr. MCGOVERN. Mr. Speaker, my colleague from Florida (Mr. NUGENT) mentioned the issue of gun ownership as related to the witnesses that the Democrats wanted to have appear before the committee. How inviting the head of the ATF, which is responsible for Operation Fast and Furious, or inviting the former Attorney General, who was briefed on gunwalking and knew about it, how that has anything to do with gun ownership—what that has to do with, Mr. Speaker, is getting to the truth.

The minority has submitted a request for witnesses in writing and even requested for a—which I guess they have the right to do—a day of minority witnesses, which they were told they would not be granted that day in a timely fashion.

This is about politics. This, by all measures, is about politics. Again, the fact that we are doing this today, I think, diminishes the House of Representatives.

I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

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

Mr. ANDREWS. Mr. Speaker, every Member of this Chamber wants to get to the bottom of the issue of the tragic death of Officer Terry. Every Member of the Chamber wants to find out how the ATF and Justice Department were run as related to that tragedy.

So the committee that's looking into this refused to hear the testimony of the person running the ATF.

The committee that's looking into this refused to hear the testimony of the Assistant Attorney General, who was responsible for the ATF and talked about this with Attorney General Holder.

The committee that is responsible for this received thousands of pages of documents from the Attorney General to try to get to the bottom of the matter.

This procedure does violence to the American Constitution. Yes, we have three separate branches. Those branches are designed to respect each other's prerogatives. Those branches are designed to avoid a constitutional confrontation and engage in one only when necessary.

In the 225-year history of this institution, there has never been a vote like this before—never.

Is it because the Attorney General didn't turn over documents? He turned over thousands of pages of documents.

Is it because the people that know about this issue haven't been made available? To the contrary. The committee refused to hear the testimony of the head of the ATF and the Assistant Attorney General.

This procedure diminishes the House. It vandalizes the Constitution. It should not go forward.

Mr. NUGENT. Mr. Speaker, I yield 30 seconds to the gentleman from Utah (Mr. CHAFFETZ).

Mr. CHAFFETZ. The record will reflect that in a bipartisan way, the Acting Director of the ATF, the person that was actually appointed by President Obama, was deposed by both Democrats and Republicans about a year ago for 2 days around July 4. It was 2 days that he was deposed. That record is there. It is crystal clear.

We were also denied, by the Department of Justice, to speak with Lanny Breuer and Kenneth Blanco, two of the key central people at the highest levels of the Department of Justice. To suggest that we were given an opportunity to talk to them is patently false.

The final part I will make is you can't complain that Attorney General Holder was here nine times between the House and the Senate talking in part about Fast and Furious and then say that you never had a Democratic witness.

Mr. MCGOVERN. Mr. Speaker, we need to deal with facts in this debate because this is an important matter.

The gentleman just talked about these hearings, these meetings with the head of the ATF. The reality was that a year ago Republican staff met with the head of the ATF on July 3 without notifying Democratic staff. Democratic staff were invited to come on July 4. There were no public hearings, and no Members were there.

Again, I'm not sure what the problem is with having the head of the ATF come before the committee so the American people can hear what the truth is and what the facts are. I don't know why that's such a big deal. But to suggest that this was a bipartisan effort is just outright false.

Mr. Speaker, at this time, I yield 2 minutes to the gentlewoman from Maryland (Ms. EDWARDS).

Ms. EDWARDS. Mr. Speaker, the Republican majority is pursuing an unprecedented and a partisan constitutional confrontation today, and it's unnecessary.

The contempt resolution that's before the House is both disgraceful and it really is demeaning to this House. It's being brought forth by the other side simply to drag Attorney General Holder through the mud and to publicly accuse him and the administration and, frankly, by extension, the President of the United States, of a coverup, claiming that our Attorney General was obstructing justice. Republicans even went so far as to call him a liar on national television. This is unheard of, it is hyperbolic, and it's disrespectful to the office and disrespectful to this House.

The fact is that Chairman ISSA and Republicans have continuously moved the goalpost and disregarded the good intent and good faith shown by the Attorney General, the Justice Department, and the President's administration.

As has been said before, the Department of Justice has provided the Congress with over 7,600 pages of documents and made numerous officials available for testimony, but that's been rebuffed. Just last week, the Attorney General offered to provide even more internal documents and requested a show simply of good faith on the part of the Republican majority that they wanted to resolve the contempt issue, but they refused, choosing this constitutional confrontation instead. That's because the Republicans, to be clear, are not interested in a resolution. They're not looking to compromise. They're only looking to score political points at the expense of the integrity of the House and the good name of the President and the Attorney General.

So I would ask us to carefully consider what we're doing here today and to raise into question what we're doing to this House, to the institution, and to the Presidency. I would ask my colleagues on the other side of the aisle to ask themselves whether the American people want us to focus on their business, to focus on the business of moving the country forward, or to simply play politics because you can't win any other way.

It's a really simple proposition that's in front of us today. And I would say to my colleagues on both sides of the aisle: it is time for us to simply walk away from the nonsense that is not doing justice to the American people.

Mr. Speaker, the Republican majority is pursuing an unprecedented and partisan constitutional confrontation today.

The contempt resolution before this House is disgraceful and demeaning to the House. It's been brought forth by the other side to drag Attorney General Holder through the mud and publicly accuse him and the Administration by extension the President of the U.S. of a "cover-up", claiming that Attorney General Holder was "obstructing justice." Republicans even went so far as to call him a "liar" on national television—unheard of, blatantly hyperbolic, and disrespectful to the office.

The fact is that Chairman ISSA and the Republicans have continuously moved the goalposts and disregarded the good faith shown by the Attorney General, the Justice Department, and the President's Administration.

All told, the Department of Justice has provided Congress with over 7,600 pages of documents and has made numerous high profile officials available for public congressional testimony. The Attorney General himself has answered questions at nine public hearings.

Last week, the Attorney General offered to provide even more internal documents, including documents outside of Chairman ISSA'S subpoena. All the Attorney General requested was a show of good faith on the part of the Republican majority to resolve the contempt issue, but they refused. That's because the Republicans are not looking to compromise. They are looking simply to score political points at the expense of the integrity of the House.

And so, on June 11th, Chairman ISSA announced his intention to hold a contempt vote. On June 20th, just nine short days later, Chairman ISSA called the vote after the President invoked executive privilege.

From George Washington to George W. Bush, Presidents of both political parties have asserted executive privilege to protect the confidentiality of certain kinds of executive branch information in response to demands by Congress. In fact, dating back to President Reagan, Presidents have asserted executive privilege 24 times.

In previous situations, Committee Chairman put off contempt proceedings in order to conduct serious and careful review of Presidential assertions of executive privilege. Then Oversight and Government Reform Chairman WAXMAN put off a contempt vote after President Bush asserted executive privilege in the Valarie Plame investigation. Chairman WAXMAN did the same when President Bush asserted the privilege relating to EPA ozone regulations—on the same day as the contempt vote. Mr. DINGELL, as Chair of the Energy and Commerce Committee held two hearings before proceeding to a contempt vote, after he received President Reagan's assertion of executive privilege.

But on June 20th, after the invocation of executive privilege by President Obama, and over the requests of several committee members to delay action, Chairman ISSA proceeded with the contempt vote.

One question that comes to my mind is why the rush? The Committee recently "completed" a 16-month investigation, one in which the committee refused all Democratic requests for hearings and even for a single witness. Then one week and just seven days after the committee reported out the contempt resolution on a party-line vote on June 20th, the House today will vote on this privileged resolution.

The last time the House voted on contempt resolution against executive branch officials was during an investigation in the Bush administration into the firing of U.S. Attorneys. In that situation, the House Judiciary Committee cited two officials for contempt of Congress in July 2007. The full House did not actually consider and vote on those contempt resolutions until eight months later in February 2008.

The Obama administration has argued that the documents in question in this instance fall within the executive privilege because they have been generated in the course of the deliberative process concerning the Justice Department's response to Congressional oversight, not because the President knew more about this matter than he admitted to or that there was a conspiracy in the White House, as Chairman ISSA falsely asserts.

For some reason, the Republican majority feels that this is a pressing issue. But I can think of a large list of other issues that I feel that Americans would rather we address.

It is hard to imagine that the House Republican majority's actions are anything else besides election-year politics designed to make this administration look bad. This resolution will not create jobs, nor will it strengthen our economic recovery. It is far past time to getting around to solving the real problems that the American people sent each of us here to resolve.

I urge my colleagues on both sides of the aisle to carefully consider what we are about to do today. Never in our nation's history has the House voted to hold a sitting Attorney General in contempt. I urge my colleagues to vote down this partisan and political contempt resolution.

□ 1320

Mr. NUGENT. Mr. Speaker, I would like to inquire how much time remains.

The SPEAKER pro tempore. The gentleman from Florida has 9½ minutes remaining. The gentleman from Massachusetts has 10 minutes remaining.

Mr. NUGENT. I will continue to reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. I thank the gentleman for yielding.

I rise in strong opposition to this resolution. What began as a legitimate investigation into an operation called

Fast and Furious has, unfortunately, degenerated into yet another partisan political attack in an election year. And it's a shame this is taking place for many reasons. First and foremost, because the American people have a legitimate interest in getting to the bottom of the gun violence that spills across our border, with the tens of thousands of weapons made in America that end up in the hands of the cartels. But instead of looking into that investigation, instead of finding out what we can do about this gun violence, this has now become a fight over documents, a fight that is completely unnecessary and unjustified.

The very documents that are at issue in this resolution were created after this operation had long since been shut down. They will shed no light on the operation. They will shed no light on what we can do to stop this gun trafficking. But then that's not the goal. The goal here is simply the fight.

The Justice Department has bent over backwards, produced thousands of documents. The Attorney General has testified eight or nine times before the House, has made every effort to cooperate in this investigation, but the committee will not take ''yes'' for an answer because that's not the goal. The fight is the goal.

And so we are here when we should be doing the Nation's business, when we should be working on legislation to create jobs. Instead, we are here in what is nothing less than a partisan brawl over nothing. And you know how this will end? It will end months or years from now with a settlement in Federal District Court in which the Justice Department will provide the very same documents they have already offered to provide. But we will have wasted our time; we will have wasted our money; and we will have wasted the precious opportunity to get the people's business done here in the House.

In case the majority hasn't noticed, we are in the midst of a very difficult economy, where people are struggling to find work. They are not struggling to find another partisan fight on the House floor. This is something that cried out for resolution, but those cries were ignored. I urge a ''no'' vote.

Mr. NUGENT. Mr. Speaker, I yield 2 minutes to the gentleman from Utah (Mr. CHAFFETZ).

Mr. CHAFFETZ. Mr. Speaker, the reason I am so passionate about this issue is that it's about openness, it's about transparency, it's about the idea that there is no one person in our government that's above the law; that when you have a duly issued subpoena, you comply with that subpoena.

In fact, I would like to hearken back to the remarks by President Obama as he took office. He said:

> Let me say as simply as I can. Transparency and the rule of law will be the touchstones of this presidency. I will also hold myself, as President, to a new standard of openness. But the mere fact that you have legal power to keep something secret does not mean you should always use it.

He went on to say:

> I expect members of my administration not simply to live up to the letter but also the spirit of this law.

He went on to send something to all of the department heads. He said:

> Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors or failures might be revealed, or because of speculative or abstract fears.

The President further said, relating to Fast and Furious:

> There may be a situation here in which a serious mistake was made, and if that's the case, we will find out, and we will hold somebody accountable.

We have a dead Border Patrol agent. We have over 200 dead Mexican people. We have a program that the Attorney General called ''fundamentally flawed.'' We have thousands of weapons that are missing. We have a duty, an obligation to pursue this to the fullest extent and to make sure that we have all those documents so we can make sure that it never, ever happens again.

Now there are 140,000 documents, according to the Attorney General, that deal with Fast and Furious. We've been given less than 8,000 of those. Less than 8,000 of those. We deserve to have that.

Also, I will be submitting for the RECORD this statement from the National Border Patrol Council. This is the AFL–CIO-oriented organization of 17,000 Border Patrol members who call for the resignation of Attorney General Holder. In fact, they say that it's ''a slap in the face to all Border Patrol agents who serve this country'' and ''an utter failure of leadership at the highest levels of government.''

''If Eric Holder were a Border Patrol agent and not the Attorney General, he would have long ago been found unsuitable for government employment and terminated.''

These are from the people on the front lines. We have an obligation to get to the bottom of this.

[From the National Border Patrol Council, June 20, 2012]

NBPC CALLS FOR THE RESIGNATION OF ATTORNEY GENERAL ERIC HOLDER

JUNE 18, 2012.—The union representing U.S. Border Patrol agents called for the resignation of Attorney General Eric Holder for his role in the ''Operation Fast and Furious'' gun smuggling scandal that directly resulted in the murder of Border Patrol Agent Brian Terry on December 15, 2010.

National Border Patrol Council President George E. McCubbin III called the actions of the Attorney General Holder, ''A slap in the face to all Border Patrol agents who serve this country'' and ''an utter failure of leadership at the highest levels of government.''

Border Patrol agents are indoctrinated from day one of their training that integrity is their most important trait as a Border Patrol agent and that without it they have little use to the agency. Border Patrol agents are quickly disciplined whenever they lie or show a lack of candor. The standard that applies to these agents should at a minimum be applied to those who lead them. ''If Eric Holder were a Border Patrol agent and not the Attorney General, he would have long ago been found unsuitable for government employment and terminated.''

''The heroism that Border Patrol Agent Brian Terry demonstrated on that cold night in the dessert of Arizona was in keeping with the finest traditions of the United States Border Patrol and will never be forgotten by those who patrol this nation's borders. We cannot allow our agents to be sacrificed for no gain and not hold accountable those who approved the ill conceived 'Operation Fast and Furious' '', said McCubbin.

''The political shenanigans surrounding this scandal and the passing of blame must stop.'' A Border Patrol agent cannot accidentally step foot into Mexico without a myriad of U.S. and Mexican government agencies being made aware, so there is no possible way that this operation was conducted without the knowledge and tacit approval of the Department of Justice and the Obama administration.

Mr. MCGOVERN. Mr. Speaker, I yield myself 15 seconds.

Mr. Speaker, if this is about openness, then why does the committee have secret meetings where they lock Democrats out? If this is about openness, then why won't they let any Democratic witnesses appear before the committee?

And since there seems to be some confusion as to whether or not Democrats actually formally requested witnesses, I will insert into the RECORD a letter to the Honorable DARRELL ISSA on October 28, on November 4, and on February 2, requesting witnesses, including the former Attorney General Mukasey and Mr. Melson, the head of the ATF.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, HOUSE OF REPRESENTATIVES,
Washington, DC, October 28, 2011.

Hon. DARRELL E. ISSA,
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As I have stated repeatedly, I believe Operation Fast and Furious was a terrible mistake with tragic consequences. As I have also stated, I support a fair and responsible investigation that follows the facts where they lead, rather than drawing conclusions before evidence is gathered or ignoring information that does not fit into a preconceived narrative.

On several occasions over the past month, you have called on Attorney General Eric Holder to appear before the House Judiciary Committee to answer questions about when he first became aware of the controversial tactics used in Operation Fast and Furious. The Attorney General has now agreed to testify before the House Judiciary Committee on December 8, 2011, when you will have another opportunity to question him directly.

With respect to our own Committee's investigation, I do not believe it will be viewed as legitimate or credible—and I do not believe the public record will be complete—without public testimony from Kenneth Melson, who served as the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

A hearing with Mr. Melson would help the Committee and the American people better understand what mistakes were made in Operation Fast and Furious, how these tactics originated, who did and did not authorize them. and what steps are being taken to ensure that they are not used again.

Our staffs have already conducted transcribed interviews with Mr. Melson and the

former Deputy Director of ATF, William Hoover. During those interviews, these officials expressed serious concerns about the controversial tactics employed by the Phoenix Field Division of ATF as part of this operation. They also raised concerns about the manner in which the Department of Justice responded to congressional inquiries.

Both officials also stated that they had not been aware of the controversial tactics being used in Operation Fast and Furious, had not authorized those tactics, and had not informed anyone at the Department of Justice headquarters about them. They stated that Operation Fast and Furious originated within the Phoenix Field Division, and that ATF headquarters failed to properly supervise it.

Since the Attorney General has now agreed to appear before Congress in December, I believe Members also deserve an opportunity to question Mr. Melson directly, especially since he headed the agency responsible for Operation Fast and Furious. My staff has been in touch with Mr. Melson's attorney, who reports that Mr. Melson would be pleased to cooperate with the Committee.

Thank you for your consideration of this request.

Sincerely,

ELIJAH E. CUMMINGS,
Ranking Member.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, HOUSE OF REPRESENTATIVES,
Washington, DC, November 4, 2011.

Hon. DARRELL E. ISSA,
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to request that the Committee hold a hearing with former Attorney General Michael Mukasey in order to assist our efforts in understanding the inception and development of so-called ''gun-walking'' operations over the past five years.

THE MUKASEY MEMO

Documents obtained by the Committee indicate that Attorney General Mukasey was briefed on November 16, 2007, on a botched gun-walking operation by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). A briefing paper prepared for Attorney General Mukasey prior to a meeting with Mexican Attorney General Medina Mora describes ''the first-ever attempt to have a controlled delivery of weapons being smuggled into Mexico by a major arms trafficker.'' The briefing paper warns, however, that ''the first attempts at this controlled delivery have not been successful.'' Despite these failures, the briefing paper proposes expanding such operations in the future. It states:

ATF would like to expand the possibility of such joint investigations and controlled deliveries—since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a single smuggler.

Attorney General Mukasey's briefing paper was prepared only weeks after ATF officials had expressed serious concerns with the failure of these tactics and claimed they were shutting them down. After ATF officials discovered that firearms were not being interdicted, William Hoover, then ATF's assistant director of field operations, wrote an e-mail on October 5, 2007, to Carson Carroll, ATF's assistant director for enforcement programs, stating:

I do not want any firearms to go South until further notice. I expect a full briefing paper on my desk Tuesday morning from SAC Newell [Special Agent in Charge William Newell] with every question answered.

The next day, Special Agent in Charge Newell responded in an e-mail, stating:

I'm so frustrated with this whole mess I'm shutting the case down and any further attempts to do something similar. We're done trying to pursue new and innovative initiatives—it's not worth the hassle.

It is unclear from the documents what changed between October 6, 2007, when Special Agent in Charge Newell indicated that he was shutting down these operations, and November 16, 2007, when Attorney General Mukasey was presented with a proposal to expand them. The documents do not indicate whether Attorney General Mukasey read this briefing paper or how he responded to the proposal to expand these operations.

ADDITIONAL GUN-WALKING OPERATIONS DURING THE BUSH ADMINISTRATION

Other documents obtained by the Committee indicate that the officials who prepared the November 16, 2007, briefing paper for Attorney General Mukasey were aware that it did not disclose the full scope of previous gun-walking operations. After reviewing the briefing paper, Mr. Carroll wrote an e-mail to Mr. Hoover, stating: ''I am going to ask DOJ to change 'first ever'.'' He added: ''there have [been] cases in the past where we have walked guns.''

Mr. Carroll's statement appears to be a reference to an earlier operation in 2006 known as Operation Wide Receiver. The documents obtained by the Committee do not indicate whether Attorney General Mukasey was in fact informed about this operation, which occurred a year earlier.

The documents obtained by the Committee appear to directly contradict your claim on national television that gun-walking operations under the previous Administration were well coordinated. During an appearance on Face the Nation on October 16, 2011, you asserted:

We know that under the Bush Administration there were similar operations, but they were coordinated with Mexico. They made every effort to keep their eyes on the weapons the whole time.

Your assertion was particularly troubling since the Committee obtained these e-mail exchanges in July, several months before your appearance on Face the Nation.

CONCLUSION

Over the past year, you have been extremely critical of Attorney General Eric Holder, arguing that he should have known about the controversial tactics employed in these operations. He has now agreed to your request to testify before the House Judiciary Committee on December 8, 2011, to answer additional questions about these operations.

Given the significant questions raised by the disclosures in these documents, our Committee's investigation will not be viewed as credible, even-handed, or complete unless we hear directly from Attorney General Mukasey.

During a press appearance on Wednesday, you stated: ''Our job for the American people is to make sure—since they say they shouldn't walk guns and they did walk guns—is that we know they'll never walk guns again.'' I completely agree with this statement, and I believe my request will help us fulfill our shared goal. Thank you for your consideration of this request.

Sincerely,

ELIJAH E. CUMMINGS,
Ranking Member.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, HOUSE OF REPRESENTATIVES,
Washington, DC, February 2, 2012.

Hon. DARRELL E. ISSA,
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Given your statements at today's hearing, I am writing to formally reiterate my previous request for the Committee to hold a public hearing with former Attorney General Michael Mukasey.

On November 4, 2011, I wrote to you requesting a public hearing with Mr. Mukasey in order to assist the Committee's efforts in understanding the inception and development of so-called ''gunwalking'' operations over the past five years in Arizona.

As I described in the letter, the Committee has now obtained a briefing paper prepared for Mr. Mukasey prior to a meeting with Mexican Attorney General Medina Mora. The briefing paper describes efforts in 2007 by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to coordinate interdiction efforts with Mexico after firearms crossed the border. The briefing paper warns, however, that ''the first attempts at this controlled delivery have not been successful.'' Despite these failures, the briefing paper proposes expanding such operations in the future. It states:

ATF would like to expand the possibility of such joint investigations and controlled deliveries—since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a single smuggler.

Since I sent the letter to you in November, the Committee has not held a public hearing with Mr. Mukasey.

In addition to these documents, I issued a report this week documenting that Operation Fast and Furious was actually the fourth in a series of reckless operations run by the Phoenix Field Division of ATF and the Arizona U.S. Attorney's Office dating back to 2006 involving hundreds of weapons across two administrations.

At today's hearing, several Members of the Committee acknowledged that the documents obtained by the Committee do not indicate that Mr. Mukasey approved gunwalking, just as they do not indicate that Attorney General Holder approved gunwalking. Nevertheless, these Members expressed their belief that Mr. Mukasey's public testimony is necessary if the Committee intends to conduct a thorough and evenhanded investigation of this five-year history of gunwalking in Arizona.

During an exchange with Committee Member Gerry Connolly at today's hearing, you stated that you were open to all requests for hearings relating to this investigation. Attorney General Holder has now testified publicly six times about these issues. It is only appropriate for the Committee and the public to hear testimony from Mr. Mukasey at least once.

Thank you for your consideration of this request.

Sincerely,

ELIJAH E. CUMMINGS,
Ranking Member.

Mr. MCGOVERN. I yield 2 minutes to the gentleman from Georgia (Mr. JOHNSON).

Mr. JOHNSON of Georgia. Mr. Speaker, today we need to understand that there are two classes of documents. The ones that relate to pending criminal investigations, those are not discoverable or cannot be distributed outside of the Justice Department under

penalty of U.S. law. You can get 5 years for doing that. You can't expect the Attorney General to turn those over. The other class of documents is internal communications. There may be some whiff of discoverable information in those, but they're covered by executive privilege. And you really don't know why the Attorney General has invoked executive privilege on those issues, but we have to trust the fact that there's good reason for that to be the case.

Now when you compare what has gone on today and over the last 7 days with what happened the day that President Obama was sworn in, you can understand why they're doing what they're doing today. You see, not very long after President Obama was sworn in, we got word that MITCH MCCONNELL said that his mission was to make President Obama a one-term President. And then we know that later on that afternoon, later that evening, when everyone else was enjoying themselves at the Presidential balls, there was a group of Congresspeople—leadership in the Republican Party—that were scheming on how they were going to disrupt and say ''no'' and obstruct everything that this President put forth. So they have done that. They have done everything they can to make this President look bad.

This is a manufactured crisis. It has no legal substance whatsoever. This is just simply a cheap political stunt to bring disfavor upon the President of the United States. And I ask my colleagues to not let us sink to this level. It is the first time in history that any Cabinet member has been found in contempt of Congress. This is truly saddening.

Mr. NUGENT. Mr. Speaker, I yield 90 seconds to the gentleman from Oklahoma (Mr. LANKFORD).

Mr. LANKFORD. Mr. Speaker, I would have to concur. This is an incredibly sad day. This administration that started talking about transparency has now sunk to the level of actually concealing documents.

Never has an Attorney General been held in contempt of Congress because every other Attorney General has turned over documents to Congress when they were requested. This Attorney General has not.

I would just compare this whole controversy with the Secret Service scandal from several months ago. They put everything out, released all the documents, walked through it. It was done. The GSA scandal, released all the documents, held people accountable. It was done. ATF even, when we started this investigation a year and a half ago, put all their documents out, put all their people out, done.

As soon as we get to the Department of Justice, it's slow. It's delay, it's delay, it's delay. The question is, Why? Why this matters when we get to the Department of Justice documents? Because in the Phoenix office, everything was organized in the Phoenix office, then was approved by the U.S. attorney in the Phoenix area, and then went to the Department of Justice—not to the head of ATF—but to the Department of Justice, to DOJ and their leadership, to be approved.

□ 1330

It is essential that we know what was done there and who did it in the process. So this is not some ancillary thing that's added to it. This is an important part of this process.

Now, there's all this obfuscation to say it's Bush's fault, this is political, there's not enough witnesses. The essence of this particular contempt deals with the documents that, on February 4 of last year, the Department of Justice sent us a letter that said they had no idea about this. And then by December, after all yearlong saying, No, we didn't know, we didn't know, we didn't know, come back in December and say, Oops, we did. It is what Eric Holder has called his evolving truth.

We want to know the facts of how it started here and went here. There's 130,000 documents that they say they have. They have turned over a little over 7,000 of those documents. This is not the prerogative for them to continue to hold and conceal those documents.

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

Mr. NUGENT. I yield the gentleman an additional 15 seconds.

Mr. LANKFORD. Fast and Furious has moved to slow and tedious. We have got to have those documents to be able to finish up this investigation. It should have long since been done.

Eric Holder told our chairman that he has these documents, but he's using the documents as a bargaining chip to get a better deal. This is not the prerogative when we have a subpoena.

We are not looking for some conflict with the administration. We're looking to get to the facts.

Mr. MCGOVERN. Mr. Speaker, I yield 1½ minutes to the gentleman from Pennsylvania (Mr. FATTAH).

Mr. FATTAH. I thank the gentleman.

I served for many years on the Oversight and Government Reform Committee. I've been involved in a lot of these investigations over time. I served for many years on the House Ethics Committee.

The Congress should be embarrassed about the conduct of this investigation and the charade that brings us to the floor today. The Attorney General can't provide these documents. The President has protected them under executive order, executive privilege, which means that the person who works for the President can't provide them to the Congress. We all know that. So to take a decent man who's served his country in almost every capacity—as a military veteran, as a U.S. attorney here in D.C., as a judge—and to drag his name wrongfully before this House, this majority, which clearly has lost its way—in their pursuit of power, they have lost all sense of principle—this is a disgraceful act.

But we will get through it. We are a big country, and the American people will recognize the disservice that the Republican majority brings to this floor today.

I wouldn't be surprised, at the end of the day, whether we couldn't even find this Congress held in more contempt than it is now. I think we're at a 9 percent approval rate. That's because of the actions of this majority. And the public will have to take account of that as we go forward.

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

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentlelady from California (Ms. SPEIER).

Ms. SPEIER. I thank the gentleman from Massachusetts.

This should be labeled ''Fast and Foolish'' or maybe ''Fast and Fake.'' We are not talking about gunwalking here. We are doing nothing to help the family of Brian Terry recover. What we're talking about are interoffice emails between the administration executives in the AG's office. I want everyone here to be willing to turn over all of their interoffice emails.

But, more importantly, let's talk about whether there's precedence for the assertion of executive privilege. And let me just point to a number of cases when executive privilege was asserted for noninvolved Presidential communications.

In October 1981, President Reagan asserted executive privilege over internal deliberations within the Department of the Interior concerning, interestingly enough, the Mineral Lands Leasing Act.

In October 1982, President Reagan asserted executive privilege over internal EPA files concerning Superfund provisions.

In July 1986, President Reagan asserted executive privilege over documents written by William Rehnquist when he was the head of the OLC at DOJ.

In August 1991, President George H.W. Bush asserted executive privilege over an internal Defense Department memorandum regarding an aircraft development contract.

In December 2011, President George W. Bush asserted executive privilege over internal Justice Department materials relating to prosecutorial decisionmaking.

It has been done many, many times before by Republican Presidents. What we are doing here is a travesty to this institution and to this country.

Mr. NUGENT. I continue to reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, can I inquire of the gentleman from Florida how many more speakers he has, because we have no more speakers on this side but myself.

Mr. NUGENT. We have no more speakers.

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

Mr. Speaker, there isn't a single person in this House who doesn't honor the service of Agent Terry. There isn't a single person in this House who does not want justice for Agent Terry's family—and the truth. There isn't a single person in this House, I believe, who doesn't want to get to the bottom of how gunwalking started and how these operations were so terribly botched.

But every single attempt for an evenhanded investigation has been thwarted by the Republican majority. There has not been an evenhanded investigation. Every single witness that the Democrats requested to be called before the committee was refused. Every single witness. It's unprecedented.

Let me say that Eric Holder is a good and decent and honorable man. He's doing an excellent job as Attorney General. He does not deserve this. And this institution does not deserve this.

I say to my friends on the other side of the aisle: Do you really want to go down this road? This is a race to the bottom. This is a witch hunt. This is politics, pure and simple. It diminishes this House of Representatives. We are better than this.

Does everything have to be a confrontation? Does everything have to be in your face?

Now, you want to maintain your majority. I get it. You want to win elections. That's understandable. But at what cost? Do we really need to drag the House of Representatives down this road?

This is a stain on this House of Representatives. We should not be here today. We should be talking about jobs and putting people back to work and about making sure student loans don't double. But instead, we are doing this.

This is so political and so blatantly partisan that I think the American people are sickened by this. And as a number of people have said, You want to know why the approval rating is so low? Watch the videotape of this debate here today. We should be doing the peoples' business.

This is not the peoples' business. This is not about getting to the truth in the case of Agent Terry. This is a political maneuver to go after this administration. And this has, unfortunately, become a trend and a pattern in this Congress. We need to find a way to solve our problems without always having these big confrontations.

So I urge my colleagues on the other side of the aisle, don't go down this road. We urged the Speaker of the House yesterday to pull this from the floor. This is wrong. Please defeat this rule.

I yield back the balance of my time.

Mr. NUGENT. Mr. Speaker, I yield myself such time as I may consume.

This is about Agent Terry, who gave his life for this country. This is about what this government has done not to expose the truth but to block the truth. This is about calling on the Attorney General to follow the Constitution. It's about us following article I of the Constitution in regards to our ability to have oversight.

I hear this stuff about witch hunt and about politics and it gets me sick, because I will tell you this: as a former law enforcement officer, we should be more worried about what lousy policies that Attorney General Holder has covered up that caused the death of one of our own in protecting this country. That's what this is all about. This is about holding people accountable.

I hear a lot of things down here. But the rule of law, when I was subpoenaed as a sheriff, we complied with the subpoena. I understand that the Attorney General feels that he's above the law in regards to the subpoena, and I understand the President's come in to protect him.

But we talk about this body and what the American people think. How about we do the right thing, Mr. Speaker, and we move forward and do the right thing in regards to all the Attorney General has to do is comply with the subpoena. By saying that he's bent over backwards, I would suggest to you that under 8,000 pages of documents out of 140,000 is not bending over backwards.

This is about our constitutional responsibility to provide oversight. This is about our constitutional responsibility to make sure that the Federal Government stays on track, that these executive branch decisions that are made don't put more Americans at risk.

Nobody seems to care about the 200-plus Mexican nationals that have been killed. Obviously, Mexico cares because they want to indict those that were responsible for coming up with this failed idea.

□ 1340

This is about Congress doing its constitutional responsibility, holding hearings to find out what happened. And when the Federal Government or branches of the Federal Government stand in the way and obstruct, that's not the right thing to do. My friends on the other side of the aisle should be more concerned that the Attorney General has said to the Congress: Guess what, you don't matter.

Congress does matter. Congress has a constitutional responsibility, Mr. Speaker, to do just that, to have oversight over the executive branch, and the subpoena is a tool to allow us to do that. And, unfortunately, this Attorney General feels he doesn't have to comply. I beg to differ.

I think the American people—but more than that, the family of Officer Terry—deserve to know what transpired and what the end of this is. And I think that we should be protecting those law enforcement officers that are out there today. In the United States of America, they are going to be facing these same guns that were walked during Fast and Furious. If you read the transcripts, hundreds—hundreds—of guns walked. Some have been recovered in the United States. And, unfortunately, some have been recovered in Mexico and have led to deaths in Mexico. One has to wonder how many of those guns are going to lead to deaths here in America.

You know, when I raised my hand, along with everybody else, it was to support and defend the Constitution. When I raised my hand as a sheriff, it was to support and defend the Constitution. And when Officer Terry raised his hand, it was to support and defend the Constitution and the laws of the United States of America.

We owe it to all of our law enforcement officers—Federal law enforcement officers, in particular—on this issue, to make sure that they're protected. And to all of our local law enforcement officers who are going to be the first line of defense on the streets of our cities and counties, they have a right to know what this Attorney General's office and the leadership has done, not giving people a free pass because it is expedient to do and because we really don't want to hear what the absolute facts are. Let's just push the facts aside.

Those on the other side of the aisle really don't want to talk about the facts. They want to talk about it is a witch hunt or it's politics.

The facts are clear. Officer Terry is dead. Officer Terry died because weapons were allowed to walk from the United States under the nose of the ATF and under the nose of the Attorney General's office through an OCDETF case. Those are the facts.

I would suggest that we should find out how did that come to pass. And then in regards to what was transpired and sent to Congress and Members of Congress about the fact that it didn't really occur, and then 10 months later, Oh, by the way, you know that memo we sent, it wasn't correct; we did, in fact, allow guns to walk.

We put law enforcement officers of the United States of America at risk because this Federal Government had a botched idea and a bad idea.

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

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. MCGOVERN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on House Resolution 708 will be followed by 5-minute votes on suspending the rules and passing: H.R. 4251, if ordered; and H.R. 4005, if ordered.

The vote was taken by electronic device, and there were—yeas 254, nays 173, not voting 5, as follows:

[Roll No. 437]

YEAS—254

Adams
Aderholt
Akin
Alexander
Amash
Amodei
Austria
Bachmann
Bachus
Barletta
Barrow
Bartlett
Barton (TX)
Bass (NH)
Benishek
Berg
Biggert
Bilbray
Bilirakis
Bishop (UT)
Black
Blackburn
Bonner
Bono Mack
Boren
Boswell
Boustany
Brady (TX)
Brooks
Broun (GA)
Buchanan
Bucshon
Buerkle
Burgess
Burton (IN)
Calvert
Camp
Campbell
Canseco
Cantor
Capito
Carter
Cassidy
Chabot
Chaffetz
Chandler
Coble
Coffman (CO)
Cole
Conaway
Cravaack
Crawford
Crenshaw
Culberson
Davis (KY)
Denham
Dent
DesJarlais
Diaz-Balart
Dold
Donnelly (IN)
Dreier
Duffy
Duncan (SC)
Duncan (TN)
Ellmers
Emerson
Farenthold
Fincher
Fitzpatrick
Flake
Fleischmann
Fleming
Flores
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Gardner
Garrett
Gerlach
Gibbs
Gibson
Gingrey (GA)
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (MO)
Griffin (AR)
Griffith (VA)
Grimm
Guinta
Guthrie
Hall
Hanna
Harper
Harris
Hartzler
Hastings (WA)
Hayworth
Heck
Hensarling
Herger
Herrera Beutler
Hochul
Huelskamp
Huizenga (MI)
Hultgren
Hunter
Hurt
Issa
Jenkins
Johnson (IL)
Johnson (OH)
Johnson, Sam
Jones
Jordan
Kelly
Kind
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kissell
Kline
Labrador
Lamborn
Lance
Landry
Lankford
Latham
LaTourette
Latta
LoBiondo
Long
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marino
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McIntyre
McKeon
McKinley
McMorris Rodgers
Meehan
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mulvaney
Murphy (PA)
Myrick
Neugebauer
Noem
Nugent
Nunes
Nunnelee
Olson
Owens
Palazzo
Paul
Paulsen
Pearce
Pence
Peterson
Petri
Pitts
Platts
Poe (TX)
Pompeo
Posey
Price (GA)
Quayle
Rahall
Reed
Rehberg
Reichert
Renacci
Ribble
Rigell
Rivera
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross (AR)
Ross (FL)
Royce
Runyan
Ryan (WI)
Scalise
Schilling
Schmidt
Schock
Schweikert
Scott (SC)
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Southerland
Stearns
Stivers
Stutzman
Sullivan
Terry
Thompson (PA)
Thornberry
Tiberi
Tipton
Turner (NY)
Turner (OH)
Upton
Walberg
Walden
Walsh (IL)
Walz (MN)
Webster
West
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Womack
Woodall
Yoder
Young (AK)
Young (FL)
Young (IN)

NAYS—173

Ackerman
Altmire
Andrews
Baca
Baldwin
Barber
Bass (CA)
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Bonamici
Brady (PA)
Braley (IA)
Brown (FL)
Butterfield
Capps
Capuano
Carnahan
Carney
Carson (IN)
Castor (FL)
Chu
Cicilline
Clarke (MI)
Clarke (NY)
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Critz
Crowley
Cuellar
Cummings
Davis (CA)
Davis (IL)
DeFazio
DeGette
DeLauro
Deutch
Dicks
Dingell
Doggett
Doyle
Edwards
Ellison
Engel
Eshoo
Farr
Fattah
Filner
Frank (MA)
Fudge
Garamendi
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Hahn
Hanabusa
Hastings (FL)
Heinrich
Higgins
Himes
Hinchey
Hinojosa
Hirono
Holden
Holt
Honda
Hoyer
Israel
Jackson Lee (TX)
Johnson (GA)
Kaptur
Keating
Kildee
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maloney
Markey
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McNerney
Meeks
Michaud
Miller (NC)
Miller, George
Moore
Moran
Murphy (CT)
Nadler
Napolitano
Neal
Olver
Pallone
Pascrell
Pastor (AZ)
Pelosi
Perlmutter
Peters
Pingree (ME)
Polis
Price (NC)
Quigley
Rangel
Reyes
Richardson
Richmond
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schrader
Schwartz
Scott (VA)
Scott, David
Serrano
Sewell
Sherman
Shuler
Sires
Slaughter
Smith (WA)
Speier
Stark
Sutton
Thompson (CA)
Thompson (MS)
Tierney
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watt
Waxman
Welch
Wilson (FL)
Woolsey
Yarmuth

NOT VOTING—5

Cardoza
Forbes
Jackson (IL)
Johnson, E. B.
Lewis (CA)

□ 1407

Ms. EDWARDS and Mr. COHEN changed their vote from ''yea'' to ''nay.''

Mr. DONNELLY of Indiana and Mrs. LUMMIS changed their vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

SECURING MARITIME ACTIVITIES THROUGH RISK-BASED TARGETING FOR PORT SECURITY ACT

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill (H.R. 4251) to authorize, enhance, and reform certain port security programs through increased efficiency and risk-based coordination within the Department of Homeland Security, and for other purposes, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. KING) that the House suspend the rules and pass the bill, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. DENT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 402, nays 21, not voting 9, as follows:

[Roll No. 438]

YEAS—402

Ackerman
Adams
Aderholt
Akin
Alexander
Altmire
Amodei
Andrews
Austria
Baca
Bachmann
Bachus
Baldwin
Barber
Barletta
Barrow
Bartlett
Barton (TX)
Bass (CA)
Bass (NH)
Benishek
Berg
Berkley
Berman
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Black
Blackburn
Blumenauer
Bonamici
Bonner
Bono Mack
Boren
Boswell
Boustany
Brady (PA)
Brady (TX)
Braley (IA)
Brooks
Brown (FL)
Buchanan
Bucshon
Buerkle
Burgess
Burton (IN)
Butterfield
Calvert
Camp
Campbell
Canseco
Cantor
Capito
Capps
Capuano
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castor (FL)
Chabot
Chaffetz
Chandler
Chu
Cicilline
Clarke (MI)
Clarke (NY)
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Cravaack
Crawford
Crenshaw
Critz
Crowley
Cuellar
Culberson
Cummings
Davis (CA)
Davis (IL)
Davis (KY)
DeFazio
DeGette
DeLauro
Denham
Dent
DesJarlais
Deutch
Diaz-Balart
Dicks
Dingell
Doggett
Dold
Donnelly (IN)
Doyle
Dreier
Duffy
Edwards
Ellison
Ellmers
Engel
Eshoo
Farenthold
Farr
Fattah
Filner
Fincher
Fitzpatrick
Fleming
Flores
Forbes
Fortenberry
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garamendi
Gardner
Garrett
Gerlach
Gibbs
Gibson
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (MO)
Green, Al
Green, Gene
Griffin (AR)
Griffith (VA)
Grijalva
Grimm
Guinta
Guthrie
Gutierrez
Hahn
Hall
Hanabusa
Hanna
Harper
Harris
Hartzler
Hastings (FL)
Hastings (WA)
Hayworth
Heck
Heinrich
Hensarling
Herger
Herrera Beutler
Higgins
Himes
Hinchey
Hinojosa
Hirono
Hochul
Holden
Holt
Honda
Hoyer
Huizenga (MI)
Hultgren
Hunter
Hurt
Israel
Issa
Jackson Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson (OH)
Johnson, Sam
Jordan
Keating
Kelly
Kildee
Kind
King (IA)
King (NY)
Kinzinger (IL)
Kissell
Kline
Lamborn
Lance
Landry
Langevin
Lankford
Larsen (WA)
Larson (CT)
Latham
LaTourette
Latta
Lee (CA)
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Long
Lowey
Lucas
Luetkemeyer
Luján
Lungren, Daniel E.
Lynch
Mack
Maloney
Marchant
Marino
Markey
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHenry

McIntyre
McKeon
McKinley
McMorris Rodgers
McNerney
Meehan
Meeks
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Moore
Moran
Mulvaney
Murphy (CT)
Murphy (PA)
Myrick
Nadler
Napolitano
Neal
Neugebauer
Noem
Nugent
Nunes
Nunnelee
Olson
Olver
Owens
Palazzo
Pallone
Pascrell
Pastor (AZ)
Paulsen
Pearce
Pelosi
Pence
Perlmutter
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Poe (TX)
Pompeo
Price (GA)
Price (NC)
Quayle
Quigley
Rahall
Rangel
Reed
Rehberg
Reichert
Renacci
Reyes
Richardson
Richmond
Rigell
Rivera
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross (AR)
Ross (FL)
Rothman (NJ)
Roybal-Allard
Royce
Runyan
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schiff
Schilling
Schmidt
Schock
Schrader
Schwartz
Schweikert
Scott (SC)
Scott (VA)
Scott, Austin
Scott, David
Sensenbrenner
Serrano
Sessions
Sewell
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Southerland
Speier
Stark
Stearns
Stivers
Stutzman
Sullivan
Sutton
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiberi
Tierney
Tipton
Tonko
Towns
Tsongas
Turner (NY)
Turner (OH)
Upton
Van Hollen
Velázquez
Visclosky
Walberg
Walden
Walz (MN)
Wasserman Schultz
Waters
Watt
Waxman
Webster
Whitfield
Wilson (FL)
Wilson (SC)
Wittman
Wolf
Womack
Yarmuth
Yoder
Young (AK)
Young (FL)
Young (IN)

NAYS—21

Amash
Broun (GA)
Duncan (SC)
Duncan (TN)
Emerson
Flake
Huelskamp
Jones
Kingston
Kucinich
Labrador
Lummis
Paul
Polis
Posey
Ribble
Walsh (IL)
Welch
West
Westmoreland
Woodall

NOT VOTING—9

Becerra
Cardoza
Fleischmann
Jackson (IL)
Johnson, E. B.
Kaptur
Lewis (CA)
Manzullo
Woolsey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining.

□ 1415

Messrs. KINGSTON, WESTMORELAND, and RIBBLE changed their vote from ''yea'' to ''nay.''

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FLEISCHMANN. Mr. Speaker, on rollcall No. 438 I was unavoidably detained. Had I been present, I would have voted "yea."

Mr. BECERRA. Mr. Speaker, earlier today I was unavoidably detained and missed rollcall vote 438. If present, I would have voted "yea" on rollcall vote 438.

Stated against:

Mr. LANDRY. Mr. Speaker, on rollcall No. 438 I inadvertently voted "yea." I meant to vote "nay" because of the drone issue.

GAUGING AMERICAN PORT SECURITY ACT

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill (H.R. 4005) to direct the Secretary of Homeland Security to conduct a study and report to Congress on gaps in port security in the United States and a plan to address them, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. KING) that the House suspend the rules and pass the bill, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. GOSAR. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 411, nays 9, not voting 12, as follows:

[Roll No. 439]

YEAS—411

Ackerman
Adams
Aderholt
Akin
Alexander
Altmire
Amodei
Andrews
Austria
Baca
Bachmann
Bachus
Baldwin
Barber
Barletta
Barrow
Bartlett
Barton (TX)
Bass (CA)
Bass (NH)
Becerra
Benishek
Berg
Berkley
Berman
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Black
Blumenauer
Bonamici
Bonner
Bono Mack
Boren
Boswell
Boustany
Brady (PA)
Braley (IA)
Brooks
Broun (GA)
Brown (FL)
Buchanan
Bucshon
Buerkle
Burgess
Burton (IN)
Butterfield
Calvert
Camp
Campbell
Canseco
Cantor
Capito
Capps
Capuano
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castor (FL)
Chabot
Chaffetz
Chandler
Chu
Cicilline
Clarke (MI)
Clarke (NY)
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Cravaack
Crawford
Crenshaw
Critz
Crowley
Cuellar
Culberson
Cummings
Davis (CA)
Davis (IL)
Davis (KY)
DeFazio
DeGette
DeLauro
Denham
Dent
DesJarlais
Deutch
Diaz-Balart
Dicks
Dingell
Doggett
Dold
Donnelly (IN)
Doyle
Dreier
Duffy
Duncan (SC)
Duncan (TN)
Edwards
Ellison
Ellmers
Emerson
Engel
Eshoo
Farenthold
Farr
Fattah
Filner
Fincher
Fitzpatrick
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garamendi
Gardner
Garrett
Gerlach
Gibbs
Gibson
Gingrey (GA)
Gohmert
Gonzalez
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (MO)
Green, Al
Green, Gene
Griffin (AR)
Griffith (VA)
Grijalva
Grimm
Guinta
Guthrie
Gutierrez
Hahn
Hall
Hanabusa
Hanna
Harper
Harris
Hartzler
Hastings (FL)
Hastings (WA)
Hayworth
Heck
Heinrich
Hensarling
Herger
Herrera Beutler
Higgins
Himes
Hinchey
Hinojosa
Hirono
Hochul
Holden
Holt
Honda
Hoyer
Huelskamp
Huizenga (MI)
Hultgren
Hunter
Hurt
Israel
Issa
Jackson Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson (OH)
Johnson, Sam
Jones
Jordan
Keating
Kelly
Kildee
Kind
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kissell
Kline
Labrador
Lamborn
Lance
Landry
Langevin
Lankford
Larsen (WA)
Larson (CT)
Latham
Latta
Lee (CA)
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Long
Lowey
Lucas
Luetkemeyer
Lungren, Daniel E.
Lynch
Mack
Maloney
Marchant
Marino
Markey
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHenry
McIntyre
McKeon
McKinley
McMorris Rodgers
McNerney
Meehan
Meeks
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Moore
Moran
Mulvaney
Murphy (CT)
Murphy (PA)
Myrick
Nadler
Napolitano
Neal
Neugebauer
Noem
Nugent
Nunes
Nunnelee
Olson
Olver
Owens
Palazzo
Pallone
Pascrell
Pastor (AZ)
Paulsen
Pearce
Pelosi
Pence
Perlmutter
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Poe (TX)
Polis
Pompeo
Posey
Price (GA)
Price (NC)
Quayle
Quigley
Rahall
Reed
Rehberg
Reichert
Renacci
Reyes
Richardson
Richmond
Rigell
Rivera
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross (AR)
Ross (FL)
Rothman (NJ)
Roybal-Allard
Royce
Runyan
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schiff
Schilling
Schmidt
Schock
Schrader
Schwartz
Schweikert
Scott (SC)
Scott (VA)
Scott, Austin
Scott, David
Sensenbrenner
Serrano
Sessions
Sewell
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Southerland
Speier
Stark
Stearns
Stivers
Stutzman
Sullivan
Sutton
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiberi
Tierney
Tipton
Tonko
Towns
Tsongas
Turner (NY)
Turner (OH)
Upton
Van Hollen
Velázquez
Visclosky
Walberg
Walden
Walz (MN)
Wasserman Schultz
Waters
Watt
Waxman
Webster
Welch
West
Westmoreland
Wilson (FL)
Wilson (SC)
Wittman
Wolf
Womack
Woodall
Woolsey
Yarmuth
Yoder
Young (AK)
Young (FL)
Young (IN)

NAYS—9

Amash
Blackburn
Flake
Kucinich
Lummis
Paul
Ribble
Terry
Walsh (IL)

NOT VOTING—12

Brady (TX)
Cardoza
Frank (MA)
Jackson (IL)
Johnson, E. B.
Kaptur
LaTourette
Lewis (CA)
Luján
Manzullo
Rangel
Whitfield

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining.

□ 1423

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NOTICE OF INTENTION TO OFFER RESOLUTION RAISING A QUESTION OF THE PRIVILEGES OF THE HOUSE

Ms. JACKSON LEE of Texas. Mr. Speaker, pursuant to clause 2(a)(1) of rule IX, I rise to give notice of my intent to raise a question of the privileges of the House.

The form of the resolution is as follows:

Whereas the chair of the Committee on Oversight and Government Reform has interfered with the work of an independent agency and pressured an administrative law judge of the National Labor Relations Board by compelling the production of documents related to an ongoing case, something independent experts said ''could seriously undermine the authority of those charged with enforcing the nation's labor laws'' and which the House Ethics Manual discourages by noting that ''Federal courts have nullified administrative decisions on grounds of due process and fairness towards all of the parties when congressional interference with ongoing administrative proceedings may have unduly influenced the outcome'';

Whereas the chair of the Committee on Oversight and Government Reform has politicized investigations by rolling back longstanding bipartisan precedents, including by authorizing subpoenas without the concurrence of the ranking member or a committee vote, by refusing to share documents and other information with the ranking member, and restricting the minority's right to call witnesses at hearings;

Whereas the chair of the Committee on Oversight and Government Reform has jeopardized an ongoing criminal investigation by publicly releasing documents that his own staff has admitted were under court seal;

Whereas the chair of the Committee on Oversight and Government Reform has unilaterally subpoenaed a witness who was expected to testify at an upcoming Federal trial, despite longstanding precedent and objections from the Department of Justice that such a step could cause complications at a trial and potentially jeopardize a criminal conviction;

Whereas the chair of the Committee on Oversight and Government Reform has engaged in a witch hunt, through the use of repeated incorrect and uncorroborated statements in the committee's ''Fast and Furious'' investigation; and

Whereas the chair of the Committee on Oversight and Government Reform has chosen to call the Attorney General of the United States a liar on national television without corroborating evidence and has exhibited unprofessional behavior which could result in jeopardizing an ongoing Committee investigation into Operation Fast and Furious: Now, therefore, be it

Resolved, That the House of Representatives disapproves of the behavior of the chair for interfering with ongoing criminal investigations; insisting on a personal attack against the attorney general of the united states; and for calling the Attorney General of the United States a liar on national television without corroborating evidence thereby discredit to the integrity of the House.

The SPEAKER pro tempore. Under rule IX, a resolution offered from the floor by a Member other than the majority leader or the minority leader as a question of the privileges of the House has immediate precedence only at a time designated by the Chair within 2 legislative days after the resolution is properly noticed.

Pending that designation, the form of the resolution noticed by the gentlewoman from Texas will appear in the RECORD at this point.

The Chair will not at this point determine whether the resolution constitutes a question of privilege. That determination will be made at the time designated for consideration of the resolution.

□ 1430

RECOMMENDING THAT ATTORNEY GENERAL ERIC HOLDER BE FOUND IN CONTEMPT OF CONGRESS

Mr. ISSA. Mr. Speaker, by direction of the Committee on Oversight and Government Reform, I call up the report (H.Rept. 112–546) to accompany resolution recommending that the House of Representatives find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform.

The Clerk read the title of the report.

The SPEAKER pro tempore. Pursuant to House Resolution 708, the report is considered read.

The text of the report is as follows:

The Committee on Oversight and Government Reform, having considered this Report, report favorably thereon and recommend that the Report be approved.

The form of the resolution that the Committee on Oversight and Government Reform would recommend to the House of Representatives for citing Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, for contempt of Congress pursuant to this report is as follows:

Resolved, That Eric H. Holder, Jr., Attorney General of the United States, shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House of Representatives shall certify the report of the Committee on Oversight and Government Reform, detailing the refusal of Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, to produce documents to the Committee on Oversight and Government Reform as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Holder be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

I. EXECUTIVE SUMMARY

The Department of Justice has refused to comply with congressional subpoenas related to Operation Fast and Furious, an Administration initiative that allowed around two thousand firearms to fall into the hands of drug cartels and may have led to the death of a U.S. Border Patrol Agent. The consequences of the lack of judgment that permitted such an operation to occur are tragic.

The Department's refusal to work with Congress to ensure that it has fully complied with the Committee's efforts to compel the production of documents and information related to this controversy is inexcusable and cannot stand. Those responsible for allowing Fast and Furious to proceed and those who are preventing the truth about the operation from coming out must be held accountable for their actions.

Having exhausted all available options in obtaining compliance, the Chairman of the Oversight and Government Reform Committee recommends that Congress find the Attorney General in contempt for his failure to comply with the subpoena issued to him.

II. AUTHORITY AND PURPOSE

An important corollary to the powers expressly granted to Congress by the Constitution is the implicit responsibility to perform rigorous oversight of the Executive Branch. The U.S. Supreme Court has recognized this Congressional power on numerous occasions. For example, in *McGrain* v. *Daugherty*, the Court held that ''the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function. . . . A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change, and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.''[1] Further, in *Watkins* v. *United States*, Chief Justice Warren wrote for the majority: ''The power of Congress to conduct investigations is inherent in the legislative process. That power is broad.''[2]

Both the Legislative Reorganization Act of 1946 (P.L. 79–601), which directed House and Senate Committees to ''exercise continuous watchfulness'' over Executive Branch programs under their jurisdiction, and the Legislative Reorganization Act of 1970 (P.L. 91–510), which authorized committees to ''review and study, on a continuing basis, the application, administration and execution'' of laws, codify the oversight powers of Congress.

The Committee on Oversight and Government Reform is a standing committee of the House of Representatives, duly established pursuant to the Rules of the House of Representatives, which are adopted pursuant to the Rulemaking Clause of the Constitution.[3] House rule X grants to the Committee broad oversight jurisdiction, including authority to ''conduct investigations of any matter without regard to clause 1, 2, 3, or this clause [of House rule X] conferring jurisdiction over the matter to another standing committee.''[4] The rules direct the Committee to make available ''the findings and recommendations of the committee . . . to any other standing committee having jurisdiction over the matter involved.''[5]

House rule XI specifically authorizes the Committee to ''require, by subpoena or otherwise, the attendance and testimony of such

[1] *McGrain* v. *Daugherty*, 273 U.S. 135, 174 (1927).
[2] *Watkins* v. *United States*, 354 U.S. 178, 187 (1957).
[3] U.S. CONST., art. I, 5, clause 2.
[4] House rule X, clause (4)(c)(2).
[5] *Id*.

witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.''[6] The rule further provides that the ''power to authorize and issue subpoenas'' may be delegated to the Committee chairman.[7] The subpoenas discussed in this report were issued pursuant to this authority.

The Committee's investigation into actions by senior officials in the U.S. Department of Justice and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in designing, implementing, and supervising the execution of Operation Fast and Furious, and subsequently providing false denials to Congress, is being undertaken pursuant to the authority delegated to the Committee under House Rule X as described above.

The oversight and legislative purposes of the investigations are (1) to examine and expose any possible malfeasance, abuse of authority, or violation of existing law on the part of the executive branch with regard to the conception and implementation of Operation Fast and Furious, and (2) based on the results of the investigation, to assess whether the conduct uncovered may warrant additions or modifications to federal law and to make appropriate legislative recommendations.

In particular, the Committee's investigation has highlighted the need to obtain information that will aid Congress in considering whether a revision of the statutory provisions governing the approval of federal wiretap applications may be necessary. The major breakdown in the process that occurred with respect to the Fast and Furious wiretap applications necessitates careful examination of the facts before proposing a legislative remedy. Procedural improvements may need to be codified in statute to mandate immediate action in the face of highly objectionable information relating to operational tactics and details contained in future applications.

The Committee's investigation has called into question the ability of ATF to carry out its statutory mission and the ability of the Department of Justice to adequately supervise it. The information sought is needed to consider legislative remedies to restructure ATF as needed.

III. BACKGROUND ON THE COMMITTEE'S INVESTIGATION

In February 2011, the Oversight and Government Reform Committee joined Senator Charles E. Grassley, Ranking Member of the Senate Committee on the Judiciary, in investigating Operation Fast and Furious, a program conducted by ATF. On March 16, 2011, Chairman Darrell Issa wrote to then-Acting ATF Director Kenneth E. Melson requesting documents and information regarding Fast and Furious. Responding for Melson and ATF, the Department of Justice did not provide any documents or information to the Committee by the March 30, 2011, deadline. The Committee issued a subpoena to Melson the next day. The Department produced zero pages of non-public documents pursuant to that subpoena until June 10, 2011, on the eve of the Committee's first Fast and Furious hearing.

On June 13, 2011, the Committee held a hearing entitled ''Obstruction of Justice: Does the Justice Department Have to Respond to a Lawfully Issued and Valid Congressional Subpoena?'' The Committee held a second hearing on June 15, 2011, entitled ''Operation Fast and Furious: Reckless Decisions, Tragic Outcomes.'' The Committee held a third hearing on July 26, 2011, entitled ''Operation Fast and Furious: The Other Side of the Border.''

On October 11, 2011, the Justice Department informed the Committee its document production pursuant to the March 31, 2011, subpoena was complete. The next day, the Committee issued a detailed subpoena to Attorney General Eric Holder for additional documents related to Fast and Furious.

On February 2, 2012, the Committee held a hearing entitled ''Fast and Furious: Management Failures at the Department of Justice.'' The Attorney General testified at that hearing.

The Committee has issued two staff reports documenting its initial investigative findings. The first, *The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents*, was released on June 14, 2011. The second, *The Department of Justice's Operation Fast and Furious: Fueling Cartel Violence*, was released on July 26, 2011.

Throughout the investigation, the Committee has made numerous attempts to accommodate the interests of the Department of Justice. Committee staff has conducted numerous meetings and phone conversations with Department lawyers to clarify and highlight priorities with respect to the subpoenas. Committee staff has been flexible in scheduling dates for transcribed interviews; agreed to review certain documents *in camera;* allowed extensions of production deadlines; agreed to postpone interviewing the Department's key Fast and Furious trial witness; and narrowed the scope of documents the Department must produce to be in compliance with the subpoena and to avoid contempt proceedings.

Despite the Committee's flexibility, the Department has refused to produce certain documents to the Committee. The Department has represented on numerous occasions that it will not produce broad categories of documents. The Department has not provided a privilege log delineating with particularity why certain documents are being withheld.

The Department's efforts at accommodation and ability to work with the Committee regarding its investigation into Fast and Furious have been wholly inadequate. The Committee requires the subpoenaed documents to meet its constitutionally mandated oversight and legislative duties.

IV. OPERATION FAST AND FURIOUS: BREAKDOWNS AT ALL LEVELS OF THE DEPARTMENT OF JUSTICE

The story of Operation Fast and Furious is one of widespread dysfunction across numerous components of the Department of Justice. This dysfunction allowed Fast and Furious to originate and grow at a local level before senior officials at Department of Justice headquarters ultimately approved and authorized it. The dysfunction within and among Department components continues to this day.

A. THE ATF PHOENIX FIELD DIVISION

In October 2009, the Office of the Deputy Attorney General (ODAG) in Washington, D.C. promulgated a new strategy to combat gun trafficking along the Southwest Border. This new strategy directed federal law enforcement to shift its focus away from seizing firearms from criminals as soon as possible, and to focus instead on identifying members of trafficking networks. The Office of the Deputy Attorney General shared this strategy with the heads of many Department components, including ATF.[8]

Members of the ATF Phoenix Field Division, led by Special Agent in Charge Bill Newell, became familiar with this new strategy and used it in creating Fast and Furious. In mid-November 2009, just weeks after the strategy was issued, Fast and Furious began. Its objective was to establish a nexus between straw purchasers of firearms in the United States and Mexican drug-trafficking organizations (DTOs) operating on both sides of the United States-Mexico border. Straw purchasers are individuals who are legally entitled to purchase firearms for themselves, but who unlawfully purchase weapons with the intent to transfer them to someone else, in this case DTOs or other criminals.

During Fast and Furious, ATF agents used an investigative technique known as ''gunwalking''—that is, allowing illegally-purchased weapons to be transferred to third parties without attempting to disrupt or deter the illegal activity. ATF agents abandoned surveillance on known straw purchasers after they illegally purchased weapons that ATF agents knew were destined for Mexican drug cartels. Many of these transactions established probable cause for agents to interdict the weapons or arrest the possessors, something every agent was trained to do. Yet, Fast and Furious aimed instead to allow the transfer of these guns to third parties. In this manner, the guns fell into the hands of DTOs, and many would turn up at crime scenes. ATF then traced these guns to their original straw purchaser, in an attempt to establish a connection between that individual and the DTO.

Federal Firearms Licensees (FFLs), who cooperated with ATF, were an integral component of Fast and Furious. Although some FFLs were reluctant to continue selling weapons to suspicious straw purchasers, ATF encouraged them to do so, reassuring the FFLs that ATF was monitoring the buyers and that the weapons would not fall into the wrong hands.[9] ATF worked with FFLs on or about the date of sale to obtain the unique serial number of each firearm sold. Agents entered these serial numbers into ATF's Suspect Gun Database within days after the purchase. Once these firearms were recovered at crime scenes, the Suspect Gun Database allowed for expedited tracing of the firearms to their original purchasers.

By December 18, 2009, ATF agents assigned to Fast and Furious had already identified fifteen interconnected straw purchasers in the targeted gun trafficking ring. These straw purchasers had already purchased 500 firearms.[10] In a biweekly update to Bill Newell, ATF Group Supervisor David Voth explained that 50 of the 500 firearms purchased by straw buyers had already been recovered in Mexico or near the Mexican border.[11] These guns had time-to-crimes of as little as one day, strongly indicating straw purchasing.[12]

Starting in late 2009, many line agents objected vociferously to some of the techniques used during Fast and Furious, including gunwalking. The investigation continued for another year, however, until shortly after December 15, 2010, when two weapons from Fast and Furious were recovered at the murder scene of U.S. Border Patrol Agent Brian Terry.

Pursuant to the Deputy Attorney General's strategy, in late January 2010 the ATF Phoenix Field Division applied for Fast and Furious to become an Organized Crime Drug Enforcement Task Force (OCDETF) case. In preparation for the OCDETF application process, the ATF Phoenix Field Division prepared a briefing paper detailing the investigative strategy employed in Fast and Furious. This document was not initially produced by the Department pursuant to its

[6] House rule XI, clause (2)(m)(1)(B).

[7] House rule XI, clause (2)(m)(3)(A)(i).

[8] E-mail from [Dep't of Justice] on behalf of Deputy Att'y Gen. David Ogden to Kathryn Ruemmler, et al. (Oct. 26, 2009).

[9] Transcribed Interview of Special Agent Peter Forcelli, at 53–54 (Apr. 28, 2011).

[10] E-mail from Kevin Simpson, Intelligence Officer, Phoenix FIG, ATF, to David Voth (Dec. 18, 2009).

[11] *Id.*

[12] *Id.*

subpoena, but rather was obtained by a confidential source. The briefing paper stated:

Currently our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetrating armed violence along the Southwest Border.[13]

Fast and Furious was approved as an OCDETF case, and this designation resulted in new operational funding. Additionally, Fast and Furious became a prosecutor-led OCDETF Strike Force case, meaning that ATF would join with the Federal Bureau of Investigation, Drug Enforcement Administration, Internal Revenue Service, and Immigrations and Customs Enforcement under the leadership of the U.S. Attorney's Office for the District of Arizona.

B. THE UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF ARIZONA

The U.S. Attorney's Office for the District of Arizona led the Fast and Furious OCDETF Strike Force. Although ATF was the lead law enforcement agency for Fast and Furious, its agents took direction from prosecutors in the U.S. Attorney's Office. The lead federal prosecutor for Fast and Furious was Assistant U.S. Attorney Emory Hurley, who played an integral role in the day-to-day, tactical management of the case.[14]

Many ATF agents working on Operation Fast and Furious came to believe that some of the most basic law enforcement techniques used to interdict weapons required the explicit approval of the U.S. Attorney's Office, and specifically from Hurley. On numerous occasions, Hurley and other federal prosecutors withheld this approval, to the mounting frustration of ATF agents.[15] The U.S. Attorney's Office chose not to use other available investigative tools common in gun trafficking cases, such as civil forfeitures and seizure warrants, during the seminal periods of Fast and Furious.

The U.S. Attorney's Office advised ATF that agents needed to meet unnecessarily strict evidentiary standards in order to speak with suspects, temporarily detain them, or interdict weapons. ATF's reliance on this advice from the U.S. Attorney's Office during Fast and Furious resulted in many lost opportunities to interdict weapons.

In addition to leading the Fast and Furious OCDETF task force, the U.S. Attorney's Office was instrumental in preparing the wiretap applications that were submitted to the Justice Department's Criminal Division. Federal prosecutors in Arizona filed at least six of these applications, each containing immense detail about operational tactics and specific information about straw purchasers, in federal court after Department headquarters authorized them.

C. ATF HEADQUARTERS

Fast and Furious first came to the attention of ATF Headquarters on December 8, 2009, just weeks after the case was officially opened in Phoenix. ATF's Office of Strategic Information and Intelligence (OSII) briefed senior ATF personnel about the case on December 8, 2009, discussing in detail a large recovery of Fast and Furious weapons in Naco, Sonora, Mexico.[16]

The next day, December 9, 2009, the Acting ATF Director first learned about Fast and Furious and the large recovery of weapons that had already occurred.[17] The following week, OSII briefed senior ATF officials about another large cache of Fast and Furious weapons that had been recovered in Mexico.[18]

On January 5, 2010, OSII presented senior ATF officials with a summary of all of the weapons that could be linked to known straw purchasers in Fast and Furious. In just two months, these straw purchasers bought a total of 685 guns. This number raised the ire of several individuals in the room, who expressed concerns about the growing operation.[19]

On March 5, 2010, ATF headquarters hosted a larger, more detailed briefing on Operation Fast and Furious. David Voth, the Group Supervisor overseeing Fast and Furious, traveled from Phoenix to give the presentation. He gave an extremely detailed synopsis of the status of the investigation, including the number of guns purchased, weapons seizures to date, money spent by straw purchasers, and organizational charts of the relationships among straw purchasers and to members of the Sinaloa drug cartel. At that point, the straw purchasers had bought 1,026 weapons, costing nearly $650,000.[20]

NATF's Phoenix Field Division informed ATF headquarters of large weapons recoveries tracing back to Fast and Furious. The Phoenix Field Division had frequently forwarded these updates directly to Deputy ATF Director Billy Hoover and Acting ATF Director Ken Melson.[21] When Hoover learned about how large Fast and Furious had grown in March 2010, he finally ordered the development of an exit strategy.[22] This exit strategy, something Hoover had never before requested in any other case, was a timeline for ATF to wind down the case.[23]

Though Hoover commissioned the exit strategy in March, he did not receive it until early May. The three-page document outlined a 30-, 60-, and 90-day strategy for winding down Fast and Furious and handing it over to the U.S. Attorney's Office for prosecution.[24]

In July 2010, Acting Director Melson expressed concern about the number of weapons flowing to Mexico,[25] and in October 2010 the Assistant Director for Field Operations, the number three official in ATF, expressed concern that ATF had not yet halted the straw purchasing activity in Fast and Furious.[26] Despite these concerns, however, the U.S. Attorney's Office continued to delay the indictments, and no one at ATF headquarters ordered the Phoenix Field Division to simply arrest the straw purchasers in order to take them off the street. The members of the firearms trafficking ring were not arrested until two weapons from Fast and Furious were found at the murder scene of Border Patrol Agent Brian Terry.

D. THE CRIMINAL DIVISION

1. COORDINATION WITH ATF

In early September 2009, according to Department e-mails, ATF and the Department of Justice's Criminal Division began discussions ''to talk about ways CRM [Criminal Division] and ATF can coordinate on gun trafficking and gang-related initiatives.''[27] Early on in these discussions, Lanny Breuer, Assistant Attorney General for the Criminal Division, sent an attorney to help the U.S. Attorney's Office in Arizona prosecute ATF cases. The first case chosen for prosecution was Operation Wide Receiver, a year-long ATF Phoenix Field Division investigation initiated in 2006, which involved several hundred guns being walked. The U.S. Attorney's Office in Arizona, objecting to the tactics used in Wide Receiver, had previously refused to prosecute the case.

According to James Trusty, a senior official in the Criminal Division's Gang Unit, in September 2009 Assistant Attorney General Breuer was ''VERY interested in the Arizona gun trafficking case [Wide Receiver], and he is traveling out [to Arizona] around 9/21. Consequently, he asked us for a 'briefing' on that case before the 21st rolls around.''[28] The next day, according to Trusty, Breuer's chief of staff ''mentioned the case again, so there is clearly great attention/interest from the front office.''[29]

When the Criminal Division prosecutor arrived in Arizona, she gave Trusty her impressions of the case. Her e-mail stated:

Case involves 300 to 500 guns. . . . It is my understanding that a lot of these guns ''walked''. Whether some or all of that was intentional is not known.[30]

Discussions between ATF and the Criminal Division regarding inter-departmental coordination continued over the next few months. On December 3, 2009, the Acting ATF Director e-mailed Breuer about this cooperation. He stated:

Lanny: We have decided to take a little different approach with regard to seizures of multiple weapons in Mexico. Assuming the guns are traced, instead of working each trace almost independently of the other traces from the seizure, I want to coordinate and monitor the work on all of them collectively as if the seizure was one case.[31]

Breuer responded:

We think this is a terrific idea and a great way to approach the investigations of these seizures. Our Gang Unit will be assigning an attorney to help you coordinate this effort.[32]

Kevin Carwile, Chief of the Gang Unit, assigned an attorney, Joe Cooley, to assist ATF, and Operation Fast and Furious was selected as a recipient of this assistance. Shortly after his assignment, Cooley had to rearrange his holiday plans to attend a significant briefing on Fast and Furious.[33]

Cooley was assigned to Fast and Furious for the next three months. He advised the lead federal prosecutor, Emory Hurley, and received detailed briefings on operational details. Cooley, though, was not the only Criminal Division attorney involved with

[13] Phoenix Group VII, Phoenix Field Division, ATF, *Briefing Paper* (Jan. 8, 2010).

[14] Transcribed Interview of Special Agent in Charge William Newell, at 32–33 (June 8, 2011).

[15] Transcribed Interview of Special Agent Larry Alt, at 94 (Apr. 27, 2011).

[16] Interview with Lorren Leadmon, Intelligence Operations Analyst, Washington, D.C., July 5, 2011 [hereinafter Leadmon Interview].

[17] *Oversight of the U.S. Department of Justice: Hearing Before the S. Comm. on the Judiciary*, 112th Cong. (May 4, 2011) (Questions for the Record of Hon. Eric H. Holder, Jr., Att'y Gen. of the U.S.).

[18] Leadmon Interview, *supra* note 16.

[19] Transcribed Interview of Deputy Ass't Dir. Steve Martin, ATF, at 36 (July 6, 2011) [hereinafter Martin Tr.].

[20] *See generally* ''Operation the Fast and the Furious'' Presentation, Mar. 5, 2010.

[21] E-mail from Mark Chait to Kenneth Melson and William Hoover (Feb. 24, 2010) [HOGR 001426].

[22] Transcribed Interview of William Hoover, ATF Deputy Director, at 9 (July 21, 2011).

[23] Id. at 72.

[24] E-mail from Douglas Palmer, Supervisor Group V, ATF, to William Newell, ATF (Apr. 27, 2010).

[25] E-mail from Kenneth Melson to Mark Chait, et al., (July 14, 2010) [HOGR 002084].

[26] E-mail from Mark Chait to William Newell (Oct. 29, 2010) [HOGR 001890].

[27] E-mail from Jason Weinstein to Lanny Breuer (Sept. 10, 2009) [HOGR 003378].

[28] E-mail from James Trusty to Laura Gwinn (Sept. 2, 2009) [HOGR 003375].

[29] E-mail from James Trusty to Laura Gwinn (Sept. 3, 2009) [HOGR 003376].

[30] E-mail from Laura Gwinn to James Trusty (Sept. 3, 2009) [HOGR 003377].

[31] E-mail from Kenneth Melson to Lanny Breuer (Dec. 3, 2009) [HOGR 003403].

[32] E-mail from Lanny Breuer to Kenneth Melson (Dec. 4, 2009) [HOGR 003403].

[33] E-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010) [HOGR 002832].

Fast and Furious during this time period. The head of the division, Lanny Breuer, met with ATF officials about the case, including Deputy Director Billy Hoover and Assistant Director for Field Operations Mark Chait.[34]

Given the initial involvement of the Criminal Division with Fast and Furious in the early stages of the investigation, senior officials in Criminal Division should have been greatly alarmed about what they learned about the case. These officials should have halted the program, especially given their prior knowledge of gunwalking in Wide Receiver, which was run by the same leadership in the same ATF field division.

On March 5, 2010, Cooley attended a briefing about Fast and Furious. The detailed briefing highlighted the large number of weapons the gun trafficking ring had purchased and discussed recoveries of those weapons in Mexico. According to Steve Martin, Deputy Assistant Director in ATF's Office of Strategic Intelligence and Information, everyone in the room knew the weapons from Fast and Furious were being linked to a Mexican cartel.[35] Two weeks later, in mid-March 2010, Carwile pulled Cooley off Fast and Furious, when the U.S. Attorney's Office informed him that it had the case under control.[36]

2. WIRETAPS

At about the same time, senior lawyers in the Criminal Division authorized wiretap applications for Fast and Furious to be submitted to a federal judge. Fast and Furious involved the use of seven wiretaps between March and July of 2010.

In a letter to Chairman Issa, the Deputy Attorney General acknowledged that the Office of Enforcement Operations (OEO), part of the Justice Department's Criminal Division, is ''primarily responsible for the Department's statutory wiretap authorizations.''[37] According to the letter, lawyers in OEO review these wiretap packages to ensure that they ''meet statutory requirements and DOJ policies.''[38] When OEO completes its review of a wiretap package, federal law provides that the Attorney General or his designee—in practice, a Deputy Assistant Attorney General in the Criminal Division—reviews and authorizes it.[39] Each wiretap package includes an affidavit which details the factual basis upon which the authorization is sought. Each application for Fast and Furious included a memorandum from Assistant Attorney General Breuer to Paul O'Brien, Director of OEO, authorizing the interception application.[40]

The Criminal Division's approval of the wiretap applications in Fast and Furious violated Department of Justice policy. The core mission of the Bureau of Alcohol, Tobacco, Firearms, and Explosives is to ''protect[ ] our communities from . . . the illegal use and trafficking of firearms.''[41]

The wiretap applications document the extensive involvement of the Criminal Division in Fast and Furious. These applications were constructed from raw data contained in hundreds of Reports of Investigation (ROI); the Department of Justice failed to produce any of these ROI in response to the Committee's subpoena. The Criminal Division authorized Fast and Furious wiretap applications on March 10, 2010; April 15, 2010; May 6, 2010; May 14, 2010; June 1, 2010; and July 1, 2010. Deputy Assistant Attorney General Jason Weinstein, Deputy Assistant Attorney General Kenneth Blanco, and Deputy Assistant Attorney General John Keeney signed these applications on behalf of Assistant Attorney General Lanny Breuer.

E. THE OFFICE OF THE DEPUTY ATTORNEY GENERAL

The Office of the Deputy Attorney General (ODAG) maintained close involvement in Operation Fast and Furious. In the Justice Department, ATF reports to the Deputy Attorney General (DAG).[42] In practice, an official in the Office of the Deputy Attorney General is responsible for managing the ATF portfolio. This official monitors the operations of ATF, and raises potential ATF issues to the attention of the DAG.[43] During the pendency of Fast and Furious, this official was Associate Deputy Attorney General Edward Siskel.

Officials in ODAG became familiar with Fast and Furious as early as March 2010. On March 12, 2010, Siskel and then-Acting DAG Gary Grindler received an extensive briefing on Fast and Furious during a monthly meeting with the ATF's Acting Director and Deputy Director. This briefing presented Grindler with overwhelming evidence of illegal straw purchasing during Fast and Furious. The presentation included a chart of the names of the straw purchasers, 31 in all, and the number of weapons they had acquired to date, 1,026.[44] Three of these straw purchasers had already purchased over 100 weapons each, with one straw purchaser having already acquired over 300 weapons. During this briefing, Grindler learned that buyers had paid cash for every single gun.[45]

A map of Mexico detailed locations of recoveries of weapons purchased through Fast and Furious, including some at crime scenes.[46] The briefing also covered the use of stash houses where weapons bought during Fast and Furious were stored before being transported to Mexico. Grindler learned of some of the unique investigative techniques ATF was using during Fast and Furious.[47] Despite receiving all of this information, then-Deputy Attorney General Gary Grindler did not order Fast and Furious to be shut down, nor did he follow-up with ATF or his staff about the investigation.

Throughout the summer of 2010, ATF officials remained in close contact with their ODAG supervisors regarding Fast and Furious. Fast and Furious was a topic in each of the monthly meetings between ATF and the DAG. ATF apprised Ed Siskel of significant recoveries of Fast and Furious weapons, as well as of notable progress in the investigation, and Siskel indicated to ATF that he was monitoring it.[48] In mid-December 2010, after Fast and Furious had been ongoing for over a year, Grindler received more details about the program. On December 15, 2010, Border Patrol Agent Brian Terry was killed. Two Fast and Furious weapons were recovered at the scene of his murder. Two days later, Associate Deputy Attorney General Brad Smith sent Grindler and four ODAG officials an e-mail detailing the circumstances of Terry's murder and its connection to Fast and Furious.[49] Smith attached a four-page summary of the Fast and Furious investigation.

V. THE COMMITTEE'S OCTOBER 12, 2011, SUBPOENA TO ATTORNEY GENERAL HOLDER

On October 12, 2011, the Committee issued a subpoena to Attorney General Eric Holder, demanding documents related to the Department of Justice's involvement with Operation Fast and Furious. The subpoena was issued following six months of constant refusals by the Justice Department to cooperate with the Committee's investigation into Operation Fast and Furious.

A. EVENTS LEADING UP TO THE SUBPOENA

On March 16, 2011, Chairman Issa sent a letter to then-ATF Acting Director Ken Melson asking for information and documents pertaining to Operation Fast and Furious.[50] Late in the afternoon of March 30, 2011, the Department, on behalf of ATF and Melson, informed the Committee that it would not provide any documents pursuant to the letter. The Committee informed the Department it planned to issue a subpoena. On March 31, 2011, the Committee issued a subpoena to Ken Melson for the documents.

On May 2, 2011, Committee staff reviewed documents the Department made available for in camera review at Department headquarters. Many of these documents contained partial or full redactions. Following this review, Chairman Issa wrote to the Department on May 5, 2011, asking the Department to produce all documents responsive to the Committee's subpoena forthwith.[51] That same day, senior Department officials met with Committee staff and acknowledged ''there's a there, there'' regarding the legitimacy of the congressional inquiry into Fast and Furious.

In spite of Chairman Issa's May 5, 2011, letter, during the two months following the issuance of the subpoena, the Department produced zero pages of non-public documents. On June 8, 2011, the Committee again wrote to the Department requesting complete production of all documents by June 10, 2011.[52] The Department responded on June 10, 2011, stating ''complete production of all documents by June 10, 2011, . . . is not possible.''[53] At 7:49 p.m. that evening, just three days before a scheduled Committee hearing on the obligation of the Department of Justice to cooperate with congressional oversight, the Department finally produced its first non-public documents to the Committee, totaling 69 pages.[54]

Over the next six weeks, through July 21, 2011, the Department produced an additional 1,286 pages of documents. The Department produced no additional documents until September 1, 2011, when it produced 193 pages of

[34] Meeting on ''Weapons Seizures in Mexico w/ Lanny Breuer'' at Robert F. Kennedy Building, Room 2107, Jan. 5, 2010, 10:00 AM [HOGR 001987].

[35] Martin Tr. at 100.

[36] E-mail from Kevin Carwile to Jason Weinstein (Mar. 16, 2010, 9:00 a.m.) [HOGR DOJ 2382].

[37] Letter from Dep Att'y Gen. James M. Cole Chairman Darrell Issa et al., at 6 (Jan. 27, 2012) [hereinafter Cole Letter].

[38] *Id.*

[39] *See* 18 U.S.C. § 2516(1).

[40] *See, e.g.*, Memorandum from Lanny A. Breuer, Ass't Att'y Gen., Criminal Division to Paul M. O'Brien, Director, Office of Enforcement Operations, Criminal Division, Authorization for Interception Order Application, Mar. 10, 2010.

[41] Bureau of Alcohol, Tobacco, Firearms, and Explosives, ''ATF's Mission,'' http://www.atf.gov/about/mission (last visited May 1, 2012).

[42] USDOJ: About Department of Justice Agencies, *available at* http://www.justice.gov/agencies/index-org.html (last visited May. 1, 2012).

[43] Transcribed Interview of Acting Dir. Kenneth Melson, at 25 (July 4, 2011).

[44] ''Operation the Fast and the Furious,'' March 12, 2010 [HOGR 002820—HOGR 002823].

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] E-mail from Edward N. Siskel to Mark R. Chait (July 14, 2010) [HOGR 002847].

[49] E-mail from Assoc. Deputy Att'y Gen. Brad Smith to Deputy Att'y Gen. Gary Grindler, et al. (Dec. 17, 2010) [HOGR 002875–002881].

[50] Letter from Chairman Darrell Issa to ATF Acting Dir. Kenneth Melson (Mar. 16, 2011) [hereinafter Mar. 16 Letter].

[51] Letter from Chairman Darrell Issa to Att'y Gen. Eric Holder (May 5, 2011).

[52] Letter from Chairman Darrell Issa to ATF Acting Dir. Kenneth Melson (June 8, 2011).

[53] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (June 10, 2011).

[54] *Id.*

documents.[55] On September 30, 2011, the Department produced 97 pages of documents.[56] On October 11, 2011, the Department produced 56 pages of documents.[57]

Early in the investigation, the Committee received hundreds of pertinent documents from whistleblowers. Many of the documents the whistleblowers provided were not among the 2,050 pages that the Department had produced by October 11, 2011, demonstrating that the Department was withholding materials responsive to the subpoena.

The Committee requested additional documents from the Department as the investigation proceeded during the summer of 2011. On July 11, 2011, Chairman Issa and Senator Grassley wrote to the Attorney General requesting documents from twelve people in Justice Department headquarters pertaining to Fast and Furious.[58] The Justice Department first responded to this letter on October 31, 2011, nearly four months later.[59]

On July 11, 2011, Chairman Issa and Senator Grassley sent a letter to the FBI requesting documents relating to the FBI's role in the Fast and Furious OCDETF investigation.[60] The letter requested information and documents pertaining to paid FBI informants who were the target of the Fast and Furious investigation. The FBI never produced any of the documents requested in this letter.

On July 15, 2011, Chairman Issa and Senator Grassley sent a letter to the DEA requesting documents pertaining to another target of the Fast and Furious investigation.[61] The DEA was aware of this target before Fast and Furious became an OCDETF case, a fact that raises serious questions about the lack of information-sharing among Department components. Though DEA responded to the letter on July 22, 2011, it, too, did not provide any of the requested documents.[62]

On September 1, 2011, Chairman Issa and Senator Grassley wrote to the Acting U.S. Attorney in Arizona requesting documents and communications pertaining to Fast and Furious.[63] As the office responsible for leading Fast and Furious, the Arizona U.S. Attorney's Office possesses a large volume of documents relevant to the Committee's investigation. The Department of Justice, on behalf of the U.S. Attorney's Office for the District of Arizona, did not respond to this letter until December 6, 2011, the eve of the Attorney General's testimony before the House Judiciary Committee.[64]

On September 27, 2011, Chairman Issa and Senator Grassley sent a letter to the Attorney General raising questions about information-sharing among Department components, the Department's cooperation with Congress, and FBI documents requested in the July 11, 2011, letter to FBI Director Mueller.[65] To date, the Department has not responded to this letter.

The Department wrote to Chairman Issa on October 11, 2011, stating it had ''substantially concluded [its] efforts to respond to the Committee requests set forth in the subpoena and the letter of June 8th.''[66] The letter further stated:

> [O]ther documents have not been produced or made available for these same reasons because neither redacting them nor making them available for review (as opposed to production) was sufficient to address our concerns. Our disclosure of the vast majority of the withheld material is prohibited by statute. These records pertain to matters occurring before a grand jury, as well as investigative activities under seal or the disclosure of which is prohibited by law . . . we also have not disclosed certain confidential investigative and prosecutorial documents, the disclosure of which would, in our judgment, compromise the pending criminal investigations and prosecution. These include core investigative and prosecutorial material, such as Reports of Investigation and drafts of court filings.
>
> Finally . . . we have also withheld internal communications that were generated in the course of the Department's effort to respond to congressional and media inquiries about Operation Fast and Furious. These records were created in 2011, well after the completion of the investigative portion of Operation Fast and Furious that the Committee has been reviewing and after the charging decisions reflected in the January 25, 2011, indictments. Thus, they were not part of the communications regarding the development and implementation of the strategy decisions that have not been the focus of the Committee's inquiry . . . Disclosure would have a chilling effect on agency officials' deliberations about how to respond to inquiries from Congress or the media. Such a chill on internal communications would interfere with our ability to respond as effectively and efficiently as possible to congressional oversight requests.[67]

The following day, on October 12, 2011, after the Department announced its intention to cease producing documents responsive to the Committee's March 31, 2011, subpoena to Melson, the Committee issued a subpoena to Attorney General Eric Holder demanding documents relating to Fast and Furious.

B. SUBPOENA SCHEDULE REQUESTS

In the weeks following the issuance of the subpoena, Committee staff worked closely with Department lawyers to provide clarifications about subpoena categories, and to assist the Department in prioritizing documents for production. Committee and Department staff engaged in discussions spanning several weeks to enable the Department to better understand what the Committee was specifically seeking. During these conversations, the Committee clearly articulated its investigative priorities as reflected in the subpoena schedule. The Department memorialized these priorities with specificity in an October 31, 2011, e-mail from the Office of Legislative Affairs.[68]

Despite the Department's acknowledgement that it understands what the Committee was seeking, it has yet to provide a single document for 11 out of the 22 categories contained in the subpoena schedule. The Department has not adequately complied with the Committee's subpoena, and it has unequivocally stated its refusal to comply with entire categories of the subpoena altogether. In a letter to Chairman Issa on May 15, 2012, the Department stated that it had delivered or made available for review documents responsive to 13 of the 22 categories of the subpoena.[69]

A review of each of the 22 schedule categories in the subpoena reflects the Department's clear understanding of the documents sought by the Committee for each category. Below is a listing of each category of the subpoena schedule, followed by what the Department has explained is its understanding of what the Committee is seeking for each category.

1. All communications referring or relating to Operation Fast and Furious, the Jacob Chambers case, or any Organized Crime Drug Enforcement Task Force (OCDETF) firearms trafficking case based in Phoenix, Arizona, to or from the following individuals:

a. Eric Holder, Jr., Attorney General;

b. David Ogden, Former Deputy Attorney General;

c. Gary Grindler, Office of the Attorney General and former Acting Deputy Attorney General;

d. James Cole, Deputy Attorney General;

e. Lanny Breuer, Assistant Attorney General;

f. Ronald Weich, Assistant Attorney General;

g. Kenneth Blanco, Deputy Assistant Attorney General;

h. Jason Weinstein, Deputy Assistant Attorney General;

i. John Keeney, Deputy Assistant Attorney General;

j. Bruce Swartz, Deputy Assistant Attorney General;

k. Matt Axelrod, Associate Deputy Attorney General;

l. Ed Siskel, former Associate Deputy Attorney General;

m. Brad Smith, Office of the Deputy Attorney General;

n. Kevin Carwile, Section Chief, Capital Case Unit, Criminal Division;

o. Joseph Cooley, Criminal Fraud Section, Criminal Division; and,

p. James Trusty, Acting Chief, Organized Crime and Gang Section.

Department Response: In late October 2011, the Department acknowledged that it had ''already begun searches of some of the custodians listed here relating to Fast and Furious, such as in response to the Chairman's letter of 7/11/11.''[70] Still, it has produced no documents since the issuance of the subpoena pursuant to subpoena categories 1(a), 1(b), 1(g), 1(i), and 1(k), only two documents pursuant to subpoena category 1(d), and very few documents pursuant to subpoena category 1(j) and 1(l).

2. All communications between and among Department of Justice (DOJ) employees and Executive Office of the President employees, including but not limited to Associate Communications Director Eric Schultz, referring or relating to Operation Fast and Furious or any other firearms trafficking cases.

Department Response: The Department acknowledged that the Committee identified several people likely to be custodians of

[55] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (Sep. 1, 2011).

[56] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa and Senator Charles Grassley (Sep. 30, 2011).

[57] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (Oct. 11, 2011) [hereinafter Oct. 11 Letter].

[58] Letter from Chairman Darrell Issa and Senator Charles Grassley to Att'y Gen. Eric Holder (July 11, 2011).

[59] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (Oct. 31, 2011) [hereinafter Oct. 31 Letter].

[60] Letter from Chairman Darrell Issa and Senator Charles Grassley to FBI Dir. Robert Mueller (July 11, 2011) [hereinafter Mueller Letter].

[61] Letter from Chairman Darrell Issa and Senator Charles Grassley to DEA Adm'r Michele Leonhart (July 15, 2011).

[62] Letter from DEA Adm'r Michele Leonhart to Chairman Darrell Issa and Senator Charles Grassley (July 22, 2011).

[63] Letter from Chairman Darrell Issa and Senator Charles Grassley to Acting U.S. Att'y Ann Scheel (Sep. 1, 2011).

[64] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa and Senator Charles Grassley (Dec. 6, 2011) [hereinafter Dec. 6 Letter].

[65] Letter from Chairman Darrell Issa and Senator Charles Grassley to Att'y Gen. Eric Holder (Sep. 27, 2011).

[66] Oct. 11 Letter, *supra* note 57.

[67] *Id.*

[68] E-mail from Office of Leg. Affairs Staff, U.S. Dep't of Justice, to Investigations Staff, H. Comm. on Oversight and Gov't Reform (Oct. 31, 2011) [hereinafter OLA e-mail].

[69] Letter from Deputy Att'y Gen. James Cole to Chairman Darrell Issa (May 15, 2012), at 4 [hereinafter May 15 Cole Letter].

[70] OLA e-mail.

these documents.[71] Though the Department has stated it has produced documents pursuant to this subpoena category, the Committee has not found any documents produced by the Department responsive to this subpoena category.[72]

3. All communications between DOJ employees and Executive Office of the President employees referring or relating to the President's March 22, 2011, interview with Jorge Ramos of Univision.

Department Response: The Department represented that it would ''check on communications with WH Press Office in the time period preceding the President's 3/22/11 interview,'' and that it had identified the most likely custodians of those documents.[73] Nonetheless, it has produced no documents responsive to this subpoena category. The Department has not informed the Committee that no documents exist responsive to this schedule number.

4. All documents and communications referring or relating to any instances prior to February 4, 2011, where the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) failed to interdict weapons that had been illegally purchased or transferred.

Department Response: The Department has produced some documents responsive to this subpoena category.

5. All documents and communications referring or relating to any instances prior to February 4, 2011, where ATF broke off surveillance of weapons and subsequently became aware that those weapons entered Mexico.

Department Response: The Department has produced documents responsive to this subpoena category.

Most of the responsive documents the Department has produced pursuant to the subpoena pertain to categories 4 and 5 and relate to earlier cases the Department has described as involving gunwalking. The Department produced these documents strategically, advancing its own narrative about why Fast and Furious was neither an isolated nor a unique program. It has attempted to accomplish this objective by simultaneously producing documents to the media and the Committee.

6. All documents and communications referring or relating to the murder of Immigrations and Customs Enforcement Agent Jaime Zapata, including, but not limited to, documents and communications regarding Zapata's mission when he was murdered, Form for Reporting Information That May Become Testimony (FD–302), photographs of the crime scene, and investigative reports prepared by the FBI.

Department Response: The Department ''understand[s] that the Zapata family has complained that they've been 'kept in the dark' about this matter'' which necessitated this subpoena category.[74] The Department ''conferred with the U.S. Attorney's Office . . . which we hope will be helpful to them and perhaps address the concerns that are the basis of this item.''[75] Though the Department has stated it has produced documents pursuant to this subpoena category, the Committee has not found any documents produced by the Department responsive to this subpoena category.[76]

In late February 2012, press accounts revealed that prosecutors had recently sentenced a second individual in relation to the murder of Immigration and Customs Enforcement (ICE) Agent Jaime Zapata. One news article stated that ''[n]obody was more astonished to learn of the case than Zapata's parents, who didn't know that [the defendant] had been arrested or linked to their son's murder.''[77] Press accounts alleged that the defendant had been ''under ATF surveillance for at least six months before a rifle he trafficked was used in Zapata's murder''—a situation similar to what took place during Fast and Furious.[78] Despite this revelation, the Department failed to produce any documents responsive to this subpoena category.

7. All communications to or from William Newell, former Special Agent-in-Charge for ATF's Phoenix Field Division, between:

a. December 14, 2010 to January 25, 2011; and,

b. March 16, 2009 to March 19, 2009.

Department Response: The Department has not produced any documents responsive to subpoena category 7(b), despite its understanding that the Committee sought documents pertaining ''to communications with [Executive Office of the President] staff regarding gun control policy'' within a specific and narrow timeframe.[79] The Department has not informed the Committee that no documents exist responsive to this schedule number.

8. All Reports of Investigation (ROIs) related to Operation Fast and Furious or ATF Case Number 785115–10–0004.

Department Response: Department representatives contended that this subpoena category ''presents some significant issues for'' the Department due to current and potential future indictments.[80] The Department has not produced any documents responsive to this subpoena category. The Department has not informed the Committee that no documents exist responsive to this schedule number.

9. All communications between and among Matt Axelrod, Kenneth Melson, and William Hoover referring or relating to ROIs identified pursuant to Paragraph 8.

Department Response: The Department acknowledged its understanding that this request specifically pertained to ''emails Ken sent to Matt and Billy, expressing concerns, perhaps in March 2011, [that] are core to [the Committee's] work, and we'll look at those.''[81] Still, it has produced no documents pursuant to this subpoena category. The Department has not informed the Committee that no documents exist responsive to this schedule number.

10. All documents and communications between and among former U.S. Attorney Dennis Burke, Attorney General Eric Holder, Jr., former Acting Deputy Attorney General Gary Grindler, Deputy Attorney General James Cole, Assistant Attorney General Lanny Breuer, and Deputy Assistant Attorney General Jason Weinstein referring or relating to Operation Fast and Furious or any OCDETF case originating in Arizona.

Department Response: The Department has produced some documents responsive to this subpoena category.

A complete production of these documents is crucial to allow Congress to understand how senior Department officials came to know that the February 4, 2011, letter to Senator Grassley was false, why it took so long for the Department to withdraw the letter despite months of congressional pressure to do so, and why the Department obstructed the congressional investigation for nearly a year. These documents will show the reactions of top officials when confronted with evidence about gunwalking in Fast and Furious. The documents will also show whether these officials knew about, or were surprised to learn of, the gunwalking. Additionally, these documents will reveal the identities of Department officials who orchestrated various forms of retaliation against the whistleblowers.

11. All communications sent or received between:

a. December 16, 2009 and December 18, 2009; and,

b. March 9, 2011, and March 14, 2011, to or from the following individuals:

i. Emory Hurley, Assistant U.S. Attorney, Office of the U.S. Attorney for the District of Arizona;

ii. Michael Morrissey, Assistant U.S. Attorney, Office of the U.S. Attorney for the District of Arizona;

iii. Patrick Cunningham, Chief, Criminal Division, Office of the U.S. Attorney for the District of Arizona;

iv. David Voth, Group Supervisor, ATF; and,

v. Hope MacAllister, Special Agent, ATF.

Department Response: The Department acknowledged that it ''will first search these custodians for records re a) the Howard meeting in 12/09; and b) the ROI or memo that was written during this time period relating to the Howard mtng in 12/09.''[82] Although the Department has produced documents that are purportedly responsive to this category, these documents do not pertain to the subject matter that the Department understands that the Committee is seeking.

12. All communications sent or received between December 15, 2010, and December 17, 2010, to or from the following individuals in the U.S. Attorney's Office for the District of Arizona:

a. Dennis Burke, former United States Attorney;

b. Emory Hurley, Assistant United States Attorney;

c. Michael Morrissey, Assistant United States Attorney; and,

d. Patrick Cunningham, Chief of the Criminal Division.

Department Response: The Department understood that the Committee's ''primary interest here is in the communications during this time period that relate to the Terry death and, per our conversation, we will start with those.''[83] Although the Department has produced some documents responsive to this subpoena category, it has not represented that it has produced all responsive documents in this category.

13. All communications sent or received between August 7, 2009, and March 19, 2011, between and among former Ambassador to Mexico Carlos Pascual; Assistant Attorney General Lanny Breuer; and Deputy Assistant Attorney General Bruce Swartz.

Department Response: The Department acknowledged that it ''understand[s] the Committee's focus here is Firearms Trafficking issues along the SW Border, not limited to Fast & Furious.''[84] The Department has produced some documents responsive to this subpoena category.

14. All communications sent or received between August 7, 2009, and March 19, 2011, between and among former Ambassador to Mexico Carlos Pascual and any Department of Justice employee based in Mexico City referring or relating to firearms trafficking initiatives, Operation Fast and Furious or

[71] *Id.*
[72] May 15 Cole Letter, at 4.
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] May 15 Cole Letter, at 4.
[77] Sharyl Attkisson, *Second gun used in ICE agent murder linked to ATF undercover operation,* (Feb. 22, 2012, 5:29 P.M.), http://www.cbsnews.com/8301-31727_162-57383089-10391695/second-gun-used-in-ice-agent-murder-linked-to-atf-undercover-operation/.
[78] *Id.*
[79] OLA e-mail, *supra* note 68.
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*

any firearms trafficking case based in Arizona, or any visits by Assistant Attorney General Lanny Breuer to Mexico.

Department Response: The Department has produced only a handful of pages responsive to this subpoena category, even though it ''understand[s] that [the Committee] wants [the Department] to approach this effort with efficiency.''[85] Despite the Committee's request for an efficient effort, the Department produced a key document regarding Attorney General Lanny Breuer three and a half months after the subpoena was issued, after several previous document productions, and long after Breuer testified before Congress and could be questioned about the document. Given the importance of the contents of the document and the request for an efficient effort on the part of the Department in this subpoena category, it is inconceivable that the Department did not discover this document months prior to its production. The Department's actions suggest that it kept this document hidden for strategic and public relations reasons.

15. Any FD–302 relating to targets, suspects, defendants, or their associates, bosses, or financiers in the Fast and Furious investigation, including but not limited to any FD–302s ATF Special Agent Hope MacAllister provided to ATF leadership during the calendar year 2011.

Department Response: The Department ''understand[s] that [the Committee's] primary focus here is the 5 FBI 302s that were provided to SA MacAllister, which she later gave to Messrs. Hoover and Melson.''[86] Despite the specificity of this document request, the Department has not produced any documents responsive to this schedule number. The Department has not informed the Committee that no documents exist responsive to this schedule number.

16. Any investigative reports prepared by the FBI or Drug Enforcement Administration (DEA) referring or relating to targets, suspects, or defendants in the Fast and Furious case.

Department Response: The Department was ''uncertain about the volume here,'' regarding the amount of documents, and pledged to ''work[ ] on this [with] DEA and FBI.''[87] Despite this pledge, it has produced no documents responsive to this subpoena category. The Department has not informed the Committee that no documents exist responsive to this schedule number.

17. Any investigative reports prepared by the FBI or DEA relating to the individuals described to Committee staff at the October 5, 2011, briefing at Justice Department headquarters as Target Number 1 and Target Number 2.

Department Response: The Department acknowledged that it ''think[s] we understand this item.''[88] Despite this understanding, it has produced no documents responsive to this subpoena category. The Department has not informed the Committee that no documents exist responsive to this schedule number.

18. All documents and communications in the possession, custody or control of the DEA referring or relating to Manuel Fabian Celis-Acosta.

Department Response: The Department agreed to ''start with records regarding information that DEA shared with ATF about Acosta, which we understand to be the focus of your interest in this item.''[89] Despite this understanding, the Department has produced no documents responsive to this subpoena category. The Department has not informed the Committee that no documents exist responsive to this schedule number.

19. All documents and communications between and among FBI employees in Arizona and the FBI Laboratory, including but not limited to employees in the Firearms/Toolmark Unit, referring or relating to the firearms recovered during the course of the investigation of Brian Terry's death.

Department Response: The Department's understanding was that ''[the Committee's] focus here is how evidence was tagged at the scene of Agent Terry's murder, how evidence was processed, how the FBI ballistics report was prepared and what it means.''[90] Despite this clear understanding, the Department has produced no documents responsive to this subpoena category. The Department has not informed the Committee that no documents exist responsive to this schedule number.

20. All agendas, meeting notes, meeting minutes, and follow-up reports for the Attorney General's Advisory Committee of U.S. Attorneys between March 1, 2009, and July 31, 2011, referring or relating to Operation Fast and Furious.

Department Response: This category asks for documents from the Attorney General's Advisory Committee within a clearly specified date range. Despite the fact that the Department has acknowledged this category ''is clear,'' the Department has produced no documents responsive to this subpoena category.[91] The Department has not informed the Committee that no documents exist responsive to this schedule number.

21. All weekly reports and memoranda for the Attorney General, either directly or through the Deputy Attorney General, from any employee in the Criminal Division, ATF, DEA, FBI, or the National Drug Intelligence Center created between November 1, 2009 and September 30, 2011.

Department Response: This category asks for weekly reports and memoranda to the Attorney General from five different Department components ''regarding ATF cases re firearms trafficking.''[92] The Department has produced some documents responsive to this subpoena category.

22. All surveillance tapes recorded by pole cameras inside the Lone Wolf Trading Co. store between 12:00 a.m. on October 3, 2010, and 12:00 a.m. on October 7, 2010.

Department Response: This category asks for all ATF surveillance tapes from Lone Wolf Trading Company between two specified dates in October 2010. Both the Committee and the Department ''understand a break-in occurred'' at that time.[93] The Department has produced no documents responsive to this subpoena category. The Department has not informed the Committee that no documents exist responsive to this schedule number.

C. ATTEMPTS OF ACCOMMODATION BY THE COMMITTEE, LACK OF COMPLIANCE BY THE JUSTICE DEPARTMENT

In public statements, the Department has maintained that it remains committed to ''work[ing] to accommodate the Committee's legitimate oversight needs.''[94] The Department, however, believes it is the sole arbiter of what is ''legitimate.'' In turn, the Committee has gone to great lengths to accommodate the Department's interests as an Executive Branch agency. Unfortunately, the Department's actions have not matched its rhetoric. Instead, it has chosen to prolong the investigation and impugn the motives of the Committee. A statement the Attorney General made at the February 2, 2012, hearing was emblematic of the Department's posture with respect to the investigation:

> But I also think that if we are going to really get ahead here, if we are really going to make some progress, we need to put aside the political gotcha games in an election year and focus on matters that are extremely serious.[95]

This attitude with respect to a legitimate congressional inquiry has permeated the Department's ranks. Had the Department demonstrated a willingness to cooperate with this investigation from the outset—instead of attempting to cover up its own internal mismanagement—this investigation likely would have concluded well before the election year even began. The Department has intentionally withheld documents for months, only to release a selected few on the eve of the testimony of Department officials.[96] The Department has impeded the ability of a co-equal branch of government to perform its constitutional duty to conduct Executive Branch oversight. By any measure, it has obstructed and slowed the Committee's work.

The Committee has been unfailingly patient in working with Department representatives to obtain information the Committee requires to complete its investigation. The Department's progress has been unacceptably slow in responding to the October 12, 2011, subpoena issued to the Attorney General. Complying with the Committee's subpoena is not optional. Indeed, the failure to produce documents pursuant to a congressional subpoena is a violation of federal law.[97] Because the Department has not cited any legal authority as the basis for withholding documents pursuant to the subpoena its efforts to accommodate the Committee's constitutional obligation to conduct oversight of the Executive Branch are incomplete.

1. IN CAMERA REVIEWS

In an attempt to accommodate the Justice Department's interests, Committee staff has viewed documents responsive to the subpoena that the Department has identified as sensitive *in camera* at Department headquarters. Committee staff has visited the Department on April 12, May 4, June 17, October 12, and November 3, 2011, as well as on January 30 and February 27, 2012 to view these documents. Many of the documents made available for *in camera* review, however, have been repetitive in nature. Many other documents seemingly do not contain any sensitive parts that require them to be viewed *in camera*. Other documents are altogether non-responsive to the subpoena.

Committee staff has spent dozens of hours at Department headquarters reviewing these

[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Fast and Furious: Management Failures at the Department of Justice: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (Feb. 2, 2012) (Statement of Hon. Eric H. Holder, Jr., Att'y Gen. of the U.S.).
[95] *Id.*
[96] On Friday January 27, 2012, just days before the Attorney General testified before Congress, documents were delivered to the Senate Judiciary Committee so late in the evening that a disc of files had to be slipped under the door. This is not only an extreme inconvenience for congressional staff but also deprives staff of the ability to review the materials in a timely manner.
[97] 2 U.S.C. 192 states, in pertinent part:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before . . . any committee of either House of Congress, willfully makes default . . . shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

documents. In addition, the Department has identified hundreds of other sensitive documents responsive to the subpoena, which it refuses to make available even for *in camera* review, instead withholding them from the Committee altogether. The Committee has made these accommodations to the Department at the expense of not being able to make these documents available for review by Committee Members.

2. REDACTED DOCUMENTS

The Department has redacted varying portions of many of the documents it has produced. These redactions purportedly protect ongoing criminal investigations and prosecutions, as well as other sensitive data. The Department has so heavily redacted some documents produced to Congress that they are unintelligible. There appears to be no objective, consistent criteria delineating why some documents were redacted, only provided *in camera*, or withheld entirely.

On the evening of May 2, 2011, Department of Justice representatives notified the Committee that the Department was planning to make approximately 400 pages of documents available for an *in camera* review at its headquarters.[98] Committee staff went to review those documents on May 4, 2011, only to discover they were partially, or in some cases almost completely, redacted. Since these documents were only made available pursuant to Committee's first subpoena and only on an *in camera* basis, redactions were inappropriate and unnecessary.

On June 14, 2011, the Department produced 65 pages of documents to the Committee in a production labeled ''Batch 4.''[99] Of these 65 pages, every single one was at least partially redacted, 44 were completely redacted, and 61 had redactions covering more than half of the page.

On July 18, 2011, after more than a month of discussions between Committee and Department staff, the Department finally included a redaction code that identifies the reason for each redaction within a document.[100] While the Department has used this redaction code in subsequent document productions to the Committee, documents produced and redacted prior to July 18, 2011, do not have the benefit of associated redaction codes for each redaction.

The Department has over-redacted certain documents. The Committee has obtained many of these documents through whistleblowers and has compared some of them with those produced by the Department. In some instances, the Department redacted more text than necessary, making it unnecessarily difficult and sometimes impossible for the Committee, absent the documents provided by whistleblowers, to investigate decisions made by Department officials.

Further, any documents made available pursuant to the Committee's subpoenas must not have any redactions. To fully and properly investigate the decisions made by Department officials during Fast and Furious, the Committee requires access to documents in their entirety. The Department has not complied with this requirement.

The Committee does recognize the importance of privacy interests and other legitimate reasons the Department has for redacting portions of documents produced to the Committee. The Committee has attempted to accommodate the Department's stated concerns related to documents it believes are sensitive. The Committee intended to release 230 pages of documents in support of its July 26, 2011, report entitled *The Department of Justice's Operation Fast and Furious: Fueling Cartel Violence*, and gave the Department an opportunity to suggest its own redactions before the documents became public.[101] These actions are consistent with the Committee's willingness to accommodate the Department's interests.

3. PRIVILEGE LOG

Mindful of the Justice Department's prerogatives as an Executive Branch agency, the Committee has offered the opportunity for the Department to prepare a privilege log of documents responsive to the subpoena but withheld from production. A privilege log would outline the documents withheld and the specific grounds for withholding. Such a log would serve as the basis for negotiation between the Committee and the Department about prioritizing the documents for potential production.

On January 31, 2012, Chairman Issa wrote to the Attorney General. He said:

> Should you choose to continue to withhold documents pursuant to the subpoena, you must create a detailed privilege log explaining why the Department is refusing to produce each document. If the Department continues to obstruct the congressional inquiry by not providing documents and information, this Committee will have no alternative but to move forward with proceedings to hold you in contempt of Congress.[102]

On February 14, 2012, Chairman Issa again wrote to the Attorney General. He said:

> We cannot wait any longer for the Department's cooperation. As such please specify a date by which you expected the Department to produce *all* documents responsive to the subpoena. In addition, please specify a Department representative who will interface with the Committee for production purposes . . . This person's primary responsibility should be to identify for the Committee all documents the Department has determined to be responsive to the subpoena but is refusing to produce, and should provide a privilege log of the documents delineating why each one is being withheld from Congress. Please direct this individual to produce this log to the Committee without further delay.[103]

On several occasions, Committee staff has asked the Department to provide such a privilege log, including a listing, category-by-category, of documents the Department has located pursuant to the subpoena and the reason the Department will not produce those documents. Despite these requests, however, the Department has neither produced a privilege log nor responded to this aspect of Chairman Issa's letters of January 31, 2012, and February 14, 2012.

The Department has not informed the Committee that it has been unable to locate certain documents. This suggests that the Department is not producing responsive documents in its possession. Since the Department will not produce a privilege log, it has failed to make a good faith effort to accommodate the Committee's legitimate oversight interests.

4. ASSERTIONS OF NON-COMPLIANCE

The Committee's investigation into Operation Fast and Furious is replete with instances in which the Justice Department has openly acknowledged it would not comply with the Committee's requests. These pronouncements began with the March 31, 2011, subpoena to the former Acting ATF Director, continued through the Committee's October 12, 2011, subpoena to the Attorney General, and persist to this day.

(a) March 31, 2011, Subpoena

On March 16, 2011, Chairman Issa sent a letter to the then-Acting ATF Director requesting documents about Fast and Furious.[104] As part of this request, Chairman Issa asked for a ''list of individuals responsible for authorizing the decision to 'walk' guns to Mexico in order to follow them and capture a 'bigger fish.' ''[105] On the afternoon of March 30, 2011, the deadline given in Chairman Issa's letter, Department staff participated in a conference call with Committee staff. During that call, Department staff expressed a lack of understanding over the meaning of the word ''list.''[106] Department officials further informed Committee staff that the Department would not produce documents by the deadline and were uncertain when they would produce documents in the future. Committee staff understood this response to mean the Department did not intend to cooperate with the Committee's investigation.

The next day Chairman Issa authorized a subpoena for the Acting ATF Director. The following day, the Department wrote to Chairman Issa. Assistant Attorney General Ronald Weich wrote:

> As you know, the Department has been working with the Committee to provide documents responsive to its March 16 request to the Bureau of Alcohol, Tobacco, Firearms and Explosives. Yesterday, we informed Committee staff that we intended to produce a number of responsive documents within the next week. As we explained, there are some documents that we would be unable to provide without compromising the Department's ongoing criminal investigation into the death of Agent Brian Terry as well as other investigations and prosecutions, but we would seek to work productively with the Committee to find other ways to be responsive to its needs.[107]

Despite the Department's stated intention to produce documents within the next week, it produced no documents for over two months, until June 10, 2011. In the interim, the Department made little effort to work with the Committee to define the scope of the documents required by the subpoena.

On April 8, 2011, the Department wrote to Chairman Issa to inform the Committee that it had located documents responsive to the subpoena. Assistant Attorney General Weich wrote that the Department did not plan to share many of these materials with the Committee. His letter stated:

> To date, our search has located several law enforcement sensitive documents responsive to the requests in your letter and the subpoena. We have substantial confidentiality interests in these documents because they contain information about ATF strategies and procedures that could be used by individuals seeking to evade our law enforcement efforts. We are prepared to make these documents, with some redactions, available for review by Committee staff at the Department. They will bear redactions to protect

[98] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (May 2, 2011).

[99] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (June 14, 2011).

[100] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (July 18, 2011).

[101] E-mail from Office of Leg. Affairs Staff, U.S. Dep't of Justice, to Staff, H. Comm. on Oversight and Gov't Reform (July 28, 2011).

[102] Letter from Chairman Darrell Issa to Att'y Gen. Eric Holder (Jan. 31, 2012) [hereinafter Jan. 31 Letter].

[103] Letter from Chairman Darrell Issa to Att'y Gen. Eric Holder (Feb. 14, 2012) (emphasis in original) [hereinafter Feb. 14 Letter].

[104] Mar. 16 Letter, *supra* note 50.

[105] *Id.*

[106] *Teleconference between Committee Staff and U.S. Dep't of Justice Office of Leg. Affairs Staff* (Mar. 30, 2011).

[107] Letter from *Ass't Att'y* Gen. Ronald Weich to Chairman Darrell Issa (Apr. 1, 2011).

information about ongoing criminal investigations, investigative targets, internal deliberations about law enforcement options, and communications with foreign government representatives. In addition, we notified Committee staff that we have identified certain publicly available documents that are responsive. While our efforts to identify responsive documents are continuing, many of your requests seek records relating to ongoing criminal investigations. Based upon the Department's longstanding policy regarding the confidentiality of ongoing criminal investigations, we are not in a position to disclose such documents, nor can we confirm or deny the existence of records in our ongoing investigative files. This policy is based on our strong need to protect the independence and effectiveness of our law enforcement efforts.[108]

The letter cited prior Department policy in support of its position of non-compliance:

We are dedicated to holding Agent Terry's killer or killers responsible through the criminal justice process that is currently underway, but we are not in a position to provide additional information at this time regarding this active criminal investigation for the reasons set forth above. . . .[109]

On June 14, 2011, after the Department had produced 194 pages of non-public documents pursuant to the subpoena, the Department informed the Committee that it was deliberately withholding certain documents:

As with previous oversight matters, we have not provided access to documents that contain detailed information about our investigative activities where their disclosure would harm our pending investigations and prosecutions. This includes information that would identify investigative subjects, sensitive techniques, anticipated actions, and other details that would assist individuals in evading our law enforcement efforts. Our judgments begin with the premise that we will disclose as much as possible that is responsive to the Committee's interests, consistent with our responsibilities to bring to justice those who are responsible for the death of Agent Terry and those who violate federal firearms laws.[110]

The June 14, 2011, letter arrived one day after the Committee held a hearing featuring constitutional experts discussing the legal obligations of the Department to comply with a congressional subpoena. The Department's letter did not address the views expressed at the hearing, instead reiterating its internal policy. The letter noted that the Department would not provide access to documents discussing its use of ''sensitive techniques''—even though these techniques were central to the Committee's investigation.

On July 5, 2011, Chairman Issa and Senator Grassley wrote to the Department about serious issues involving the lack of information sharing among Department components, in particular, between the FBI and DEA.[111] These issues raised the possibility that the Department had been deliberately concealing information about Fast and Furious from the Committee, including the roles of its component agencies. The next day, the Department responded. It wrote:

Your letter raises concerns about the alleged role of other agencies in matters that you say touch on Operation Fast and Furious. Chairman Issa's staff previously raised this issue with representatives of the Department and it is my understanding that discussions about whether and how to provide any such sensitive law enforcement information have been ongoing. . . .[112]

On July 11, 2011, Chairman Issa and Senator Grassley wrote to the FBI requesting information on the issue of information sharing within the Department. The letter included a request for information relating to the murder of Immigrations and Customs Enforcement Agent Jaime Zapata.[113] On August 12, 2011, the FBI responded. It wrote:

Your letter also asks for specific information related to the crime scene and events leading to the murder of ICE Agent Jaime Zapata in Mexico on February 15, 2011. As you know, crime scene evidence and the circumstances of a crime are generally not made public in an ongoing investigation. Furthermore, the investigative reports of an ongoing investigation are kept confidential during the investigation to preserve the integrity of the investigation and to ensure its successful conclusion. We regret that we cannot provide more details about the investigation at this time, but we need to ensure all appropriate steps are taken to protect the integrity of the investigation.[114]

The FBI did not provide any documents to the Committee regarding the information sharing issues raised, though it did offer to provide a briefing to staff. It delivered that briefing nearly two months later, on October 5, 2011.

On October 11, 2011, the Department wrote to Chairman Issa. The Department stated:

We believe that we have now substantially concluded our efforts to respond to the Committee requests set forth in the subpoena and the letter of June 8th.[115]

The Department was well aware that the Committee was struggling to understand how the Department created its February 4, 2011, letter to Senator Grassley, which the Committee believed to contain false information. To that end, the Department stated:

As we have previously explained to Committee staff, we have also withheld internal communications that were generated in the course of the Department's effort to respond to congressional and media inquiries about Operation Fast and Furious. These records were created in 2011, well after the completion of the investigative portion of Operation Fast and Furious that the Committee has been reviewing and after the charging decisions reflected in the January 25, 2011, indictments. Thus, they were not part of the communications regarding the development and implementation of the strategy decisions that have been the focus of the Committee's inquiry. It is longstanding Executive Branch practice not to disclose documents falling into this category because disclosure would implicate substantial Executive Branch confidentiality interests and separation of powers principles. Disclosure would have a chilling effect on agency officials' deliberations about how to respond to inquiries from Congress or the media. Such a chill on internal communications would interfere with our ability to respond as effectively and efficiently as possible to congressional oversight requests.[116]

The next day, the Committee issued a subpoena to Attorney General Holder.

(b) October 12, 2011, Subpoena

On October 31, 2011, the Department produced its first batch of documents pursuant to the Committee's October 12, 2011, subpoena.[117] This production consisted of 652 pages. Of these 652 pages, 116 were about the Kingery case, a case that the Department wanted to highlight in an attempt to discredit some of the original Fast and Furious whistleblowers. Twenty-eight additional pages were about an operation from the prior administration, the Hernandez case, and 245 pages were about another operation from the prior administration, Operation Wide Receiver.

Although the subpoena covered documents from the Hernandez and Wide Receiver cases, their inclusion into the first production batch under the subpoena was indicative of the Department's strategy in responding to the subpoena. The Department briefed the press on these documents at the same time as it produced them to the Committee. The Department seemed more interested in spin control than in complying with the congressional subpoena. Sixty percent of the documents in this first production were related to either Kingery, Hernandez, or Wide Receiver, and therefore, unrelated to the gravamen of the Committee's investigation into Fast and Furious.

On December 2, 2011, shortly before the Attorney General's testimony before the House Judiciary Committee, the Department produced 1,364 pages of documents pertaining to the creation of its February 4, 2011, letter.[118] Despite its statements in the October 11, 2011, letter, the Department, through a letter from Deputy Attorney General James Cole, publicly admitted under pressure its obvious misstatements, formally acknowledging that the February 4, 2011, letter ''contains inaccuracies.''[119]

On December 13, 2011, on the eve of the Committee's interview with Gary Grindler, Chief of Staff to the Attorney General, the Department produced 19 pages of responsive documents.[120]

On January 5, 2012, the Department produced 482 pages of documents responsive to the subpoena.[121] Of these 482 pages, 304 of them, or 63 percent, were related to the Wide Receiver case. This production brought the total number of pages produced pursuant to Wide Receiver to 549, nearly 100 more than the Department had produced at that time regarding Fast and Furious in three document productions.

On January 27, 2012, the Department produced 486 pages of documents pursuant to the October 12, 2011, subpoena.[122] In its cover letter, the Department stated, ''[t]he majority of materials produced today are responsive to items 7, 11 and 12 of your October 11 subpoena.'' There are no documents in the production, however, responsive to items 7(b) or 11(b)(i–v). The Department wrote in its January 27 cover letter:

We are producing or making available for review materials that are responsive to these

[108] Letter from Ass't Atty'y Gen. Ronald Weich to Chairman Darrell Issa (Apr. 8, 2011).

[109] *Id.*

[110] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (Apr. 8, 2011).

[111] Letter from Chairman Darrell Issa and Senator Charles Grassley to Att'y Gen. Eric Holder (July 5, 2011).

[112] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa and Senator Charles Grassley (July 6, 2011).

[113] Mueller Letter, *supra* note 60.

[114] Letter from Stephen Kelley, Ass't Dir., FBI Office of Congressional Affairs, to Chairman Darrell Issa and Senator Charles Grassley (Aug. 12, 2011).

[115] Oct. 11 Letter, *supra* note 57.

[116] *Id.*

[117] Oct. 31 Letter, *supra* note 59.

[118] Letter from Deputy Att'y Gen. James Cole to Chairman Darrell Issa and Senator Charles Grassley (Dec. 2, 2011).

[119] *Id.*

[120] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa and Senator Charles Grassley (Dec. 13, 2011).

[121] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (Jan. 5, 2012).

[122] Cole Letter, *supra* note 37.

items, most of which pertain to the specific investigations that we have already identified to the Committee. We are not, however, providing materials pertaining to other matters, such as documents regarding ATF cases that do not appear to involve the inappropriate tactics under review by the Committee; non-ATF cases, except for certain information relating to the death of Customs and Border Protection Agent Brian Terry; administrative matters; and personal records.[123]

The Department refused to produce documents pursuant to the subpoena regarding investigations that it had not previously specified to the Committee, or investigations that ''do not appear'' to involve inappropriate tactics. In doing so, the Department made itself the sole arbiter of the Committee's investigative interests, as well as of the use of ''inappropriate'' tactics. The Department has prevented Congress from executing its constitutionally mandated oversight function, preferring instead to self-regulate.

The October 12, 2011, subpoena, however, covers all investigations in which ATF failed to interdict weapons that had been illegally purchased or transferred—not just those cases previously identified by the Department. The subpoena does not give the Department the authority to define which tactics are inappropriate. Rather, the language in sections 4 and 5 of the subpoena schedule is clear. The Department's refusal to cooperate on this front and only produce documents about investigations that it had previously identified—documents that support the Department's press strategy—is in violation of its obligation to cooperate with congressional oversight.

On January 31, 2012, Chairman Issa again wrote to the Attorney General, this time asking that the Department produce all documents pursuant to the subpoena by February 9, 2012.[124] The following day, the Department responded. It stated:

Your most recent letter asks that we complete the production process under the October 11, 2011, subpoena by February 9, 2012. The broad scope of the Committee's requests and the volume or material to be collected, processed and reviewed in response make it impossible to meet that deadline, despite our good faith efforts. We will continue in good faith to produce materials, but it simply will not be possible to finish the collection, processing and review of materials by the date sought in your most recent letter.[125]

Yet, as discussed in Section V.B above, the Department was acutely aware in October 2011, approximately three months earlier, exactly what categories of documents the Committee was seeking. In response to the subpoena, the Department had, up to February 1, 2012, produced more documents relating to a single operation years before Fast and Furious even began than it had relating to Operation Fast and Furious itself.

On February 16, 2012, the Department produced 304 pages of documents pursuant to the subpoena.[126] The production included nearly 60 pages of publicly available and previously produced information, as well as other documents previously produced to the Committee.

On February 27, 2012, the Department produced eight pages pursuant to the subpoena.[127] These eight pages, given to the Committee by a whistleblower ten months earlier, were produced only because a transcribed interview with a former Associate Deputy Attorney General was to take place the next day.

On March 2, 2012, the Department produced 26 pages of documents pursuant to the October 12, 2011, subpoena.[128] Five of these documents were about the Kingery case. Fourteen documents—over half of the production—related to Wide Receiver. Seven pages were duplicate copies of a press release already produced to the Committee.

On March 16, 2012, the Department produced 357 pages of documents pursuant to the subpoena. Three hundred seven of these pages, or 86 percent, related to the Hernandez and Medrano cases from the prior Administration. Twenty other pages had been previously produced by the Department, and seven pages were publicly available on the Justice Department's website.

On April 3, 2012, the Department produced 116 pages of documents pursuant to the subpoena. Forty four of these pages, or 38 percent, related to cases other than Fast and Furious. On April 19, 2012, the Department produced 188 pages of documents pursuant to the subpoena.

On May 15, 2012, the Department produced 29 pages of documents pursuant to the subpoena. Ten of these pages, or 36 percent, related to cases other than Fast and Furious.

The Department has produced a total of 6,988 pages to the Committee to date.[129] Though the Department recently stated that it has ''provided documents to the Committee at least twice every month since late last year,'' the Department has not produced any documents to the Committee in over 30 days.[130]

(c) Post-February 4, 2011, Documents

Many of the documents the October 12, 2011, subpoena requires were created or produced after February 4, 2011. The Department first responded to Congress about Fast and Furious on this date. The Department has steadfastly refused to make any documents created after February 4, 2011, available to the Committee.

The Department's actions following the February 4, 2011, letter to Senator Grassley are crucial in determining how it responded to the serious allegations raised by the whistleblowers. The October 12, 2011, subpoena covers documents that would help Congress understand what the Department knew about Fast and Furious, including when and how it discovered its February 4 letter was false, and the Department's efforts to conceal that information from Congress and the public. Such documents would include those relating to actions the Department took to silence or retaliate against Fast and Furious whistleblowers and to find out what had happened, and how the Department assessed the culpability of those involved in the program.

The Attorney General first expressed the Department's position regarding documents created after February 4, 2011, in his testimony before the House Judiciary Committee on December 8, 2011. In no uncertain terms, he stated:

[W]ith regard to the Justice Department as a whole—and I'm certainly a member of the Justice Department—we will not provide memos after February the 4th . . . e-mails, memos—consistent with the way in which the Department of Justice has always conducted itself in its interactions.[131]

He again impressed this point upon Committee Members later in the hearing:

Well, with the regard to provision of e-mails, I thought I've made it clear that after February the 4th it is not our intention to provide e-mail information consistent with the way in which the Justice Department has always conducted itself.[132]

The Department reiterated this position less than a week later in a December 14, 2011, transcribed interview of Gary Grindler, the Attorney General's Chief of Staff. Department counsel broadened the Department's position with respect to sharing documents created after February 4, 2011, in refusing to allow Grindler to answer any questions relating to conversations that he had with anyone in the Department regarding Fast and Furious after February 4, 2011. Grindler stated:

What I am saying is that the Attorney General made it clear at his testimony last week that we are not providing information to the committee subsequent to the February 4th letter.[133]

Department counsel expanded the position the Attorney General articulated regarding documentary evidence at the House Judiciary Committee hearing to include testimonial evidence as well.[134] Given the initial response by the Department to the congressional inquiry into Fast and Furious, the comments by Department counsel created a barrier preventing Congress from obtaining vital information about Fast and Furious.

The Department has maintained this position during additional transcribed interviews. In an interview with Deputy Assistant Attorney General Jason Weinstein on January 10, 2012, Department counsel prohibited him from responding to an entire line of questioning about his interactions with the Arizona U.S. Attorney's Office because it ''implicates the post-February 4th period.'' [135]

Understanding the post-February 4th period is critical to the Committee's investigation. Furthermore, documents from this period are responsive to the October 12, 2011, subpoena. For example, following the February 4, 2011, letter, Jason Weinstein, at the behest of Assistant Attorney General Breuer, prepared an analytical review of Fast and Furious.[136] Weinstein interviewed Emory Hurley and Patrick Cunningham of the Arizona U.S. Attorney's office as part of this review.[137] The document that resulted from Weinstein's analysis specifically discussed issues relevant to the Committee's inquiry. To date, the Department has not produced documents related to Weinstein's review to the Committee.

Chairman Issa has sent several letters urging the Department to produce documents pertaining to the Fast and Furious from the post-indictment period, and raising the possibility of contempt if the Attorney General chose not to comply. Initially, the Department refused to produce any documents created after January 25, 2011, the date that the

[123] *Id.*

[124] Jan. 31 Letter, *supra* note 102.

[125] Letter from Deputy Att'y Gen. James Cole to Chairman Darrell Issa (Feb. 1, 2012) [hereinafter Feb. 1 Letter].

[126] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (Feb. 16, 2012) [hereinafter Feb. 16 Letter].

[127] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (Feb. 27, 2012).

[128] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (Mar. 2, 2012).

[129] The most recent production by the Department, on May 15, 2012, ended with Bates number HOGR 006988.

[130] May 15 Cole Letter, *supra* note 69.

[131] *Oversight Hearing on the United States Department of Justice: Hearing Before the H. Comm. on the Judiciary*, 112th Cong. (Dec. 8, 2011) (Test. of Hon. Eric H. Holder, Jr., Att'y Gen. of the U.S.).

[132] *Id.*

[133] Transcribed Interview of Gary Grindler, Chief of Staff to the Att'y Gen., at 22 (Dec. 14, 2011) [hereinafter Grindler Tr.].

[134] *Id.*

[135] Transcribed Interview of Jason Weinstein, Deputy Ass't Att'y Gen. at 177 (Jan. 10, 2012).

[136] Transcribed Interview of Dennis K. Burke at 158–60 (Dec. 13, 2011).

[137] *Id.* at 158–59.

case was unsealed. On November 9, 2011, Chairman Issa wrote to the Department:

Over the past six months, Senator Grassley and I have asked for this information on many occasions, and each time we have been told it would not be produced. This information is covered by the subpoena served on the Attorney General on October 12, 2011, and I expect it to be produced no later than Wednesday, November 16, at 5:00 p.m. Failure to comply with this request will leave me with no other alternative than the use of compulsory process to obtain your testimony under oath.

* * * * * * *

Understanding the Department's actions after Congress started asking questions about Fast and Furious is crucial. As you know, substantial effort was expended to hide the actions of the Department from Congress . . . I expect nothing less than full compliance with all aspects of the subpoena, including complete production of documents created after the indictments were unsealed on January 25, 2011.[138]

On December 2, 2011, the Department produced documents pertaining to its February 4, 2011, response to Senator Grassley. When the Attorney General testified before Congress on December 8, 2011, he created a new cutoff date of February 4, 2011, after which no documents would be produced to Congress, despite the fact that such documents were covered by the October 12, 2011, subpoena. In support of this position regarding post-February 4, 2011, documents, in transcribed interviews, Department representatives have asserted a ''separation of powers'' privilege without further explanation or citation to legal authority.[139] The Department has not cited any legal authority to support this new, extremely broad assertion of privilege.

On January 31, 2012, Chairman Issa wrote to the Attorney General about this new, arbitrary date created by the Department, and raised the possibility of contempt:

In short, the Committee requires full compliance with all aspects of the subpoena, including complete production of documents created after the Department's February 4, 2011, letter. . . . If the Department continues to obstruct the congressional inquiry by not providing documents and information, this Committee will have no alternative but to move forward with proceedings to hold you in contempt of Congress.[140]

The Department responded the following day. It said:

To the extent responsive materials exist that post-date congressional review of this matter and were not generated in that context or to respond to media inquiries, and likewise do not implicate other recognized Department interests in confidentiality (for example, matters occurring before a grand jury, investigative activities under seal or the disclosure of which is prohibited by law, core investigative information, or matters reflecting internal Department deliberations), we intend to provide them.[141]

The Department quoted from its October 11, 2011, letter, stating:

[A]s we have previously explained to Committee staff, we have also withheld internal communications that were generated in the course of the Department's effort to respond to congressional and media inquiries about Operation Fast and Furious. These records were created in 2011, well after the completion of the investigative portion of Operation Fast and Furious that the Committee has been reviewing and after the charging decisions reflected in the January 25, 2011, indictments. Thus, they were not part of the communications regarding the development and implementation of the strategy decisions that have been the focus of the Committee's inquiry. It is longstanding Executive Branch practice not to disclose documents falling into this category because disclosure would implicate substantial Executive Branch confidentiality interests and separation of powers principles. Disclosure would have a chilling effect on agency officials' deliberations about how to respond to inquiries from Congress or the media. Such a chill on internal communications would interfere with our ability to respond as effectively and efficiently as possible to congressional oversight requests.[142]

On February 14, 2012, Chairman Issa again wrote to the Department regarding post-February 4, 2011, documents, and again raised the possibility of contempt:

Complying with the Committee's subpoena is not optional. Indeed, the failure to produce documents pursuant to a congressional subpoena is a violation of federal law. The Department's letter suggests that its failure to produce, among other things, ''deliberative documents and other internal communications generated in response to congressional oversight requests'' is based on the premise that ''disclosure would compromise substantial separation of powers principles and Executive Branch confidentiality interests.'' Your February 4, 2011, cutoff date of providing documents to the Committee is entirely arbitrary, and comes from a ''separation of powers'' privilege that does not actually exist.

You cite no legal authority to support your new, extremely broad assertion. To the contrary, as you know, Congress possesses the ''power of inquiry.'' Furthermore, ''the issuance of a subpoena pursuant to an authorized investigation is . . . an indispensable ingredient of lawmaking.'' Because the Department has not cited any legal authority as the basis for withholding documents, or provided the Committee with a privilege log with respect to documents withheld, its efforts to accommodate the Committee's constitutional obligation to conduct oversight of the Executive Branch are incomplete.[143]

* * * * * * *

Please specify a date by which you expect the Department to produce **all** documents responsive to the subpoena. In addition, please specify a Department representative who will interface with the Committee for production purposes. This individual should also serve as the conduit for dealing with possible contempt proceedings, should the Department continue to ignore the Committee's subpoena.[144]

On February 16, 2012, the Department responded. The response did not address the post-February 4, 2011, documents, nor did it address the possibility of contempt. The Department's letter stated:

We have produced documents to the Committee on a rolling basis; since late last year these productions have occurred approximately twice a month. It is our intent to adhere to this rolling production schedule until we have completed the process of producing all responsive documents to which the Committee is entitled, consistent with the longstanding policies of the Executive Branch across administrations of both parties. Moreover, we intend to send a letter soon memorializing our discussions with your staff about the status of our production of documents within the various categories of the subpoena.

Our efforts to cooperate with the Committee have been a significant undertaking, involving a great deal of hard work by a large number of Department employees. The Department has been committed to providing the documents and information necessary to allow the Committee to satisfy its core oversight interests regarding the use of inappropriate tactics in Fast and Furious.

The Department, however, has yet to produce any documents pursuant to the subpoena created after February 4, 2011. Despite warnings by Chairman Issa that the Committee would initiate contempt if the Department failed to comply with the subpoena, the Department has refused to produce documents.

(d) Interview Requests

In addition to the October 12, 2011, subpoena, the Committee has requested to interview key individuals in Operation Fast and Furious and related programs. The Committee accommodated the Department's request to delay an interview with Hope MacAllister, the lead case agent for Operation Fast and Furious, despite her vast knowledge of the program. The Committee agreed to this accommodation due to the Department's expressed concern about interviewing a key witness prior to trial.

Throughout the investigation, the Department has had an evolving policy with regard to witnesses that excluded ever-broader categories of witnesses from participating in volunteer interviews. The Department first refused to allow line attorneys to testify in transcribed interviews, and then it prevented first-line supervisors from testifying. Next, the Department refused to make Senate-confirmed Department officials available for transcribed interviews. One such Senate-confirmed official, Assistant Attorney General Lanny Breuer, is a central focus in the Committee's investigation. On February 16, 2012, the Department retreated somewhat from its position, noting in a letter to the Committee that it was ''prepared to work with [the Committee] to find a mutually agreeable date for [Breuer] to appear and answer the Committee's questions, whether or not that appearance is public.''[145] The Department has urged the Committee to reconsider this interview request.

While the Department has facilitated a dozen interviews to avoid compulsory depositions, there have been several instances in which the Department has refused to cooperate with the Committee in scheduling interviews. The Department has stated that it would not make available certain individuals that the Committee has requested to interview. On December 6, 2011, the Department wrote:

We would like to defer any final decisions about the Committee's request for Mr. Swartz's interview until we have identified any responsive documents, some of which may implicate equities of another agency. The remaining employees you have asked to interview are all career employees who are either line prosecutors or first- or second-level supervisors. James Trusty and Michael Morrissey were first-level supervisors during

[138] Letter from Chairman Darrell Issa to Ass't Att'y Gen. Ronald Weich (Nov. 9, 2011).

[139] *See, e.g.*, Grindler Tr. at 22.

[140] Jan. 31 Letter, *supra* note 102.

[141] Feb. 1 Letter, *supra* note 125.

[142] *Id.*

[143] Feb. 14 Letter, *supra* note 103.

[144] *Id* (emphasis in original).

[145] Feb. 16 Letter, *supra* note 126.

the time period covered by the Fast and Furious investigation, and Kevin Carwile was a second-level supervisor. The remaining three employees you have asked to interview—Emory Hurley, Serra Tsethlikai, and Joseph Cooley—are line prosecutors. We are not prepared to make any of these attorneys available for interviews.[146]

The Department did, however, make Patrick Cunningham, Chief of the Criminal Division for the U.S. Attorney's Office in Arizona, available for an interview. The Committee had been requesting to interview Cunningham since summer 2011. The Department finally allowed access to Cunningham for an interview in December 2011. Cunningham chose to retain private counsel instead of Department counsel. On January 17, 2012, Cunningham canceled his interview scheduled for the Committee on January 19, 2012.

Chairman Issa issued a subpoena to Cunningham to appear for a deposition on January 24, 2012. In a letter dated January 19, 2012, Cunningham's counsel informed the Committee that Cunningham would ''assert his constitutional privilege not to be compelled to be a witness against himself.'' [147] On January 24, 2012, Chairman Issa wrote to the Attorney General to express that the absence of Cunningham's testimony would make it ''difficult to gauge the veracity of some of the Department's claims'' regarding Fast and Furious.[148]

On January 27, 2012, Cunningham left the Department of Justice. After months of Committee requests, the Department finally made him available for an interview just before he left the Department. The actions of the Department in delaying the interview and Cunningham's own assertion of the Fifth Amendment privilege delayed and denied the Committee the benefit of his testimony.

5. FAILURE TO TURN OVER DOCUMENTS

The Department has failed to turn over any documents pertaining to three main categories contained in the October 12, 2011, subpoena.

(a) Who at Justice Department Headquarters Should Have Known of the Reckless Tactics

The Committee is seeking documents relating to who had access to information about the objectionable tactics used in Operation Fast and Furious, who approved the use of these tactics, and what information was available to those individuals when they approved the tactics. Documents that whistleblowers have provided to the Committee indicate that those officials were the senior officials in the Criminal Division, including Lanny Breuer and one of his top deputies, Jason Weinstein.

Documents in this category include those relating to the preparation of the wiretap applications, as well as certain ATF, DEA, and FBI Reports of Investigation. Key decision makers at Justice Department headquarters relied on these and other documents to approve the investigation.

(b) How the Department Concluded that Fast and Furious was ''Fundamentally Flawed''

The Committee requires documents from the Department relating to how officials learned about whistleblower allegations and what actions they took as a result. The Committee is investigating not just management of Operation Fast and Furious, but also the Department's efforts to slow and otherwise interfere with the Committee's investigation.

For months after the congressional inquiry began, the Department refused to acknowledge that anything improper occurred during Fast and Furious. At a May 5, 2011, meeting with Committee staff, a Department representative first acknowledged that ''there's a there, there.'' The Attorney General acknowledged publicly that Fast and Furious was ''fundamentally flawed'' on October 7, 2011. On December 2, 2011, the Department finally admitted that its February 4, 2011, letter to Senator Grassley contained false information—something Congress had been telling the Department for over seven months.

Documents in this category include those that explain how the Department responded to the crisis in the wake of the death of U.S. Border Patrol Agent Brian Terry. These documents will reveal when the Department realized it had a problem, and what actions it took to resolve that problem. These documents will also show whether senior Department officials were surprised to learn that gunwalking occurred during Fast and Furious, or if they already knew that to be the case. These documents will also identify who at the Department was responsible for authorizing retaliation against the whistleblowers. The documents may also show the Department's assignment of responsibility to officials who knew about the reckless conduct or were negligent during Fast and Furious.

(c) How the Inter-Agency Task Force Failed

The Organized Crime Drug Enforcement Task Force (OCDETF) program was created to coordinate inter-agency information sharing. As early as December 2009, the DEA shared information with ATF that should have led to arrests and the identification of the gun trafficking network that Fast and Furious sought to uncover. The Committee has received information suggesting that, after arrests were made one year later, ATF discovered that two Mexican drug cartel associates at the top of the Fast and Furious network had been designated as national security assets by the FBI, and at times have been paid FBI informants. Because of this cooperation, these associates are considered by some to be unindictable.

Documents in this category will reveal the extent of the lack of information-sharing among DEA, FBI, and ATF. Although the Deputy Attorney General is aware of this problem, he has expressed little interest in resolving it.

VI. ADDITIONAL ACCOMMODATIONS BY THE COMMITTEE

As discussed above in Section V.C.5, the Department has failed to turn over any documents responsive to three main categories covered by the October 12, 2011, subpoena:

(a) Who at Justice Department Headquarters Should Have Known of the Reckless Tactics;

(b) How the Department Concluded that Fast and Furious was ''Fundamentally Flawed''; and,

(c) How the Inter-Agency Task Force Failed.

The Committee notified the Justice Department on multiple occasions that its failure to produce any documents responsive to these three categories would force the Committee to begin contempt proceedings against the Attorney General.

On May 18, 2012, Chairman Issa, along with Speaker John Boehner, Majority Leader Eric Cantor, and Majority Whip Kevin McCarthy, wrote a letter to the Attorney General. As an accommodation to the Department, the letter offered to narrow the scope of documents the Department needed to provide in order to avoid contempt proceedings.[149] Documents in category (c) are outside the scope of the narrowed request, and so the Department no longer needed to produce them to avoid contempt proceedings, even though such documents are covered by the October 12, 2011, subpoena.

The Committee also obtained copies of wiretap applications authorized by senior Department officials during Operation Fast and Furious. These documents, given to the Committee by whistleblowers, shined light on category (a). Still, many subpoenaed documents under this category have been deliberately withheld by the Department. These documents are critical to understanding who is responsible for failing to promptly stop Fast and Furious. The Department has cited such documents as ''core investigative'' materials that pertain to ''pending law enforcement matters.'' [150] To accommodate the Department's interest in successfully prosecuting criminal defendants in this case, the Committee is willing to accept production of these documents after the current prosecutions of the 20 straw purchasers indicted in January 2011, have concluded at the trial level. This deferment should in no way be interpreted as the Committee ceding its legitimate right to receive these documents, but instead solely as an accommodation meant to alleviate the Department's concerns about preserving the integrity of the ongoing prosecutions.

In addition to deferring production of category (a) documents, the Committee is also willing to view these documents *in camera* with limited redactions. These accommodations represent a significant commitment on the part of the Committee to negotiating in good faith to avoid contempt.

Unlike documents in category (a), the Department has no legitimate interest in limiting the Committee's access to documents in category (b). On February 4, 2011, the Department wrote a letter to Congress categorically denying that gunwalking had occurred. This letter was false. Still, it was not withdrawn until December 2011. The Committee has a right to know how the Department learned that gunwalking did in fact occur, and how it handled the fallout internally. The deliberative process privilege is not recognized by Congress as a matter of law and precedent. By sending a letter that contained false and misleading statements, the Department forfeited any reasonable expectation that the Committee would accommodate its interest in withholding deliberative process documents.

On June 20, 2012, minutes before the start of the Committee's meeting to consider a resolution holding the Attorney General in contempt, the Committee received a letter from Deputy Attorney General James Cole claiming that the President asserted executive privilege over certain documents covered by the subpoena. The Committee has a number of concerns about the validity of this assertion:

1. The assertion was transparently not a valid claim of privilege given its last minute nature;

2. The assertion was obstructive given that it could have and should have been asserted months ago, but was not until literally the day of the contempt mark-up;

3. The assertion is eight months late. It should have been made by October 25, 2011, the subpoena return date;

4. To this moment, the President himself has not indicated that he is asserting executive privilege;

5. The assertion is transparently invalid in that it is not credible that every document

[146] Dec. 6 Letter, *supra* note 64.

[147] Letter from Tobin Romero, Williams & Connolly LLP, to Chairman Darrell Issa (Jan. 19, 2012).

[148] Letter from Chairman Darrell Issa to Att'y Gen. Eric Holder (Jan. 24, 2012).

[149] Letter from Speaker John Boehner et al. to Att'y Gen. Eric Holder (May 18, 2012).

[150] May 15 Cole Letter, *supra* note 69.

withheld involves a ''communication[ ] authored or solicited and received by those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate,''; [151]

6. The assertion is transparently invalid where the Justice Department has provided no details by which the Committee might evaluate the applicability of the privilege, such as the senders and recipients of the documents;

7. Even if the privilege were valid as an initial matter, which it is not, it certainly has been overcome here, as: (i) the Committee has demonstrated a sufficient need for the documents as they are likely to contain evidence important to the Committee's inquiry and (ii) the documents sought cannot be obtained any other way. The Committee has spent 16 months investigating, talking to dozens of individuals, and collecting documents from many sources. The remaining documents are ones uniquely in the possession of the Justice Department; and,

8. Without these documents, the Committee's important legislative work will continue to be stymied. The documents are necessary to evaluate what government reform is necessary within the Justice Department to avoid the problems uncovered by the investigation in the future.

The President has now asserted executive privilege. This assertion, however, does not change the fact that Attorney General Eric Holder Jr. is in contempt of Congress today for failing to turn over lawfully subpoenaed documents explaining the Department's role in withdrawing the false letter it sent to Congress.

VII. HISTORICAL PERSPECTIVES ON CONTEMPT

Contempt proceedings in Congress date back over 215 years. These proceedings provide Congress a valuable mechanism for adjudicating its interests. Congressional history is replete with examples of the pursuit of contempt proceedings by House committees when faced with strident resistance to their constitutional authority to exercise investigative power.

A. PAST INSTANCES OF CONTEMPT

Congress first exercised its contempt authority in 1795 when three Members of the House charged two businessmen, Robert Randall and Charles Whitney, with offering bribes in exchange for the passage of legislation granting Randall and his business partners several million acres bordering Lake Erie. [152] This first contempt proceeding began with a resolution by the House deeming the allegations were adequate ''evidence of an attempt to corrupt,'' and the House reported a corresponding resolution that was referred to a special committee. [153] The special committee reported a resolution recommending formal proceedings against Randall and Whitney ''at the bar of the House.'' [154]

The House adopted the committee resolution which laid out the procedure for the contempt proceeding. Interrogatories were exchanged, testimony was received, Randall and Whitney were provided counsel, and at the conclusion, on January 4, 1796, the House voted 78–17 to adopt a resolution finding Randall guilty of contempt. [155] As punishment Randall was ''ordered [ ] to be brought to the bar, reprimanded by the Speaker, and held in custody until further resolution of the House.'' [156] Randall was detained until January 13, 1796, when the House passed a resolution discharging him. [157] In contrast, Whitney ''was absolved of any wrongdoing,'' since his actions were against a ''member-elect'' and occurred ''away from the seat of government.'' [158]

Congressional records do not demonstrate any question or hesitation regarding whether Congress possesses the power to hold individuals in contempt.[159] Moreover, there was no question that Congress could punish a non-Member for contempt.[160] Since the first contempt proceeding, numerous congressional committees have pursued contempt against obstinate administration officials as well as private citizens who failed to cooperate with congressional investigations.[161] Since the first proceeding against Randall and Whitney, House committees, whether standing or select, have served as the vehicle used to lay the foundation for contempt proceedings in the House.[162]

On August 3, 1983, the House passed a privileged resolution citing Environmental Protection Agency Administrator Anne Gorsuch Burford with contempt of Congress for failing to produce documents to a House subcommittee pursuant to a subpoena.[163] This was the first occasion the House cited a cabinet-level executive branch member for contempt of Congress.[164] A subsequent agreement between the House and the Administrator, as well as prosecutorial discretion, was the base for not enforcing the contempt citation against Burford.[165]

Within the past fifteen years the Committee on Oversight and Government Reform has undertaken or prepared for contempt proceedings on multiple occasions. In 1998, Chairman Dan Burton held a vote recommending contempt for Attorney General Janet Reno based on her failure to comply with a subpoena issued in connection with the Committee's investigation into campaign finance law violations.[166] On August 7, 1998, the Committee held Attorney General Reno in contempt by a vote of 24 to 18.[167]

During the 110th Congress, Chairman Henry Waxman threatened and scheduled contempt proceedings against several Administration officials.[168] Contempt reports were drafted against Attorney General Michael B. Mukasey, Stephen L. Johnson, Administrator of the U.S. Environmental Protection Agency, and Susan E. Dudley, Administrator of the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget. Business meetings to consider these drafts were scheduled.[169] Former Attorney General Mukasey's draft contempt report charged him with failing to produce documents in connection to the Committee's investigation of the release of classified information. According to their draft contempt reports, Administrators Johnson and Dudley failed to cooperate with the Committee's lengthy investigation into California's petition for a waiver to regulate greenhouse gas emissions from motor vehicles and the revision of the national ambient air quality standards for ozone.

Most recently, the House Judiciary Committee pursued contempt against former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten.[170] On June 13, 2007, the Committee served subpoenas on Miers and Bolten.[171] After attempts at accommodations from both sides, the Committee determined that Miers and Bolten did not satisfactorily comply with the subpoenas. On July 25, 2007, the Committee voted, 22–17, to hold Miers and Bolten in contempt of Congress.

On February 14, 2008, the full House, with most Republicans abstaining, voted to hold Miers and Bolten in criminal contempt of Congress by a margin of 223–42.[172] One hundred seventy-three Members of Congress did not cast a vote either in favor or against the resolution.[173] All but nine Members who abstained were Republican.[174] Only three Republicans supported the contempt resolution for Miers and Bolten.[175] This marked the first contempt vote by Congress with respect to the Executive Branch since the Reagan Administration.[176] The resolutions passed by the House allowed Congress to exercise all available remedies in the pursuit of contempt.[177] The House Judiciary Committee's action against Miers marked the first time that a former administration official had ever been held in contempt.[178]

B. DOCUMENT PRODUCTIONS

The Department has refused to produce thousands of documents pursuant to the October 12, 2011, subpoena because it claims certain documents are Law Enforcement Sensitive, others pertain to ongoing criminal investigations, and others relate to internal deliberative process.

During the past ten years, the Committee on Oversight and Government Reform has undertaken a number of investigations that resulted in strong opposition from the Executive Branch regarding document productions. These investigations include regulatory decisions of the Environmental Protection Agency (EPA), the leak of CIA operative Valerie Plame's identity, and the fratricide of Army Corporal Patrick Tillman. In all cases during the 110th Congress, the Administration produced an overwhelming amount of documents, sheltering a narrow few by asserting executive privilege.

In 2008, the Committee received or reviewed *in camera* all agency-level documents related to the EPA's decision regarding California's request for a rule waiver, numbering approximately 27,000 pages in total.[179] According to a Committee Report, the EPA

[151] In re Sealed Case, 121 F.3d 729, 752 (D.C. Cir 1997).

[152] *Todd Garvey & Alissa M. Dolan, Congressional Research Service, Congress's Contempt Power: Law, History, Practice, & Procedure*, no. RL34097, Apr. 15, 2008 [hereinafter CRS Contempt Report].

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] *Id.*

[158] *Id.*: quoting Asher C. Hinds, *Precedents of the House of Representatives*, Sec. 1603 (1907).

[159] *Id.*

[160] *Id.* at 5.

[161] *Id.* at 6.

[162] *Id.* at 14.

[163] *Id.*

[164] Wm. Holmes Brown et al., *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, 450 (2011).

[165] *Id.* at 20, 22.

[166] David E. Rosenbaum, *Panel Votes to Charge Reno With Contempt of Congress*, N.Y. TIMES (Aug. 7, 1998).

[167] *Id.*

[168] Laurie Kellman, *Waxman Threatens Mukasey With Contempt Over Leak*, U.S.A. TODAY (July 8, 2008); Richard Simon, *White House Says No to Congress' EPA Subpoena*, L.A. TIMES (June 21, 2008).

[169] Press Release, Rep. Henry Waxman, *Chairman Waxman Warns Attorney General of Scheduled Contempt Vote* (July 8, 2008) http://oversight-archive.waxman.house.gov/story.asp?ID=2067 (last visited Feb. 22, 2012); Press Release, Rep. Henry Waxman, *Chairman Waxman Schedules Contempt Vote* (June 13, 2008) http://oversight-archive.waxman.house.gov/story.asp?ID=2012 (last visited Feb. 22, 2012).

[170] CRS Contempt Report at 54–55.

[171] *Id.*

[172] See H. Res. 982.

[173] *Id.*

[174] *Id.*

[175] *Id.*

[176] Philip Shenon, *House Votes to Issue Contempt Citations*, N.Y. TIMES (Feb. 15, 2008).

[177] *CRS Contempt Report at 54–55.*

[178] *Id.*

[179] H. Comm. on Oversight and Gov't Ref. Minority Additional Views, *EPA, OIRA Investigations & Exec.*

Continued

withheld only 32 documents related to the California waiver decision based on executive privilege. These included notes of telephone calls or meetings in the White House ''involving at least one high-ranking EPA official and at least one high-ranking White House official.'' [180] The White House Counsel informed the Committee that these documents represented ''deliberations at the very highest level of government.'' [181]

During the Committee's 2008 investigation into the Administration's promulgation of ozone standards, the EPA produced or allowed *in camera* review of over 35,000 pages of documents. The President asserted executive privilege over a narrow set of documents, encompassing approximately 35 pages. One such document included ''talking points for the EPA Administrator to use in a meeting with [the President].'' [182]

In furtherance of the Committee's ozone regulation investigation, OIRA produced or allowed *in camera* review of 7,500 documents.[183] Documents produced by EPA and OIRA represented pre-decisional opinions of career scientists and agency counsel.[184] These documents were sensitive because some, if not all, related to ongoing litigation.[185] The OIRA Administrator withheld a certain number of documents that were communications between OIRA and certain White House officials, and the President ultimately ''claimed executive privilege over these documents.'' [186]

Also during the 110th Congress, the Committee investigated the revelation of CIA operative Valerie Plame's identity in the news media. The Committee's investigation was contemporaneous with the Department of Justice's criminal investigation into the leak of this classified information—a situation nearly identical to the Committee's current investigation into Operation Fast and Furious.

Pursuant to the Committee's investigation, the Justice Department produced FBI reports of witness interviews, commonly referred to as ''302s.'' Specifically, documents reviewed by the Committee staff during the Valerie Plame investigation included the following:

> FBI interviews of federal officials who did not work in the White House, as well as interviews of relevant private individuals . . . total of 224 pages of records of FBI interview reports with 31 individuals, including materials related to a former Secretary, Deputy Secretary, Undersecretary [sic], and two Assistant Secretaries of State, and other former or current CIA and State Department officials, including the Vice President's CIA briefer.[187]

To accommodate the Committee, the Department permitted *in camera* review of the following:

> [D]ocuments include[ing] redacted reports of the FBI interview with Mr. Libby, Andrew Card, Karl Rove, Condoleezza Rice, Stephen Hadley, Dan Bartlett, and Scott McClellan and another 104 pages of additional interview reports of the Director of Central Intelligence, and eight other White House or Office of the Vice President officials.[188]

The only documents the Justice Department declined to produce were the FBI 302s with respect to the interviews of the President and the Vice President.[189] Ultimately, the Committee relented in its pursuit of the President's 302.[190] The Committee, however, persisted in its request for the Vice President's 302. As a result, the President asserted executive privilege over that particular document.[191]

The Committee specifically included 302s in its October 12, 2011, subpoena to the Attorney General regarding Fast and Furious. These subpoenaed 302s do not include FBI interviews with White House personnel, or even any other Executive Branch employee. Still, in spite of past precedent, the Department has refused to produce those documents to the Committee or to allow staff an *in camera* review.

In the 110th Congress, the Committee investigated the fratricide of Army Corporal Patrick Tillman and the veracity of the account of the capture and rescue of Army Private Jessica Lynch.[192] The Committee employed a multitude of investigative tools, including hearings, transcribed interviews, and non-transcribed interviews. The Administration produced thousands of documents.[193] The Committee requested the following:

> [T]he White House produce all documents received or generated by any official in the Executive Office of the President from April 22 until July 1, 2004, that related to Corporal Tillman. The Committee reviewed approximately 1,500 pages produced in response to this request. The documents produced to the Committee included e-mail communications between senior White House officials holding the title of ''Assistant to the President.'' According to the White House, the White House withheld from the Committee only preliminary drafts of the speech President Bush delivered at the White House Correspondents' Dinner on May 1, 2004.[194]

The Department of Defense produced over 31,000 responsive documents, and the Committee received an unprecedented level of access to documents and personnel.[195]

The Oversight and Government Reform Committee's investigations over the past five years demonstrate ample precedent for the production of a wide array of documents from the Executive Branch. In these investigations, the Committee received pre-decisional deliberative regulatory documents, documents pertaining to ongoing investigations, and communications between and among senior advisors to the President. The Committee's October 12, 2011, subpoena calls for many of these same materials, including 302s and deliberative documents. Still, the Justice Department refuses to comply.

Further, the number of documents the Department has produced during the Committee's Fast and Furious investigation pales in comparison to those produced in conjunction with the Committee's prior investigations. In separate EPA investigations, the Committee received 27,000 documents and 35,000 documents respectively. In the Patrick Tillman investigation, the Committee received 31,000 documents. Moreover, in the Valerie Plame investigation, the Committee received access to highly sensitive materials despite the fact that the Justice Department was conducting a parallel criminal investigation.

As of May 15, 2012, in the Fast and Furious investigation, in the light most favorable to the Department of Justice, it has ''provided the Committee over 7,600 pages of documents''—a small fraction of what has been produced to the Committee in prior investigations and of what the Department has produced to the Inspector General in this matter.[196] This small number reflects the Department's lack of cooperation since the Committee sent its first letter to the Department about Fast and Furious on March 16, 2011.

VIII. RULES REQUIREMENTS

EXPLANATION OF AMENDMENTS

Mr. Gowdy offered an amendment that updated the Committee's Report to reflect that the President asserted the executive privilege over certain documents subpoenaed by the Committee. The amendment also updated the Report to include the Committee's concerns about the validity of the President's assertion of the executive privilege. The amendment was agreed to by a recorded vote.

COMMITTEE CONSIDERATION

On June 20, 2012, the Committee on Oversight and Government Reform met in open session with a quorum present to consider a report of contempt against Eric H. Holder, Jr., the Attorney General of the United States, for failure to comply with a Congressional subpoena. The Committee approved the Report by a roll call vote of 23–17 and ordered the Report reported favorably to the House.

ROLL CALL VOTES

The following recorded votes were taken during consideration of the contempt Report:

1. Mr. Welch offered an amendment to add language to the Executive Summary stating that contempt proceedings at this time are unwarranted because the Committee has not met with former Attorney General Michael Mukasey.

The amendment was defeated by a recorded vote of 14 Yeas to 23 Nays.

Voting Yea: Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Lynch, Connolly, Quigley, Davis, Braley, Welch, Murphy and Speier.

Voting Nay: Issa, Burton, Mica, Platts, Turner, McHenry, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Walsh, Gowdy, Ross, Guinta, Farenthold and Kelly.

2. Mr. Lynch offered an amendment asking for an itemized accounting of the costs associated with the Fast and Furious investigation.

The amendment was defeated by a vote of 15 Yeas to 23 Nays.

Voting Yea: Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Lynch, Connolly, Quigley, Davis, Braley, Welch, Murphy and Speier.

Voting Nay: Issa, Burton, Mica, Platts, Turner, McHenry, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Walsh, Gowdy, Ross, Guinta, Farenthold and Kelly.

3. Ms. Maloney offered an amendment to add language to the Executive Summary stating that contempt proceedings at this

Privilege Claims; Missed Opportunities by Majority to Complete Investigations, Oct. 22, 2008.

[180] *Id.*

[181] *Id.*

[182] *Id.*

[183] *Id.*

[184] *Id.*

[185] *Id.*

[186] *Id.*

[187] H. Comm. on Oversight and Gov't Ref. Draft Report, *U.S. House of Reps. Regarding President Bush's Assertion of Exec. Privilege in Response to the Comm. Subpoena to Att'y Gen. Michael B. Mukasey*, http://oversight-archive.waxman.house.gov/documents/20081205114333.pdf (last visited Mar. 5, 2012).

[188] *Id.*

[189] *Id.*

[190] *Id.*

[191] *Id.*

[192] H. Comm. on Oversight and Gov't Ref. Comm. Report, *Misleading Information From the Battlefield: the Tillman & Lynch Episodes*, H. Rep. 110–858, Sept. 16, 2008.

[193] *Id.*

[194] *Id.*

[195] *Id.*; The minority views by Hon. Tom Davis states that the Comm. received 50,000 pages of documents and reviewed additional documents *in camera*.

[196] Letter from Ass't Att'y Gen. Ronald Weich to Chairman Darrell Issa (May 15, 2012).

time are unwarranted because the Committee has not held a public hearing with the former head of the Bureau of Alcohol, Tobacco, Firearms and Explosives, Kenneth Melson.

The amendment was defeated by a vote of 16 Yeas to 23 Nays.

Voting Yea: Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Lynch, Cooper, Connolly, Quigley, Davis, Braley, Welch, Murphy and Speier.

Voting Nay: Issa, Burton, Mica, Platts, Turner, McHenry, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Walsh, Gowdy, Ross, Guinta, Farenthold and Kelly.

4. Mr. Gowdy offered an amendment that updated the Committee's Report to reflect that the President asserted the executive privilege over certain documents subpoenaed by the Committee. The amendment also updated the Report to include the Committee's concerns about the validity of the President's assertion of the executive privilege. The amendment was agreed to by a recorded vote.

The amendment was agreed to by a vote of 23 Yeas to 17 Nays.

Voting Yea: Issa, Burton, Mica, Platts, Turner, McHenry, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Walsh, Gowdy, Ross, Guinta, Farenthold and Kelly.

Voting Nay: Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Lynch, Cooper, Connolly, Quigley, Davis, Braley, Welch, Yarmuth, Murphy and Speier.

5. The Resolution was favorably reported, as amended, to the House, a quorum being present, by a vote of 23 Yeas to 17 Nays.

Voting Yea: Issa, Burton, Mica, Platts, Turner, McHenry, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Walsh, Gowdy, Ross, Guinta, Farenthold and Kelly.

Voting Nay: Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Lynch, Cooper, Connolly, Quigley, Davis, Braley, Welch, Yarmuth, Murphy and Speier.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. The Report does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this Report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Report will assist the House of Representatives in considering whether to cite Attorney General Eric H. Holder, Jr. for contempt for failing to comply with a valid congressional subpoena.

CONSTITUTIONAL AUTHORITY STATEMENT

The Committee finds the authority for this Report in article 1, section 1 of the Constitution.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the Report does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

EARMARK IDENTIFICATION

The Report does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

UNFUNDED MANDATE STATEMENT, COMMITTEE ESTIMATE, BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Committee finds that clauses 3(c)(2), 3(c)(3), and 3(d)(1) of rule XIII of the Rules of the House of Representatives, sections 308(a) and 402 of the Congressional Budget Act of 1974, and section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) are inapplicable to this Report. Therefore, the Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this Report or costs incurred to carry out the report.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

This Report makes no changes in any existing federal statute.

ADDITIONAL VIEWS

Report of the Committee on Oversight and Government Reform

Resolution Recommending that the House of Representatives Find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on Oversight and Government Reform

''The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents'' Joint Staff Report, prepared for Representative Darrell Issa, Chairman, House Committee on Oversight and Government Reform, and Senator Charles Grassley, Ranking Member, Senate Committee on the Judiciary.

''The Department of Justice's Operation Fast and Furious: Fueling Cartel Violence'' Joint Staff Report, prepared for Representative Darrell Issa, Chairman, House Committee on Oversight and Government Reform, and Senator Charles Grassley, Ranking Member, Senate Committee on the Judiciary.

The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents

JOINT STAFF REPORT

Prepared for

Rep. Darrell E. Issa, Chairman
United States House of Representatives
Committee on Oversight and Government Reform
&
Senator Charles E. Grassley, Ranking Member
United States Senate
Committee on the Judiciary

112th Congress
June 14 2011

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I. Executive Summary

In the fall of 2009, the Department of Justice (DOJ) developed a risky new strategy to combat gun trafficking along the Southwest Border. The new strategy directed federal law enforcement to shift its focus away from seizing firearms from criminals as soon as possible—and to focus instead on identifying members of trafficking networks. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) implemented that strategy using a reckless investigative technique that street agents call "gunwalking." ATF's Phoenix Field Division began allowing suspects to walk away with illegally purchased guns. The purpose was to wait and watch, in the hope that law enforcement could identify other members of a trafficking network and build a large, complex conspiracy case.

This shift in strategy was known and authorized at the highest levels of the Justice Department. Through both the U.S. Attorney's Office in Arizona and "Main Justice," headquarters in Washington, D.C., the Department closely monitored and supervised the activities of the ATF. The Phoenix Field Division established a Gun Trafficking group, called Group VII, to focus on firearms trafficking. Group VII initially began using the new gunwalking tactics in one of its investigations to further the Department's strategy. The case was soon renamed "Operation Fast and Furious," and expanded dramatically. It received approval for Organized Crime Drug Enforcement Task Force (OCDETF) funding on January 26, 2010. ATF led a strike force comprised of agents from ATF, Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), and the Internal Revenue Service (IRS). The operation's goal was to establish a nexus between straw purchasers of assault-style weapons in the United States and Mexican drug-trafficking organizations (DTOs) operating on both sides of the United States-Mexico border. Straw purchasers are individuals who are legally entitled to purchase firearms for themselves, but who unlawfully purchase weapons with the intent to transfer them into the hands of DTOs or other criminals.

Operation Fast and Furious was a response to increasing violence fostered by the DTOs in Mexico and their increasing need to purchase ever-growing numbers of more powerful weapons in the U.S. An integral component of Fast and Furious was to work with gun shop merchants, or "Federal Firearms Licensees" (FFLs) to track known straw purchasers through the unique serial number of each firearm sold. ATF agents entered the serial numbers of the weapons purchased into the agency's Suspect Gun Database. These weapons bought by the straw purchasers included AK-47 variants, Barrett .50 caliber sniper rifles, .38 caliber revolvers, and the FN Five-seveN.

During Fast and Furious, ATF frequently monitored actual transactions between the FFLs and straw purchasers. After the purchases, ATF sometimes conducted surveillance of these weapons with assistance from local police departments. Such surveillance included following the vehicles of the straw purchasers. Frequently, the straw purchasers transferred the weapons they bought to stash houses. In other instances, they transferred the weapons to third parties. The volume, frequency, and circumstances of these transactions clearly established reasonable

suspicion to stop and question the buyers. Agents are trained to use such interactions to develop probable cause to arrest the suspect or otherwise interdict the weapons and deter future illegal purchases. Operation Fast and Furious sought instead to *allow* the flow of guns from straw purchasers to the third parties. Instead of trying to interdict the weapons, ATF purposely avoided contact with known straw purchasers or curtailed surveillance, allowing guns to fall into the hands of criminals and bandits on both sides of the border.

Though many line agents objected vociferously, ATF and DOJ leadership continued to prevent them from making every effort to interdict illegally purchased firearms. Instead, leadership's focus was on trying to identify additional conspirators, as directed by the Department's strategy for combating Mexican Drug Cartels. ATF and DOJ leadership were interested in seeing where these guns would ultimately end up. They hoped to establish a connection between the local straw buyers in Arizona and the Mexico-based DTOs. By entering serial numbers from suspicious transactions into the Suspect Gun Database, ATF would be quickly notified as each one was later recovered at crime scenes and traced, either in the United States or in Mexico.

The Department's leadership allowed the ATF to implement this flawed strategy, fully aware of what was taking place on the ground. The U.S. Attorney's Office for the District of Arizona encouraged and supported every single facet of Fast and Furious. Main Justice was involved in providing support and approving various aspects of the Operation, including wiretap applications that would necessarily include painstakingly detailed descriptions of what ATF knew about the straw buyers it was monitoring.

This hapless plan allowed the guns in question to disappear out of the agency's view. As a result, this chain of events inevitably placed the guns in the hands of violent criminals. ATF would only see these guns again after they turned up at a crime scene. Tragically, many of these recoveries involved loss of life. While leadership at ATF and DOJ no doubt regard these deaths as tragic, the deaths were a clearly foreseeable result of the strategy. Both line agents and gun dealers who cooperated with the ATF repeatedly expressed concerns about that risk, but ATF supervisors did not heed those warnings. Instead, they told agents to follow orders because this was sanctioned from above. They told gun dealers not to worry because they would make sure the guns didn't fall into the wrong hands.

Unfortunately, ATF never achieved the laudable goal of dismantling a drug cartel. In fact, ATF never even got close. After months and months of investigative work, Fast and Furious resulted only in indictments of 20 straw purchasers. Those indictments came only after the death of U.S. Border Patrol Agent Brian Terry. The indictments, filed January 19, 2011, focus mainly on what is known as "lying and buying." Lying and buying involves a straw purchaser falsely filling out ATF Form 4473, which is to be completed truthfully in order to legally acquire a firearm. Even worse, ATF knew most of the indicted straw purchasers to be straw purchasers *before Fast and Furious even began.*

In response to criticism, ATF and DOJ leadership denied allegations that gunwalking occurred in Fast and Furious by adopting an overly narrow definition of the term. They argue that gunwalking is limited to cases in which ATF itself supplied the guns directly. As field

agents understood the term, however, gunwalking includes situations in which ATF had contemporaneous knowledge of illegal gun purchases and purposely decided not to attempt any interdiction. The agents also described situations in which ATF facilitated or approved transactions to known straw buyers. Both situations are even more disturbing in light of the ATF's certain knowledge that weapons previously purchased by the same straw buyers had been trafficked into Mexico and may have reached the DTOs. When the full parameters of this program became clear to the agents assigned to Group VII, a rift formed among Group VII's agents in Phoenix. Several agents blew the whistle on this reckless operation only to face punishment and retaliation from ATF leadership. Sadly, only the tragic murder of Border Patrol Agent Brian Terry provided the necessary impetus for DOJ and ATF leadership to finally indict the straw buyers whose regular purchases they had monitored for 14 months. Even then, it was not until after whistleblowers later reported the issue to Congress that the Justice Department finally issued a policy directive that prohibited gunwalking.

This report is the first in a series regarding Operation Fast and Furious. Possible future reports and hearings will likely focus on the actions of the United States Attorney's Office for the District of Arizona, the decisions faced by gun shop owners (FFLs) as a result of ATF's actions, and the remarkably ill-fated decisions made by Justice Department officials in Washington, especially within the Criminal Division and the Office of the Deputy Attorney General. This first installment focuses on ATF's misguided approach of letting guns walk. The report describes the agents' outrage about the use of gunwalking as an investigative technique and the continued denials and stonewalling by DOJ and ATF leadership. It provides some answers as to what went wrong with Operation Fast and Furious. Further questions for key ATF and DOJ decision makers remain unanswered. For example, what leadership failures within the Department of Justice allowed this program to thrive? Who will be held accountable and when?

II. Table of Names

John Dodson
Special Agent, ATF Phoenix Field Division

Agent Dodson is the original whistleblower who exposed Operation Fast and Furious. A seven-year veteran of ATF, Dodson also worked in the sheriff's offices in Loudoun County and other Virginia municipalities for 12 years. Agent Dodson was removed from Phoenix Group VII in the summer of 2010 for complaining to ATF supervisors about the dangerous tactics used in Operation Fast and Furious.

Brian Terry
U.S. Border Patrol Agent

Brian Terry was an agent with the U.S. Border Patrol's Search, Trauma, and Rescue team, known as BORSTAR. He served in the military and was a Border Patrol agent for three years. On December 14, 2010, during a routine patrol, Terry was confronted by armed bandits. He was shot once and killed. Two weapons found at the scene traced back to Operation Fast and Furious.

Jaime Avila
Straw Purchaser

Jaime Avila was the straw purchaser who bought the two AK-47 variant weapons that were found at the murder scene of Brian Terry. Avila bought the weapons on January 16, 2010. ATF, however, began conducting surveillance of Avila as early as November 25, 2009. On January 19, 2011, Avila was indicted on three counts of "lying and buying" for weapons purchased in January, April, and June 2010.

David Voth
Phoenix Group VII Supervisor

Agent Voth was the former supervisor of the Phoenix Group VII, which conducted Operation Fast and Furious. As Group VII Supervisor, Voth controlled many operational aspects of Fast and Furious. Voth is no longer in Phoenix.

Pete Forcelli
Group Supervisor, ATF Phoenix Field Division

Since 2007, Agent Forcelli has been the Group Supervisor for Phoenix Group I. Before Phoenix Group VII was formed in October 2009, Group I was the primary southwest border firearms group. Before joining ATF in 2001, Agent Forcelli worked for twelve years in the New York City Police Department as a police officer and detective.

Olindo Casa
Special Agent, ATF Phoenix Field Division

Agent Casa served in Phoenix Group VII during Operation Fast and Furious. Agent Casa is an 18-year veteran of ATF, having worked in Chicago, California, and Florida. In Chicago, Agent Casa worked on numerous firearms trafficking cases, including a joint international case. Agent Casa had never seen a gun walk until he arrived at Group VII in Phoenix and participated in Operation Fast and Furious.

William Newell
Special Agent in Charge, ATF Phoenix Field Division

Agent Newell was the former head of the ATF Phoenix Field Division during Operation Fast and Furious. Newell is no longer in Phoenix.

Emory Hurley
Assistant U.S. Attorney, District of Arizona

Emory Hurley is the lead prosecutor for Operation Fast and Furious. Hurley advised the ATF Phoenix Field Division on the Operation, including instructing agents when they were and were not able to interdict weapons.

Larry Alt
Special Agent, ATF Phoenix Field Division

Agent Alt served in Phoenix Group VII during Operation Fast and Furious. An 11-year veteran of ATF, Agent Alt worked as a police officer for five years before joining ATF. Agent Alt is also a lawyer, having served as deputy county attorney in Maricopa County, a county of nearly 4 million people that encompasses the Phoenix metro area.

III. Findings

- DOJ and ATF inappropriately and recklessly relied on a 20-year old ATF Order to allow guns to walk. DOJ and ATF knew from an early date that guns were being trafficked to the DTOs.

- ATF agents are trained to "follow the gun" and interdict weapons whenever possible. Operation Fast and Furious required agents to abandon this training.

- DOJ relies on a narrow, untenable definition of gunwalking to claim that guns were never walked during Operation Fast and Furious. Agents disagree with this definition, acknowledging that hundreds or possibly thousands of guns were in fact walked. DOJ's misplaced reliance on this definition does not change the fact that it knew that ATF could have interdicted thousands of guns that were being trafficked to Mexico, yet chose to do nothing.

- ATF agents complained about the strategy of allowing guns to walk in Operation Fast and Furious. Leadership ignored their concerns. Instead, supervisors told the agents to "get with the program" because senior ATF officials had sanctioned the operation.

- Agents knew that given the large numbers of weapons being trafficked to Mexico, tragic results were a near certainty.

- Agents expected to interdict weapons, yet were told to stand down and "just surveil." Agents therefore did not act. They watched straw purchasers buy hundreds of weapons illegally and transfer those weapons to unknown third parties and stash houses.

- Operation Fast and Furious contributed to the increasing violence and deaths in Mexico. This result was regarded with giddy optimism by ATF supervisors hoping that guns recovered at crime scenes in Mexico would provide the nexus to straw purchasers in Phoenix.

- Every time a law enforcement official in Arizona was assaulted or shot by a firearm, ATF agents in Group VII had great anxiety that guns used to perpetrate the crimes may trace back to Operation Fast and Furious.

- Jaime Avila was entered as a suspect in the investigation by ATF on November 25, 2009, after purchasing weapons alongside Uriel Patino, who had been identified as a suspect in October 2009. Over the next month and a half, Avila purchased 13 more weapons, each recorded by the ATF in its database within days of the purchase. Then on January 16, 2010, Avila purchased three AK-47 style rifles, two of which ended up being found at the murder scene of U.S. Border Patrol Agent Brian Terry. The death of Border Agent Brian Terry was likely a preventable tragedy.

- Phoenix ATF Special Agent in Charge (SAC) William Newell's statement that the indictments represent the take-down of a firearms trafficking ring from top to bottom, and his statement that ATF never allowed guns to walk are incredible, false, and a source of much frustration to the agents.

- Despite mounting evidence to the contrary, DOJ continues to deny that Operation Fast and Furious was ill-conceived and had deadly consequences.

IV. The ATF Policy on Gun Interdiction: "You Don't Get to Go Home"

ATF's long-standing policy has been not to knowingly allow guns to "walk" into the hands of criminals. Yet DOJ and ATF used a 1989 ATF order to help justify allowing straw purchasers allegedly connected to Mexican drug cartels to illegally buy more than 1,800 weapons during Operation Fast and Furious. While this Order permits agents—at their discretion—to allow the illegal transfer of firearms to further an investigation, it does not go so far as to permit them to pull surveillance completely and allow the guns to walk.

A. The Justification for Operation Fast and Furious

FINDING: DOJ and ATF inappropriately and recklessly relied on a 20-year old ATF Order to allow guns to walk. DOJ and ATF knew from an early date that guns were being trafficked to the DTOs.

Released on February 8, 1989, ATF Order 3310.4(b) explains ATF's Firearms Enforcement Program. The Department of Justice and ATF relied on this Order to defend Operation Fast and Furious. ATF leadership in Phoenix believed a specific clause within the Order, section 148(a)(2), justified Operation Fast and Furious and its policy to allow guns to walk. The clause reads as follows:

> 148. "WEAPONS TRANSFERS"
>
> a. Considerations. During the course of illegal firearms trafficking investigations, special agents may become aware of, observe, or encounter situations where an individual(s) will take delivery of firearms, or transfer firearm(s) to others. In these instances, the special agent may exercise the following options:
>
> * * *
>
> (2) In other cases, *immediate intervention* may not be needed or desirable, and the special agent may choose to allow the transfer of firearms to take place in order to further an investigation and allow for the identification of additional coconspirators who would have continued to operate and illegally traffic firearms in the future, potentially producing more armed crime.[1]

[1] BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES ORDER 3310.4(b) 148(a)(2) (Feb. 8, 1989) (emphasis added).

ATF's reliance on this section of the Order is misguided. The phrase "*immediate intervention* may not be needed or desirable" does not justify a complete lack of intervention with regard to thousands of weapons illegally purchased by straw buyers allegedly linked to drug cartels. ATF cited this Order in an early briefing paper that contained the following paragraph:

> Currently our strategy is to ***allow the transfer of firearms to continue to take place***, albeit at a much slower pace, in order to further the investigation and allow for the identification of co-conspirators who would continue to operate and ***illegally traffic firearms to Mexican DTOs*** which are perpetrating armed violence along the Southwest Border. This is all in compliance with ATF 3310.4(b) 148(a)(2). It should be noted that since early December efforts to "slow down" the pace of these firearms purchases have succeeded and will continue ***but not to the detriment of the larger goal of the investigation.*** It should also be noted that the pace of firearms procurement by this straw purchasing group from late September to early December, 2009 defied the "normal" pace of procurement by other firearms trafficking groups investigated by this and other field divisions. This "blitz" was extremely out of the ordinary and created a situation where measures had to be enacted in order to slow this pace down in order to perfect a criminal case.[2]

This statement leaves little doubt that ATF felt Operation Fast and Furious was compliant with existing ATF policy. Further, it shows that DOJ and ATF knew from an early date that the firearms were being illegally trafficked to Mexican drug cartels.

Although senior ATF management cited the Order as justification for Fast and Furious, it did not pass muster with street agents. They believed that it did not permit a total lack of intervention. Agents believed they must interdict at some point if they have knowledge of an illegal firearms transfer. Yet senior management used the Order to justify the notion that ATF would completely drop surveillance of the weapons and then wait until receiving trace requests when the weapons were eventually recovered at crime scenes. Such traces would supposedly create a "nexus" between the drug cartels and the straw purchasers. The agents, however, did not agree with any interpretation of the order that would be consistent with that kind of strategy.

As Special Agent John Dodson testified:

> Q. And just so we are clear on what your understanding of the order was, and we can all obtain it and read it and have our own understanding of it, but what were you taught about what that means?
>
> A. That that implies when the straw purchaser makes the purchase at the counter, you don't have to land on them right there at the counter or as soon as he walks out the door, that it is okay to allow it to happen, to allow him to go with that gun under your

[2] Briefing Paper, ATF Phoenix Field Division, Group VII (Jan. 8, 2010) (emphasis added).

surveillance to the ultimate purchaser of it or whom he is delivering it to, or if he is taking it to a gang or a stash house or whomever, it is okay to allow it to happen, to go there, to be delivered. ***But you don't get to go home.*** You get the gun, is my understanding, what I have been taught and how in every other ATF office not only that I have been in but that I have gone like TDY to work at that that policy is implemented.

Q. So, in other words, your understanding is that there is a temporal or time limitation on how long it can be allowed to continue on its course without you intervening.

A. I think it is not so much time as it is availability of eyes on. Like if I get an agent that's on the house and we know that gun is on the house, that's still okay . . . even if it is overnight, on to the next night, the gun and bad guy are still there. We are just waiting on the guy he is supposed to deliver it to to come by and pick it up.

Q. Well, the beginning of it said in other cases immediate intervention may not be needed or desirable.

A. Correct.

Q. So are you saying that, in other words, "intervention," that doesn't mean, "no intervention ever?"

A. Correct.

Q. Just the intervention doesn't have to happen right now, ***but intervention does need to occur***, that's your understanding?

A. Yes, sir, that it is not as soon as the FFL hands the straw purchaser the gun, that's it, you can't let him leave the store with it.

Q. It is not a license to forego intervention at all?

A. Correct.[3]

During Operation Fast and Furious, however, ATF agents *did* go home. They did *not* get the guns. ATF simply broke off surveillance of the weapons. Yet, as Agent Dodson explains it, the Order used to justify that practice actually anticipates interdiction at some point. It does not authorize what occurred under Fast and Furious:

[3] Transcribed Interview of ATF Special Agent John Dodson, Transcript at 121-123 (April 26, 2011) (on file with author) [hereinafter Agent Dodson Transcript].

> More so, that line that says the agent has the discretion to allow the purchaser not – or the purchase to proceed or not, what it is trying to tell you is you don't have to effect the arrest or the interdiction right there in the store. It is telling you that you can allow it to happen until that guy leaves the store and meets with the person that he bought the gun for, then you can effect the arrest. **It is *not* telling you that you can watch this guy purchase *thousands of firearms over 18 months* and not do any follow-up on it.**[4]

B. Trained to Interdict

FINDING: ATF agents are trained to "follow the gun" and interdict weapons whenever possible. Operation Fast and Furious required agents to abandon this training.

Interdiction v. Prosecution: Prior to their assignment with Operation Fast and Furious, ATF agents were trained to interdict guns and prevent criminals from obtaining them. Interdiction can be accomplished in many ways. While prosecutors focus on gathering proof "beyond a reasonable doubt" to be presented at trial, agents begin with a standard of "reasonable suspicion." If an agent can articulate a reasonable basis to suspect an illegal purchase, then the agent can take proactive steps to investigate, potentially develop probable cause to arrest, or prevent the illegal transfer of firearms some other way. From the agents' point of view, a prosecution isn't necessary in order to achieve the goal of preventing criminals from obtaining firearms. An arrest may not even be necessary. In fact, another portion of the ATF Order describes some of these other interdiction strategies:

> b. Alternative Intervention Methods. In the event it is determined by the special agent that a weapons transfer should not take place, the special agent may consider ***alternative methods of intervention*** other than arrest and/or search warrants ***that will prevent the culmination of the weapons transfer but allow the investigation to continue undetected***. These alternative methods are considered to be a course of action that must be approved by the RAC/GS or SAC as previously noted. These alternative interventions may include, but are not limited to:
>
> (1) A traffic stop (supported by probable cause to search or supported by a traffic violation allowing for plain view observations) by a State or local marked law enforcement vehicle that would culminate in the discovery and retention of the firearms. ***This would prevent the weapons transfer from fully occurring and may in turn produce new investigative leads***. Should the occupants of the vehicle be new/unknown participants in the organization under investigation, they may be fully identified

[4] Agent Dodson Transcript, at 84.

> which in turn will yield additional information for follow-up investigation. Should the occupants of the vehicle be known participants in the investigation, requesting telephone tolls for these individuals (or if a Penn Register/T-III interception order is in use) for the period shortly after the traffic stop may show calls and yield identifying information relating to the intended receivers of the firearms.[5]

Three of the special agents assigned to this operation had more than 50 years of law enforcement experience. Throughout their careers, ATF always taught them to get the guns away from criminals. When they observed signs of suspicious transactions, agents looked for ways to prevent weapons from falling into the wrong hands. Agent Dodson testified:

> I can tell you this. We knew without a doubt at my old field division when someone had a case that said, hey, this guy is . . . supposed to be a straw and he is going to make this deal today, if he makes the deal, we were talking to them. I mean if we all left the office on an op for a suspected straw purchaser, that means we had, we suspected him of being a straw purchaser. Well, when he purchases, that adds to the suspicion. So he was getting talked to, either "knock and talk" or, depending on what happened or what he purchased might alter things and we might get to a higher level . . . that reasonable suspicion or probable cause. **But we were doing *something*. If nothing else we were putting him on notice that we were watching him, all right, and that every time he went to the gun store, we were going to be there with him, or the minute one of those guns turned up in a crime somewhere, we were coming back to talk to him**, or even better, or maybe not better, but some point down the road we might be back to knock on your door and ask you, still got those guns or are you selling without a license, you better have a receipt or something to go with them to prove your point.
>
> The bottom line, sir, whenever a walk situation with a gun occurred . . . ***nobody went home until we found it, until we got it back.*** There were no ifs, ands or buts, you didn't ask. Nobody said, "I got to make a soccer game," [or] "I have got to pick my dog up," nothing. Okay. If somebody said, "where is the gun," you knew it was an all-nighter until we found it.[6]

Fast and Furious employed the exact opposite practices. ATF agents rarely talked with straw purchasers, or conducted a "knock and talk." When guns recovered at crime scenes linked back to straw purchasers, ATF agents did not approach these straw purchasers. Agents did not

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[5] BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES ORDER 3310.4(b) 148(b)(1) (Feb. 8, 1989) (emphasis added).
[6] Agent Dodson Transcript, at 60-61.

ask them why did they did not still possess guns they had recently sworn on a federal form were for their personal use. Instead, ATF agents stood by and watched for months as the straw purchasers bought hundreds upon hundreds of additional AK-47 variants and Barrett .50 caliber sniper rifles. ATF failed to conduct proper surveillance of the walked guns. ATF leadership in Phoenix cannot account for the location of the walked guns until they turn up at a crime scene, which may be *after* they have been used to kill or maim innocent victims on both sides of the border. Untold numbers of these weapons likely reached the DTOs in Mexico.

To the extent that these walked weapons reached the DTOs, it is a direct result of the policy decision to no longer focus on interdicting weapons as soon as possible. From the agents' perspective, that decision was the polar opposite of their understanding of the previous policy. For example, Special Agent Olindo Casa testified:

> Q. And if you became aware that somebody purchased guns with the intent of transferring it to a third person, would it be your practice and experience to interdict those weapons *right away*?
>
> A. Yes, yes.
>
> Q. Is that your understanding of ATF policy?
>
> A. Yes.[7]

However, under Fast and Furious in Phoenix, agents did not follow these methods. As Special Agent Lawrence Alt testified:

> Q. [I]s it fair to say that if you saw a suspect, a suspicious person . . . leaving an FFL with . . . an armful of boxes that appeared to be AK-47s or like weapons, that in your experience as an agent, I mean, would you be able to interdict that?
>
> A. That would be my normal course of action. I understand there is other strategies wherein you are trying to identify where those firearms are going to. So you might not interdict them until they are delivered, or if you have investigative measures in place to follow them, you might let them go to . . . what you believe is their ultimate destination.
>
> ***But prior to my coming to Phoenix, Arizona, I had never witnessed a firearm not – I never witnessed a situation where there wasn't at least an attempt to interdict or take the firearm at some point.***

[7] Transcribed Interview of ATF Special Agent Olindo James Casa Transcript, at 18 (April 28, 2011) (on file with author) [hereinafter Agent CasaTranscript].

Q. [Y]ou might allow the suspicious person to leave the FFL with a car full of weapons, you might make a decision not to do a traffic stop right then, but is it fair to say that you would want to follow that suspect?

A. I have had experiences or been aware and involved either directly or indirectly in experiences where we knew there was illegal firearms purchases. *Follow the gun was also the motto, follow the gun, stay with the gun.*

I am aware of a couple of instances in my past where people would sit on houses all night long, days on end, waiting for the guns to go so that they could then follow it, satisfy the requirements of the investigation. . . . But I have never been involved in a situation where you would simply not do anything.[8]

This changed when the Agent Alt arrived in Phoenix.

Agent Casa recounted a similar situation. He had also never heard of, nor seen, guns being allowed to walk until he got to Phoenix:

. . . . But from the time I started as an ATF special agent . . . up until the time I got to Phoenix, that was my understanding, that ***we do not let guns walk, absolutely, positively not***. And if we – if ever a case [where] we would do that, there better be a really good explanation why we did not grab that gun when we could.

Q. But that changed when you came to Phoenix, I mean the practice at least changed, correct?

A. Yes.

Q. So that occurred while you were here?

A. Yes.[9]

ATF policy is clear and unambiguous. As Agent Casa further explained:

Q. So could you – are you saying if you determine that somebody has acquired a firearm unlawfully –

A. Correct.

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[8] Transcribed Interview of ATF Special Agent Lawrence Alt, Transcript at 37-39 (April 27, 2011) (on file with author) [hereinafter Agent Alt Transcript].
[9] Agent Casa Transcript, at 92.

Q. – ATF's policies and procedures would be to interdict that weapon?

A. Yes. Yes.[10]

Agent Dodson said it succinctly:

> So my training and experience with ATF as well as with law enforcement prior to then essentially is *you interdicted a gun whenever you could. Guns didn't go.*[11]

A third agent, Special Agent Peter Forcelli, spoke of the importance of interdicting these weapons:

Q. Did you have any kind of policy regarding gun trafficking, in other words . . . was your policy to interdict guns whenever possible?

A. Absolutely.[12]

Every single agent on every single prior assignment adhered to a policy to interdict weapons as soon as possible, until Fast and Furious. As one agent put it, "It's like they grabbed the ATF rulebook and threw it out the window."[13]

V. Gunwalking Defined: It's Semantics

FINDING: DOJ relies on a narrow, untenable definition of gunwalking to claim that guns were never walked during Operation Fast and Furious. Agents disagree with this definition, acknowledging that hundreds or possibly thousands of guns were in fact walked. DOJ's misplaced reliance on this definition does not change the fact that it knew that ATF could have interdicted thousands of guns that were being trafficked to Mexico, yet chose to do nothing.

The Department of Justice has repeatedly and steadfastly denied that any guns were walked under Operation Fast and Furious. According to the narrowest possible interpretation, a gun is walked only when an ATF agent physically places an AK-47 into the hands of a straw purchaser and then lets that straw purchaser walk out of sight. Conversely, every single ATF field agent interviewed stated that guns are walked when ATF has the opportunity to interdict illegally purchased weapons, yet chooses not to even try.

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[10] Agent Casa Transcript, at 17.
[11] Agent Dodson Transcript, at 19.
[12] Transcribed Interview of ATF Special Agent Peter Forcelli, Transcript, at 25 (April 28, 2011) (on file with author) [hereinafter Agent Forcelli Transcript].
[13] Telephone interview with ATF Special Agent A.

DOJ officials must have known that straw purchasers were buying guns illegally and transferring them to third parties for trafficking across the border. This was clear, or at least should have been clear, from the following factors:

(1) the sheer volume and frequency of the purchases,

(2) ATF's and DOJ's communications with the cooperating gun dealers,

(3) the contemporaneous notice dealers provided about hundreds of transactions with straw purchasers, and

(4) notifications through the Suspect Gun Database that the firearms were being recovered in crime scenes in Mexico shortly after being purchased.

Yet, ATF failed to use this information to interdict future purchases and prevent guns from crossing the border.

Instead, ATF followed DOJ's new policy, and focused on simply trying to identify more and more members of the trafficking ring. It was a conscious decision to systematically avoid interdicting guns that normally should have been interdicted, according to the agents. Thus, the agents considered it to be gunwalking. Agent Dodson testified:

> My understanding of letting something walk or defining walk is, when it was in or could have been in and quite possibly should have been in law enforcement custody, a decision is made, a conscious decision is made to not take it into custody or to release it. Then it is walked. . . . [Y]ou are talking about walking dope, walking money, walking anything else. To walk a firearm was never taught. It was what we consider a no-brainer.[14]

As the agent explained, ATF did not teach agents to walk firearms as such a practice was beyond comprehension. Agent Casa provided a similar understanding of gunwalking:

> Now, when I talk about walking guns, my understanding is that is when a person we suspect or have probable cause that a person illegally came across guns, whatever way they came across it, and we have knowledge of it and we are there and we do not interdict those guns, we do not take those guns, we do not do any warrantless seizure based on probable cause of those guns. That would be my understanding of letting guns walk.[15]

Agent Forcelli defined gun walking as follows:

> . . . . If you can interdict it and you don't, in my opinion you have walked it. There are times . . . we do a car stop, the person maybe

[14] Agent Dodson Transcript, at 18-19.
[15] Agent Casa Transcript, at 17.

> bought two guns, they would have a story that was reasonable. They had a pay stub . . . that indicated they had a salary or they had a – they can articulate why they bought it. A couple times it happened. Like I said, maybe twice they went on their way. Okay.
>
> But again . . . walking guns, in my opinion, is if you can stop it and you don't. There are some whose definition is if ATF has the gun and gives it, then we are walking it.[16]

Agent Alt also acknowledged two definitions of gunwalking:

> So I call that the two versions of walking a gun. There is, it is a semantics issue. Some people will say that only the purest definition is walking a gun. Some people won't acknowledge that the other version is walking a gun. And I say potato, you say potato. I believe it is, my assessment, they are the same. That's it.[17]

Regardless of which definition one subscribes to, the two situations both warrant action. Still, DOJ and some senior ATF officials maintain that federal agents did not sanction or knowingly allow the transfer of firearms to straw purchasers. Yet, the evidence demonstrates that DOJ and ATF *were well aware* of what was happening.

Phoenix Field Division leadership did not tolerate debate or dissent from agents over terminology or strategy. Agent Dodson testified:

> Q. I believe you mentioned that there was some dispute about exactly what gun walking meant.
>
> * * *
>
> And can you describe what the difference was, difference of opinion was?
>
> A. Well, yes, sir. . . . Again, as I said earlier, my understanding of gun walking . . . has been something was and/or should have been, could have been in law enforcement custody. When we should have done something and it wasn't, you have let it walk.
>
> There has to be an active decision . . . a choice is made to allow it to walk. It is not like something got away from you or you lost it. If a suspect beats you in a foot chase and he gets away, you didn't let him walk, you just lost the chase. So that's what walking is.

[16] Agent Forcelli Transcript, at 33.
[17] Agent Alt Transcript, at 50.

> When [the Assistant Special Agent in Charge] came down to our office . . . we were told you don't know what walking is, we are not walking guns. And that's pretty much the extent of the debate, because in Phoenix there is very little debating one of the ASACs or the [Special Assistant in Charge]. So it was . . . a declaration, you don't know what walking guns is, we are not walking guns, this is all okay.[18]

Regardless of whether it meets a technical definition of gunwalking, the strategy was clearly ill-conceived. Instead of candidly acknowledging the facts and working to correct the problem, DOJ has withheld critical information from Congress and the public, obfuscating the issue.

VI. Concerns about Gunwalking: "What the Hell is the Purpose of This?"

ATF special agents in Group VII expressed many concerns about the strategies employed during Fast and Furious. None of the agents had ever before allowed a gun to "walk." None of the agents had even heard of allowing a gun to be "walked." The ATF academy does not teach agents to walk weapons, and the practice is abhorrent. Yet, in this operation, veteran ATF agents acted against their training and well-established ATF practice in allowing guns to walk right out of their sight. In spite of the agents' frustration and dismay, ATF leadership from Phoenix to Washington refused to acknowledge the validity of their concerns.

A. Concerns Fall on Deaf Ears and Meet Resistance

FINDING: ATF agents complained about the strategy of allowing guns to walk in Operation Fast and Furious. Leadership ignored their concerns. Instead, supervisors told the agents to "get with the program" because senior ATF officials had sanctioned the operation.

When agents learned that the tactics used in Fast and Furious required guns to be walked, many veteran special agents criticized and rebelled against the policy. These agents felt hamstrung, given that they could not use the training they had received throughout their careers. As Agent Dodson testified:

> Q. Based on our training and experience, what did you think about [walking guns]?
>
> A. It was something I had never done before, sir. And quite frankly, I took great issue with it and concern. I felt like I understand the

[18] Agent Dodson Transcript, at 90-92.

importance of going after the bigger target, but there is a way to do that. We did it successfully in the dope world all the time. And those skills and practices that we used there, a lot of them transfer over, and more than applicable in gun trafficking investigations, but we weren't allowed to use any of them.

Q. And did you ever have a recollection of sharing your frustration with Special Agent Casa?

A. Oh, yes, sir.

Q. And any other special agents that you can –

A. Yes, sir.

Q. And maybe you could just tell us what other agents you –

A. Pretty much everyone, sir. It was, I shared my reservations and concerns with Special Agent [L], with Dave Voth, with Special Agent [D] Special Agent [H], Special Agent Alt, Special Agent [P], several of the special agents that came on the GRIT, G-R-I-T. The gunrunner initiative is what it stands for. I shared them with or I voiced my concerns to other agents inside the Phoenix field division that was on other groups.[19]

Agents felt compelled to speak up within days after joining Group VII. Agents complained to their superiors, to no avail. The agents, new to Phoenix, had to comply:

Q. So the special agents in Group 7 objected to this amongst themselves. And at what point did feedback start to get communicated up the chain, whether it was to the case agent, Special Agent [L], or Group Supervisor Voth?

A. Oh, it was *almost immediately* before we had . . . Special Agent Casa and I had taken it up with Special Agent [L], Special Agent [D], and as well as Group Supervisor Voth.[20]

Having launched an innovative strategic plan, ATF senior leadership at Phoenix was excited at the prospect of a new way of combating drug cartel activity. ATF and DOJ leadership both approved of this plan. As such, ATF Phoenix leadership were loathe to let disgruntled field agents scuttle their signature achievement. In this matter, a great divide developed between those who knew walking guns was a bad policy and vehemently spoke out against it, and those who believed walking guns was an effective policy.

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[19] Agent Dodson Transcript, at 40-41.
[20] Agent Dodson Transcript, at 42.

A widely discussed e-mail from Group VII Supervisor David Voth best summarizes the divide that had emerged in Group VII, with senior special agents on one side, wanting to stop the operation, and those in the ATF chain of command on the other, wanting to continue the gun walking:[21]

> It has been brought to my attention that there may be a schism developing amongst the group. This is the time we all need to pull together not drift apart. We are all entitled to our respective (albeit different) opinions however we all need to get along and realize that we have a mission to accomplish.
>
> I am thrilled and proud that our Group is the first ATF Southwest Border Group in the country to be going up on wire. On that note I thank everyone for their efforts thus far and applaud the results we have achieved in a short amount of time.
>
> Whether you care or not people of rank and authority at HQ are paying close attention to this case and they also believe we (Phoenix Group VII) are doing what they envisioned the Southwest Border Groups doing. It may sound cheesy but we are "The tip of the ATF spear" when it comes to Southwest Border Firearms Trafficking.
>
> We need to resolve our issues at this meeting. I will be damned if this case is going to suffer due to petty arguing, rumors or other adolescent behavior.
>
> I don't know what all the issues are but we are all adults, we are all professionals, and we have a exciting opportunity to use the biggest tool in our law enforcement tool box. **If you don't think this is fun you're in the wrong line of work – period!** This is the pinnacle of domestic U.S. law enforcement techniques. After this the tool box is empty. Maybe the Maricopa County Jail is hiring detention officers and you can get paid $30,000 (instead of $100,000) to serve lunch to inmates all day.

Despite this e-mail, agents continued to experience dismay and frustration as Operation Fast and Furious continued along its perilous path. As Agent Casa testified:

> Q. And is it fair to say that . . . the folks on your side of the schism wanted to do everything they could to interdict these weapons so they wouldn't get any farther down the street than they have to?
>
> A. Yes, sir. We were all sick to death when we realized that – when we realized what was going on or when we saw what was going on by the trends. We were all just, yes, we were all distraught.[22]

The rift widened when the Assistant Special Agent in Charge (ASAC) authoritatively and unambiguously told Group VII that guns were not being walked, that the special agents were incorrect in their terminology, and that there would be no more discussion or dissension about this topic. Agent Dodson testified:

> A. Then we get an e-mail that . . . there is going to be a meeting. [the ASAC] is coming down, [the ASAC] comes into the Group 7 office and tells us essentially we better stand down with our complaints, that we didn't know what the definition of walking

[21] Email from Group VII Supervisor David Voth to Phoenix Group VII (Mar. 12, 2010).
[22] Agent Casa Transcript, at 41.

> guns was, we weren't familiar with the Phoenix way of doing things, that ***all of this was sanctioned*** and we just needed to essentially shut up and get in line. That's not a quote, but that's the feel of the meeting, so . . .

Q. Do you remember approximately when that occurred?

A. It was right after we went to the Group 7 building, so it had to be late February, early March 2010.[23]

Even some - outside Group VII - with reservations about the practice, indicated that they gave them the benefit of the doubt because the case was being supervised by the U.S. Attorney's office. Agent Forcelli testified:

> And I expressed concern . . . about that. And I believe some of those guns were purchased historically. It wasn't like 1200 were watched to go, but apparently they weren't interdicting either. And his response was . . . if you or I were running the group . . . it wouldn't be going down that way and that **the U.S. Attorney is on board, and it was Mr. [Emory] Hurley, and *they say there is nothing illegal going on.***[24]

B. Tragic, Yet Foreseeable Results

FINDING: Agents knew that given the large numbers of weapons being trafficked to Mexico, tragic results were a near certainty.

Since Group VII agents were instructed not to interdict as early and as often as they believed they should, the agents quickly grasped the likelihood of tragic results. Agent Alt testified:

Q. At any point in time did you have communications that . . . this is going to end terribly, there is going to be deaths?

A. I know that was talked about . . . the probability of a bad situation arises with the number each – as the number of firearms increases, meaning firearms that are out and outside of our control in this environment with this type of a case, which we are talking about a firearms trafficking case, southwest border firearm trafficking case, I only hope the case agent knows where they are going. But they are out there and they are not accounted for by us, at least that I am aware of. So there is certainly a greater probability and a greater liability.

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[23] Agent Dodson Transcript, at 44.
[24] Agent Forcelli Transcript, at 36.

I can tell you that as early as June of last year I predicted to some of my peers in the office that we would be sitting right where we are today in this room.

Q. Speaking with Congressional investigators?

A. That this would be in front of a Congressional investigation. And I was in agreement with Agent Dodson that someone was going to die. And my observations in the office were there was an overwhelming concern, *even amongst those persons on the other side of the schism*, if I can use that term, that something bad was going to happen.

* * *

Q. And is it fair to say that anxiety is heightened because of the possibility of some of these guns getting into the hands of criminals and being used against your fellow law enforcement agents?

A. Yes. And it is not even the possibility, because we know that they were procured unlawfully. So if we know that from the beginning, they are already in the hands of criminals, so now we are simply dealing with what is the consequence of that.[25]

The most frustrating aspect of the gunwalking policy for the agents was that they believed they *could* have interdicted and stopped the guns from walking.

When agents arrived in Phoenix in December 2009, they believed there was *already* enough information to arrest the straw purchasers, try to flip them, and begin working up the chain with an eye toward "bigger fish" in the organization. Yet, the fall of 2009 brought a remarkable departure from the normal practice of interdiction. ATF's strategy explicitly stated that it would allow straw purchasers to buy weapons, and that's exactly what happened. Agent Dodson testified:

Q. With the new resources in Group 7 in the fall of '09 . . . you talked about some of the special agents that were joined, if all of you had interdicted the weapons as you saw them, what percentage do you think you could have prevented from sort of entering the stream . . . if you read the press accounts of this, it is somewhere along the lines of 2,000 firearms have disappeared. How many do you think you and your colleagues would have been successful to interdict? Is it 10 percent, 50 percent?

[25] Agent Alt Transcript, at 120-122.

A. Well, the question is kind implausible, sir. . . . When we hit the ground in Phoenix, say, and the original 40 straw purchasers were identified, and I can't remember if it is 240 or 270 guns that they knew at that point that these guys were responsible for, you take, you minus that 270 from the estimate of 2,000, and whatever you have left is what we could have prevented.

Because we should have landed on every one of those people the minute that we hit here. And the ones that we landed on that we couldn't make cases on, at least they would have been on notice that we were watching and they would have stopped buying, or every time they did, the flag went up and we could have been on them then.

And of all the ones that we didn't land on, several of them would have spoken to us, a couple of them even maybe would have worked for us as a confidential informant or sources, which is how you climb the ladder in an investigation into an organization. Sitting back and watching isn't it. Okay? If you are watching a TV show at that point of the wire, you are not doing your job. Your job is to get out here and make a difference. And we could have done it when we hit the ground. So what are we talking? ***1730, to answer your question***, is my opinion of how many of these firearms that we could have and should have prevented from ever being purchased by these individuals and subsequently trafficked to known criminals or cartel elements south of the border and elsewhere.

Q. And is it fair to say if you started stopping these straw buyers as soon as they left [the gun dealers], is it fair to say that perhaps the drug trafficking organizations that they worked for would realize we got to get out of Phoenix, we have got to go to Dallas, we have got to go somewhere else, because Phoenix now has these new resources and they are catching us?

A. Right, if not, come up with an entirely new alternative way to get their weapons. If we shut down the whole straw purchasing scenario here in Phoenix, or significantly hurt it to the point where it is not advantageous for them to do so, you figure, if they are paying $600 for an AK or AK variant, all right, for every one that they buy we are taking off ten of them, okay, that's, I mean in any business sense that's not a good idea. Ultimately you are paying $6600 for one AK at that point. Am I correct? [26]

[26] Agent Dodson Transcript, at 61-63.

Unfortunately, the agents' complaints fell on deaf ears. As one ASAC noted, the policy and Operation had been sanctioned. For many of the agents, the operation only fueled their outrage. According to the agents, the operation failed to use their investigative strengths, honed over dozens of years in law enforcement. Agents saw the whole operation as pointless, a poor way to operate, and above all, dangerous. Agent Dodson testified:

> Q. Can you be more specific about the instances in which you were told not to use those techniques?
>
> A. Oh, certainly. Well, every time we voiced concerns, every time we asked the question. And this is so hard to convey because I understand you guys weren't there, you didn't live it. But every day being out here watching a guy go into the same gun store buying another 15 or 20 AK-47s or variants or . . . five or ten Draco pistols or FN Five-seveNs . . . guys that don't have a job, and he is walking in here spending $27,000 for three Barrett .50 calibers at . . . walks in with his little bag going in there to buy it, and you are sitting there every day and you can't do anything, you have this conversation every day.
>
> You asked me . . . a specific time where you voiced where you want to do this. Every day, all right? It was like are we taking this guy? No. Why not? Because it is not part of the plan, or it is not part of the case. [Agent L] said no, Dave said no, [Agent E] said no. ***What are we doing here? I don't know. What the hell is the purpose of this? I have no idea.*** This went on every day.[27]

DOJ and ATF determined that the goal of making the big case was worth the risk of letting hundreds and hundreds of guns go to criminals in the process. This conclusion was unacceptable to the agents on the ground carrying out these direct orders. The agents knew they were facilitating the sale of AK-47 variants to straw purchasers. Supervisors ignored complaints and retaliated against agents who did complain by transferring them out of ATF Phoenix Group VII. As Agent Dodson recalled:

> Q. [A]t any point in time do you have a recollection of commiserating with your colleagues, whether it was Special Agent Casa, whether it was Special Agent Alt, or some of the other special agents that were on sort of your side of the schism, for lack of a better word? Do you ever recall saying . . . good grief, if we had just snatched these guns at the FFLs we wouldn't even be in this situation?
>
> A. Oh, yes, sir, and not only with people on my side of the schism. I mean this was why I was, I mean I guess we will get to this later, but why I am no longer in Group 7, is because I addressed it with, or primarily with those on the other side of the schism.

[27] Agent Dodson Transcript, at 113.

* * *

Q. And is it fair to say at this point you are outraged?

A. Outraged and disgusted, however else you want to look at it.

Q. And is it fair to say that part of your outrage is because . . . needless deaths are possibly occurring?

A. Oh, very much so, sir.

Q. That countless number of crimes are being perpetrated with these weapons that you and your colleagues may have facilitated –

A. Yes.[28]

C. *Catastrophe Becomes Reality*

This agent's fear and outrage were realized by the death of Border Patrol Agent Brian Terry, a member of the U.S. Border Patrol Tactical Unit, as well as the almost certain deaths of countless Mexican citizens killed and the unknown amount of other crimes with weapons stemming from Fast and Furious. In Fast and Furious, ATF wanted to design a unique way to pursue the drug cartels. ATF and DOJ failed spectacularly to consider resulting negative outcomes. As Agent Dodson noted:

> Well, sir, if I may, and first of all, please everyone understand, I am not on either, or either side of this political spectrum, nor do I want to be. And quite frankly, it is unfathomable to me how both sides or any person isn't completely livid about what we have been doing here. **I cannot see anyone who has *one iota of concern for human life* being okay with this**, and being willing to make this go away or not hold the people that made these decisions accountable. I don't understand it. And again, none of you owe me an explanation, that's just my personal opinion.[29]

VII. Witnessing Gunwalking: "We Did Not Stop Them."

Fast and Furious required agents to stand down, ignoring their training and professional instincts. Allowing guns to fall into the hands of the DTOs was the Operation's central goal. Even when agents were able to interdict weapons, they received orders to stand down.

[28] Agent Dodson Transcript, at 57-58.
[29] Agent Dodson Transcript, at 101.

A. Watching Guns Walk

FINDING: Agents expected to interdict weapons, yet were told to stand down and "just surveil." Agents therefore did not act. They watched straw purchasers buy hundreds of weapons illegally and transfer those weapons to unknown third parties and stash houses.

During their interviews, several agents offered detailed descriptions of their observations of suspected straw purchasers entering FFLs to purchase enormous quantities of assault rifles. Following orders, they did not intervene. Agent Dodson remembered:

> Q. You got a guy that had purchased . . . ***40 different AKs* in the past two months** and . . . five or ten of them had already returned in time to crime. **So I thought here we go, we are going to start interdicting people.**
>
> We – they would go in and buy another five or ten AK variants or . . . five or ten FN Five-seveN pistols at a time, and come out. We would see it. We would know . . . that whatever standard of reasonable suspicion or probable cause was met, and we were landing on somebody before the end of the day. **But that didn't happen.**
>
> Q. And that's something you realized how early in your fieldwork, first or second day?
>
> A. Oh, yes, sir. I mean first or second day you are starting to question why aren't we doing this. And then by the end of the week it was . . . frustration already as to how many guns have we watched these guys get away with.
>
> Q. In your first week, can you make an estimate of how many guns you saw get loaded into a vehicle and driven away? I mean, are we talking like 30 or one?
>
> A. Probably 30 or 50. It wasn't five. There were five at a time. These guys didn't go to the FFLs unless it was five or more. And the only exceptions to that are sometimes the Draco, which were the AK variant pistols, or the FN Five-seveN pistols, because a lot of FFLs just didn't have . . . 10 or 20 of those on hand.[30]

[30] Agent Dodson Transcript, at 33-34.

Witnessing, but not contacting, straw purchasers buying weapons from FFLs became common practice for Group VII field agents in Phoenix. Agents sometimes conducted minimal surveillance following the purchases. Sometimes they conducted no surveillance. As Agent Dodson testified:

> We witnessed one of the individuals . . . the known straw purchasers arrive, go in. Sometimes one of us would actually be inside the FFL behind the counter. Sometimes if we had enough lead way we would go to the suspect's house and follow him from there to the FFL, or to a meeting . . . just prior to and see an exchange.[31]

Typically, agents ended surveillance of both the guns and the straw purchasers. Agent Alt testified:

> Watched and/or was aware – I shouldn't say watched – was aware that purchasers were routinely making purchases . . . at least in one case suspects who were known to be purchasing for other people were buying firearms with funds that were known to come from other people. And those firearms were not interdicted. Those firearms often went to a house or a place, and then surveillance was terminated there. So the disposition of the particular firearm may or may not have been known.

Q. And did that happen frequently?

A. Yes.[32]

B. Ordered to Stand Down

Superiors specifically ordered field agents to "stand down" despite establishing probable cause that a straw purchase had occurred. Agent Casa testified:

Q. And you were instructed or under orders from the case agent and group supervisor to do what, to do nothing?

A. Well, when I would call out on surveillance, yes, I was advised do not – I would ask do we want to do a traffic stop, do we want to – I will throw another definition, you guys have probably heard this. I am sorry, guys. I don't know what you heard or didn't. It is called "rip." It is a slang for saying we are going to do a warrantless seizure of those firearms once we establish probable cause.

---

[31] Agent Dodson Transcript, at 39.
[32] Agent Alt Transcript, at 50.

> Yeah . . . one of those days I called the case agent on the Nextel, said, hey . . . our straw purchaser, one of our targets has transferred the guns, he is driving south. This unknown person that just got delivered the firearms probably . . . all intents and purposes gave the straw purchaser the money to buy the guns had all the guns and he is going north. Hey, why don't we go ahead and stop that vehicle, rip the guns, and you can do what you want, we can arrest them. We don't have to arrest them. But we will grab the guns. And they said no. And I said this person is an unknown person. Well, you got the license plate. Well, it can be, that car could be registered to anybody, we don't know who that person is, let's at least do a vehicle stop so we can ID the person so maybe later we could get the guns back. ***No, just surveil.***[33]

Agent Forcelli recounts that situation from a different point of view:

> Well, as I said, there was that GRIT, people at command. And there was an instance where an agent was yelling over the radio. . . . There were a bunch of people milling around. And we heard an agent that sounded like he was in distress.
>
> And what happened was he was attempting to do a car stop. And we heard a female agent . . . telling him to stand down and not do the car stop. I later found out there were guns in the car and that the agent felt distressed because they had made him on the surveillance. So to let the guns go, it doesn't make any sense to me if you are burned.

Q. Do you know who the agent was?

A. Yes. It was Agent Casa.

Q. And so you specifically yourself heard him on the radio saying something to the effect I want to go get these guns now?

A. Yeah. And again, the reason, being a cop for so long you hear so many things on the radio, but you always can tell when somebody is in distress by the tone of their voice. As a cop you start racing to the scene before you actually hear the call. This was a similar instance, where you can tell by the tone of his voice something wasn't right.

> Later on I spoke with him. And he said that a car had almost come at him. That's how aggressive they had become during the surveillance. And that's why he was so excited on the radio. But

[33] Agent Casa Transcript, at 41-43.

> he was told to not stop the car with the guns in it, which to me makes no sense.[34]

Agent Dodson described the situation:

> I remember one time specifically we had been following this individual for so long to so many places that day . . . money pickups, gun drops, FFLs, and he got into an area of the city and he just started doing crazy [Ivans] . . . [like] unexplainable U-turns. He is doing heat runs, trying to burn surveillance, whatever cliché you want to use.
>
> So we knew we were made. Okay? We are made. He knows we are following. He knows we have been following him for awhile and we haven't done anything. We have to do something. I mean you have to do – we have to pull him over. We have to interact with him at some point. If not, he is always going to wonder, well, why are you following me. At least, for no other reason than a ruse, pull him over because . . . he did that illegal U-turn and whatever we need.
>
> We did it when I worked dope all the time. If they made surveillance, what did you do? Hey, there's an armed robbery back there, you guys match the description. No, you are not them. All right, later. And then we don't heat them up too bad. We weren't allowed to do that, not even for a ruse situation. **I mean there is a verbal screaming match over the radio about how . . . *what are you talking about*? There is no better time or reason to pull this guy over than right now.**

Q. So, in other words, whatever arguments might have been made before with regard to the specific instance that you are referring to about the utility of letting them continue their operations without knowing that you are onto them so that you can then follow and see where it goes, all those arguments go away at the point they made the fact they are being surveilled, right?

A. Correct.[35]

Unfortunately, ordering special agents to "stand down" when they planned to interdict guns became the norm. As Agent Dodson testified:

Q. Can you recollect a time when you were conducting surveillance on an FFL and you saw firearms being loaded into a car when you

[34] Agent Forcelli Transcript, at 60-62.
[35] Agent Dodson Transcript, at 116-117.

said to your colleague we got to go, we got to go seize this now, I understand the direction we have been given, but this is bad stuff, these are bad people, we need to go just –

A. Yes, sir.

Q. And did you ever do that?

A. No, sir. We were, at the time, one of the incidents that I recall specifically, Special Agent [D] was in the wire room at the time. We had been directed by both case agent and group supervisor that absent both of them, she is in charge. When we were communicating the interdiction that we were going to make over the radio, she, monitoring the radio traffic in the wire room, came back over and ordered us to stand down.

I debated this with her, probably far more lengthy than I should have over the radio, and again ultimately was just ordered to stand down. There were actually more than one of these discussions with her and Group Supervisor Voth, as well as with Special Agent [L], when *I thought we had a duty to act, that that was nonfeasance on our part by not doing so.* And each time I was . . . told to stand down and somewhat reprimanded afterwards for voicing it.[36]

Other agents had similar experiences in being told to stand down. Agent Casa remembered:

And a situation would arise where a known individual, a suspected straw purchaser, purchased firearms and immediately transferred them or shortly after, not immediately, shortly after they had transferred them to an unknown male. And at that point I asked the case agent to, if we can intervene and seize those firearms, and I was told no.[37]

These were not isolated incidents. Group VII members discussed, debated, and lamented walking guns on a daily basis, but the practice continued. Agent Casa testified:

Q. And what did you observe during your surveillance?

A. [I] observed suspected straw purchasers go to area federal firearms licensees, FFLs, go into the store, walk out with a large number of weapons, get into a vehicle, drive off.[38]

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[36] Agent Dodson Transcript, at 45-46.
[37] Agent Casa Transcript, at 33.
[38] Agent Casa Transcript, at 29.

C. *"We Were Walking Guns. It was Our Decision."*

As all of the accounts from numerous ATF agents demonstrate, ATF intentionally and knowingly walked guns. One of the ASACs in Phoenix reported that this policy was "sanctioned." To allow these guns to be bought and transferred illegally was a conscious and deliberate decision, not merely by failing to take action to interdict, but also by giving the green light to gun dealers to sell to known straw purchasers. By sanctioning the purchases even after dealers expressed concerns, ATF agents said they were actually facilitating the transactions:

> Q. And essentially you witnessed guns walk; that was not consistent with your training and experience?
>
> A. Sir . . . by the very definition of allowing them to walk, if I witnessed guns walk, that means it is another agency's operations. If I go help another agency and this is their op, then I witnessed guns walk.
>
> **We were walking guns. It was our decision.** We had the information. **We had the duty and the responsibility to act, and we didn't do so.** So it was us walking those guns. We didn't watch them walk, we walked.[39]

Agent Dodson later explains the consequences:

> Q. That countless number of crimes are being perpetrated with these weapons that you and your colleagues may have facilitated --
>
> A. Yes.
>
> Q. -- moving into the hands of the bad guys?
>
> A. Yes, sir. **I would argue that it wasn't a "may have facilitated." It *was facilitated.*** These FFLs wouldn't have made these purchases. I mean they addressed their concerns to, I mean to ATF both formally as well as to us when we were inside getting copies of the forms, that this whole --
>
> The genesis of this case was when they were calling in these people that they knew. **This guy comes in, buys 10, 15, 20 AKs or . . . a 22-year-old girl walks in and dumps $10,000 on . . . AK-47s in a day, when she is driving a beat up car that doesn't have enough metal to hold hubcaps on it. *They knew what was***

[39] Agent Dodson Transcript, at 41.

> ***going on.*** The "may have facilitated" to me is kind of erroneous. We did facilitate it. How are we not responsible for the ultimate outcome of these [g]uns?[40]

VIII. Collateral Damage: A Fast and Furious Inevitability

An increase of crimes and deaths in Mexico caused an increase in the recovery of weapons at crime scenes. When these weapons traced back through the Suspect Gun Database to weapons that were walked under Fast and Furious, supervisors in Phoenix were giddy at the success of their operation.

A. Increasing Volume Equals Increasing Success

FINDING: Operation Fast and Furious contributed to the increasing violence and deaths in Mexico. This result was regarded with giddy optimism by ATF supervisors hoping that guns recovered at crime scenes in Mexico would provide the nexus to straw purchasers in Phoenix.

Since ATF supervisors regarded violence and deaths in Mexico as inevitable collateral damage, they were not overly concerned about this effect of the Operation. Quite the opposite, they viewed the appearance of Fast and Furious guns at Mexican crime scenes with *satisfaction*, because such appearances proved the connection between straw purchasers under surveillance and the DTOs. For example, Group VII Supervisor David Voth eagerly reported how many weapons their "subjects" purchased and the immense caliber of some of these guns during the month of March alone:

[40] Agent Dodson Transcript, at 59.

From: Voth, David J.
Sent: Friday, April 02, 2010 10:31 AM
To: [redacted]
Cc: Phoe-Group VII
Subject: No pressure but perhaps an increased sense of urgency .

MEXICO STATS

958 killed in March 2010 (Most violent month since 2005)

937 killed in January 2010

842 killed in December 2009

SINALOA - MARCH STATISTICS

187 murders in March, including 11 policemen

I hope this e-mail is well received in that it is not intended to imply anything other than that the violence in Mexico is severe and without being dramatic we have a sense of urgency with regards to this investigation. Our subjects purchased 359 firearms during the month of March alone, to include numerous Barrett .50 caliber rifles. I believe we are righteous in our plan to dismantle this entire organization and to rush in to arrest any one person without taking in to account the entire scope of the conspiracy would be ill advised to the overall good of the mission. I acknowledge that we are all in agreement that to do so properly requires patience and planning. In the event however that there is anything we can do to facilitate a timely response or turnaround by others we should communicate our sense of urgency with regard to this matter.

Thanks for everyone's continued support in this endeavor,

David Voth
Group Supervisor
Phoenix Group VII

The agents within Group VII described Voth's reaction to all this gun violence in Mexico as "giddy."[41] In addition to this e-mail, private conversations they had with Voth gave them the impression that Voth was excited about guns at Mexican crime scenes subsequently traced back to Fast and Furious. Agent Dodson explains:

Q. Then there is an e-mail that was on CBS news that I made notes about written on April 2, 2010 by Group Supervisor Voth?

A. Yes, sir.

Q. And he reported that our subjects purchased 359 firearms during March alone.

A. Yes, sir.

Q. That there were 958 people killed in March of 2010.

[41] Agent Dodson Transcript, at 118.

A. Yes, sir.

Q. And he was . . . he was essentially trumpeting up the violence that was occurring as a result of an ATF sanctioned program, is that correct?

A. Agent or Group Supervisor Voth took that, or the way that he presented that to us was look here, this is proof that we are working a cartel, the guns that our guys are buying that we are looking at are being found, are coming back with very short time to crime rates in Mexico in known cartel related violence, and the violence is going through the roof down there, we are onto a good thing here.

Q. The e-mail further goes on and says there was 937 killed in January 2010, 842 killed in December, 2009. The numbers are increasing?

A. Yes, sir.[42]

This evidence established a nexus between straw purchasers in the United States and the DTOs in Mexico, bringing ATF one step closer to catching the "bigger fish." This strategy of letting the "little fish" go in order to capture the "bigger fish" was the ultimate goal of Phoenix Group VII. As Agent Dodson explained:

Q. Okay. So earlier we were discussing an e-mail that . . . was describing from Mr. Voth where he appears to present the crimes in Mexico. You said something to the effect that he was, he was presenting the guns being recovered in Mexico as proof that you were watching the right people.

A. Correct.

Q. And that the increasing levels of violence were proof you were on the right track, essentially.

I just wanted to clarify. Is that, when you were saying those things, was that your reading of his e-mail, or do you recall other conversations that you had with him outside of the e-mail that . . . this was evidence that you were on the right track?

A. Well, both. I get that impression from reading his e-mail, but perhaps I get that impression because of knowing him how well I did.

[42] Agent Dodson Transcript, at 56-57.

> There were several instances. Whenever he would get a trace report back . . . ***he was jovial, if not, not giddy, but just delighted about that, hey, 20 of our guns were recovered with 350 pounds of dope in Mexico last night. And it was exciting.*** To them it proved the nexus to the drug cartels. It validated that . . . we were really working the cartel case here.[43]

Agent Alt described in great detail his disgust at the self-satisfaction of ATF leadership for sending guns into what they knew to be a war zone. He also expounded on his view that the Group Supervisor should have been more concerned with those deaths in Mexico rather than with motivating his team. He testified:

> Why then do we stand by and try to motivate agents to do something more to stem the homicides . . . with no further mention on the homicides and correlate that with the number of guns recovered in Mexico in a given month, when we should be saying how many of those guns left this state that we knew about in relationship to our cases in conjunction with these murders? That didn't happen.[44]

B. *"You Need to Scramble Some Eggs"*

According to the ATF agents, their supervisors in Phoenix were sometimes shockingly insensitive to the possibility the policy could lead to loss of life. Agent Dodson explained:

> Q. [S]omebody in management . . . used the terminology "scramble some eggs."
>
> A. Yes, sir.
>
> Q. If you are going to make an omelette you have got to scramble some eggs. Do you remember the context of that?
>
> A. Yes, sir. It was – there was a prevailing attitude amongst the group and outside of the group in the ATF chain of command, and that was the attitude. . . . I had heard that . . . sentiment from Special Agent [E] Special Agent [L], and Special Agent Voth. And the time referenced in the interview was, I want to say, in May as the GRIT team or gunrunner initiative team was coming out. I was having a conversation with Special Agent [L] about the case in which the conversation ended with me asking her are you prepared to go to a border agent's funeral over this or a Cochise County

[43] Agent Dodson Transcript, at 117-118.
[44] Agent Alt Transcript, at 174.

> deputy's over this, because that's going to happen. And the sentiment that was given back to me by both her, the group supervisor, was that . . . if you are going to make an omelette, you need to scramble some eggs.[45]

C. An Inevitable and Horrible Outcome

The increasing number of deaths along with the increasing number of Fast and Furious guns found at Mexican crime scenes evoked a very different reaction among the line agents. They had great anxiety about the killings across the border. Their concern focused on reports of shootings and assaults of law enforcement officials. They worried openly of the consequences of walked weapons used to shoot a police officer.

This worst-case scenario came to fruition when United States Border Patrol Agent Brian Terry was murdered and two "walked" AK-47 rifles were found at the scene of the murder. Agent Forcelli described the mood following the Terry murder:

> Q. Do you recall any specific conversations that you had about after, after learning that . . . two of the guns at the scene had been traced back to the Fast and Furious case?
>
> A. [T]here was kind of a thing like deja vu, hey, we have been saying this was going to happen. The agents were pretty livid and saying exactly that. We knew. How many people were saying this was going to happen a long time before it did happen?
>
> And then there was a sense like every other time, ***even with Ms. Giffords' shooting*, there was a state of panic**, like, oh, God, let's hope this is not a weapon from that case. And the shooting of Mr. [Zapata] down in Mexico, I know that, again, that state of panic that they had, like please let this not come back.
>
> This was an embarrassment . . . that this happened to the agent, tragic. I mean my heart goes out to this family. I lost colleagues, and I couldn't imagine the pain they were going through. And it made it painful for us, even those not involved in the case, to think ATF now has this stain.[46]

Agent Alt explained the process by which ATF learned that weapons were being trafficked into Mexico.

> Q. But how would you identify that they ended up in Mexico?

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[45] Agent Dodson Transcript, at 135-136.
[46] Agent Forcelli Transcript, at 127-128.

A. Well, there is a variety of ways. One . . . you would identify where they are going by virtue of recoveries that are happening in crimes or interdictions. . . . So you identify that they are going south. And I think then the strategy, if I understand it, is that the firearms are then, once . . . they are going south, you try and follow them and figure out where they are going and to who they are going to tie to a greater organization and more people, identify the hierarchy of the organization. That's the strategy.

And I don't know how you perfect a case doing that when you don't have the guns. . . . But the strategy to me would have to be that there has got to be some measure of accounting or follow-up as to where they end up.[47]

The notion that these guns moved into Mexico and aided the drug war distressed the ATF field agents, including Agent Casa:

Q. It was a likely consequence of the policy of walking guns that some of those guns would wind up at crime scenes in Mexico?

A. Yeah.

Q. And is it fair to say that some, if not many, of these crime scenes would be where people would be seriously injured or possibly killed?

A. Of course.

Q. **So is it a fair, predictable outcome of the policy that there would be essentially collateral damage in terms of human lives?**

A. **Sure.**[48]

Agent Casa also emphasized that those who planned and approved Operation Fast and Furious could have predicted the ensuing collateral violence:

I feel for the family of Agent Terry, I feel for his death. . . . I don't know how some of the people I work with could not see this was going to be an inevitable outcome, something like this happening. And I don't know why they don't think that six months from now this won't happen again, or a year from now, a year and a half from now.

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[47] Agent Alt Transcript, at 160-161.
[48] Agent Casa Transcript, at 126-127.

But I don't know the exact number of guns that were put out into the streets as a result of this investigation. But they are not going to disintegrate once they are used once. They are going to keep popping up over and over and over.[49]

D. *The Pucker Factor*

FINDING: Every time a law enforcement official in Arizona was assaulted or shot by a firearm, ATF agents in Group VII had great anxiety that guns used to perpetrate the crimes may trace back to Operation Fast and Furious.

The design defect of Fast and Furious was its failure to include sufficient safeguards to keep track of thousands of heavy-duty weapons sold to straw purchasers for the DTOs. ATF agents did not maintain surveillance of either the guns or the straw purchasers. The guns were therefore lost. The next time law enforcement would encounter those guns was at crime scenes in Mexico and in the United States. However, because ATF had contemporaneous notice of the sales from the gun dealers and entered the serial numbers into the Suspect Gun Database, agents were notified whenever a trace request was submitted for one of those walked guns. As Agent Alt testified:

Q. [A] little bit earlier you talked about a level of anxiety, the anxiety among the agents, perhaps even the supervisors, relating to weapons that are found at crime scenes. There was a death, there is a murder scene in Mexico. There is a trace that comes in of some kind, and the weapon is then connected to a weapon that may have been one of the weapons that were walked. . . . Is that accurate?

A. **Yes. I used the word anxiety. The term I used amongst my peers is pucker factor.**

* * *

Q. Pucker factor, precisely. But that's what it is relating to? I am saying that correctly, right?

A. Yes.

Q. And this pucker factor, in your view, is related to a gun showing up at a crime scene, right, a murder scene, someone gets killed, et cetera?

[49] Agent Casa Transcript, at 127-128.

A. Absolutely.

Q. [B]ut isn't that crime scene also the reason or the place that permits us to trace the gun? In other words, once the gun is walked, let's say it walks south, isn't the only other information we are ever going to get about that gun, isn't that going to come from a crime scene?

A. Most likely, unless we have some resource in place down there, whether it be an informant or an undercover or an agent or something telling us where those guns end up.

* * *

Q. **So assuming for a second that that does not exist because we don't have any evidence to speak of, the only way we are going to see this firearm that was let go --**

A. **Is a crime recovery.**

Q. Crime gun recovery --

A. That's correct.

Q. -- which would be either in the pocket of a person caught for some other offense or very likely at a shooting?

A. Most of the Mexican recoveries are related to an act of violence.

* * *

Q. But so typically the recovery will have evolved around a serious injury or gun related?

A. Or about drug related.

Q. But someone is either dead or hurt or both or something frequently?

A. Yes . . . there is a lot of violence, and guns are recovered with respect to the violence. A lot of your big seizures of the guns, though, the big seizures of the guns, mass is usually in conjunction of seizures of other things.

* * *

> My opinion is the last portion of your statement is spot on, you have to accept that there is going to be collateral damage with regard to that strategy. **You can't allow thousands of guns to go south of the border without an expectation that they are going to be recovered eventually in crimes and people are going to die.**[50]

IX. The Tragic Death of U.S. Border Patrol Agent Brian Terry

FINDING: Jaime Avila was entered as a suspect in the investigation by ATF on November 25, 2009, after purchasing weapons alongside Uriel Patino, who had been identified as a suspect in October 2009. Over the next month and a half, Avila purchased 13 more weapons, each recorded by the ATF in its database within days of the purchase. Then on January 16, 2010, Avila purchased three AK-47 style rifles, two of which ended up being found at the murder scene of U.S. Border Patrol Agent Brian Terry. The death of Border Agent Brian Terry was likely a preventable tragedy.

Fast and Furious has claimed the life of an American federal agent. Late in the evening of December 14, 2010, Border Patrol Agent Brian Terry, a native of Michigan, was on patrol with three other agents in Peck Canyon, near Rio Rico, Arizona. One of the agents spotted a group of five suspected illegal aliens; at least two were carrying rifles. Although one of the border patrol agents identified the group as federal agents, the suspected aliens did not drop their weapons. At least one of the suspected aliens fired at the agents, who returned fire. Agent Terry was struck by on bullet that proved to be fatal.[51]

Most of the suspected aliens fled the scene, though one of them, Manual Osorio-Arellanes, had been wounded and was unable to flee. A slew of federal agents from a variety of agencies arrived at the scene and the authorities' recovered three weapons from the suspects, who had dropped their rifles in order to flee the scene faster. Two of those recovered weapons were AK-47 variant rifles that had been bought on January 16, 2010 by straw purchaser Jaime Avila during Operation Fast and Furious. Avila was entered as a suspect in the investigation by ATF on November 25, 2009. This occurred after he purchased weapons with Uriel Patino, a straw buyer who had previously been identified as a suspect in October 2009. On November 24, 2009, agents rushed to the FFL to surveil Avila and Patino, but arrived too late. Over the next month and a half, Avila purchased 13 more weapons, each recorded by the ATF in its database within days of the purchase. Avila bought the weapons recovered at the scene of Agent Terry's murder almost two months after ATF knew he was working with Patino. Avila's purchases would eventually total fifty two under Fast and Furious.[52] Patino's purchases would eventually

[50] Agent Alt Transcript, at 187-191.
[51] In re: Manual Osorio-Arellanes, No. 10-10251M, aff. of [Name Redacted], Special Agent, (D.Ariz. Dec. 29, 2010).
[52] Chart of "Indicted targets", [Author Redacted], A/GS Phoenix FIG, (Mar. 29, 2011).

top 660. As with all the Fast and Furious suspects, gun dealers provided contemporaneous notice of each sale to the ATF.[53]

The day after the Terry shooting, law enforcement agents located and arrested Avila in Phoenix. The U.S. Attorney's Office in Arizona later indicted him. Avila's indictment, however, is typical of the indictments that have resulted thus far from Fast and Furious. Avila was indicted on three counts of "lying and buying"—including false statements on ATF Form 4473, a prerequisite to the purchase of any firearm. These three indictments, however, do not stem from the weapons purchased on January 16, 2010, that eventually ended up at the Terry murder scene. Instead, Avila was indicted with respect to rifles he bought *six months later* and which also turned up at a crime scene.

On May 6, 2011, DOJ unsealed an indictment of Manuel Osorio-Arellanes for the murder of Brian Terry.[54] Federal authorities, led by the FBI, are pursuing his co-conspirators, including the gunman suspected of firing the fatal shot and fleeing the scene.

In Phoenix, the news of Agent Terry's death deeply saddened, but did not surprise, Group VII agents. They had agonized over the possibility of this event, and they ruefully contemplated future similar incidents resulting from the abundance of illegal guns.

During their transcribed interviews, the ATF agents shared their reactions to Agent Brian Terry's murder. Agent Dodson testified:

> Q. Along those lines, when did you find out that Agent Terry was killed?
>
> A. I found out December 16th, 2010.
>
> Q. And what can you tell us about your recollections that information?
>
> * * *
>
> A. Well, I was called by another agent and was told that – or asked if I had heard about Agent Terry's death. I told him that I had. And then he confirmed for me what I already thought when he called, which was that it was one of the guns from Fast and Furious.
>
> And then later that day, I was speaking to my acting supervisor, Marge Zicha, and she had made a comment to me that they were very busy because two of the Fast and Furious guns were found at the scene of Agent Terry's homicide.[55]

---

[53] *Id.*
[54] U.S. v. Manuel Osorio-Arellanes et al., No. CR-11-0150-TUC-DCB-JCG. (D.Ariz. Apr. 20, 2011).
[55] Agent Dodson Transcript, at 136-137.

Agent Dodson also detailed ATF's awareness of and its multiple contacts with the accused murderer, Jaime Avila, for months prior to Agent Terry's murder.

> So essentially in January 2010, or December when I got there, **we *knew* Jaime Avila was a straw purchaser**, had him identified as a known straw purchaser supplying weapons to the cartel. Shortly thereafter, we had previous weapons recovered from Mexico with very short time to crime rates purchased by Jaime Avila, as I recall.
>
> And then in May we had a recovery where Border Patrol encounters an armed group of bandits and recovered an AK variant rifle purchased by Jaime Avila, and we still did not – **purchased during the time we were watching Jaime Avila, had him under surveillance, *and we did nothing***.
>
> Then on December 14th, 2010 Agent Brian Terry is killed in Rio Rico, Arizona. Two weapons recovered from the scene . . . two AK variant weapons purchased by Jaime Avila on January 16th, 2010 while we had him under surveillance, after we knew him to be a straw purchaser, after we identified him as purchasing firearms for a known Mexican drug cartel.[56]

Although the ATF agents' worst fears were confirmed, they did not feel good about being right. In the wake of Agent Terry's death, they were even more upset, saddened, and embarrassed. Agent Alt explained:

> I have loved working for ATF since I have been hired here. I came here to retire from ATF. I could be doing any number of things, as you all are aware. . . . I could be whatever I chose to be, and I chose to be here.
>
> I am not -- I am embarrassed here. I regret the day that I set foot into this field division because of some of the things that a few people have done and the impact that it has had on our agency, and not the least of, not the least, though, is the impact it has had on the public and safety and Agent Terry. While I don't know that guns in any of these cases are directly responsible for his death, I am appalled that there would be in any way associated with his death.[57]

A December 15, 2010 e-mail exchange among ATF agents details the aftermath of Agent Terry's death. ATF, fearing the worst, conducted an "urgent firearms trace" of the firearms, recovered on the afternoon of the murder. By 7:45 p.m. that evening, the trace confirmed these fears:

---

[56] Agent Dodson Transcript, at 140-141.
[57] Agent Alt Transcript, at 180-181.

From: [redacted]
To: [redacted]
Cc: [redacted]
Sent: Wed Dec 15 19:45:03 2010
Subject: U.S. Border Patrol Agent killed in the line of duty - Two firearms recovered by ATF
The two firearms recovered by ATF this afternoon near Rio Rico, Arizona, in conjunction with the shooting death of U.S. Border Patrol agent Terry were identified as 'Suspect Guns' in the Fast and Furious investigation [redacted]

The firearms are identified as follows:

Romarm/CUGIR, 762 rifle, Model GP WASR 10/63, serial number 1971CZ3775
Romarm/CUGIR, 762 rifle, Model GP WASR 10/63, serial number 1983AH3977

[redacted] contact me late this afternoon requesting Intel assistance in the tracing of two recovered firearms.

I initiated an urgent firearms trace requests on both of the firearms and then contacted the NTC to ensure the traces were conducted today.

I was advised by the NTC that the firearms were entered into ATF Suspect Gun database by SA Medina and associated to the Fast and Furious Investigation. The NTC further advised that on 01/16/10 Jaime AVILA purchased three Romarm 7.62 rifles from Lone Wolf Trading Company, two of these firearms are the recovered firearms cited above.

No trace has been submitted on the third firearm purchased by AVILA (serial number 1979IS1530). I am researching the trace status of the firearms recovered earlier today by the FBI.

Agent Terry did not die in vain. His passing exposed the practice of knowingly allowing the transfer of guns to suspected straw purchasers. ATF now maintains it no longer condones this dangerous technique. The cessation of this practice will likely save lives on both sides of the border. Tragically, however, we will be seeing the ramifications of the policy to allow guns from Fast and Furious be transferred into the hands of suspected criminals for years to come. These weapons will continue to be found at crime scenes in the United States and Mexico.

X. The Beginning of DOJ's Denials: "Hell, No!"

FINDING: Phoenix ATF Special Agent in Charge (SAC) William Newell's statement that the indictments represent the take-down of a firearms trafficking ring from top to bottom, and his statement that ATF never allowed guns to walk are incredible, false, and a source of much frustration to the agents.

On January 25, 2011, Phoenix SAC William Newell gave a press conference announcing the indictment of 20 individuals as a result of Fast and Furious. Most of the indictment involves "lying and buying" – paper transgressions that carry much lighter sentences than felonies relating

to actual firearms trafficking. Under "lying and buying," a straw purchaser improperly fills out ATF Form 4473, required before the purchase of any firearm, by submitting false information. A comparison of the indictment with the goals of Fast and Furious reveals the Operation's utter failure. According to the agents, the Department could have indicted all 20 defendants far sooner than January 2011. Instead, the timing of the indictment appears to coincide with the outrage following the killing of Border Agent Brian Terry. Agent Dodson testified:

> A. Essentially, the indictments looked very similar in January 2011, when they were finally served, as they did in December 2009 when I first got here. The only difference is the number of purchases that were made. Some of the names of people are new, some have been added and some taken out, but no major players at all.
>
> Q. So the publicly announced indictments, they are all for straw purchasers, right?
>
> A. Yes, sir, which we could have rounded up . . . a year and a half ago.
>
> Q. You could have arrested them the day you saw this stuff happening?
>
> A. And saved those 1730 guns from being trafficked.[58]

At the press conference announcing the indictments, SAC Newell made two notable comments. Newell claimed that the indictments represented a take-down of a firearms trafficking ring from top to bottom.[59] Yet virtually all of the indicted defendants were mere straw purchasers—not key players of a criminal syndicate by any stretch of the imagination.

Newell's second notable comment was equally negligent and inaccurate. When asked whether or not ATF ever allowed guns to walk, Newell emphatically exclaimed **"Hell, no!"**[60] His denial was shocking to those who knew the truth, like Agent Alt:

> Q. And why is that engrained in your memory?
>
> A. Candidly, my mouth fell open. I was asked later by the public information officer for our division . . . and I told him that I thought that – I was just astounded that he made that statement and it struck me and I don't know how he could make that statement.[61]

* * *

[58] Agent Dodson Transcript, at 141-142.
[59] Tamara Audi, *Alleged Gun Ring Busted,* W.S.J., Jan. 26, 2011.
[60] Dennis Wagner, *Sen. Chuck Grassley: Guns in ATF sting tied to agent's death,* TUCSON CITIZEN, Feb. 1, 2011.
[61] Agent Alt Transcript, at 193-194.

Q. When SAC Newell made those statements at the press conference and you said something along the lines – did your jaw drop?

A. Literally my mouth fell open. I am not being figurative about that. I couldn't believe it.

Q. Is it fair to say that his statements that caused your mouth to drop, that's a spectacular lie, isn't it?

A. Yes. My mouth fell open because I thought, I perceived it as being either completely ignorant or untruthful. But also a person in that position I don't really – I don't know that I would have made – the statement was unnecessary to make. He did not need to make the statement.

If I am in a position like that and I have gotten involved or have knowledge of an investigation, me personally, I probably would have avoided comment. I certainly would have avoided making a comment like that.[62]

Agent Casa also expressed similar astonishment at Newell's inaccurate comment following the press conference:

Q. At the press conference I believe he was asked whether or not guns were walked, and his response was hell no. Do you remember that?

A. Yes, I do.

Q. What was your reaction to that statement?

A. I can't believe he just answered the question that way.

Q. And why can't you believe that?

A. Because we, in my definition of walking guns, we had walked a bunch of guns. When I say we, Group 7. And under this case that we are discussing, a bunch of firearms were walked against the objections o f some senior agents.

Q. So Newell's statement was inaccurate?

A. I would say it was very inaccurate.[63]

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[62] Agent Alt Transcript, at 202-203.
[63] Agent Casa Transcript, at 119-120.

Agent Forcelli shared similar sentiments over Newell's remarkable statements during the press conference.

> Q. Right. Did you attend that press conference that SAC Newell came down to do, or did?
>
> A. No. I was involved in the command post that day. I wasn't there. I heard about it. I was appalled.
>
> Q. Tell us about your reaction. What were you appalled by?
>
> A. My understanding is somebody asked him if guns walked, and his response was hell no.
>
> Q. How did you feel about that?
>
> A. Insulted. Because I know that they were saying that this was a technique that was like a great new technique we were using. . . . And it just amazes me. But he knew what was going on. He is the SAC. And agents knew that guns were not being interdicted.[64]

None of the agents interviewed believed Newell's dramatic comment to be truthful. His denial of the existing policy sought to end questioning on this topic once and for all. Instead, it only engendered more attention and interest.

XI. DOJ's Continued Denials: "That is False."

FINDING: Despite mounting evidence to the contrary, DOJ continues to deny that Operation Fast and Furious was ill-conceived and had deadly consequences.

The denials of gunwalking became more sensational as they continued. Presented with an opportunity to set the record straight, the Department of Justice instead chose a path of denial.

A. "Of Course Not"

In a February 4, 2011 letter to Senator Charles Grassey, Ranking Member of the Senate Judiciary Committee, DOJ's Assistant Attorney General for Legislative Affairs wrote:

> At the outset, the allegation described in your January 27 letter – that ATF "sanctioned" or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico – **is false**.

[64] Agent Forcelli Transcript, at 52-53.

> ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.[65]

When asked in later meetings and letters how this statement could be true in light of all the evidence to the contrary, DOJ officially stood by it. The argument that it is true relies on the fine distinction that it was not the *straw purchasers themselves* who physically crossed the border with the weapons, but rather the unknown third parties to whom they transferred the firearms. DOJ offered no specific defense of the second sentence.

Of course, this statement misses the point entirely. ATF permitted known straw purchasers to obtain these deadly weapons and traffic them to third parties. Then, at some point after ATF broke off surveillance, the weapons were transported to Mexico. ATF was definitely aware that these guns were ending up in Mexico, being transported through Arizona and Texas Points of Entry.[66]

The second part of this statement is also patently false. Numerous ATF agents have gone on the record with stories that directly contradict it. During interviews with, these agents had the chance to respond directly to DOJ's position. Not surprisingly, they uniformly rejected it. Agent Alt testified:

> Q. And I will just read a portion of that into the record. The second paragraph of the letter said, the second sentence of the second paragraph says, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico," period. Is that sentence, based on your knowledge of what was going on here in Phoenix, true or not true?
>
> A. **No, it is not true.**[67]

Agent Forcelli agreed:

> Q. [The] second sentence of the second paragraph of the letter says: "ATF makes every effort to interdict weapons that have been purchased illegally to prevent their transportation to Mexico," period. Have you heard that before, that that representation was made to Congress?
>
> A. I was unaware of that. And I will tell you based on what I know has occurred that *that is false*.[68]

Agent Forcelli reiterated, "Based on my conversations in regards to that meeting between Mr. Hurley and the ATF's agents and the two gun dealers, no. *It is false*."[69] And when asked if

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[65] Letter from Assistant Attorney General Ronald Weich to Senator Charles E. Grassley (Feb. 4, 2011) (emphasis added).
[66] The Fast and The Furious, Organized Crime Drug Enforcement Task Force Interim Report (Sept. 9, 2010).
[67] Agent Alt Transcript, at 148.
[68] Agent Forcelli Transcript, at 143-144.

the DOJ's statement was true, given what he had personally witnessed in Phoenix, Agent Casa replied, "I think you already know the answer to that. ***Of course not.***"[70]

B. More Denials

Even after the U.S. Congress presented it with evidence that the statements in the February 4, 2011 letter were false, the Department of Justice *still* stood by its initial position. In a May 2, 2011 response to a letter from Senator Grassley, the Department maintained its original position:

> It remains our understanding that ATF's Operation Fast and Furious did not knowingly permit *straw buyers* to take guns into Mexico. You have provided to us documents, including internal ATF emails, which you believe support your allegation. . . . [W]e have referred these documents and all correspondence and materials received from you related to Operation Fast and Furious to the Acting Inspector General, so that she may conduct a thorough review and resolve your allegations.[71]

The Justice Department also notes that the Attorney General has "made clear . . . that the Department should never knowingly permit firearms to cross the border." Although the Department issued this directive in early-March, well after the congressional investigation of Operation Fast and Furious had begun, it is a welcome affirmation of what the ATF whistleblowers had been trying to tell their bosses for over a year before Agent Brian Terry was killed.

XII. Conclusion

We will persist in seeking documents and testimony from Justice Department officials and other sources to thoroughly examine all the key questions. The Department should avail itself of the opportunity to come clean and provide complete answers. It should also reverse its position and choose to fully cooperate with the investigation.

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[69] Agent Forcelli Transcript, at 144.
[70] Agent Casa Transcript, at 131.
[71] Letter from Assistant Attorney General Ronald Weich to Charles E. Grassley (May 2, 2011).

The Department of Justice's Operation Fast and Furious: Fueling Cartel Violence

JOINT STAFF REPORT

Prepared for

Rep. Darrell E. Issa, Chairman
United States House of Representatives
Committee on Oversight and Government Reform
&
Senator Charles E. Grassley, Ranking Member
United States Senate
Committee on the Judiciary

112th Congress
July 26, 2011

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"That is, I mean, this is the perfect storm of idiocy."

–Carlos Canino, Acting ATF Attaché in Mexico

I. Executive Summary

The previous joint staff report entitled *The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents* chronicled Operation Fast and Furious, a reckless program conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the courageous ATF agents who came forward to expose it. Operation Fast and Furious made unprecedented use of a dangerous investigative technique known as "gunwalking." Rather than intervene and seize the illegally purchased firearms, ATF's Phoenix Field Division allowed known straw purchasers to walk away with the guns, over and over again. As a result, the weapons were transferred to criminals and Mexican Drug Cartels.

This report explores the effect of Operation Fast and Furious on Mexico. Its lethal drug cartels obtained AK-47 variants, Barrett .50 caliber sniper rifles, .38 caliber revolvers, and FN Five-seveNs from Arizona gun dealers who were cooperating with the ATF by continuing to sell to straw purchasers identified in Operation Fast and Furious.

In late 2009, ATF officials stationed in Mexico began to notice a large volume of guns appearing there that were traced to the ATF's Phoenix Field Division. These weapons were increasingly recovered in great numbers from violent crime scenes. ATF intelligence analysts alerted Darren Gil, Attaché to Mexico, and Carlos Canino, Deputy Attaché, about the abnormal number of weapons. Gil and Canino communicated their worries to leadership in Phoenix and Washington, D.C., only to be brushed aside. Furthermore, ATF personnel in Arizona denied ATF personnel in Mexico access to crucial information about the case, even though the operation directly involved their job duties and affected their host country.

Rather than share information, senior leadership within both ATF and the Department of Justice (DOJ) assured their representatives in Mexico that everything was "under control." The growing number of weapons recovered in Mexico, however, indicated otherwise. Two recoveries of large numbers of weapons in November and December 2009 definitively demonstrated that Operation Fast and Furious weapons were heading to Mexico. In fact, to date, there have been 48 different recoveries of weapons in Mexico linked to Operation Fast and Furious.

ATF officials in Mexico continued to raise the alarm over the burgeoning number of weapons. By October 2010, the amount of seized and recovered weapons had "maxed out"

space in the Phoenix Field Division evidence vault.[1] Nevertheless, ATF and DOJ failed to share crucial details of Operation Fast and Furious with either their own employees stationed in Mexico or representatives of the Government of Mexico. ATF senior leadership allegedly feared that any such disclosure would compromise their investigation. Instead, ATF and DOJ leadership's reluctance to share information may have only prolonged the flow of weapons from this straw purchasing ring into Mexico.

ATF leadership finally informed the Mexican office that the investigation would be shut down as early as July 2010. Operation Fast and Furious, however, continued through the rest of 2010. It ended only after U.S. Border Patrol Agent Brian Terry was murdered in December 2010 with weapons linked to this investigation. Only then did the ATF officials in Mexico discover the true nature of Operation Fast and Furious. Unfortunately, Mexico and the United States will have to live with the consequences of this program for years to come.

[1] *See* E-mail from [ATF Evidence Vault Employee] to Hope MacAllister October 12, 2010 (HOGR ATF – 002131-32).

II. Findings

- In the fall of 2009, ATF officials in Mexico began noticing a spike in guns recovered at Mexican crime scenes. Many of those guns traced directly to an ongoing investigation out of ATF's Phoenix Field Division.

- As Operation Fast and Furious progressed, there were numerous recoveries of large weapons caches in Mexico. These heavy-duty weapons included AK-47s, AR-15s, and even Barrett .50 caliber rifles – the preferred weapons of drug cartels.

- At a March 5, 2010 briefing, ATF intelligence analysts told ATF and DOJ leadership that the number of firearms bought by known straw purchasers had exceeded the 1,000 mark. The briefing also made clear these weapons were ending up in Mexico.

- ATF and DOJ leadership kept their own personnel in Mexico and Mexican government officials totally in the dark about all aspects of Fast and Furious. Meanwhile, ATF officials in Mexico grew increasingly worried about the number of weapons recovered in Mexico that traced back to an ongoing investigation out of ATF's Phoenix Field Division.

- ATF officials in Mexico raised their concerns about the number of weapons recovered up the chain of command to ATF leadership in Washington, D.C. Instead of acting decisively to end Fast and Furious, the senior leadership at both ATF and DOJ praised the investigation and the positive results it had produced. Frustrations reached a boiling point, leading former ATF Attaché Darren Gil to engage in screaming matches with his supervisor, International Affairs Chief Daniel Kumor, about the need to shut down the Phoenix-based investigation.

- Despite assurances that the program would be shut down as early as March 2010, it took the murder of a U.S. Border Patrol Agent in December 2010 to actually bring the program to a close.

- ATF officials in Mexico finally realized the truth: ATF allowed guns to walk. By withholding this critical information from its own personnel in Mexico, ATF jeopardized relations between the U.S. and Mexico.

- The high-risk tactics of cessation of surveillance, gunwalking, and non-interdiction of weapons that ATF used in Operation Fast and Furious went against the core of ATF's mission, as well as the training and field experience of its agents. These flaws inherent in Operation Fast and Furious made its tragic consequences inevitable.

III. Weapons Traced to the ATF Phoenix Field Division

FINDING: In the fall of 2009, ATF officials in Mexico began noticing a spike in guns recovered at Mexican crime scenes. Many of those guns traced directly to an ongoing investigation out of ATF's Phoenix Field Division.

Starting in late 2009, ATF officials in Mexico noticed a growing number of weapons appearing in Mexico that were traced to the ATF's Phoenix Field Division. Completely unaware of Operation Fast and Furious at the time, Carlos Canino, then Deputy Attaché to Mexico, was surprised when he learned of the number of weapons seized in Mexico that were connected to this one case in Phoenix. Canino explained:

> Either late October, early November, mid November, 2009, I was informed about the large number of guns that have made it on to the suspect gun database relating to this investigation [Operation Fast and Furious]. That is when I became aware, okay they just opened up this case in October of '09, and I thought, wow, look at all these guns.
>
> I thought two things: I thought, okay, all these guns, the reason all these guns are here is because we are finally on to these guys, and we went back and did our due diligence and found out that these guys had already beaten us for 900 guns. That was one of the things I thought.[2]

Canino informed his boss, then ATF Attaché to Mexico, Darren Gil, about an unusual amount of weapons being seized in Mexico. Gil stated:

> I remember the event that my chief analyst and my deputy came in and said, hey, we're getting this abnormal number of weapons that are being seized in Mexico and they're all coming back to the Phoenix field division. So that was my first awareness of this regarding anything to do with this case.[3]

ATF officials in Mexico never received any notice or warning from ATF in Phoenix or Washington, D.C. about the possibility of a spike in guns showing up in their host country. Instead, they began to suspect something was amiss as an inordinate number of weapons recovered in Mexico traced back to the Phoenix Field Division.

The weapons were being seized from violent crime scenes involving Mexican drug cartels. One of the early seizures occurred after a shoot-out between warring cartels. Canino described learning about this incident:

---

[2] Canino Transcript, at 11. Carlos Canino became the Acting Attaché in October 2010. Prior to this time, he served as the Deputy Attaché.

[3] Transcribed Interview of Darren Gil, Transcript, at 13 (May 12, 2011) (on file with author) [hereinafter Gil Transcript].

Q. When was the next time that you got some information about Operation Fast and Furious after October, 2009?

A. I need to go back and check, but I was approached by an ICE agent at the U.S. embassy, and he showed me some pictures of a shootup between the Sinoloa cartel and the La Familia cartel in a small town up in the mountains of Sonora. He asked – I saw the picture a lot of dead bodies he told me that the Sinoloa cartel had come into the area to try to push out the La Familia cartel, the La Familia cartel had ambushed the Sinoloans up in the mountains, and literally decimated the group. There was some firearms recovered on the scene. He asked if we could trace the guns, and we did.

When we got the traces back, I believe two or three guns had come back to the case number that is now known as Operation Fast and Furious.

I believe I reached out to ATF Group VII special agent Tonya English via e mail and I notified her that some of the firearms in her case had been recovered as a homicide, what were they planning, what were they planning to do, what is going on with this case?[4]

According to Canino, he did not receive any information about the operation's future plans or an explanation for the growing number of weapons being recovered at Mexican crime scenes linked to Operation Fast and Furious.[5] However, these seizures were only the beginning. Over the next several months, an alarming number of weapons would be seized in Mexico and traced to Phoenix.

IV. Fast and Furious Weapons Recovered at Crime Scenes

FINDING: As Operation Fast and Furious progressed, there were numerous recoveries of large weapons caches in Mexico. These heavy-duty weapons included AK-47s, AR-15s, and even Barrett .50 caliber rifles – the preferred weapons of drug cartels.

The following chart represents a list of recoveries in Mexico where weapons found were traced back to Operation Fast and Furious. Despite its length, *this list is not complete*. Rather, this list is compiled solely from information the Justice Department has provided to date. Many more recoveries may have occurred and will continue to occur in the future, but it is impossible to determine precisely how many weapons recoveries in Mexico trace back to Operation Fast and

[4] Canino Transcript, at 9-10.
[5] *Id* at 10.

Furious. So far, the Justice Department has provided documents that reference at least 48 separate recoveries involving 122 weapons connected to Operation Fast and Furious.

Recovery #	Date	Location	Notes on Recovery	# of Fast and Furious Guns Recovered
1	11/15/2009	Costa Grande, Guerrero	15 AK-47s, 30 guns, 9 guns traced to Operation Fast and Furious[6]	9
2	11/20/2009	Naco, Sonora	41 AK-47s and 1 50 caliber. "Time-to-crime," the period between the purchase date and the recovery date, of 1 day. Two multiple sales summaries linked to this seizure[7]	42
3	11/26/2009	Agua Prieta, Sonora	15 rifles, 8 pistols, traced to [SP 1][8]	1
4	12/9/2009	Mexicali, Baja	$2 million US, $1 million Mexican, 421 kilos cocaine, 60 kilos meth, 41 AK-47s, 5 traced to Operation Fast and Furious[9]	5
5	12/18/2009	Tijuana, Baja	"El Teo" link, 5 AK-47 type rifles recovered and 1 linked to [SP 2][10]	1
6	12/18/2009	Tijuana, Baja	Traced to weapons bought 11/13/09[11]	1
7	1/8/2010	Tijuana, Baja	"El Teo" link, 2 guns traced to F&F, bought by [SP 2] on 12/13/09 and [SP 1][12]	2
8	1/11/2010	Guasave, Sinaloa	2,700 rounds of ammo, 3 belts of rounds, 9 rifles, 2 grenade launchers, 1 gun traced to Operation Fast and Furious[13]	1

[6] E-mail from Tonya English to David Voth March 09, 2010 (HOGR ATF – 001803-12).
[7] E-mail from William Newell to Lorren Leadmon November 25, 2009 (HOGR ATF – 002141); *see also* e-mail from [ATF NTC] to Hope MacAllister December 9, 2009 (HOGR ATF – 002205-06); *see also* e-mail from Mark Chait to William Newell, Daniel Kumor November 25, 2009 (HOGR ATF – 001993).
[8] *See generally* "Operation The Fast and The Furious" Presentation, March 5, 2010.
[9] E-mail from [ATF NTC] to Tonya English, [ATF Group 7 SA], Hope MacAllister, David Voth January 8, 2010 (HOGR ATF – 002210-11); *see also* e-mail from [ATF Tijuana Field Office Agent] to David Voth February 24, 2010 (HOGR ATF – 002301); "Operation The Fast and The Furious" Presentation, March 5, 2010.
[10] E-mail from [ATF Intelligence Specialist] to [ATF Group 7 SA], Hope MacAllister, Tonya English, David Voth January 13, 2010 (HOGR ATF – 002166-70).
[11] E-mail from [ATF NTC] to Hope MacAllister December 29, 2009 (HOGR ATF – 002208-09).
[12] E-mail from Lorren Leadmon to [ATF Intelligence Specialist], [ATF Group 7 SA], Hope MacAllister, Tony English, David Voth, [ATF Analyst Chief – Mexico] January 18, 2010 (HOGR ATF – 002112); *see also* e-mail from Tonya English to Hope MacAllister January 14, 2010 (HOGR ATF – 002214-15); *see also* e-mail from [ATF Tijuana Field Office Agent] to David Voth February 24, 2010 (HOGR ATF – 002301).
[13] E-mail from [ATF Intelligence Analyst] to David Voth March 9, 2010 (HOGR ATF – 002307-08).

Recovery #	Date	Location	Notes on Recovery	# of Fast and Furious Guns Recovered
9	2/8/2010	La Paz, Baja	4th recovery related to "El Teo" organization[14]	1
10	2/21/2010	Sinaloa, Mexico	15 rifles, 5 handguns, 11,624 rounds of ammunition. At least 4 weapons traced to [SP 1] [15]	4
11	2/25/2010	Tijuana, Baja	"El Teo" link, attempted State Police Chief assassination, guns traced to [SP 4] [16]	1
12	3/14/2010	Juarez, Chihuahua	5 weapons traced back to Operation Fast and Furious purchased by [SP 2], [SP 3], and [SP 2][17]	5
13	6/15/2010	Acapulco, Guerrero	6 rifles, 1,377 rounds of ammo, 1 traced back to Operation Fast and Furious[18]	1
14	6/24/2010	Tijuana, Baja	6 AK-47 type firearms, 5 traced back to [SP 2][19]	5
15	7/1/2010	Tubutama, Sonora	DTO battle, 15 firearms seized, 12 rifles, 3 pistols, 1 traced to Operation Fast Furious[20]	1
16	7/4/2010	Navajoa, Sonora	25 AK-47 rifles, 78 magazines, over 8,000 rounds of ammo, 1 AK-47 traced to [SP 1] 3/2/10 purchase[21]	1
17	7/8/2010	Culiacan, Sinaloa	Grenade launcher, 2 submachine guns, 8 rifles, 3 shotguns, 1,278	1

[14] *See generally* "Operation the Fast and the Furious" Presentation, March 5, 2010.
[15] E-mail from Tonya English to [ICE Agent] March 19, 2010 (HOGR ATF – 001813-15); *see also* e-mail from David Voth to Tonya English, Hope MacAllister, [ATF Group 7 SA] March 22, 2010 (HOGR ATF – 002114-15); *see also* e-mail from Lorren Leadmon to David Voth, [ATF Analyst Chief – Mexico] March 11, 2010 (HOGR ATF – 002133-40); *see also* e-mail from Lorren Leadmon to David Voth, [ATF Analyst Chief – Mexico] March 11, 2010 (HOGR ATF – 002315-16).
[16] E-mail from David Voth to Emory Hurley February 26, 2010 (HOGR ATF – 002271-72).
[17] E-mail from [ATF SA] to Hope MacAllister, Tonya English, [ATF El Paso SA] April 29, 2010 (HOGR ATF – 001713-16).
[18] E-mail from [ATF Mexico City SA] to Tonya English January 26, 2011 (HOGR ATF – 001863-65).
[19] E-mail from [ATF SA-EPIC] to Tonya English July 1, 2010 (HOGR ATF – 001821); *see also* e-mail from [ATF NTC] to Tonya English July 1, 2010 (HOGR ATF – 001824).
[20] E-mail from David Voth to Carlos Canino July 14, 2010 (HOGR ATF – 002378-2379).
[21] E-mail from [ATF SA-EPIC] to Tonya English August 3, 2010 (HOGR ATF – 001726-27); *see also* e-mail from [ATF NTC] to Hope MacAllister, Tonya English July 15, 2010 (HOGR ATF – 001729-1730); *see also* e-mail from David Voth to Tonya English July 30, 2010 (HOGR ATF – 001742-43); *see also* e-mail from Tonya English to [ATF SA-EPIC], [ATF Analyst] July 29, 2010 (HOGR ATF – 001796-97).

Recovery #	Date	Location	Notes on Recovery	# of Fast and Furious Guns Recovered
			rounds of ammo, 1 rifle traced to Operation Fast and Furious[22]	
18	7/21/2010	El Roble, Durango	5 handguns, 15 rifles, 70 armored vests, night vision goggles, 1 traced to [SP 1] 3/22/10 purchase[23]	1
19	7/27/2010	Durango, Durango	Barrett 50 caliber traced to [SP 1] purchase on 3/22/10[24]	1
20	8/1/2010	Chihuahua, Chihuahua	Romarm 762s traced to 12/17/09 purchase[25]	1
21	8/1/2010	Sinaloa de Leyva, Sinaloa	Barrett 50 caliber traced to Operation Fast and Furious, bought 6/8/10[26]	1
22	8/11/2010	Santiago, Durango	16 rifles, 110 magazines, 36 bullet-proof vests, 1 rifle traced to Operation Fast and Furious[27]	1
23	8/13/2010	Santiago Papasquiaro, Durango	Romarm/Cugir 762 traced to Operation Fast and Furious[28]	1
24	8/14/2010	El Naranjo, Sinaloa	16 firearms including Barrett 50 caliber, 69 magazines, 2,060 rounds of ammo, 1 weapon traced to Operation Fast and Furious[29]	1
25	8/24/2010	Nogales, Sonora	Romarm/Cugir 762 traced to Operation Fast and Furious, bought 12/14/09[30]	1
26	9/8/2010	San Luis, Sonora	Romarm/Cugir 762 traced to Operation Fast and Furious, bought 12/14/09[31]	1

[22] E-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English July 19, 2010 (HOGR ATF – 001717-18); *see also* e-mail from [ATF NTC] to Hope MacAllister, Tonya English July 15, 2010 (HOGR ATF – 001723).
[23] E-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] August 3, 2010 (HOGR ATF – 001731-32).
[24] E-mail from [ATF NTC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] July 28, 2010 (HOGR ATF – 001735-36); *see also* e-mail from [ATF Firearms Specialist] to Tonya English, [ATF Group 7 SA], Hope MacAllister June 10, 2010 (HOGR ATF – 002117-20).
[25] E-mail from [ATF NTC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] January 21, 2011 (HOGR ATF – 001856-57).
[26] E-mail from [ATF NTC] to Tonya English, Hope MacAllister August 13, 2010 (HOGR ATF – 002013-14).
[27] E-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English October 18, 2010 (HOGR ATF – 002178).
[28] E-mail from [ATF NTC] to Hope MacAllister, Tonya English October 18, 2010 (HOGR ATF – 002181-82).
[29] E-mail from [ATF Investigative Specialist] to [ATF NTC], Hope MacAllister, Tonya English August 23, 2010 (HOGR ATF – 002174-75).
[30] E-mail from [ATF SA-EPIC] to [ATF Group 7 SA], Hope MacAllister, Tonya English September 15, 2010 (HOGR ATF – 002123-24).

Recovery #	Date	Location	Notes on Recovery	# of Fast and Furious Guns Recovered
27	9/9/2010	Nogales, Sonora	Guns traced to Operation Fast and Furious, bought on 11/27/09[32]	1
28	9/10/2010	Tijuana, Baja	6 firearms recovered, 6 firearms traced to Operation Fast and Furious purchases on 8/6/10 and 8/11/10[33]	6
29	9/14/2010	Nogales, Sonora	Romarm/Cugir 762 traced to Operation Fast and Furious[34]	1
30	9/18/2010	Colonia Granjas, Chihuahua	Romarm/Cugir 762 traced to Operation Fast and Furious[35]	1
31	9/22/2010	Saric, Sonora	18 AK-47 rifles and 1 Barrett 50 caliber, 1 firearm traced to Operation Fast and Furious[36]	1
32	9/24/2010	Saric, Sonora	Guns bought on 2/16/10 traced to [SP 3] and [SP 1] [37]	1
33	9/26/2010	Reynosa, Tamaulipas	Traced guns to Operation Fast and Furious bought 3/18/10[38]	1
34	9/28/2010	Juarez, Chihuahua	Romarm/Cugir 762 traced to Operation Fast and Furious, bought 1/7/10[39]	1
35	10/11/2010	Saric, Sonora	Firearm traced to 11/17/09 purchase[40]	1
36	10/12/2010	Tepic, Nayarit	Barrett 50 caliber traced to Operation Fast and Furious, bought 2/17/10[41]	1

[31] E-mail from [ATF SA-EPIC] to [ATF Group 7 SA], Hope MacAllister, Tonya English September 15, 2010 (HOGR ATF – 002121-22).
[32] E-mail from [ATF SA-EPIC] to [ATF Group 7 SA], Hope MacAllister, Tonya English September 20, 2010 (HOGR ATF – 002186-87).
[33] E-mail from [ATF NTC] to Hope MacAllister, Tonya English September 17, 2010 (HOGR ATF – 001744-45); *see also* e-mail from[ATF NTC] to Hope MacAllister, Tonya English September 14, 2010 (HOGR ATF – 001748-49); *see also* e-mail from [ATF NTC] to Tonya English, Hope MacAllister September 20, 2010 (HOGR ATF – 001754-55).
[34] E-mail from [ATF NTC] to Hope MacAllister, Tonya English September 16, 2010 (HOGR ATF – 001746); *see also* e-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] September 20, 2010 (HOGR ATF – 001752-53).
[35] E-mail from Hope MacAllister to [AUSA AZ District] November 29, 2010 (HOGR ATF – 001798-99).
[36] E-mail from [ATF Investigative Specialist] to Hope MacAllister, [ATF NTC], [ATF NTC] October 28, 2010 (HOGR ATF – 001756-59).
[37] E-mail from [ATF NTC] to Hope MacAllister, Tonya English October 7, 2010 (HOGR ATF – 002126-27).
[38] E-mail from [ATF NTC] to Hope MacAllister, Tonya English October 26, 2010 (HOGR ATF – 001831-32).
[39] E-mail from [ATF NTC] to Hope MacAllister, Tonya English October 15, 2010 (HOGR ATF – 002129-2130).
[40] E-mail from [ATF NTC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] November 19, 2010 (HOGR ATF – 002003-04).
[41] E-mail from [ATF NTC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] November 19, 2010 (HOGR ATF – 002001-02).

Recovery #	Date	Location	Notes on Recovery	# of Fast and Furious Guns Recovered
37	10/12/2010	Juarez, Chihuahua	Romarm/Cugir 762 traced to Operation Fast and Furious bought 1/7/10[42]	1
38	10/19/2010	Reynosa, Tamaulipas	Romarm/Cugir 762 traced to Operation Fast and Furious[43]	1
39	10/28/2010	Acapulco, Guerrero	Romarm/Cugir 762 traced to Operation Fast and Furious[44]	1
40	11/4/2010	Chihuahua, Chihuahua	16 guns, 2 traced to Operation Fast and Furious, Used in the murder of Mario Gonzalez[45]	1
41	11/22/2010	Nogales, Sonora	Traced to guns bought 11/27/09[46]	1
42	12/14/2010	Puerto Penasco, Sonora	5 guns traced to Operation Fast and Furious, bought 12/11/09, 12/14/09, 6/8/10, and 6/15/10[47]	5
43	12/17/2010	Zumu Rucapio, MC	Traced to Operation Fast and Furious, bought 11/27/09[48]	1
44	12/28/2010	Obregon, Sonora	12 total firearms, 1 firearm traced to Operation Fast and Furious, bought 4/12/10[49]	1
45	1/9/2011	Chihuahua, Chihuahua	6 rifles and magazines seized, 1 firearm traced to Operation Fast and Furious[50]	1
46	1/25/2011	Culiacan, Sinaloa	Romarm/Cugir 762 traced to Operation Fast and Furious, bought 3/8/10[51]	1

[42] E-mail from [ATF NTC] to Hope MacAllister, [ATF Group 7 SA], Tonya English December 15, 2010 (HOGR ATF – 002190-91).
[43] E-mail from Hope MacAllister to [AUSA AZ District] November 29, 2010 (HOGR ATF – 001798).
[44] E-mail from Hope MacAllister to [AUSA AZ District] November 29, 2010 (HOGR ATF – 001799).
[45] E-mail from Tonya English to David Voth November 15, 2010 (HOGR ATF – 001792).
[46] E-mail from [ATF NTC] to Hope MacAllister, Tonya English November 24, 2010 (HOGR ATF – 001833-38); *see also* e-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English December 8, 2010 (HOGR ATF – 002188-89).
[47] E-mail from [ATF NTC] to Hope MacAllister, Tonya English December 28, 2010 (HOGR ATF – 001842-51).
[48] E-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] December 22, 2010 (HOGR ATF – 001852-55).
[49] E-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English March 21, 2011 (HOGR ATF – 001874-77); *see also* e-mail from [ATF NTC] to Hope MacAllister, Tonya English March 17, 2011 (HOGR ATF – 001885-86).
[50] E-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] February 2, 2011 (HOGR ATF – 002192-93); *see also* e-mail from [ATF NTC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] January 18, 2011 (HOGR ATF – 002196-97).
[51] E-mail from [ATF NTC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] March 21, 2011 (HOGR ATF – 001883-84).

Recovery #	Date	Location	Notes on Recovery	# of Fast and Furious Guns Recovered
47	2/4/2011	Juarez, Chihuahua	Barrett 50 caliber traced to Operation Fast and Furious, bought 2/2/10[52]	1
48	2/19/2011	Navajoa, Sonora	37 rifles, 3 grenade launchers, 16,000 rounds of ammo, 1 Firearm traced to Operation Fast and Furious, purchased on 3/8/10[53]	1
			TOTAL	**122**[54]

These documented recoveries indicate that a significant number of Operation Fast and Furious guns ended up in Mexico. However, there are indications that the numbers could be larger. For example, within 24 hours of the murder of Border Patrol Agent Brian Terry, Special Agent in Charge (SAC) Bill Newell asked for the total number of Operation Fast and Furious firearms recovered to date in Mexico and the U.S.[55] Five days later, on December 21, 2010, Newell forwarded the totals to his boss, Deputy Assistant Director William McMahon, indicating that he had the numbers compiled because, "I don't like the perception that we allowed guns to 'walk.'"[56] According to the tally Newell received on December 16, 2010, approximately 241 firearms had been recovered in Mexico and 350 in the U.S.[57] The number reported to Newell as recovered in Mexico as of the day after Agent Terry's death is twice what can be verified through documents produced by the Department of Justice as outlined in the table above. Furthermore, this number is much higher than the 96 firearms reported by the Department of Justice as recovered in Mexico in answers to questions for the record received on July 22, 2011.[58]

[52] E-mail from [ATF NTC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] February 17, 2011 (HOGR ATF – 001859-62); *see also* e-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] March 21, 2011 (HOGR ATF – 001880-82); *see also* e-mail from [ATF NTC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] February 17, 2011 (HOGR ATF – 002020-21).

[53] E-mail from [ATF SA-EPIC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] March 7, 2011 (HOGR ATF – 002198-99); *see* E-mail from [ATF NTC] to Hope MacAllister, Tonya English, [ATF Group 7 SA] March 1, 2011 (HOGR ATF – 002202-03).

[54] This total of 122 guns is based on documents produced to the Committees by DOJ and total represents the minimum number of guns recovered in Mexico as identified by the Committees.

[55] E-mail from David Voth to William Newell December 16, 2010, 7:22pm (HOGR ATF – 001935).

[56] *Id.*

[57] *Id.*

[58] Letter from Ronald Weich, Asst. Att'y Gen., U.S. Dep't of Justice, to Senator Patrick Leahy, Chairman, Senate Jud. Comm., July 22, 2011, 14 ("Based on information known to ATF and analyzed as of May 26, 2011, we understand that ninety-six (96) firearms were recovered in Mexico after the suspects were identified in the investigation.").

From: McMahon, William G.
Sent: Tuesday, December 21, 2010 11:21 AM
To: Newell, William D.
Subject: RE: simple numbers on F&F recoveries

10-4 thanks.

William G. McMahon
Deputy Assistant Director (West)
Office of Field Operations
[redacted]

From: Newell, William D.
Sent: Tuesday, December 21, 2010 11:21 AM
To: McMahon, William G.
Subject: Fw: simple numbers on F&F recoveries

For what it's worth and since I don't like the perception that we allowed guns to "walk", I had David Voth pull the numbers of the guns recovered in Mexico as well as those we had a direct role in taking off here in the US. Almost all of the 350 seized in the US were done based on our info and in such a way to not burn the wire or compromise the bigger case. The guns purchased early on in the case we couldn't have stopped mainly because we weren't fully aware of all the players at that time and people buying multiple firearms in Arizona is a very common thing.

...

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Voth, David J.
To: Newell, William D.
Sent: Thu Dec 16 19:22:42 2010
Subject: simple numbers on F&F recoveries
Sir,

I can make this more grand tomorrow if you wish but right now by my count;

- Firearms recovered in Mexico = 241
- Firearms recovered in the USA = 350

Thanks,

David Voth
Group Supervisor
Phoenix Group VII
[redacted]

More troubling, several of these recoveries highlight the deadly consequences of Operation Fast and Furious.[59]

[59] *See* Section VII *infra*, page 48 for an in-depth look at the tragic consequences of Operation Fast and Furious.

A. Tracing the Recoveries

ATF officials in Mexico learned about many of these recoveries through open sourcing, such as articles in local newspapers or internet searches. After learning of these recoveries, however, it was incumbent on ATF employees in Mexico to attempt to view the weapons recovered as soon as possible in order to see if any link existed between the weapon and the United States. Mexican authorities transported the seized weapons to local police stations for processing. Once processed, the authorities turned the weapons over to the Mexican military, which stored them in vaults indefinitely. Once the Mexican military acquired these weapons, they were considered to be for the exclusive use of the military, and viewing them required a court order. It was therefore imperative for ATF agents in Mexico attempt to view the weapons as soon as possible after a recovery.

When ATF agents in Mexico were able to view these recovered weapons, they could also enter the serial numbers of the weapons into an online internal tracing system known as e-Trace. ATF has a procedure for tracing weapons. This initiates a manual tracing process which involves notifying the National Tracing Center (NTC), located in Martinsburg, WV, of the recovery. NTC then identifies the purchaser as well as the date of purchase. The process can take several days. ATF also maintains a Suspect Gun Database (SGD). This database is a list of all the guns purchased that ATF believes might turn up at crime scenes. Since no specific criteria exist for entering a gun into the SGD, it is usually up to the case agent's discretion. During Operation Fast and Furious, Group VII case agents entered over 1,900 guns into the SGD, usually within days of the purchase. Since these weapons were already in the SGD, the case agent would receive notice the trace request was submitted and the full manual trace process was unnecessary.

Starting in late 2009, ATF officials in Mexico began to notice that many of the weapon recoveries in Mexico traced back to the same Phoenix investigation. ATF personnel in Mexico called the Phoenix Field Division to notify them of what was occurring. The response from Phoenix was that everything was under control and not to worry about the investigation. Because the guns were in the SGD, the case agent in Phoenix received notice of trace requests. The case agent could limit the information that other ATF officials would receive to merely a notice that the trace results were "delayed," which effectively kept ATF personnel in Mexico out of the loop.

For example, in June 2010, Hope MacAllister, the Operation Fast and Furious case agent asked an NTC employee to postpone the completion of several traces for guns recovered in Mexico. With the subject line "RE: Suspect Gun Notification – DO NOT Trace ?," the employee writes, "Good morning, as case agent you advised 'do not trace', [t]race will be held pending upon your instructions."[60] In her response, MacAllister asks, "Can we postpone completing that trace as well? Thanks!"[61] These holds prevented ATF personnel in Mexico from discovering the origin of the recovered guns.

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[60] E-mail from [NTC employee] to Tonya English and Hope MacAllister, June 10, 2010 (HOGR ATF - 002114).
[61] E-mail from Hope MacAllister to [NTC employee], June 11, 2010 (HOGR ATF - 002117).

To make matters worse, ATF officials in Mexico did not even know that their fellow agents were shutting them out of the investigation. With reassurances from ATF Phoenix and ATF Headquarters in Washington D.C. that things were under control, ATF officials in Mexico remained unaware that ATF was implementing a strategy of allowing straw purchasers to continue to transfer firearms to traffickers. Even though large recoveries were taking place in Mexico, with the awareness of senior ATF officials in both Phoenix and Washington D.C, ATF officials in Mexico did not have the full picture. What they were able to piece together based on several large weapons seizures made them extremely nervous.

B. The Naco, Mexico Recovery

The first large recovery of weapons in Mexico linked to Operation Fast and Furious occurred on November 20, 2009, in Naco, Sonora – located on the U.S./Mexico border. All of the 42 weapons recovered in Naco traced back to Operation Fast and Furious straw purchasers. Forty-one of these weapons were AK-47 rifles and one was a Beowulf .50 caliber rifle. Twenty of the weapons in this recovery were reported on multiple sales summaries by ATF, and these weapons had a "time-to-crime" of just one day.[62] Within a span of 24 hours, a straw purchaser bought guns at a gun store in Arizona and facilitated their transport to Naco, Mexico with the intent of delivering the guns to the Sinaloa cartel.

Mexican authorities arrested the person transporting these weapons, a 21-year old female. Mexican authorities interviewed her along with her brother, who was also in the vehicle. According to an official in ATF's Office of Strategic Information and Intelligence (OSII), the female suspect told law enforcement that she intended to transport the weapons straight to the Sinaloa cartel.[63] From the very first recovery of weapons ATF officials knew that drug trafficking organizations (DTOs) were using these straw purchasers.

C. The Mexicali Recovery

Nearly three weeks after the Naco recovery, an even bigger weapons seizure occurred in Mexicali, the capital of the state of Baja California, located near the border. The seizure included the following weapons:

- 41 AK-47 rifles
- 1 AR-15 rifle
- 1 FN 5.7

In addition, Mexican authorities seized the following items:

- 421 kilograms of cocaine
- 60 kilograms of methamphetamine
- 392 rounds of ammunition
- $2 million U.S. dollars

[62] E-mail from Mark Chait to William Newell and Daniel Kumor, November 25, 2009 (HOGR ATF – 001993).
[63] Interview with Lorren Leadmon, Intelligence Operations Specialist, in Wash., D.C., July 5, 2011.

- $1 million Mexican pesos

Of the twelve suspects detained, all were from the state of Sinaloa.[64] Several were identified members of the Sinaloa cartel.[65] The guns recovered at the scene traced back to straw purchasers being monitored under ATFs Operation Fast and Furious.[66] With a second large recovery tracing to the same case in Phoenix in less than three weeks, there was little doubt to ATF officials monitoring Operation Fast and Furious what was happening. As one ATF Special Agent wrote to Fast and Furious Case Agent Hope MacAllister, "[the head of the Sinaloa cartel] **is arming for a war**."[67]

D. The El Paso, Texas Recovery

On January 13, 2010, the ATF Dallas Field Division seized 40 rifles traced to Operation Fast and Furious suspect [SP 2].[68] This seizure connected Operation Fast and Furious suspects with a specific high-level "plaza boss" in the Sinaloa DTO.[69] Additionally, this seizure may have represented a shift in the movement of Operation Fast and Furious weapons in order to provide the necessary firearms for the Sinaloa Cartel's battle for control of the Juarez drug smuggling corridor.[70]

This possible shift of Operation Fast and Furious weapons may have been a result of the death of Arturo Beltrán-Leyva in December 2009. Mexican authorities killed Beltrán-Leyva, the leader of the Beltrán-Leyva DTO, effectively crippling his family's DTO.[71] The resulting decreased competition in Sonora between the Sinaloa DTO and the Beltrán-Leyva DTO may have contributed to the shift in Operation Fast and Furious weapons transported to Juarez. The map below, created by the Drug Enforcement Administration (DEA), reflects the areas of DTO influence in Mexico:[72]

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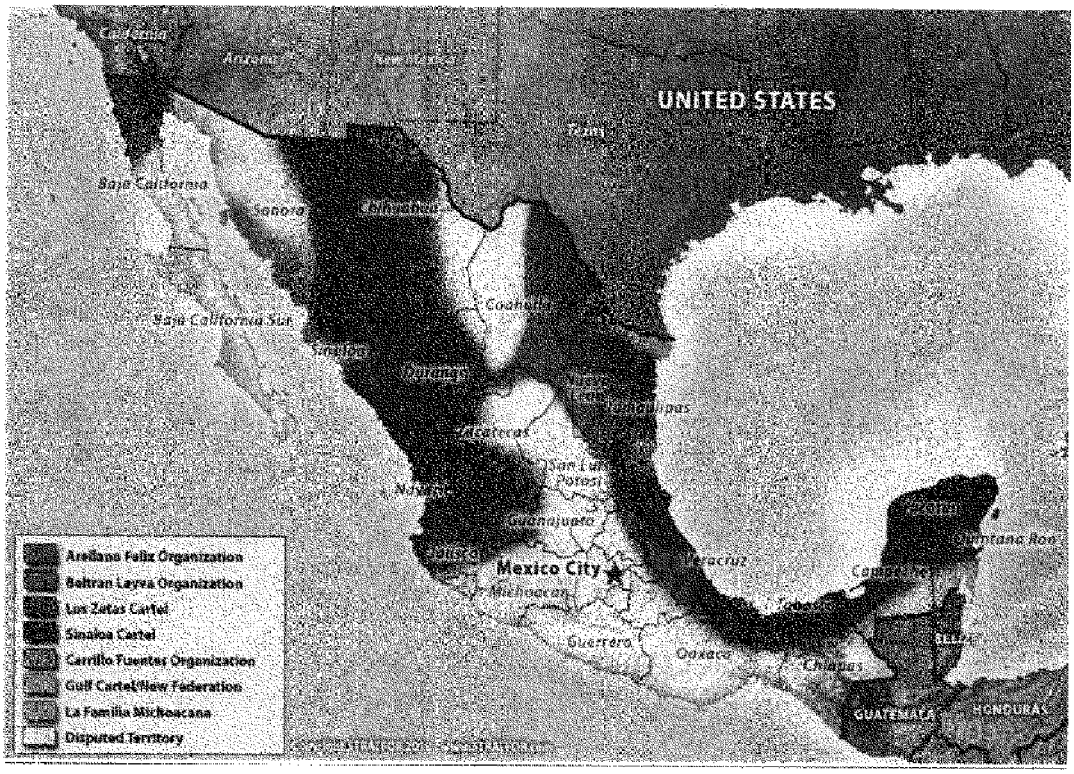
[64] *See* "Operation The Fast and The Furious" Presentation, March 5, 2010.
[65] *Id.*
[66] E-mail from [ATF Official] to David Voth, February 24, 2010 (HOGR ATF – 002301).
[67] E-mail from Jose Wall to Hope MacAllister, December 11, 2009 (HOGR ATF – 002024).
[68] This recovery is not listed in the chart in Section IV since it occurred in the United States.
[69] *See* "Operation the Fast and the Furious" Presentation, March 5, 2010.
[70] *See* Alicia A. Caldwell & Mark Stevenson, *Sinaloa Drug Cartel Wins Turf War in Juarez*, AP, April 9, 2010 *available at* http://www.azcentral.com/news/articles/2010/04/09/20100409cartel-wins-turf-war-juarez-mexico09-ON.html (highlighting statements made by FBI officials that the Sinaloa DTO gained control over trafficking routes through Ciudad Juarez).
[71] Ruth Maclean, *Mexico's Drug 'Boss of Bosses' Shot Dead in Raid on Luxury Hideout*, December 18, 2009, *available at* http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6960040.ece (summarizing the bloody feud between the Beltrán-Leyva brothers and Joaquin Guzmán, the head of the Sinaloa DTO).

AREAS OF CARTEL INFLUENCES IN MEXICO



E. *Tuesday Briefings at ATF Headquarters*

These weapons recoveries did not occur in a vacuum. Upon learning of the recoveries, analysts in ATF's Office of Strategic Information and Intelligence (OSII) in Washington, D.C. attempted to piece together fragments of information to report up the chain of command. According to ATF personnel, every Tuesday morning OSII holds a briefing for the field operations staff to share and discuss information about ongoing ATF cases.[73] Typically, the four Deputy Assistant Directors for Field Operations attend. Additionally, Mark Chait, the Assistant Director for Field Operations, often attends. Occasionally, Deputy Director William Hoover and Acting Director Kenneth Melson attend these briefings.

OSII first briefed on Operation Fast and Furious on Tuesday December 8, 2009, including the Naco recovery. The following week, OSII briefed the Mexicali recovery. Subsequent briefings covered other recoveries that had occurred in the United States. The magnitude of the Operation Fast and Furious investigation quickly became apparent to senior ATF officials.

[73] Interview with Lorren Leadmon, Intelligence Operations Analyst, in Wash., D.C., July 5, 2011.

F. January 5, 2010 Briefing

Assistant Director Mark Chait, Deputy Assistant Director Bill McMahon, International Affairs Chief Daniel Kumor, Southwest Border Czar Ray Rowley, and Assistant Director James McDermond all attended the January 5, 2010, field-ops briefing led by Intelligence Operations Specialist Lorren Leadmon.[74] At this briefing, the participants expressed concerns about Operation Fast and Furious. Though the briefing included the normal updates of weapons seizures linked to Operation Fast and Furious provided every Tuesday, the January 5, 2010, briefing also included a key addition.

OSII had compiled a summary of all of the weapons that could be linked to known straw purchasers under Operation Fast and Furious to date and presented this information to the group. The total number of guns purchased in just two months was 685.[75]

Steve Martin, an ATF Deputy Assistant Director for OSII, took extensive notes during the briefing. Examining the locations where the weapons ended up in Mexico, he outlined potential investigative steps that could be taken to address the problem.[76] Due to the sheer volume of weapons that had already moved south to Mexico, he had a hunch that guns were being walked:

> A. So I made – they were talking about – I had [SP 1] in there, I had [SP 2] who were major purchasers. And I had numbers by them about how many guns they had purchased from the PowerPoint. I had a little picture drawn, with Phoenix at the top and then guns going two ways, one down to Naco and then over to Mexicali.
>
> Q. Uh huh.
>
> A. And that was because we said . . . it's the same distance to go from Phoenix to these two places. So they don't all have to go to here to arm the Sinaloa Cartel; they can go over to Mexicali and bring them that way-same distance. So that's one thing I wrote as I was being briefed.
>
> I also wrote down guns, **I think, guns walking into Mexico. Because that's just, kind of, what's going through my head**. And I had, if yes into Mexico, then some things to do; if no into Mexico, things to do. Then I put a list of a whole list of stuff that you could do investigative wise: interview straw purchasers, put

[74] Transcribed Interview of Steve Martin, Transcript at 40, July 6, 2011 (on file with author) [hereinafter Martin Transcript].
[75] *Id.* at 43.
[76] Notes from Steve Martin, ATF Deputy Assistant Director for OSII, January 5, 2010 (HOGR ATF – 001552-53) (produced *in camera* by the Department of Justice).

trackers on the guns, put pole cams up, mobile surveillance, aerial surveillance, a number of stuff.[77]

Hoping to draw from his experience as a former Assistant Special Agent in Charge (ASAC) and Special Agent in Charge (SAC), Martin wanted to offer suggestions on a plan for the case – specifically, how to track weapons, conduct surveillance, and eventually bring Operation Fast and Furious to a close. Those in field operations – the chain of command responsible for overseeing and implementing Operation Fast and Furious – responded to his suggestions with complete silence. ATF personnel within field operations felt free to ignore OSII's suggestions and complaints because OSII's role was to support field operations:

A. From my notes, **I asked Mr. Chait and Mr. McMahon, I said, what's your plan? I said, what's your plan?** And I said, hearing none, **and I don't know if they had one.** I said . . . there are some things that we can do. Ray Rowley, who was the southwest border czar at the time, asked, **how long are you going to let this go on?**

Q. This is in January 2010?

A. January 5th, that meeting, that's correct. Ray has since retired. So I said, well, here are some things that . . . we might think of doing. And we had talked about this before, we'd brainstormed stuff, too, with Lorren. Lorren even talked about it. Kevin talked about it. Kevin O'Keefe had done a lot of trafficking investigations in south Florida – about identifying some weak straw purchasers, let's see who the weak links are, maybe the super young ones, the super old ones. Pole cameras . . . put them up to see who is coming and going, to help you with surveillance.

The aerial surveillance, the mobile surveillance, trackers. I said . . . one of the first things I would do is think about putting trackers, to help me keep track of where they're going.

And I said, as far as going into Mexico, I said, have we thought about putting trackers on them and let them - - follow them into Mexico? Dan Kumor said, the Ambassador would never go for that. I said, okay, fine. I said, I'm not going to pursue that anymore, assuming that.

Had we thought about putting trackers on them and following them down to see where they're going across, to see where they go, who they're in contact with, and where they cross the border, we might find out something new and then . . . interdict. And I got no response. And I wasn't asking for one. I was just . . . throwing this stuff out.

[77] Martin Transcript, at 39-41.

Q. You said this to who again, Mr. Chait?

A. Mr. Chait, Mr. McMahon, Mr. Kumor. My boss was there, Jim McDermond, who agreed with me because we talked probably daily.

Q. **Did any of those folks step up at that time and say, "Oh, no, no, no. We've got another great plan in place"?**

A. **No. No.**

Q. **They were silent?**

A. **Yes. And I don't know if they had one.** I mean, they could have. I don't know.

Q. Do you remember if they were nodding their head, giving you **any nonverbal cues that . . . this sounds like a bright idea that you're suggesting?**

A. **Not that I recall, no.**

Q. Or was it just like **a blank look on their face**?

A. Just listening.[78]

Whether Mr. Chait or Mr. McMahon had a plan for Operation Fast and Furious is unclear. What is clear is that they did not take kindly to suggestions from OSII about the operation. They were not inclined to discuss the operation at all, choosing instead to excuse themselves from the conversation:

A. Somewhere during the meeting, Mr. Chait said that he had to go to another meeting, and he left. Mr. McMahon said that he had to go check some E-mails in a classified system, and he left. And then it was just the rest of us talking.

Q. Do you feel that the other meeting, checking the E-mails on a classified system, was that an indication to you that they just didn't want to talk about this topic?

A. You know, I'm not going to go into their brain on that one.

Q. Okay. Well . . . sitting in a room with them, was that your perception?

[78] *Id.* at 43-45.

A. Well, I would like – it would have been nice to have some interaction. . . .

Q. So it was a one-way conversation of suggestions from you, from Mr. McDermond, to how to effectively limit –

A. Pretty much from me and the others to the field officers.[79]

G. *March 5, 2010 Briefing*

FINDING: At a March 5, 2010 briefing, ATF intelligence analysts told ATF and DOJ leadership that the number of firearms bought by known straw purchasers had exceeded the 1,000 mark. The briefing also made clear these weapons were ending up in Mexico.

Two months after the January 5, 2010 briefing, ATF headquarters hosted a larger, more detailed briefing on Operation Fast and Furious. Not part of the normal Tuesday field ops briefings, this special briefing only covered Operation Fast and Furious. David Voth, the Phoenix Group VII Supervisor who oversaw Operation Fast and Furious, traveled from Phoenix to give the presentation. On videoconference were the four southwest border ATF SACs: Bill Newell in Phoenix, Robert Champion in Dallas, J. Dewey Webb in Houston, and John Torres in Los Angeles.

In addition to the usual attendees of the Tuesday morning field ops briefings (the Deputy Assistant Directors for Field Operations, including Bill McMahon, and Mark Chait, Assistant Director for Field Operations), Deputy Director William Hoover also attended. Joe Cooley, a trial attorney from the gang unit at Main Justice, also joined. After a suggestion from Acting ATF Director Ken Melson in December 2009, Assistant Attorney General Lanny Breuer personally assigned Cooley as a DOJ representative for Operation Fast and Furious. Kevin Carwile, chief of the Capital Case Unit at Main Justice, may have also been present. According to Steve Martin, the inclusion of Main Justice representatives was unusual.[80]

An extremely detailed synopsis of the current details of the investigation ensued, including the number of guns purchased, specific details of all Operation Fast and Furious weapons seizures to date, money spent by straw purchasers, and organizational charts of the straw purchasers and their relationship not only to each other, but also to members of the Sinaloa DTO. At that point, there had been 15 related weapons seizures over a four to five month period.[81]

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[79] *Id.* at 45-46.
[80] *Id.* at 91 ("[Joe Cooley and Kevin Carwile] never sat in any of my briefings that I can recall.").
[81] *Id.* at 97. *See generally* "Operation Fast and the Furious" Presentation, March 5, 2010.

Two of the first slides in the March 5, 2010 presentation detailed the number of weapons bought as of February 27, 2010 – **1,026** – and the amount of money spent, in cash, to purchase these weapons – nearly **$650,000**:[82]

Total Firearms Purchased as of February 27, 2010	
Name	**Total of Firearms**
[redacted]	313
[redacted]	241
[redacted]	116
[redacted]	68
[redacted]	55
[redacted]	30
[redacted]	25
[redacted]	22
[redacted]	20
[redacted]	20
[redacted]	18
[redacted]	17
[redacted]	13
[redacted]	10
[redacted]	10
[redacted]	8
[redacted]	8
[redacted]	8
[redacted]	5
[redacted]	5
[redacted]	3
[redacted]	2
[redacted]	1
[redacted]	1
[redacted]	1
[redacted]	1
[redacted]	1
[redacted]	1
[redacted]	1
[redacted]	1
[redacted]	1
TOTAL	**1026**

[82] *See* "Operation the Fast and the Furious" Presentation, March 5, 2010.

Total Costs of Firearms Purchased as of February 27, 2010			
Name	Gun Purchases	Invoice Total	Notes
[redacted]	$8,189.50	$8,880.81	
[redacted]	11,984.00	13,002.64	
[redacted]			Need Receipts
[redacted]	2,589.60	3,125.57	
[redacted]	36,959.75	38,823.33	
[redacted]	36,541.75	39,663.33	
[redacted]	3,199.60	3,466.77	
[redacted]	6,487.00	7,038.39	
[redacted]	3,999.50	4,333.46	
[redacted]	22,719.80	23,781.91	
[redacted]			Need Receipts
[redacted]	8,789.50	9,530.91	
[redacted]	849.98	849.98	
[redacted]	4,494.75	4,873.80	
[redacted]	100.00	100.00	
[redacted]	7,445.97	7,731.27	
[redacted]	59,663.40	64,929.98	
[redacted]	1,999.75	2,166.73	
[redacted]	1,999.80	2,158.78	
[redacted]	204,110.59	213,756.87	
[redacted]	3,992.00	4,331.32	
[redacted]	1,799.00	1,951.92	
[redacted]			Need Receipts
[redacted]	134,638.84	140,034.36	
[redacted]	19,963.75	21,657.66	
[redacted]	7,984.00	8,662.63	
[redacted]	24,892.25	24,892.25	Ammunition
TOTAL PURCHASES	$615,394.08	$649,745.32	

The next set of slides at the briefing detailed the fifteen recoveries of weapons that had already taken place during Operation Fast and Furious. Following a map indicating the locations in both the United States and Mexico of these recoveries were detailed slides for each recovery, including the number of guns recovered, the purchaser, the transporter, and the intended recipient in the Sinaloa cartel.

For example, the slide pertaining to the Mexicali seizure indicated that the 12 detained suspects were all from Sinaloa, Mexico, "Confirmed Sinaloa cartel."[83] The slide also catalogs the full recovery: "41 AK-47s, 1 AR-15 rifle, 1 FN 5.7 pistol, 421 kilograms of cocaine, 60 kilograms of meth, 392 miscellaneous rounds of ammunition, $2 million U.S., and $1 million Mexican pesos."[84] In addition, the slide graphically depicts the relationships between the straw purchasers and the weapons seized. And finally, the slide on the El Paso recovery links Operation Fast and Furious to a Texas investigation and to the "plaza boss" in the Sinaloa cartel that Fast and Furious ultimately targeted.[85]

Given the rich detail in the presentation, it is clear that the guns bought during Operation Fast and Furious were headed to the Sinaloa cartel. As Martin testified:

> Q. The guns are up to 1,026 at this point?
>
> A. That's correct.
>
> Q. I know you had expressed some complaints earlier when it was only at 685. So there's **no doubt after this briefing that the guns in this case were being linked with the Sinaloa cartel**, based on the -
>
> A. Based on the information presented, **I'd say yes.**
>
> Q. And that was presumably **very apparent to everybody in the room**?
>
> A. Based on this one, it says the people are connected with the Sinaloa cartel, I would say **that's correct.**[86]

The volume of guns purchased and the short time-to-crime for many of these guns clearly signaled that the Sinaloa cartel received the guns shortly after their purchase in Arizona. If ATF had attempted to interdict the weapons, it is likely that hundreds of these weapons would not have ended up with this dangerous cartel or entered Mexico.[87] Martin agreed that was clear:

> Q. But whether the guns were walking, whether they were flying, whether they just disappeared, based on all the evidence that you've collected to this point, **it was pretty clear that the guns were going almost linearly from the FFLs to the DTOs?**
>
> A. **They were headed that way.**[88]

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[83] *Id.*
[84] *Id*
[85] *Id.*
[86] Martin Transcript, at 100.
[87] For a complete discussion of the shortcomings of ATF's investigation, *see generally The Department of Justice's Operation Fast and Furious: Accounts of ATF Agents*, Joint Staff Report, 112th Congress, June 14, 2011.
[88] Martin Transcript, at 50.

Several individuals, such as Ray Rowley and those in OSII, had already expressed their concerns, only to have them fall on deaf ears. Others, however, remained silent, despite the ominous consequences:

> Q. Was there any concern ever expressed about the guns being . . . essentially just bee lined right to the drug trafficking organizations about what the DTOs might actually do with the guns?
>
> A. I think it was **common knowledge that they were going down there to be crime guns to use in the battle against the DTOs to shoot each other.**
>
> Q. So **these guns, in a way, are murder weapons?**
>
> A. **Potentially.**[89]

The only person that did speak up during the March 5, 2010 presentation was Robert Champion, SAC for the Dallas Field Division participating by videoconference, who asked "What are we doing about this?"[90] According to Lorren Leadmon, in response, Joe Cooley from Main Justice simply said that the movement of so many guns to Mexico was "**an acceptable practice.**"[91]

Shortly after the March 5, 2010 presentation on Operation Fast and Furious, OSII stopped giving briefings on the program to ATF management during the weekly Tuesday meetings. OSII personnel felt that nobody in field operations heeded their warnings, and OSII no longer saw the point of continuing to brief the program.

V. Kept in the Dark

FINDING: ATF and DOJ leadership kept their own personnel in Mexico and Mexican government officials totally in the dark about all aspects of Fast and Furious. Meanwhile, ATF officials in Mexico grew increasingly worried about the number of weapons recovered in Mexico that traced back to an ongoing investigation out of ATF's Phoenix Field Division.

Not surprisingly, ATF officials in Mexico grew increasingly alarmed about the growing number of weapons showing up in Mexico that traced back to the Phoenix Field Division. Yet, when they raised those concerns, ATF senior leadership both in Phoenix and Washington, D.C. reassured them that the Phoenix investigation was under control. No one informed them about

[89] *Id.* at 103-104.
[90] Interview with Lorren Leadmon, Intelligence Operations Specialist, in Wash., D.C., July 5, 2011.
[91] *Id.*

the details of Operation Fast and Furious. No one informed them that ATF was knowingly allowing guns to be sold to straw buyers and then transferred into Mexico.

A. Volume of Weapons Raises Eyebrows in Mexico

ATF leadership in Mexico started noticing an "abnormal" number of weapons flowing from Phoenix into Mexico as early as the end of 2009. Former ATF Attaché Darren Gil explained:

> Q. Now, at some point you mentioned that in late 2009, early 2010, your analysts made you aware of an increase in the number of recoveries, firearm recoveries being traced back to Phoenix; is that right?
>
> A. Correct.
>
> Q. And I think the word you used was abnormal. Can you explain for us what exactly -- what was normal?
>
> A. Normal was -- there's, I want to say there's at least 1,000 FFLs along the border. And . . . some people use the trail of ants terminology, some people use the river of iron terminology, but generally you'll get a handful of traces to this FFL, handful of traces to this FFL, Federal Firearms Licensee, all along the border.
>
> * * *
>
> I asked my analyst, because I was fairly new. I said, why is this abnormal. He says, look, Darren, we have all these trace results and they come from a variety of FFLs, but then you have a high correlation here with this one particular investigation coming out of Phoenix where we're getting this way and above the number of recoveries we get from all these other Federal Firearms Licensees. So it stuck out to my analyst who presented that to me that it was an abnormal, his terminology actually, abnormal number of recoveries.[92]

The "abnormal number of recoveries" concerned Gil and his agents in Mexico. Gil sought answers:

> Q. And when your analyst made you aware of this uptick, what was the next step that you took?

[92] Gil Transcript, at 61-62.

A. Pretty much a review, show me what you're talking about, which he did. And then the phone call to Phoenix. And then after the phone call to Phoenix, which I spoke of, throughout the rest of the time it was primarily dealing with ATF headquarters, primarily with the chief of international affairs, Dan [Kumor].[93]

B. *Reassurances from Phoenix and Washington, D.C.*

Attaché Gil initially reached out directly to the Phoenix Field Division to express his concerns about the growing number of weapons. Gil explained:

Q. So when your staff in Mexico determined that a particular weapon was tracked back to Phoenix, did they try or did you try to make contact with some of the ATF staff in the Phoenix field office?

A. I did. I called the division, tried to make contact with the SAC. I don't believe I spoke with the SAC, but I got a returned call and spoke with the ASAC there, George [Gillett]. I identified my concerns, hey, we're getting an abnormal number of traces. From what I recall his response was, yes, we're aware of it. We have an ongoing investigation. We have a ton of resources on it. We're looking at it. We're working at it, and thanks for calling and making us aware and then we'll follow it up from there.[94]

Yet the seizures continued unabated, and the answers Gil received failed to better explain the underlying cause. Gil continued:

Q. So your discussions with Mr. [Gillett] in early January, is it fair to say you weren't satisfied with the results of that call?

A. I was satisfied with the first response, sure. They're working a case, they're trying to identify what the problem is, how these weapons are getting there, they're aware of it. That's a normal response, okay, good, we're on the job.

But . . . unfortunately, my chief analyst and my deputy would come back and say, Darren, these are – we're getting more and more and more of these seizures. And I would make inquiries with the Phoenix field division and I wasn't getting any responses back. And I may have gotten two more phone calls, yeah, we're working on it, we're working on it.[95]

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[93] *Id.* at 63.
[94] *Id.* at 15-16.
[95] *Id.* at 17.

Despite these reassurances, the volume of weapons flowing from Phoenix into Mexico continued to grow. Further, no one at ATF provided Gil or his staff any explanation as to why the volume continued to grow. When Gil and his staff tried to access the trace data on their E-Trace system to find out for themselves, they learned they did not have access. As Gil explained:

> And at that point, with the number of seizures we were receiving in Mexico, that wasn't – that connected to the fact that my analyst didn't have access to the trace data in E-Trace, where we entered the data, normally we . . . would get that information back regarding the trace.
>
> Unfortunately, my . . . deputy advised me that we were entering the data but we weren't getting the trace results back, all we were getting was "trace information delayed". And what that generally means is, there's been a hold placed on it by either the tracing center or by a field division because they didn't want that information released for some particular reason.[96]

Members of Phoenix Field Division Group VII, including its case agent with support from the Group supervisor, actively shut out their colleagues in Mexico. As a result, Attaché Gil decided to seek answers from senior leadership in Washington, D.C.: "Ultimately I made phone calls to the chief of international affairs, Dan [Kumor], to try and get responses because I wasn't getting responses from Phoenix like I thought I should."[97] In early 2010, Attaché Gil shared his concerns with Kumor about the increasing number of gun recoveries in Mexico linked to Phoenix:

> Q. At some point I understand you had some conversations with your boss back in Washington, Mr. [Kumor]. Was he the first person in Washington that you spoke to about the abnormal number of weapons that you were recovering?
>
> A. Yes.
>
> Q. And do you remember when the first time you raised this issue with Mr. [Kumor] was?
>
> A. Again, it would be early 2010, probably around – probably January, about the same time.
>
> We talked almost certainly weekly and almost daily basis, so he would have been notified at that time.
>
> Q. And do you remember what his reaction was when you first raised the issue with him?

---

[96] *Id.* at 17-18.
[97] *Id.* at 17.

A. Certainly, yeah, okay, let me check on it, it's an ongoing investigation, let me make some inquiries and I'll get back with you.

Q. And did he ever get back with you?

A. Yes.

Q. And what did he say?

A. Again, he said an on-going investigation, they're looking at straw purchasers, they have cooperative Federal Firearms Licensees and it sounds like a significant investigation. And . . . he didn't have access to the trace information either but . . . the Phoenix field division is aware of the investigation. The chain up to him is aware of the investigation, so everybody is aware of it and it looks like they have it under control.[98]

Gil found it insufficient to hear the investigation was "under control." In the meantime, guns from a known straw purchasing ring continued to flow into Mexico from Arizona. Although Gil and his agents in Mexico remained in the dark about the tactics and strategy of Operation Fast and Furious, they realized something was wrong. Gil continued to express his concerns:

Q. And did you ever raise any issues with Mr. [Kumor] that while they . . . may think they have it under control, it may not be under control because we are recovering an abnormal number of firearms?

A. Again, spring time it got to the point of at what point are we going to . . . to close this investigation down? I mean, after 500 or so seizures I think you should have had enough data collection on what you're trying to show or prove. It was my position, it was Chief [Kumor's] position as well. He says, yeah, you're right. And he goes, so when are they going to close this down. And we were both on the same position there that this thing needed to be shut down.

So there was a number of ongoing – you saw my CBS interview, screaming matches . . . it was a very frustrated – high frustration level. And that was one of the reasons for . . . being frustrated.[99]

Understandably, Gil was frustrated. Hundreds of weapons appeared suddenly in Mexico – traced to Phoenix – without explanation. Gil and his agents struggled to get answers from their own agency. Although ATF officials in Phoenix and Washington, D.C. acknowledged that an

[98] *Id.* at 20-21.
[99] *Id.* at 21.

investigation was underway, they refused to share the details of the strategy and operation with the agents in Mexico. Gil took their silence as suggesting that his colleagues did not trust him to keep the information confidential:

> Q. Did you have any idea why you weren't being made aware of the specific details of this investigation?
>
> A. I can tell you what I was told and they were afraid that I was going to either brief the ambassador on it or brief the Government of Mexico officials on it.
>
> Q. And it was your understanding that individuals within ATF higher than Chief [Kumor] didn't want the ambassador to know about the investigations?
>
> A. I couldn't say that . . . specifically they didn't want the ambassador to know. I know I asked . . . why can't I be briefed on this. Well, they're afraid that you would brief the GOM officials, Government of Mexico officials or . . . brief the ambassador. **They were just worried about somebody leaking whatever was unique about this investigation.**[100]

VI. More Complaints and More Reassurances

ATF officials in Mexico constantly worried about the number of guns flowing from Phoenix to Mexico in connection with the Phoenix Field Division's investigation. Mexican authorizes continued to seize guns at violent crime scenes involving Mexican DTOs. Without being privy to the particular tactics utilized by Operation Fast and Furious, ATF's representatives in Mexico suspected something was terribly amiss. Because initial contacts with Phoenix provided few answers, ATF officials in Mexico continued to report their concerns up the chain of command to ATF leadership in Washington, D.C. Instead of acting on their complaints, senior leadership at both ATF and the Department of Justice praised the investigation. However, ATF agents in Mexico kept sounding the alarm. In July 2010, Gil and his agents received notification that the Phoenix Field Division's investigation would be ending and shut down.[101] In reality, ATF agents in Phoenix closed the investigative stage of Operation Fast and Furious in January 2011, only after the tragic death of Border Patrol Agent Brian Terry in December 2010.

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[100] *Id.* at 72.

[101] *See* Section VI.E *infra* page 44 (summarizing the exchange between Gil and Kumor regarding the timeline to shutdown Operation Fast and Furious).

A. Concerns Raised up the Chain of Command

FINDING: ATF officials in Mexico raised their concerns about the number of weapons recovered up the chain of command to ATF leadership in Washington, D.C. Instead of acting decisively to end Fast and Furious, the senior leadership at both ATF and DOJ praised the investigation and the positive results it had produced. Frustrations reached a boiling point, leading former ATF Attaché Darren Gil to engage in screaming matches with his supervisor, International Affairs Chief Daniel Kumor, about the need to shut down the Phoenix-based investigation.

Without knowing of possible gunwalking tactics used in Operation Fast and Furious, Gil and other ATF officials in Mexico knew the investigation needed to be shut down based on the empirical data. As Gil testified:

> Q. And the number of firearms recovered in Mexico, you said it was about 500 in the spring, did that number continue to rise?
>
> A. Yes, it did. I want to say by the time I left I think it was up to, which was in October, I think it was up to – the last data I think I was quoted was like 700 or so.
>
> Q. And that continued to alarm you?
>
> A. It was a topic of discussion every time – pretty much every time we spoke about when this thing was going to be shut down. And the general – the origin of it was, again, because it worried my folks. My chief analyst, who would see the data every day. He'd put in the trace results, he'd get information back, data – "trace results not available", which means ATF put a hold on it somewhere.
>
> So number one, we were submitting our information and we weren't getting our own trace data back, so that was an issue. The number was an issue. The fact that these guns were found in crime scenes, which we could not notify the GOM, the Government of Mexico, was an issue.
>
> The fact that this brought pressure on us from the GOM because they're saying, why are we using – we're spending – ATF is spending extraordinary number of resources to train them on the Spanish E-Trace. And in the same breath they're saying, look, we're not getting anything back so why should we use this Spanish E-Trace, it's a waste of our time. And we have to say, no, it gives you this, this, and this. And they go, yeah, but we're not getting anything back.

> So it became a big event that we're not getting this trace data back and it frustrated my folks, they in turn notified me. And we had meetings on it and then I'd make my calls to headquarters, again, primarily Chief [Kumor], and voiced our concerns. And it got to the point I would have my staff, on conference calls that we have, speak with Chief [Kumor] trying to – what the heck is going on here.[102]

Gil and his staff struggled to deal with this growing crisis. Despite the increasing number of guns from Phoenix showing up at violent crime scenes in Mexico, ATF agents in Phoenix continually denied the ATF agents in Mexico the relevant information explaining this spike. Gil was so passionate about his and his staff's concerns that he had yelling matches with his boss:

> Q. Who were those screaming matches with?
>
> A. Primarily with Chief [Kumor]. And it wasn't just on this, all right, keep that in mind. . . . However, this was also part of it and at some point screaming, yelling . . . hey, when are they going to shut this, to put it bluntly, damn investigation down, we're getting hurt down here.
>
> When, again, I think I mentioned in my CBS interview, when the Mexicans find out about this. **And this was not even knowing of the potential for gun walking. This was just . . . not shutting this investigation down and letting another 300 weapons come into the country after the first 300 weapons.** Because, again, it's inconceivable to me to even allow weapons to knowingly cross an international border.[103]
>
> * * *
>
> Q. So it was clear to you that this ongoing case based out of Phoenix was proceeding, they weren't shutting it down, you disagreed with that because you saw too many weapons showing up in Mexico?
>
> A. That's a fair assessment.[104]

Deputy Attaché Canino shared Gil's concerns about the number of guns entering Mexico and that something needed to be done:

> Q. What discussions did you have about the weapons from the Phoenix case in Mexico with Mr. Gil, Mr. Darren Gil?

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[102] Gil Transcript, at 30-32.
[103] *Id.* at 66-67.
[104] *Id.* at 24.

A. We were very concerned . . . with that amount of guns and short period of time on a suspect gun data and they kept climbing.

* * *

I said, Darren, this is a problem . . . these many guns coming down here is a problem. We made that known to Danny Kumor . . . Danny was in agreement he pushed it up the chain and we were told yeah it is a case out of Phoenix and it is going great.[105]

Gil and Canino prevailed upon their direct supervisor, Daniel Kumor, ATF's Chief of International Affairs, to take their concerns about the volume of weapons in Mexico up the chain of command:

Q. When you say pushed it up the chain, what do you mean exactly?

A. He told his superior.

Q. That would have been who?

A. That would have been deputy assistant director Bill McMahon.[106]

Gil also testified that Kumor spoke to his superior, Deputy Assistant Director McMahon, about this matter:

Q. And do you know if [Kumor] had any conversations with Mr. [McMahon], did he ever relate to you that he's had these conversations with Mr. [McMahon]?

A. Sure. He would say, I'll – I'm going to go meet with . . . Bill [McMahon], the deputy assistant director. And he would – and then in our conversations he would respond and, hey, I've spoken with Bill and he's going to send notification out or contact Phoenix and see what's going on, sure.[107]

Gil also discussed his concerns with McMahon during trips to Washington:

Q. Did you take any trips to Washington during this time period of –

A. Sure.

Q. - January 2010 to before you left October 2010?

---

[105] Canino Transcript, at 16.
[106] *Id.* at 16-17.
[107] Gil Transcript, at 22-23.

A. Yes.

* * *

Q. You said, might have discussed it with Mr. [McMahon]. If you did, it wasn't something that you remember in detail?

A. Yeah, would have been, hey . . . . is this thing still going on, and when is it going to be shut down. And something to the effect they're either working on it – again, their general response was they're working on it, they're going to close it down as soon as they can, and we'll let you know.[108]

While Phoenix was "working on it," guns continued to flow unabated into Mexico. Gil, Canino, and other ATF agents in Mexico raised legitimate concerns, but leadership told them to stand down. According to ATF leadership, not only was everything "under control," but everyone in ATF *and* DOJ were well aware of the investigation in Phoenix:

Q. And at any point during those conversations was it made clear to you that the director is aware of this program?

A. Yes. At one point, I mean, again, probably during one of the final screaming matches was . . . I think I threw the question out there, hey, is DOJ aware of this investigation? Are they aware of what's going on, and are they approving this.

And then the chief's response was, yes, not only is . . . the director aware of it, Billy, William Hoover is aware of it, DOJ is aware of it. And then . . . through that fact – they have a Title 3, so DOJ must be aware of it certainly for that aspect. And certainly the US Attorney's office in Phoenix is aware of it because they had to approve the investigation.

But – so it wasn't just is the direct link aware of it . . . if the acting director is aware you assume everybody is aware of it. And then, okay, they don't want me to know something for some reason that's fine, they have their reasons and . . . you got to defer to your executive staff.[109]

Senior leadership in Phoenix and Washington, D.C. continued to provide reassurances without answers during their visits to Mexico. Canino recalled several visits by both Mark Chait and Bill McMahon:

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[108] *Id.* 36-38.
[109] *Id.* at 24-25.

Q. Did senior officials from DOJ and ATF visit Mexico with regard to this case?

A. This case specifically?

Q. Did they make any visits to Mexico?

A. Sure, yeah. Mmh hmm.

Q. Would this case have been one of the things that got discussed during their visits?

A. We talked about it, but we said . . . hey what is going on with this case out of Phoenix, we are starting to see a lot of guns in the suspect gun database, kind of alarming, so many guns. They said hey . . . we've got it handled, we are working, it is a good case out of Phoenix.

Q. Who would those officials have been?

A. Well, the director had come down, the deputy director had come down, the deputy associate director had come down.

Q. Who is that?

A. Bill McMahon. This assistant director for field operations, that is the guy who is in charge of all agents.

Q. Mark Chait?

A. Mark Chait came down. Bill Newell came down. So, yeah these guys have come down.

Q. Multiple visits?

A. Yeah. Some of them, multi visits and they talked, hey, yeah, we got a big case out of Phoenix.[110]

As Gil later stated, "[a]t that point . . . you just got to say, fine, these guys, they're the leaders of this agency and they have some plan that I'm not aware of, but hopefully they have a good one."[111]

[110] Canino Transcript, at 19-20.
[111] Gil Transcript, at 69.

B. A "Good Investigation"

The Phoenix Field Division and ATF headquarters extolled the virtues of the investigation to ATF personnel in Mexico. For example, during Acting ATF Director Kenneth Melson's 2010 spring visit, Gil's staff asked about the Phoenix case. Gil detailed Acting Director Melson's response:

> Q. And do you recall what Mr. Melson said?
>
> A. Generally his response was, he's aware of it, it's an ongoing investigation, it's providing some good intelligence . . . [A]ll positive as far as the investigation, it looks good. And I remember, I think Deputy Director Hoover was there. I think he turned to the deputy director and said, yeah, we'll check on it when we get back but I think it's providing some good results and we'll check on when it's going to be closed down, but my understanding it should be closed down fairly soon.[112]

Canino confirmed Gil's recollection:

> Q. And when any of the ATF officials came to Mexico, whether it is Melson or Hoover, do you recall briefing them? Or maybe briefing is the wrong word.
>
> A. Mentioning it? Sure.
>
> Q. Do you remember mentioning that there's a lot of firearms being tracked back to Phoenix?
>
> A. Mmh-hmm.
>
> Q. Do you remember what their response was?
>
> A. It was like, yeah . . . we got a case. We got a good case going on in Phoenix.
>
> * * *
>
> Q. Senior people in headquarters were aware of the case and they were not as alarmed?
>
> A. Right.

---

[112] *Id* at 40.

Q. They thought it was under control, or they thought it was a great case, about to come to fruition?

A. Correct.[113]

C. *Lanny Breuer and the Department of Justice*

Gil and Canino received the same message of support for Operation Fast and Furious from the Department of Justice. During a visit to Mexico, Lanny Breuer, the Assistant Attorney General for the Criminal Division demonstrated his awareness of the case:

> Mr. [Breuer] kind of summed up his take on everything at the end, and one of them was that there's an investigation that ATF is conducting that looks like it's going to generate some good results and it will be a good positive case that we can present to the Government of Mexico as efforts that the US Government is taking to try and interdict weapons going into Mexico. And that was about – that was it. That was just a general statement. Myself and my deputy I believe were in the room and we kind of looked at each other. We're aware of this case, and so we assumed that's what he was mentioning. And we just wanted to make sure – we look at each other going, hope the ambassador [Carlos Pascual] doesn't ask any questions because we really don't know anything about the case. And luckily the ambassador did not.[114]

Canino also remembered a visit from Breuer where Breuer touted the Phoenix case:

Q. And during meetings with Mr. Breuer, did this subject come up?

A. I mean, I was in a meeting, it was a country team meeting, or it might have been a law enforcement team meeting . . . Ambassador, Mr. Breuer was there, Darren was there, Mr. Breuer . . . the Ambassador was saying hey, you know what . . . we need a big win we need some positive, some positive [firearms trafficking] cases. And Lanny Breuer says, yeah, there is a good case, there is a good case out of Phoenix. And that is all he said.

* * *

Q. But do you remember the specific incident with the Ambassador talking about the success stories?

A. Right.

---

[113] Canino Transcript, at 102-103.
[114] Gil Transcript, at 44.

Q. And that is when Breuer mentioned this large case in Phoenix?

A. Yeah. He said we got, there is a good case out of Phoenix.

Q. And is it your impression that the case he was referring to is what now what you now know to be Fast and Furious?

A. Yeah, when he said, I thought, oh, okay . . . he knows. He knows about this case.[115]

The Department of Justice, and more specifically, Assistant Attorney General Lanny Breuer, clearly knew about Operation Fast and Furious. Further, the Department of Justice's Office of Enforcement Operations (OEO) approved numerous of the wiretap applications in this case. These applications were signed on behalf of Assistant Attorney General Breuer in the spring of 2010. Instead of stemming the flow of firearms to Mexico, Operation Fast and Furious arguably contributed to an increase in weapons and violence.[116]

Additionally, the United States Attorney's office in Arizona – another DOJ component – was inextricably involved in supervising Operation Fast and Furious as the office was part of a prosecutor-led and OCDETF funded strike force.[117] According to many agents, the U.S. Attorney's office's intimate day-to-day involvement was to the detriment of ATF's Phoenix Field Division. Furthermore, although DOJ knew about the operation, it kept key people who needed this information in the dark.[118]

D. Still in the Dark

By their own accounts, members of the senior leadership of both ATF and DOJ wanted a big firearms trafficking case to demonstrate success in combatting Mexican cartels. Despite this goal, they failed to provide specifics of the case to both Mexican officials and ATF personnel stationed in Mexico. As the chief ATF advisor in Mexico, Gil found this lapse of information sharing embarrassing.[119]

As Attaché in Mexico, Gil needed to be aware of ATF operations that impacted Mexico. Nevertheless, his own agency intentionally withheld critical details of the tactics and strategy behind Operation Fast and Furious. Gil did not even know the name of the operation until January 2011:

Q. And generally, it would have been your job to approve operations that involved Mexico given your position as the attaché?

---

[115] Canino Transcript, at 22-23.
[116] *See* Section IV *supra*, page 8 for a detailed discussion of the flow of weapons to Mexico and the increased violence as a result.
[117] Briefing Paper, Phoenix Field Division, 785115-10-0004 (Jan. 8, 2010).
[118] *See supra* Section V.B.
[119] Gil Transcript, at 45.

A. Correct. Any activity regarding certain ATF in Mexico should have come through the ATF attaché's office in Mexico, and certainly any investigative activity should have been brought to the attention of the office.

* * *

A. Again, I was aware there was an investigation, but I wasn't aware of the particulars of the investigation.[120]

According to Gil, ATF leadership withheld information from him and other ATF agents in Mexico because of a fear that they would brief the Government of Mexico on the investigation and would jeopardize Operation Fast and Furious:

Q. Did anyone ever tell you, this is sensitive and we can't let the Government of Mexico know about this case?

A. Yeah, in one of my conversations – it was probably more than one, but certainly one that I recall, because it was so out of character, but . . . what our impression was in Mexico was it's a high level investigation. We understand the security issues of it. There's a Title 3 going on. So we all assume it's probably a corrupt Federal Firearms Licensee or more or others, and maybe they do have a connection that's flowing weapons there and they're working on it.

But at some point, okay, you haven't gotten the information by this time . . . you need to shut it down just for safety and security reasons. So that was the assumption we had.

* * *

Well, they're worried the Mexicans are going to get – the Government of Mexico would get it and it would ruin their investigation. All right, so let us know. Well . . . they're afraid that you'll either willingly or unknowingly release this information to your GOM counterparts.

Okay, well, how about letting me know as the attaché. Well, they're afraid that you'll do the same. And at that point . . . I called my folks and I said, look, they say they have it under control, all we can do is continue our mission down here and work towards our objectives and hopefully this investigation will bear fruit down the road that everybody is going to be happy with.

[120] *Id.* at 111-112.

> But the problem we had, and I noted in my interview, was that these weapons are being recovered in violent crime scenes of Mexican law enforcement interacting with cartels or Mexican military officials interacting with cartels. And these guns are going to come back in the murder of some of these officials and we're going to have some explaining to do.[121]

Ultimately, ATF leadership's withholding of information worked against its own representatives in Mexico. This realization was a source of major irritation and frustration for Gil:

> Q. Is it inconceivable to you that you were not a part of these discussions?
>
> A. Again, I've repeatedly said I was very frustrated down there. And so that answer is, yes, I was very frustrated because I was not part of the ongoing investigation.
>
> Q. So when you're told about a bigger picture, when you're told about a more sophisticated case, you hear [Lanny Breuer] referencing an ATF case, which is presumably this case. . . . At any point in time did you say, why am I not read into this case? Why am I not a party to these conversations?
>
> A. Sure. Myself, my deputy, my staff, we were all frustrated. We didn't understand it. We understand the concept to keep secret investigations, that if you leak something potentially that it could get corrupt the case or get somebody . . . unfortunately get somebody hurt or killed. We understand that, but as I said, one of my screaming matches was over this issue that, okay, you don't want us to -- okay, if you tell me I'm not going to release anything to the Government of Mexico then I won't release it, but let me know.
>
> When you tell me, well, we don't want to let you know because we're afraid you'll notify the ambassador or ultimately somehow the Government of Mexico is going to find out, yes, that irritates me. **And you can see why the voice level went up and the vulgar language probably came out on certain occasion because it is very, very irritating.**
>
> Q. And you were trying to help them understand these guns are being recovered at crime scenes, these guns are in the possession of cartels, people are dying?
>
> A. Correct.

---

[121] *Id.* at 32-34.

Q. Is that part of your –

A. Myself, the deputy, I mean, it's like ground-hog day and – that's the best way to put it. Every time the event came up for whatever reason, maybe it was a new seizure, I was notified again, hey, when is this going to be shut down. And it's the same response that, hey, we're still working on it, it's still ongoing, we're getting some good information and we'll shut it down as soon as we can.[122]

E. Told Operation Fast and Furious Being Shut Down

FINDING: Despite assurances that the program would be shut down as early as March 2010, it took the murder of a U.S. Border Patrol Agent in December 2010 to actually bring the program to a close.

As the ATF officials in Mexico continued to express concerns throughout 2010, ATF leadership told them the investigation would be shut down as soon as possible. Gil explained:

> I queried Chief [Kumor] again . . . and that – and the ongoing discussion continued, they're aware of it, they're going to close it down as soon as they possibly can, but there's still – they think the investigation is not to the point where they can close it yet. And the discussions went on and on. It went to the point I departed Mexico.[123]

Gil left his position as Attaché to Mexico in October 2010 and retired from the ATF just a few months later. At the time of his retirement, Operation Fast and Furious remained ongoing. Several months before Gil retired, Deputy Attaché Canino wrote to Dan Kumor with disturbing statistics:

> Like I said, this is a problem. I sent an e-mail, I think it was July of 2010 . . . letting Dan Kumor know that approximately . . . the count was up to 1,900 guns in suspect gun data, 34 of which were, 34 of which were .50 caliber rifles. And I, my opinion was that these many .50 caliber rifles in the hands of one of these cartels is going to change the outcome of a battle. Dan pushed it forward. He was told, yeah, we are taking the case off in August of 2010. The case doesn't get taken off until January 25, 2011.[124]

Kumor's response led Canino to believe that arrests were imminent in Operation Fast and Furious:

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[122] *Id.* at 113-115.
[123] *Id.* at 78.
[124] Canino Transcript, at 17.

Q. So anyway let's talk about Danny Kumor telling you it is going to be closed down. You send him in the e-mail in July?

A. He says, hey, I talked to Bill McMahon, Bill McMahon said they are taking the case down in August.

Q. What did that mean to you? What was your understanding?

A. That they were going to shut the case down and make arrests.

Q. Now, at that point you still didn't know that they were gun walking?

A. I never knew, I never believed it until this past April. Even after I ... talked to other guys in intel.

Q. Just to go back to this. So when they said they are going to close the case down, what did you interpret that to mean? What was they were shutting down?

A. They were going to start making arrests. Now . . . through the fall, late fall, and I have been talking to Bill.

Q. Bill Newell?

A. Bill Newell, and Bill told me, hey, Carlos, we are going to probably take this down you know we are trying to take it down, I think he said December or so . . . Novemberish. . . . This is right around October . . . November, December we are going to take this down . . . then, the Terry murder happens.[125]

The first arrest finally came in December 2010, immediately after Agent Terry's murder. More followed a few weeks later in January 2011. Prior to these arrests, Canino and the other ATF agents in Mexico continued to urge ATF leaders to shut down Operation Fast and Furious to no avail. Canino testified:

> Like I said, right around after somebody told me the figure was 1,200 guns . . . there's a case out of Phoenix. . . . They'll take it off when they take it off. We're concerned. . . . I've made my concerns up the chain . . . sent that e-mail in July. I'm told they're going take it off in August. From September nothing, October . . . . October, November, Bill Newell says, I'm going to start taking this off. . . . October, November. December comes around, Agent Terry happens. They take it off in January, end of January.[126]

[125] *Id.* at 95.
[126] *Id.* at 123.

Kumor testified about his conversation with Deputy Assistant Director William McMahon about shutting down Operation Fast and Furious:

> Q. But he did suggest to us in an interview we did that at least in part he was telling you we've got to shut that case down, we've got to shut that case down?
>
> A. Oh, yeah, we've had those discussions.
>
> Q. But that got heated as well. He was very animated about needing to shut this case down?
>
> A. And if we did which is very possible and I'd say I agree with you a hundred percent but it's not my call, and I've already made those concerns known . . . to Bill [McMahon], and it's not – I don't have the authority to do it. And I said, matter of fact, whoever comes down or if you want to pick up the phone, you can tell them and see if you get anywhere with them. But the bottom line is that they're saying that the U.S. attorney's office is not going to authorize them to arrest these people. And, again, they're up on a wire and they're trying to put this case together.
>
> Q. And when you say "Bill," you mean McMahon?
>
> A. Yes.[127]

F. Concerns Communicated to Deputy Assistant Director McMahon

Despite Dan Kumor's testimony to the Committees' investigators, Deputy Assistant Director for Field Operations William McMahon tried to minimize his knowledge of the concerns expressed by ATF agents in Mexico to their supervisors at Headquarters during his testimony to the Committees:

> Q. What about Mr. Kumor? Did he express any concerns about this case?
>
> A. Not that I remember.
>
> Q. Essentially you were having two direct reports –
>
> A. Uh huh.
>
> Q. Expressing major concerns about this case to you.

[127] Transcribed Interview of Daniel Kumor, Transcript at 39, July 13, 2011 (on file with author) [hereinafter Kumor Transcript].

A. I did?

Q. Yes, Mr. Kumor and Mr. Rowley. That doesn't ring a bell?

A. No, it doesn't. Them expressing concerns?[128]

A December 17, 2009 e-mail from Bill Newell indicates that he intended to brief McMahon about Ray Rowley's concerns regarding weapons showing up in Mexico in great numbers:[129]

[128] Transcribed Interview of William McMahon, Transcript at 38, June 28, 2011 (on file with author) [hereinafter McMahon Transcript].
[129] E-mail from Bill Newell to Dave Voth December 17, 2009 (HOGR ATF – 000906).

From: Newell, William D.
Sent: Thursday, December 17, 2009 11:45 AM
To: Gillett, George T. Jr.
Cc: Voth, David J.
Subject: Re:

Well done, thank you. I will address Ray's concerns with McMahon.
Bill Newell
Special Agent in Charge
ATF Phoenix Field Division (AZ and NM)
[redacted]

***
NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Gillett, George T. Jr.
To: Newell, William D.
Cc: Voth, David J.
Sent: Thu Dec 17 13:27:49 2009
Subject:
Bill-

OSII has not yet finished a link diagram on this investigation. Therefore, there is no "chart" in existence diagramming this investigation. Lorren Leadmon and crew are currently working on such a link-diagram chart, but it is not yet complete. Mr. Leadmon did have a power point that gave an overview of the case and that has been forwarded to GS Voth. However, that power point is about 1 week old, so the info is already a bit dated. GS Voth and Mr. Leadmon are speaking on a regular basis, so the lines of communication are now the equivalent of the proverbial fire hose. During one of their conversations, Lorren told Voth that Ray Rowley received a briefing on the investigation this week and mentioned the possibility of needing to shut the investigation down due to the large number of guns that have already been trafficked. Therefore, I spoke with Ray Rowley today and explained that even though the identified straw-purchasers bought approximately 175 guns last week alone, we have slowed down the FFL on future purchases and are obtaining intelligence directly related to this investigation from the current DEA wire tap. Ray did express some concern regarding the total number of guns that have been purchased by this straw-purchase scheme. I cautioned Ray on not doing any type of informal calculations on purchase numbers as that likely will result in double counting of firearms (counting purchased guns as well as recovered guns). I have also advised that we will slow the purchasers down as much as possible, but we have not identified the network yet. The result will be that the responsible conspirators will have new straw-purchasers operational before we complete the booking paperwork. I have asked Ray to consider me his direct point of contact on any future questions and/or concerns and I will do the same with him. I have also spoken with Kevin O'Keefe today and maintain those lines of communication.

As for plans to proceed, I have asked Mr. Voth to begin preparing a white paper that outlines progress to date as well as a plans for proceeding with the investigation. I know that he wants to take the information from the DEA wire and spin it off on a wire involving these subjects. I have also asked Mr. Voth to prepare a list of resources that HQ can provide (personnel and equipment) to support this investigation. I will keep you posted as things arise.

George T. Gillett
Assistant Special Agent in Charge
ATF - Phoenix Field Division

In his testimony, Kumor noted that he lacked the authority to shut down this investigation, but he reiterated that he raised the concerns expressed to him by ATF agents in Mexico with McMahon:

Q. And you and Gil were in agreement that this was concerning, and you supported him in his view that something ought to be done –

A. Yes, once they started showing up, absolutely.

Q. But you didn't have the authority to do it?

A. No.

Q. However, you did raise those concerns with Bill McMahon?

A. Yes.[130]

Kumor specifically refuted McMahon's testimony to the Committees' investigators about these events:

Q. So if McMahon said to us that you never raised these concerns with him, that wouldn't be completely honest; right?

A. That I never raised them?

Q. Right.

A. That's false. That's not true.

Q. So you did raise these concerns on multiple occasions with Mr. McMahon?

A. I did. I raised the issue of the fact that these weapons had been had started showing up and . . . what are we going to do? What's going on? Obviously if they're showing up in Mexico, that's a problem.

Q. How early did you raise that with him as far as the best you can recall?

A. When this thing first started. When this case first started that you're going to have . . . I know in March when they were showing the screen and how many guns were involved.

Q. March of 2010?

A. March of 2010, yes.

Q. And McMahon was at that meeting?

A. I believe he was.

Q. So he saw all these guns?

A. Right.

[130] Kumor Transcript, at 39-40.

Q. Did he ever express to you that's a concern of his?

A. Yeah, I think we've had – we had discussions where he was concerned as well. But, again, it kind of came back to . . . our hands are tied. The U.S. attorneys' office is not going to charge these guys . . . . [T]hey want to go up on a wire, so they're going up on a wire, and they're going to do the case that way. So from my standpoint, I was like, well . . . the U.S. attorney's office is involved. . . . Newell is running the case. You're aware of it.[131]

VII. Reaction of ATF Officials in Mexico

FINDING: ATF officials in Mexico finally realized the truth: ATF allowed guns to walk. By withholding this critical information from its own personnel in Mexico, ATF jeopardized relations between the U.S. and Mexico.

When Special Agent John Dodson and the other ATF whistleblowers first came forward with allegations that guns were walked across the Mexican border during Operation Fast and Furious, Canino and Gil refused to believe them. Gil and Canino could not believe that the ATF would actually utilize a tactic that contravened the training and field experience of every ATF agent. Gil and Canino, the top two ATF officials in Mexico, could not even conceive that ATF would employ a strategy of allowing weapons transfers to straw purchasers. As Canino testified:

Q. So at no time did you think [gunwalking] was a deliberate effort or part of a strategy?

A. No. That was, like I said, in 21 years as an ATF agent, as a guy who teaches surveillance techniques, as a guy who teaches agents how to conduct field operations, **never in my wildest dreams ever would I have thought that this was a technique. Never. Ever. It just, it is inconceivable to me.**[132]

Q And that is because of the dangers involved?

A. Just – you don't do it. You don't wa[lk] guns. You don't wa[lk] guns. . . . **You don't lose guns. You don't walk guns. You don't let guns get out of your sight.** You have all these undercover techniques, all these safety measures in place so guns do not get out of your custody or control. I mean, I mean, you could follow, you could do a surveillance for 1,000 miles . . . either use planes, trackers, you use everything under the sun, but at the end of the

[131] *Id.* at 41-43.
[132] Canino Transcript, at 12.

> day, those guns do not leave your control. At some point those guns do not get into the streets.[133]

Gil felt the same way as Canino:

> ...And so the – to me, when I first heard this going on in the media about the potential for ATF letting guns walk, **it was inconceivable. I didn't want to believe it. It just – it would never happen. Everybody knows the consequences on the other end** of . . . these guns aren't going for a positive cause, they're going for a negative cause. The term "guns walking" didn't exist in my vocabulary.[134]

In fact, Canino – an instructor for field operations and undercover operations for ATF since 1998, and a founding member and teacher of the ATF enhanced undercover training program – felt so confident that these allegations were false, that he began assuring people that the allegations had no merit:

> Never, it is just, you don't do that. It is not – **what these guys did was basically grab the ATF rule book on trafficking and threw it out the window. This is indefensible. It is indefensible.** The ATF does not do this. . . . I owe people apologies because when this first came out, I did not believe it.
>
> * * * *
>
> [W]hen this first broke, I said there is no way this happened. . . . [M]y boss told me, hey, Carlos don't be so vocal about this . . . wait, wait to see what happens. I told him, I said, boss, we didn't do this. **He said how are you so sure? I said because we don't teach this, this is not how we are taught.**[135]

Dan Kumor remembers cautioning Canino about being too quick to deny the allegations. As Canino's supervisor, Kumor did not want him to potentially have to retract false and misleading comments made to his Mexican counterparts. As somebody stationed in ATF headquarters, Kumor may have known there could be some merit to the allegations:

> And I said . . . but I told Carlos, I said . . . until we find out what's going on, I wouldn't be – if we get questions about what happened, we're going to have to direct all that to the Phoenix field division or field ops because we don't know. And the last thing I want to do is represent or have you guys represent to the Mexicans or anybody else that, hey . . . there's no issues with any of this case.

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[133] *Id* at 12-13.
[134] Gil Transcript, at 48.
[135] Canino Transcript, at 13-14.

> We don't know, and I don't want that coming back later because that would certainly be an issue with them as far as their reputations and their ability to be able to operate in the future down there.[136]

As more information came to light, however, Gil and Canino concluded that hundreds and hundreds of guns had been walked. These guns ended up in at crime scenes in Mexico, about which Gil and Canino received extensive briefings. Gil and Canino became incensed when they finally began to learn about the full scope of Operation Fast and Furious and the investigative techniques involved:

> Q. When you first got the impression that this was part of a strategy to let guns walk into Mexico, what was your reaction to that strategy?
>
> A. I wasn't convinced that this happened until this past April after all the allegations were made, and I talked to different people. **I was beyond shocked. Embarrassed. I was angry. I'm still angry. Because this is not what we do.**
>
> * * *
>
> That is, I mean, **this is the perfect storm of idiocy**. That is the only way I could put it. This is, I mean, this is inconceivable to me. This is group think gone awry. You know what General George Patton says, if we are all thinking alike, then nobody is thinking. Right? Nobody was thinking here. How could anybody think, hey, let's follow, I mean there is a guy in this case that bought over 600 guns. At what point do you think you might want to pull him aside and say, hey, come here for a second.[137]

When Canino himself uncovered hard evidence that ATF had allowed the guns to disappear from their surveillance he understood the whistleblower allegations were true:

> Q. Okay, and take us through what happened in April.
>
> A. I was here on a visit to headquarters.
>
> Q. Alcohol, Tobacco and Firearms headquarters?
>
> A. Alcohol, Tobacco and Firearms headquarters, and I was, I was looking at a, the management log on this case. And **the first two pages, if I'm not mistaken, there are entries there that chronicle us walking away on three separate occasions from stash houses.**

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[136] Kumor Transcript, at 98-99.
[137] Canino Transcript, at 17-19.

Q. And did that sound to you incredible?

A. I stopped reading.

Q. So you only got through two pages of this management log?

A. Yeah.

Q. And then you couldn't read it any longer?

A. Didn't want to.

Q. Because you were so upset?

A. Yes.

Q. And you were upset because walking away from three stash houses struck you as so outrageous?

A. Walking away from one, walking away from one gun when you know that that gun is going to be used in a crime when you, I mean, there is no, **there was no gray area here guys. There was no gray area here.** We knew that these guys were trafficking guns into Mexico. **There is no gray area.** They weren't trafficking, [the] guys weren't going out and buying two Larson 22 pistols. These guys were buying 7.62, 223's, .50 caliber rifles, okay, there was no mistake about this. **This is no gray area.**[138]

Gil realized the full scope of Operation Fast and Furious only after he retired from ATF. It took the public allegations of the whistleblowers and contacts with his former colleagues for Gil to fully comprehend the tactics used in Operation Fast and Furious:

Q. Now, when you were speaking with [a Congressional investigator] you indicated that you learned about the specific tactics of operation Fast and Furious. Can you remind us when that was?

A. It was after I retired. It was after the shooting of Border Patrol Agent Terry. I started getting phone calls saying, hey, this is – there is something to this thing, these guns were knowingly allowed into Mexico. And so that was the first knowledge that I had about the potential allowing guns to go into Mexico.

Q. And how did you become aware of that?

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[138] *Id.* at 25-26.

A. Several phone calls from agents, speaking to my deputy or my former deputy, Carlos [Canino], who I remained in contact with. Seeing Agent Dodson on TV and getting phone calls primarily. And then I was contacted by several media sources including CBS.[139]

After realizing that ATF had let guns walk, Gil's concerns turned to the safety of ATF agents in Mexico:

Q. And I believe you mentioned that in the aftermath of Agent Dodson's interview on CBS, you had concerns about your former agents in Mexico. What were – what were the concerns you had for them?

A. I had spoken to my deputy primarily and he mentioned that, obviously, the Government of Mexico, our counterparts are not happy with this situation. It made it tough for them that . . . didn't want to work with them. It's like, hey, we can't trust you, you guys are allowing these guns to come in. Inside the embassy because the **Government of Mexico was irritated with us, they held that against the other agencies within the embassy,** maybe slowing down Visas to allow personnel to come in and work in Mexico. . . Obviously **the ambassador** probably, I didn't speak -- I haven't spoken to him since I left the country, but my understanding is he **wasn't happy about it.** And so there might have been some friction there between the acting attaché', Carlos [Canino], and him. And so it was several conflicts going on. And, again, they just started looking at the articles and the bloggers and some of the media reports in Mexico that the ATF was corrupt, and we were taking kickbacks to allow these weapons to come in, which puts a big zero – crossbar on my guys' backs down there.

Q. When you say crossbar?

A. I'm sorry, I should clarify that.

Q. Sure.

A. Puts a mark on their back, for instance, targets for not only corrupt cartel members to find out who they are and kidnap or kill, which is some of the unfortunate areas I had to deal with down there. And then – or **Government of Mexico officials not happy and . . . they may arrest you, indict you, take away your Visa and**

[139] Gil Transcript, at 81-82.

throw you out of the country. So there's all these things going on down there amongst my former crew.[140]

VIII. Persistent Consequences of Operation Fast and Furious

FINDING: The high-risk tactics of cessation of surveillance, gunwalking, and non-interdiction of weapons that ATF used in Fast and Furious went against the core of ATF's mission, as well as the training and field experience of its agents. These flaws inherent in Operation Fast and Furious made tragic consequences inevitable.

A. The Murder of Mario Gonzalez Rodriguez

On October 21, 2010, drug cartel members kidnapped Mario Gonzalez Rodriguez from his office. At the time of the kidnapping, his sister Patricia Gonzalez Rodriguez was the Attorney General of the state of Chihuahua in northwestern Mexico. A few days after the kidnapping, a video surfaced on the Internet in which Mario Gonzalez Rodriguez sat handcuffed, surrounded by five heavily armed men wearing masks, dressed in camouflage and bullet-proof vests. Apparently under duress, Rodriguez alleged that his sister had ordered killings at the behest of the Juarez cartel, located in Chihuahua.[141] The video quickly went viral, instantly becoming a major news story in Mexico.

Patricia Gonzalez Rodriguez denied her brother's allegations, claiming the armed men holding him hostage coerced Mario into making his statements. Patricia Gonzalez Rodriguez asserted her brother's kidnapping was payback for the prosecutions of members of the Sinaloa cartel and corrupt Mexican law enforcement officers. Ms. Rodriguez left her post as attorney general later that month.

On November 5, 2010, Mexican authorities found Mario Gonzalez Rodriguez's body in a shallow grave.[142] Shortly after this grisly discovery, the Mexican federal police engaged in a shootout with drug cartel members, which resulted in the arrest of eight suspects. Police seized sixteen weapons from the scene of the shootout. Two of these weapons traced back to Operation Fast and Furious.[143]

E-mails obtained by the Committees indicate that ATF knew about the link to Operation Fast and Furious almost immediately after the trace results came back. A November 15, 2010 e-mail from ATF's OSII to the Phoenix Field Division alerted Phoenix that two of the recovered AK-47s weapons traced back to Operation Fast and Furious.[144] A number of employees from

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[140] *Id.* at 82-84.
[141] Kim Murphy, *U.S. AK-47s Linked to Mexican attorney's slaying*, L.A. TIMES, June 23, 2011, *available at* http://articles.latimes.com/2011/jun/23/nation/la-na-gunrunner-20110623.
[142] Maggie Ybarra, *8 Held in Death of Ex-Chihuahua AG's Brother*, EL PASO TIMES, November 5, 2010, *available at* http://www.elpasotimes.com/news/ci_16537620.
[143] Email from Tonya English to David Voth, November 15, 2010 (HOGR ATF – 001792).
[144] *Id.*

OSII contacted their colleagues in Phoenix to alert them of this connection. OSII agents also told ATF personnel in Mexico.[145]

Carlos Canino informed ATF headquarters about the link between the Gonzalez murder and the subsequent shootout to Fast and Furious. However, no one authorized Canino to inform the Mexican government about the connection.

Q. Who did you mention it to?

A. I mentioned it to the Director.

Q. That's Acting Director Melson?

A. Yes. I mentioned it to Billy Hoover, I mentioned it to Mark Chait, I mentioned it to Bill McMahon, I mentioned it to my boss Danny Kumor.

* * *

A. I remember at least two times when I mentioned it to them. I said one of us – look, here's what happened. Okay, this woman is a prominent politician.

Q. This is Miss Patricia Gonzalez?

A. Right.

Q. She's no longer a –

A. No longer, right. . . [T]his is front page news for days in Mexico, we need to tell them this, because if we don't tell them this, and this gets out, it was my opinion that the Mexicans would never trust us again because we were holding back this type of information. **And every time I mentioned it... guys started looking at their cell phones, silence in the room, let's move on to the next subject.** . . . I wasn't told, yea, tell her, but I was never told, no, you can't tell her. I was never told that. It was just indecision.

Q. So you were getting no instructions at all?

A. Zero instructions.[146]

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[145] Interview with Lorren Leadmon, Intelligence Operations Specialist, in Wash., D.C., July 5, 2011.
[146] Canino Transcript, at 31-32.

Acting Attaché Canino continued to feel strongly that the Mexican government should be informed of the link between the Mario Gonzalez murderers and Operation Fast and Furious. He also believed that, given the seriousness of the information and the negative fallout that would likely ensue, ATF headquarters should share this information with the U.S. Ambassador to Mexico.[147]

The rapidly escalating media scrutiny would eventually expose the connection between the Mario Gonzalez Rodriguez murderers and Operation Fast and Furious. In Canino's view, sharing this information directly with Mexican officials before the press exposed it was of paramount importance to preserve U.S.-Mexico relations and the ability of ATF personnel to operate in Mexico. Not until June 2011, nearly eight months after ATF became aware of the link between Operation Fast and Furious and the guns recovered following the shootout, did Canino notify the Mexican government:

Q. And why did you do that [tell Ms. Morales]?

A. I communicated that to the Mexican Attorney General Maricela Morales because I did not want her to find out through media reports where these guns had come from. I wanted her to find out from me, because she is an ally of the U.S. Government. She is committed to fighting these cartels, she is a personal friend, and I owe her that.

Q. That courtesy?

A. I owe her that courtesy, absolutely.

* * *

Q. And even though you really didn't get permission – well, I guess Mr. Kumor sort of approved, but no one else really did?

A. Right.

Q. But you still decided that it was important for you to disclose that information?

A. **If I hadn't told the Attorney General this, and this had come out in the news media, I would never be able to work with her ever again, and we would be done in Mexico.** We just might as well pack up the office and go home.

Q. So the fact that these guns traced back to this program Fast and Furious has the potential, perhaps even did, to create an international incident?

[147] *Id* at 32.

A. This has already created an international incident.

Q. But this is even more personal?

A. When the Mexican media gets ahold of this, it's going to go crazy.

Q. By "this" you're talking about the tracing to the death of Mario Gonzalez?

A. Absolutely.

* * *

Q. Now, what was her reaction when you told her?

A. She was shocked.

Q. Did she say anything, exclaim anything?

A. **She said, "Hijole," which translates basically into, "Oh, my."**

Q. Oh, my God? Oh, my?

A. Yeah.[148]

The failure to inform the Mexican government earlier risked possible international implications. This failure to inform is another example of ATF leadership withholding essential information related to Operation Fast and Furious.

B. The Mexican Helicopter Incident

A May 2011 shootout between Mexican police and cartel members demonstrates the broadening impact of Operation Fast and Furious. On May 24, 2011, La Familia DTO gunmen forced a Federal Police helicopter to make an emergency landing in the state of Michoacan, located in western Mexico.[149] The gunmen attacked the helicopter, wounding two officers on board and forcing the aircraft to land near the scene of the attack.[150] Canino described the event:

A. I think it was on May 24th the Mexican Federal Police mounted an operation against members of La Familia.

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[148] *Id.* at 30-31, 33.
[149] "Drug Gunmen Force Down Mexican Police Helicopter," *AP*, May 25, 2011, *available at* http://www.signonsandiego.com/news/2011/may/25/drug-gunmen-force-down-mexican-police-helicopter/.
[150] *Id.*

Q. That's a drug cartel?

A. Right. In the State of Michoacan. When the Mexican Federal Police was deploying its troops via helicopter, they came under fire from members of La Familia. I believe in the May 24th incident two crewmen were hit.

Q. These were soldiers or policemen?

A. Policemen, Federal policemen. They were hit. The helicopter flew off. My understanding is that that helicopter could have made it back to the base under its own power; however, it landed to render aid to the injured people on board.[151]

On May 29, 2011, the federal police launched a massive raid on the La Familia DTO. During the raid, cartel gunmen again attacked Federal Police helicopters and wounded two more officers:

A. Fast forward to May 29th. Again, the Mexican Federal Police mount another operation. I believe this time it was in the State of -- I need to look at a map. Anyway, it was a bordering State.

Q. Okay.

A. They were coming in. Members of La Familia cartel engaged – there were four helicopters – engaged them. I believe all four helicopters were struck by fire. Mexican Federal Police returned fire from the helicopters; able to suppress the fire coming in, offloaded, and the helicopters all flew back, and they were back in service within a few days.

Q. Now, was there any people hurt on the ground, any deaths?

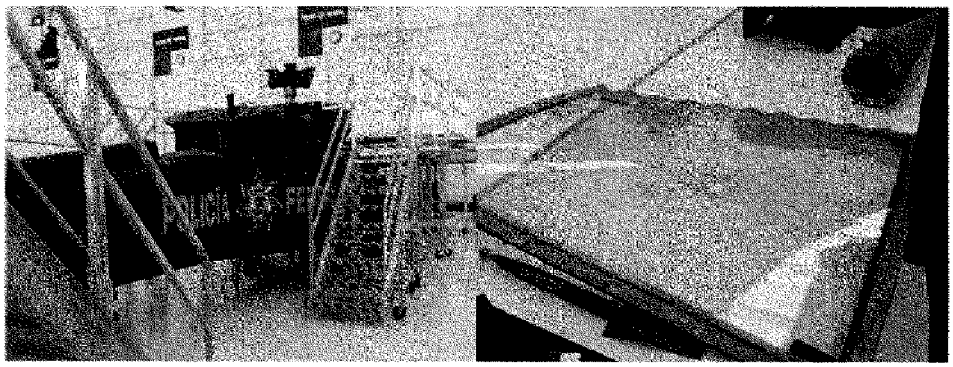
A. I believe in the second operation, I believe ... Mexican Federal Police killed, I believe either 11 or 14 people.[152]

The raid resulted in the deaths of 11 cartel members and the arrest of 36 cartel members, including those suspected of firing on the helicopter several days earlier. Authorities also found a cache of more than 70 rifles at the scene, including a Barrett .50 caliber rifle. Some of these weapons traced back to Operation Fast and Furious.[153] Mexican police also found a stash of heavy-duty body armor belonging to the cartels. This was the first time ATF in Mexico had seen

[151] Canino Transcript, at 34.
[152] *Id.* at 34.
[153] *Id.* at 35.

such body armor in the hands of the cartels. Along with the Barrett .50 caliber rifles, these vests symbolized a new level of sophistication in cartel weaponry.[154]

During a trip to Mexico City on June 25, 2011, Members and staff from the U.S. House of Representatives Committee on Oversight and Government had an opportunity to visually inspect the damaged helicopter.[155] Several bullet holes were evident on the body of the aircraft, and one round from a .50-caliber rifle penetrated the thick "bullet proof" glass windshield.



The downed helicopter incident and subsequent police raid resulted in the recovery of Operation Fast and Furious weapons that may have been used against the Mexican police. Barrett .50 caliber rifles provide a significant upgrade to the cartels' ability to inflict serious damage and casualties on their enemies. As Canino testified:

> [T]he count was up to 1,900 guns [associated with Fast and Furious] in suspect gun data, 34 of which were, 34 of which were .50 caliber rifles. And I, my opinion was that these many .50 caliber rifles in the hands of one of these **cartels is going to change the outcome of a battle.**[156]

Previously, weapons had been linked back to the Sinaloa cartel and members of the El Teo organization, an off-shoot from the Beltrán -Leyva cartel. La Familia DTO is the third cartel connected to Operation Fast and Furious weapons. The May 24, 2011 shooting shows that Operation Fast and Furious weapons may be found in a broader geographic area than the territory controlled by the Sinaloa DTO.[157] This spread of Operation Fast and Furious weapons may place an even greater number of Mexican citizens in harm's way.

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[154] Canino Transcript, at 36.
[155] Report from United States Embassy staff about Congressional Visit, June 25, 2011 (on file with author).
[156] Canino Transcript, at 17.
[157] *See* Areas of Cartel Influences in Mexico, *supra* page 19.

IX. Conclusion

According to the Justice Department's July 22, 2011 response to Questions for the Record posed by Senator Grassley, Fast and Furious suspects purchased 1,418 weapons *after* becoming known to the ATF.[158] Of those weapons, 1,048 remain unaccounted for, since the Department's response indicates that the guns have not yet been recovered and traced.[159] U.S and Mexican law enforcement officials continue to seize weapons connected to the operation and recover weapons at crime scenes on both sides of the border. Given the vast amount of Operation Fast and Furious weapons possibly still in the hands of cartel members, law enforcement officials should expect more seizures and recoveries at crime scenes. According to several agents involved in Operation Fast and Furious, ATF agents will have to deal with these guns for years to come.[160]

Some aspects of Operation Fast and Furious may ultimately escape scrutiny given the difficulties of tracing weapons recovered in Mexico. The possibility remains for more high-profile deaths linked to Operation Fast and Furious. Canino bluntly described his reaction to that possibility:

> Q. When you first got the impression that this was part of a strategy to let guns walk into Mexico, what was your reaction to that strategy?
>
> A. The guys in Mexico will trace those . . . I'm beyond angry. Brian Terry is not the last guy, okay, guys? Let's put it out there right now. Nobody wants to talk about that. Brian Terry is not the last guy unfortunately. . . . **Unfortunately, there are hundreds of Brian Terrys probably in Mexico . . . we ATF armed the [Sinaloa] cartel. It is disgusting.**[161]

The faulty design of Operation Fast and Furious led to tragic consequences. Countless United States and Mexican citizens suffered as a result. The lessons learned from exposing the risky tactics used during Operation Fast and Furious will hopefully be a catalyst for better leadership and better internal law enforcement procedures. Any strategy or tactic other than interdiction of illegally purchased firearms at the first lawful opportunity should be subject to strict operational controls. These controls are essential to ensure that no government agency ever again allows guns to knowingly flow from American gun stores to intermediaries to Mexican drug cartels.

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[158] Letter from Ronald Weich, Asst. Att'y Gen., U.S. Dep't of Justice, to Senator Patrick Leahy, Chairman, Senate Jud. Comm., July 22, 2011, 13.
[159] *Id.* at 14.
[160] *See* Casa Transcript, at 17; *see also Operation Fast and Furious: Reckless Decisions, Tragic Outcomes*, 111th Cong. 44 June 14, 2011 (statement of Peter Forcelli, ATF Special Agent).
[161] Canino Transcript, at 17-19.

MINORITY VIEWS

Report of the Committee on Oversight and Government Reform

Resolution Recommending that the House of Representatives Find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Committee on Oversight and Government Reform

On June 20, 2012, the Committee adopted on a strictly party-line vote a report and resolution (hereinafter ''Contempt Citation'') concluding that Attorney General Eric H. Holder, Jr., the chief law enforcement officer of the United States, should be held in contempt of Congress for declining to produce certain documents pursuant to the Committee's investigation of ''gunwalking'' during Operation Fast and Furious and previous operations.

Committee Democrats were unanimous in their opposition to the Contempt Citation. These dissenting views conclude that Congress has a Constitutional responsibility to conduct vigorous oversight of the executive branch, but that holding the Attorney General in contempt would be an extreme, unprecedented action based on partisan election-year politics rather than the facts uncovered during the investigation.

These views find that the Committee failed to honor its Constitutional responsibility to avoid unnecessary conflict with the executive branch by seeking reasonable accommodations when possible. The Committee flatly rejected a fair and reasonable offer made by the Attorney General to provide additional internal deliberative documents sought by the Committee in exchange for a good faith commitment toward resolving the contempt dispute. Instead, the Committee has repeatedly shifted the goalposts in this investigation after failing to find evidence to support its unsubstantiated allegations.

The Contempt Citation adopted by the Committee contains serious and significant errors, omissions, and misrepresentations. To address these inaccuracies, these views hereby incorporate and attach the 95-page staff report issued by Ranking Member Elijah Cummings in January 2012, which provides a comprehensive analysis of the evidence obtained during the Committee's investigation.

I. THE COMMITTEE'S ACTIONS HAVE BEEN HIGHLY PARTISAN

The Committee's contempt vote on June 20, 2012, was the culmination of one of the most highly politicized congressional investigations in decades. It was based on numerous unsubstantiated allegations that targeted the Obama Administration for political purposes, and it ignored documented evidence of gunwalking operations during the previous administration.

During the Committee's 16-month investigation, the Committee refused all Democratic requests for witnesses and hearings. In one of the most significant flaws of the investigation, the Chairman refused multiple requests to hold a public hearing with Kenneth Melson, the former head of ATF, the agency responsible for conducting these operations.[1] The Chairman's refusal came after Mr. Melson told Committee investigators privately in July 2011 that he never informed senior officials at the Justice Department about gunwalking during Operation Fast and Furious because he was unaware of it himself.[2] Mr. Melson's statements directly contradict the claim in the Contempt Citation that senior Justice Department officials were aware of gunwalking because Mr. Melson briefed Gary Grindler, then-Acting Deputy Attorney General, in March 2010.[3]

Despite promising that he would be ''investigating a president of my own party because many of the issues we're working on began on [sic] President Bush,'' the Chairman also refused multiple requests for former Attorney General Michael Mukasey to testify before the Committee or to meet with Committee Members informally to discuss the origination and evolution of gunwalking operations since 2006.[4] Documents obtained during the investigation indicate that Mr. Mukasey was briefed personally on botched efforts to coordinate firearm interdictions with Mexican law enforcement officials in 2007 and was informed directly that such efforts would be expanded during his tenure.[5]

The Committee also failed to conduct interviews of other key figures. For example, the Committee did not respond to a request to interview Alice Fisher, who served as Assistant Attorney General in charge of the Criminal Division from 2005 to 2008, about her role in authorizing wiretaps in Operation Wide Receiver, or to a request to interview Deputy Assistant Attorney General Kenneth Blanco, who also authorized wiretaps in Operation Fast and Furious and still works at the Department, but who was placed in his position under the Bush Administration in April 2008.[6] No explanation for these refusals has been given.

During the Committee business meeting on June 20, 2012, every Democratic amendment to correct the Contempt Citation by noting these facts was defeated on strictly party-line votes.

II. HOLDING THE ATTORNEY GENERAL IN CONTEMPT WOULD BE UNPRECEDENTED

The House of Representatives has never in its history held an Attorney General in contempt of Congress. The only precedent referenced in the Contempt Citation for holding a sitting Attorney General in contempt for refusing to provide documents is this Committee's vote in 1998 to hold then-Attorney General Janet Reno in contempt during the campaign finance investigation conducted by then-Chairman Dan Burton.[7]

Chairman Burton's investigation was widely discredited, and the decision to hold the Attorney General in contempt was criticized by editorial boards across the country as ''a gross abuse of his powers as chairman of the committee,''[8] a ''fishing expedition,''[9] ''laced with palpable political motives,''[10] and ''showboating.''[11] That action was so partisan and so widely discredited that Newt Gingrich, who was then Speaker, did not bring it to the House Floor for a vote.[12]

Similarly, numerous commentators and editorial boards have criticized Chairman Issa's recent actions as ''a monstrous witch hunt,''[13] ''a pointless partisan fight,''[14] and ''dysfunctional Washington as usual.''[15]

III. THE COMMITTEE HAS HELD THE ATTORNEY GENERAL TO AN IMPOSSIBLE STANDARD

For more than a year, the Committee has held the Attorney General to an impossible standard by demanding documents he is prohibited by law from producing.

One of the key sets of documents demanded during this investigation has been federal wiretap applications submitted by law enforcement agents in order to obtain a federal court's approval to secretly monitor the telephone calls of individuals suspected of gun trafficking.

The federal wiretapping statute, which was passed by Congress and signed by President Lyndon B. Johnson on June 19, 1968, provides for a penalty of up to five years in prison for the unauthorized disclosure of wiretap communications and prohibits the unauthorized disclosure of wiretap applications approved by federal judges, who must seal them to protect against their disclosure.[16] The statute states:

Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction. Applications made and orders granted under this chapter shall be sealed by the judge.[17]

Similarly, in 1940, Congress passed a statute giving the Supreme Court the power to prescribe rules of pleading, practice, and procedure in criminal cases.[18] In 1946, the modern grand jury secrecy rule was codified as Rule 6(e) of the Federal Rules of Criminal Procedure, which provides for criminal penalties for disclosing grand jury information.[19]

The Department has explained this to the Committee repeatedly, including in a letter on May 15, 2012:

Our disclosure to this oversight Committee of some material sought by the October 11 subpoena, such as records covered by grand jury secrecy rules and federal wiretap applications and related information, is prohibited by law or court orders.[20]

Despite these legal prohibitions, the Chairman continued to threaten to hold the Attorney General in contempt for protecting these documents. He also publicly accused the Attorney General of a ''cover-up,''[21] claimed he was ''obstructing'' the Committee's investigation,[22] asserted that he is willing to ''deceive the public,''[23] and stated on national television that he ''lied.''[24]

IV. THE DOCUMENTS AT ISSUE IN THE CONTEMPT CITATION ARE NOT ABOUT GUNWALKING

The documents at issue in the Contempt Citation are not related to the Committee's investigation into how gunwalking was initiated and utilized in Operation Fast and Furious.

Over the past year, the Department of Justice has produced thousands of pages of documents, the Committee has interviewed two dozen officials, and the Attorney General has testified before Congress nine times.

In January, Ranking Member Cummings issued a comprehensive 95-page staff report documenting that Operation Fast and Furious was in fact the fourth in a series of gunwalking operations run by ATF's Phoenix field division over a span of five years beginning in 2006. Three prior operations—Operation Wide Receiver (2006–2007), the Hernandez case (2007), and the Medrano case (2008)—occurred during the Bush Administration. All four operations were overseen by the same ATF Special Agent in Charge in Phoenix.[25]

The Committee has obtained no evidence that the Attorney General was aware that gunwalking was being used. To the contrary, as soon as he learned of its use, the Attorney General halted it, ordered an Inspector General investigation, and implemented significant internal reform measures.[26]

After finding no evidence of wrongdoing by the Attorney General, the Committee's investigation shifted to focusing on a single letter sent by the Department's Office of Legislative Affairs to Senator Charles Grassley on February 4, 2011. This letter initially denied allegations that ATF ''knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico'' and stated that ''ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.''[27]

The Department has acknowledged that its letter was inaccurate and has formally withdrawn it. On December 2, 2011, the Department wrote that ''facts have come to light during the course of this investigation that

indicate that the February 4 letter contains inaccuracies.''[28]

Acknowledging these inaccuracies, the Department also provided the Committee with 1,300 pages of internal deliberative documents relating to how the letter to Senator Grassley was drafted. These documents demonstrate that officials in the Office of Legislative Affairs who were responsible for drafting the letter did not intentionally mislead Congress, but instead relied on inaccurate assertions and strong denials from officials ''in the best position to know the relevant facts: ATF and the U.S. Attorney's Office in Arizona, both of which had responsibility for Operation Fast and Furious.''[29]

Despite receiving these documents explaining how the letter to Senator Grassley was drafted, the Committee moved the goalposts and demanded additional internal documents created after February 4, 2011, the date the letter to Senator Grassley was sent. It is unclear why the Committee needs these documents. This narrow subset of additional documents—which have nothing to do with how gunwalking was initiated in Operation Fast and Furious—is now the sole basis cited in the Contempt Citation for holding the Attorney General in contempt.[30]

V. THE COMMITTEE REFUSED A GOOD FAITH OFFER BY THE ATTORNEY GENERAL FOR ADDITIONAL DOCUMENTS

The Committee failed to honor its Constitutional responsibility to avoid unnecessary conflict with the Executive Branch by seeking reasonable accommodations when possible. On the evening before the Committee's contempt vote, the Attorney General met with Chairman Issa, Ranking Member Cummings, Senator Grassley, and Senator Patrick Leahy. The Attorney General offered to take the following steps in response to the Committee's demands for additional documents. Specifically, the Attorney General:

(1) offered to provide additional internal deliberative Department documents, created even after February 4, 2011;

(2) offered a substantive briefing on the Department's actions relating to how they determined the letter contained inaccuracies;

(3) agreed to Senator Grassley's request during the meeting to provide a description of the categories of documents that would be produced and withheld; and

(4) agreed to answer additional substantive requests for information from the Committee.

The Attorney General noted that his offer included documents and information that went even beyond those demanded in the Committee's subpoena. In exchange, the Attorney General asked the Chairman for a good faith commitment to work towards a final resolution of the contempt issue.[31]

Chairman Issa did not make any substantive changes to his position. Instead, he declined to commit to a good faith effort to work towards resolving the contempt issue and flatly refused the Attorney General's offer.

There is no question that the Constitution authorizes Congress to conduct rigorous investigations in support of its legislative functions.[32] The Constitution also requires Congress and the executive branch to seek to accommodate each other's interests and to avoid unnecessary conflict. As the D.C. Circuit has held:

[E]ach branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.[33]

Similarly, then-Attorney General William French Smith, who served under President Ronald Reagan, observed:

The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch.[34]

VI. THE COMMITTEE'S DECISION TO PRESS FORWARD WITH CONTEMPT LED TO THE ADMINISTRATION'S ASSERTION OF EXECUTIVE PRIVILEGE

After the Chairman refused the Attorney General's good faith offer—and it became clear that a Committee contempt vote was inevitable—the President asserted executive privilege over the narrow category of documents still at issue. The Administration made clear that it was still willing to negotiate on Congress' access to the documents if contempt could be resolved.

On June 20, 2012, Deputy Attorney General James Cole wrote to the Chairman to inform the Committee that ''the President, in light of the Committee's decision to hold the contempt vote, has asserted executive privilege over the relevant post-February 4 documents.''[35] An accompanying letter from Attorney General Holder described the documents covered by the privilege as limited to ''internal Department 'documents from after February 4, 2011, related to the Department's response to Congress.' ''[36]

Claims by House Speaker John Boehner and others that the Administration's assertion of executive privilege raises questions about the President's personal knowledge of gunwalking reflect a misunderstanding of the scope of the privilege asserted.[37] Regarding the narrow subset of documents covered by the assertion, the letter from Attorney General explained:

They were not generated in the course of the conduct of Fast and Furious. Instead, they were created after the investigative tactics at issue in that operation had terminated and in the course of the Department's deliberative process concerning how to respond to congressional and related media inquiries into that operation.[38]

The Attorney General's letter also explained the Administration's legal rationale for invoking executive privilege over internal deliberative Justice Department documents, citing opinions from former Attorneys General Michael B. Mukasey, John Ashcroft, William French Smith, and Janet Reno, as well as former Solicitor General and Acting Attorney General Paul D. Clement.[39] The letter also quoted the Supreme Court in United States v. Nixon, writing:

The threat of compelled disclosure of confidential Executive Branch deliberative material can discourage robust and candid deliberations, for ''[h]uman experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.'' . . . Thus, Presidents have repeatedly asserted executive privilege to protect confidential Executive Branch deliberative materials from congressional subpoena.[40]

VII. THE COMMITTEE FAILED TO RESPONSIBLY CONSIDER THE EXECUTIVE PRIVILEGE ASSERTION

Despite requests from several Committee Members, the Committee did not delay or postpone the business meeting in order to responsibly examine the Administration's assertion of executive privilege and determine whether it would be appropriate to continue contempt proceedings against the Attorney General.

Instead of following the example of previous Committee Chairmen who put off contempt proceedings in order to conduct a serious and careful review of presidential assertions of executive privilege, Chairman Issa stated that ''I claim not to be a constitutional scholar'' and proceeded with the contempt vote.[41]

In contrast, former Committee Chairman Henry Waxman put off a contempt vote after President George W. Bush asserted executive privilege in the investigation into the leak of the covert status of CIA operative Valerie Plame.[42] He took the same course of action after President Bush asserted executive privilege over documents relating to the Environmental Protection Agency's ozone regulation on the same day as a scheduled contempt vote. At the time, he stated:

I want to talk with my colleagues on both sides of the aisle about this new development. I want to learn more about the assertion and the basis for this assertion of the executive privilege.[43]

Although the Committee ultimately disagreed with the validity of President Bush's assertions of executive privilege, in neither case did the Committee go forward with contempt proceedings against the officials named in the contempt citations.

Similarly, Rep. John Dingell, as Chairman of the Energy and Commerce Committee during that Committee's 1981 investigation into the Department of Interior, received an assertion of executive privilege from the Reagan Administration regarding documents pertaining to the administration of the Mineral Lands Leasing Act.[44] Before proceeding to contempt, the Committee held two separate hearings on the executive privilege assertion, and the Committee invited the Attorney General to testify regarding his legal opinion supporting the claim of executive privilege.[45]

VIII. THE INVESTIGATION HAS BEEN CHARACTERIZED BY UNSUBSTANTIATED CLAIMS

The Committee's investigation of ATF gunwalking operations has been characterized by a series of unfortunate and unsubstantiated allegations against the Obama Administration that turned out to be inaccurate.

For example, during an interview on national television on October 16, 2011, the Chairman accused the Federal Bureau of Investigation (FBI) of concealing evidence of the murder of Agent Brian Terry by hiding a ''third gun'' found at the murder scene.[46] The FBI demonstrated quickly that this claim was unsubstantiated.[47] Although the Chairman admitted during a subsequent hearing that ''we do go down blind alleys regularly,'' no apology was issued to the law enforcement agents that were accused of a cover-up.[48]

At the same time, the Chairman has defended the previous Administration's operations as ''coordinated.''[49] In response to a question about gunwalking during the Bush Administration, the Chairman stated:

We know that under the Bush Administration there were similar operations, but they were coordinated with Mexico. They made every effort to keep their eyes on the weapons the whole time.[50]

To the contrary, the staff report issued by Ranking Member Cummings on January 31, 2012, documents at least three operations during the previous Administration in which coordination efforts were either non-existent or severely deficient.[51]

In addition, the Chairman has stated repeatedly that senior Justice Department officials were ''fully aware'' of gunwalking in Operation Fast and Furious.[52] After conducting two dozen transcribed interviews, none of the officials and agents involved said

they informed the Attorney General or other senior Department officials about gunwalking in Operation Fast and Furious. Instead, the heads of the agencies responsible for the operation—ATF and the U.S. Attorney's Office—told Committee investigators just the opposite, that they never informed senior Department officials about gunwalking in Operation Fast and Furious because they were unaware of it.[53]

Finally, the Chairman has promoted an extreme conspiracy theory that the Obama Administration intentionally designed Operation Fast and Furious to promote gunwalking. He stated in December 2011 that the Administration ''made a crisis and they are using this crisis to somehow take away or limit people's second amendment rights.''[54] This offensive claim has also been made by Rush Limbaugh and other conservative media personalities during the course of the investigation. For example, on June 20, 2011, Mr. Limbaugh stated:

The real reason for Operation Gunrunner or Fast and Furious, whatever they want to call it now, the purpose of this was so that Obama and the rest of the Democrats can scream bloody murder about the lack of gun control in the U.S., which is causing all the murders in Mexico. This was a setup from the get-go.[55]

Another conservative commentator stated that ''their political agenda behind this entire thing was to blame American gun shops for cartel violence in America in order to push an anti-Second Amendment, more regulations on these gun shops.''[56] Yet another one stated:

This was purely a political operation. You send the guns down to Mexico, therefore you support the political narrative that the Obama administration wanted supported. That all these American guns are flooding Mexico, they're the cause of the violence in Mexico, and therefore we need draconian gun control laws here in America.[57]

As recently as this month, Committee Member John Mica repeated this claim on Fox News. On June 15, 2012, he stated:

People forget how all this started. This administration is a gun control administration. They tried to put the violence in Mexico on the blame of the United States. So they concocted this scheme and actually sending our federal agents, sending guns down there, and trying to cook some little deal to say that we have got to get more guns under control.[58]

There is no evidence to support this conspiracy theory. To the contrary, the documents obtained and interviews conducted by the Committee demonstrate that gunwalking began in 2006, was used in three operations during the Bush Administration, and was a misguided tactic utilized by the ATF field division in Phoenix.[59]

NOTES

[1] Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Oct. 28, 2011).

[2] House Committee on Oversight and Government Reform, Transcribed Interview of Kenneth E. Melson (July 4, 2011).

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[4] *The Daily Rundown*, MSNBC (Nov. 3, 2010) (online at http://videocafe.crooksandliars.com/david/darrell-issa-obama-must-answer-several-hundr); Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (June 5, 2012); Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Feb. 2, 2012); Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (Nov. 4, 2011).

[5] Department of Justice, *Meeting of the Attorney General with Mexican Attorney General Medina Mora* (Nov. 16, 2007).

[6] Letter from Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (June 5, 2012).

[7] House Committee on Government Reform and Oversight, *Contempt of Congress: Refusal of Attorney General Janet Reno to Produce Documents Subpoenaed By the Government Reform and Oversight Committee*, 105th Cong. (1998) (H. Rept. 105–728).

[8] *The Contempt Citation*, Washington Post (Sept. 22, 1998).

[9] *Buck Stops With Reno; Appointing an Independent Counsel in Campaign Contribution Case: That Decision is Reno's Alone to Make on the Basis of Her Information and Her Interpretation of the Law*, Los Angeles Times (Aug. 6, 1998).

[10] *Tell Him No, Ms. Reno!*, Miami Herald (Aug. 6, 1998).

[11] *Give Reno Some Room*, St. Petersburg Times (Aug. 6, 1998).

[12] Congressional Research Service, *Congressional Contempt Power and the Enforcement of Congressional Subpoenas: Law, History, Practice, and Procedure* (May 8, 2012).

[13] Juan Williams, *Issa's Monstrous Witch Hunt*, The Hill (May 14, 2012).

[14] *A Pointless Partisan Fight*, New York Times (June 20, 2012).

[15] *Holder Contempt Vote is Dysfunctional Washington as Usual*, Baltimore Sun (June 21, 2012). *See also* Eugene Robinson, *GOP Witch Hunt for Eric Holder Reflects Bigger Problem*, Washington Post (June 21, 2012); Paul Barrett, *In Contempt of Government Reform*, Businessweek (June 20, 2012); Dana Milbank, *Republicans' Attempt to Hold Holder in Contempt is Uphill Battle*, Washington Post (June 20, 2012) (describing the ''contemptible antics'' of the Committee's contempt proceedings); Sandra Hernandez, *Partisan Politics Plague Probe of 'Fast and Furious,'* Los Angeles Times (''Issa's demand loses some of its credibility and lapses into political theater when he threatens Atty. Gen. Eric H. Holder Jr. with criminal contempt for failing to cooperate'') (Mar. 29, 2012).

[16] The White House, *Statement by the President Upon Signing the Omnibus Crime Control and Safe Streets Act of 1968* (June 19, 1968); 18 U.S.C. 2511(4)(a) (providing that violators ''shall be fined under this title or imprisoned not more than five years, or both''); 18 U.S.C. 2511(1)(e) (covering any person who ''intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized'' under this chapter).

[17] 18 U.S.C. 2518(1), 2518(8).

[18] Sumner Courts Act, Pub. L. No. 76–675, 54 Stat. 688 (1940).

[19] Fed. R. Crim. Pro. 6(e)(7) (providing that a knowing violation of Rule 6 ''may be punished as a contempt of court''); 18 U.S.C. 401(3) (providing that a ''court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority'').

[20] Letter from James M. Cole, Deputy Attorney General, Department of Justice, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform (May 15, 2012).

[21] Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (Jan. 31, 2012).

[22] Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (Oct. 9, 2011).

[23] Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (Jan. 31, 2012).

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[27] Letter from Ronald Weich, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to Sen. Charles E. Grassley, Ranking Member, Senate Committee on the Judiciary (Feb. 4, 2011).

[28] Letter from James M. Cole, Deputy Attorney General, Department of Justice, to Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, et al. (Dec. 2, 2011).

[29] *Id.*

[30] Contempt Citation, at 41–42.

[31] *Id.*

[32] Congressional Research Service, *Congressional Oversight Manual* (June 10, 2011).

[33] *United States* v. *AT&T*, 567 F.2d 121, 127 (D.C. Cir. 1977).

[34] 5 Op. Off. Legal Counsel. 27, 31 (1981).

[35] Letter from James M. Cole, Deputy Attorney General, Department of Justice, to Rep. Darrell E. Issa, Chairman, House Oversight and Government Reform (June 20, 2012).

[36] Letter from Eric H. Holder, Jr., Attorney General, Department of Justice, to Barack H. Obama, President (June 19, 2012) (quoting Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (June 13, 2012)).

[37] *Fast and Furious: How President Obama and John Boehner Got to the Brink*, Politico (June 22, 2012) (quoting Speaker John A. Boehner as stating that the ''decision to invoke executive privilege is an admission that White House officials were involved in decisions that misled the Congress and have covered up the truth''); House Committee on Oversight and Government Reform, *Business Meeting* (June 20, 2012) (quoting Rep. James Lankford as stating ''we weren't even aware that the President was engaged in the deliberations'' and Rep. Jason E. Chaffetz stating

that the assertion means that the President ''somehow was personally involved'').

[38] Letter from Eric H. Holder, Jr., Attorney General, Department of Justice, to Barack H. Obama, President (June 19, 2012) (quoting Letter from Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Eric H. Holder, Jr., Attorney General, Department of Justice (June 13, 2012)).

[39] Letter from Eric H. Holder, Jr., Attorney General, Department of Justice, to Barack H. Obama, President (June 19, 2012) (quoting Letter from Michael B. Mukasey, Attorney General, Department of Justice, to George W. Bush, President (June 19, 2008); Letter from Paul D. Clement, Solicitor General and Acting Attorney General, Department of Justice, to George W. Bush, President (June 27, 2007); Letter from John D. Ashcroft, Attorney General, Department of Justice, to George W. Bush, President (Dec. 10, 2001); 23 Op. Off. Legal Counsel 1, 1–2 (1999) (opinion of Attorney General Janet W. Reno); 5 Op. Off. Legal Counsel 27,29–31 (1981) (opinion of Attorney General William French Smith)).

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[49] Face the Nation, CBS News (Oct. 16, 2011) (online at www.cbsnews.com/stories/ 2011/10/16/ftn/main20121072.shtml).

[50] *Id*.

[51] Minority Staff, House Committee on Oversight and Government Reform, *Fatally Flawed: Five Years of Gunwalking in Arizona* (Jan. 2012) (online at http://democrats. oversight.house.gov/index.php?option=com__content&task=view&id=5575&Itemid=104).

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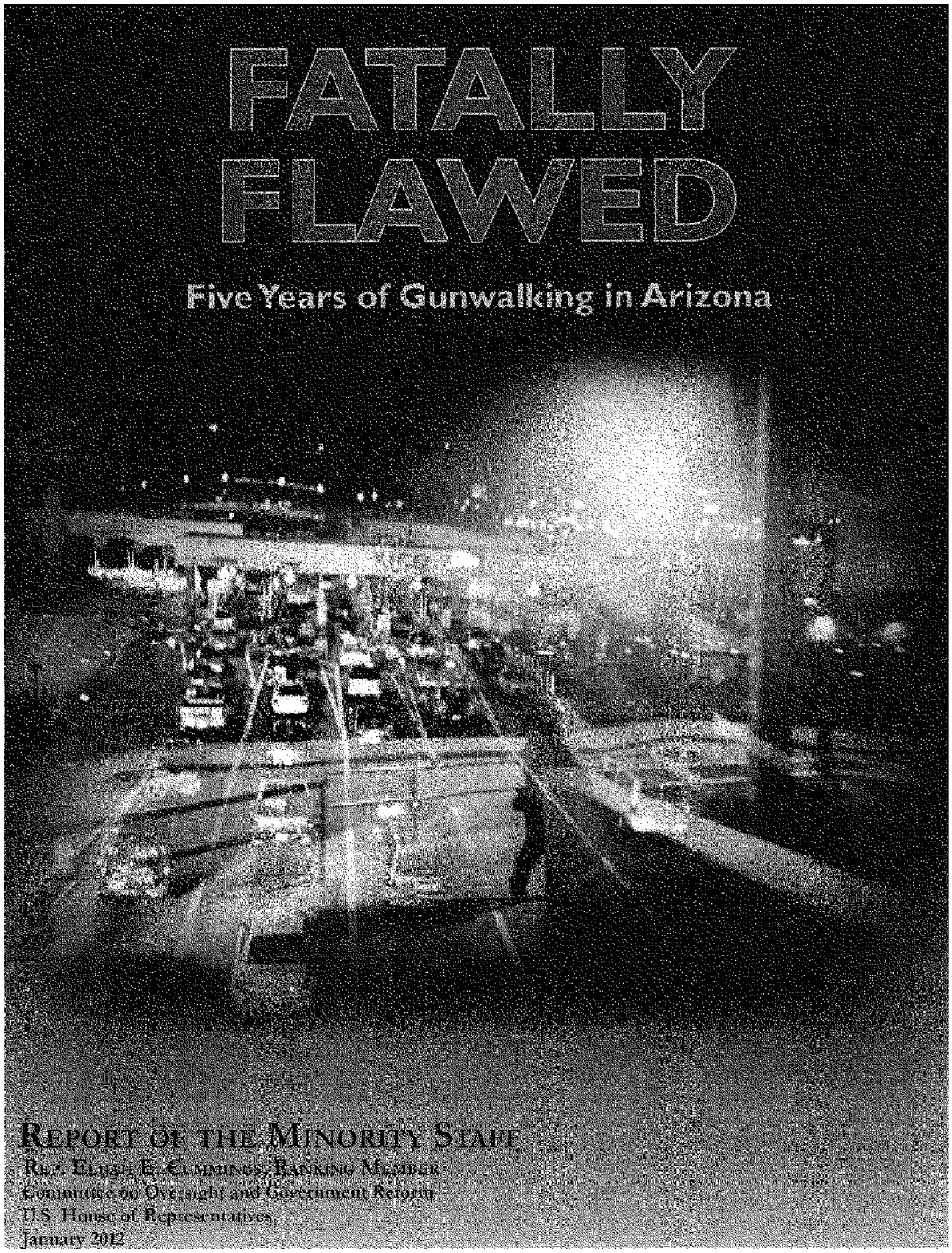
FATALLY FLAWED
Five Years of Gunwalking in Arizona
REPORT OF THE MINORITY STAFF
REP. ELIJAH E. CUMMINGS, RANKING MEMBER
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
JANUARY 2012

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January 30, 2012

Dear Members of the Committee on Oversight and Government Reform:

On December 15, 2010, Brian Terry, an Agent in an elite Customs and Border Protection tactical unit, was killed in a gunfight 18 miles from the Mexican border. Two AK-47 variant assault rifles found at the scene were traced back to purchases by one of the targets of an investigation called Operation Fast and Furious being conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). When he purchased these weapons, the target had already been identified as a suspected straw purchaser involved with a large network of firearms traffickers illegally smuggling guns to deadly Mexican drug cartels. Despite knowing about hundreds of similar purchases over a year-long period, ATF interdicted only a small number of firearms and delayed making arrests.

Last June, I pledged to Agent Terry's family that I would try to find out what led to this operation that allowed hundreds of firearms to be released into communities on both sides of the border. Following the Committee's year-long investigation of this matter, I directed my staff to compile this report to provide some of those answers. I instructed them to focus on the facts we have discovered rather than the heated and sometimes inaccurate rhetoric that has characterized much of this investigation.

As a result, this report tells the story of how misguided gunwalking operations originated in 2006 as ATF's Phoenix Field Division devised a strategy to forgo prosecutions against low-level straw purchasers while they attempted to build bigger charges against higher-level cartel members. Unfortunately, this strategy failed to include sufficient operational controls to stop these dangerous weapons from getting into the hands of violent criminals, creating a danger to public safety on both sides of the border.

The report describes how, rather than halting this operation after its flaws became evident, ATF's Phoenix Field Division launched several similarly reckless operations over the course of several years, also with tragic results. Operation Fast and Furious was the fourth in a series of operations in which gunwalking—the non-interdiction of illegally purchased firearms that could and should be seized by law enforcement—occurred since 2006.

This report also details complaints by ATF line agents and senior officials in Washington, who told the Committee that these failures were aggravated and compounded by the Arizona

U.S. Attorney's Office, which failed to aggressively prosecute firearms trafficking cases, and Federal courts in Arizona, which showed leniency toward the trafficking networks that fuel armed violence in Mexico.

This report debunks many unsubstantiated conspiracy theories. Contrary to repeated claims by some, the Committee has obtained no evidence that Operation Fast and Furious was a politically-motivated operation conceived and directed by high-level Obama Administration political appointees at the Department of Justice. The documents obtained and interviews conducted by the Committee indicate that it was the latest in a series of reckless and fatally flawed operations run by ATF's Phoenix Field Division during both the previous and current administrations.

Although this report provides a great amount of detail about what we have learned to date, it has several shortcomings. Despite requests from me and others, the Committee never held a hearing or even conducted an interview with former Attorney General Michael Mukasey. The Committee obtained documents indicating that in 2007 he was personally informed about the failure of previous law enforcement operations involving the illegal smuggling of weapons into Mexico, and that he received a proposal to expand these operations. Since the Committee failed to speak with Mr. Mukasey, we do not have the benefit of his input about why these operations were allowed to continue after he was given this information.

The Committee also rejected my request to hold a public hearing with Kenneth Melson, the former Acting Director of ATF, the agency primarily responsible for these operations. Although Committee staff conducted an interview with Mr. Melson, the public has not had an opportunity to hear his explanations for why these operations continued for so many years without adequate oversight from ATF headquarters.

As its title indicates, the Committee on Oversight and Government Reform has two primary missions. Not only are we charged with conducting oversight of programs to root out waste, fraud, and abuse, but we are also responsible for reforming these programs to ensure that government works more effectively and efficiently for the American people. For these reasons, this report sets forth constructive recommendations intended to address specific problems identified during the course of this investigation.

Above all, in offering this report and these recommendations, I recognize and commend the contributions of hundreds of thousands of law enforcement agents across our government who risk their lives on a daily basis in the pursuit of public safety and in defense of this nation.

Sincerely,

Elijah E. Cummings
Ranking Member

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I. EXECUTIVE SUMMARY

On December 15, 2010, Customs and Border Protection Agent Brian Terry was killed in a gunfight in Arizona, and two AK-47 variant assault rifles found at the scene were traced back to purchases by one of the targets of an investigation called Operation Fast and Furious being conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The target already had been identified as a suspected straw purchaser involved with a large network of firearms traffickers smuggling guns to deadly Mexican drug cartels.

At the request of the Committee's Ranking Member, Rep. Elijah E. Cummings, this report describes the results of the Committee's year-long investigation into the actions and circumstances that led to this operation.

The report finds that gunwalking operations originated as early as 2006 as agents in the Phoenix Field Division of ATF devised a strategy to forgo arrests against low-level straw purchasers while they attempted to build bigger cases against higher-level trafficking organizers and financiers. Rather than halting operations after flaws became evident, they launched several similarly reckless operations over the course of several years, also with tragic results. Each investigation involved various incarnations of the same activity: agents were contemporaneously aware of illegal firearms purchases, they did not typically interdict weapons or arrest straw purchasers, and firearms ended up in the hands of criminals on both sides of the border.

Operation Wide Receiver (2006-2007)

In 2006, ATF agents in Phoenix initiated Operation Wide Receiver with the cooperation of a local gun dealer. For months, ATF agents watched in real-time as traffickers purchased guns and drove them across the border into Mexico. According to William Newell, the Special Agent in Charge of the Phoenix Field Division, these suspects told the gun dealer that the "firearms are going to his boss in Tijuana, Mexico where some are given out as gifts." Although ATF officials believed they had sufficient evidence to arrest and charge these suspects, they instead continued surveillance to identify additional charges. As one agent said at the time, "we want it all."

Paul Charlton, then the U.S. Attorney in Phoenix, was informed that firearms were "currently being released into the community," and he was asked for his position on allowing an "indeterminate number" of additional firearms to be "released into the community, and possibly into Mexico, without any further

ability by the U.S. Government to control their movement or future use." As his subordinate stated, "[t]his is obviously a call that needs to be made by you Paul."

Over the next year, ATF agents in Phoenix went forward with plans to observe or facilitate hundreds of suspected straw firearm purchases. In 2007, a year after the investigation began, ATF initiated attempts to coordinate with Mexican officials. After numerous attempts at cross-border interdiction failed, however, the lead ATF case agent for Operation Wide Receiver concluded: "We have reached that stage where I am no longer comfortable allowing additional firearms to 'walk'."

In late 2007, the operational phase of Operation Wide Receiver was terminated, and the case sat idle for two years. When a Justice Department prosecutor reviewed the file in 2009, she quickly recognized that "a lot of guns seem to have gone to Mexico" and "a lot of those guns 'walked'." The defendants were indicted in 2010 after trafficking more than 450 firearms.

The Hernandez Case (2007)

ATF agents in Phoenix attempted a second operation in 2007 after identifying Fidel Hernandez and several alleged co-conspirators who "purchased over two hundred firearms" and were "believed to be transporting them into Mexico."

After being informed of several failed attempts at coordinating with Mexican authorities, William Hoover, then ATF's Assistant Director of Field Operations, temporarily halted operations, writing:

> I do not want any firearms to go South until further notice. I expect a full briefing paper on my desk Tuesday morning from SAC Newell with every question answered. I will not allow this case to go forward until we have written documentation from the U.S. Attorney's Office re full and complete buy in. I do not want anyone briefed on this case until I approve the information. This includes anyone in Mexico.

In response, Special Agent in Charge Newell wrote to another ATF official, "I'm so frustrated with this whole mess I'm shutting the case down and any further attempts to do something similar." Nevertheless, ATF operational plans show that additional controlled deliveries were planned for October and November of that year.

In the midst of these operations, Attorney General Michael Mukasey received a briefing paper on November 16, 2007, in preparation for a meeting with the Mexican Attorney General. It stated that "ATF would like to expand the possibility of such joint investigations and controlled deliveries—since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a

single smuggler." The briefing paper also warned, however, that "the first attempts at this controlled delivery have not been successful." Ten days later, ATF agents planned another operation in coordination with Mexico, again without success.

Hernandez and his co-conspirators, who had purchased more than 200 firearms, were arrested in Nogales, Arizona on November 27, 2007, while attempting to cross the border into Mexico. They were brought to trial in 2009, but acquitted after prosecutors were unable to obtain the cooperation of the Mexican law enforcement officials who had recovered the firearms.

The Medrano Case (2008)

In 2008, ATF agents in Phoenix began investigating a straw purchasing network led by Alejandro Medrano. Throughout 2008, ATF agents were aware that Medrano and his associates were making illegal firearms purchases from the same gun dealer who cooperated with ATF in Operation Wide Receiver.

An ATF Operational Plan describes an instance on June 17, 2008, in which agents watched Medrano and an associate illegally purchase firearms and load them into a car bound for Mexico. According to the document, "Agents observed both subjects place the firearms in the backseat and trunk," and then "surveilled the vehicle to Douglas, AZ where it crossed into Mexico."

Agents from U.S. Immigration and Customs Enforcement (ICE) balked when they learned about these tactics. After an interagency planning meeting in August 2008, the head of ICE's Arizona office wrote to ATF Special Agent in Charge Newell that, although ICE agents "left that meeting with the understanding that any weapons that were followed to the border would be seized," ATF agents later informed them that "weapons would be allowed to go into Mexico for further surveillance by LEAs [law enforcement agents] there."

On December 10, 2008, Federal prosecutors filed a criminal complaint that appears to confirm that ATF agents watched as Medrano and his associates smuggled firearms into Mexico. Describing the incident on June 17, 2008, for example, the complaint asserts that the suspects "both entered into Mexico with at least the six (6) .223 caliber rifles in the vehicle." Medrano and his associates were sentenced to multi-year prison terms after trafficking more than 100 firearms to a Mexican drug cartel.

Operation Fast and Furious (2009-2010)

In Operation Fast and Furious, ATF agents in Phoenix utilized gunwalking tactics that were similar to previous operations. In October 2009, ATF agents had

identified a sizable network of straw purchasers they believed were trafficking military-grade assault weapons to Mexican drug cartels. By December, they had identified more than 20 suspected straw purchasers who "had purchased in excess of 650 firearms."

Despite this evidence, the ATF agents and the lead prosecutor in the case believed they did not have probable cause to arrest any of the straw purchasers. As the lead prosecutor wrote: "We have reviewed the available evidence thus far and agree that we do not have any chargeable offenses against any of the players."

In January 2010, ATF agents and the U.S. Attorney's Office agreed on a strategy to build a bigger case and to forgo taking down individual members of the straw purchaser network. The lead prosecutor presented this broader approach in a memo that was sent to U.S. Attorney Dennis Burke. The memo noted that "there may be pressure from ATF headquarters to immediately contact identifiable straw purchasers just to see if this develops any indictable cases and to stem the flow of guns." In the absence of probable cause, however, the U.S. Attorney agreed that they should "[h]old out for bigger." Over the next six months, agents tried to build a bigger case with wiretaps while making no arrests and few interdictions.

After receiving a briefing on Operation Fast and Furious in March 2010, ATF Deputy Director William Hoover became concerned about the number of firearms involved in the case. Although he told Committee staff that he was not aware of gunwalking, he ordered an "exit strategy" to take down the case and ready it for indictment within 90 days. ATF field agents chafed against this directive, however, and continued to facilitate suspect purchases for months in an effort to salvage the broader goal of the investigation. The case was not indicted until January 2011, ten months after Deputy Director Hoover directed that it be shut down.

No evidence that senior officials authorized gunwalking in Fast and Furious

The documents obtained and interviews conducted by the Committee reflect that Operation Fast and Furious was the latest in a series of fatally flawed operations run by ATF agents in Phoenix and the Arizona U.S. Attorney's Office. Far from a strategy that was directed and planned by "the highest levels" of the Department of Justice, as some have alleged, the Committee has obtained no evidence that Operation Fast and Furious was conceived or directed by high-level political appointees at Department of Justice headquarters.

ATF's former Acting Director, Kenneth Melson, and ATF's Deputy Director, William Hoover, told Committee staff that gunwalking violated agency doctrine, that they did not approve it, and that they were not aware that ATF agents in Phoenix were using the tactic in Operation Fast and Furious. They also stated that,

because they did not know about the use of gunwalking in Operation Fast and Furious, they never raised it up the chain of command to senior Justice Department officials.

Apart from whether Mr. Hoover was aware of specific gunwalking allegations in Operation Fast and Furious, it remains unclear why he failed to inform Acting ATF Director Melson or senior Justice Department officials about his more general concerns about Operation Fast and Furious or his March 2010 directive for an "exit strategy." During his interview with Committee staff, Mr. Hoover took substantial personal responsibility for ATF's actions, stating: "I have to take responsibility for the mistakes that we made."

Former Phoenix U.S. Attorney Dennis Burke told Committee staff that although he received multiple briefings on Operation Fast and Furious, he did not approve gunwalking, was not aware it was being used, and did not inform officials in Washington about its use. He told Committee staff that, at the time he approved the proposal for a broader strategy targeting cartel leaders instead of straw purchasers, he had been informed that there was no probable cause to make any arrests and that he had been under the impression that ATF agents were working closely with Mexican officials to interdict weapons. Given the number of weapons involved in the operation, Mr. Burke stated that he "should have spent more time" focusing on the case. He stated: "it should not have been done the way it was done, and I want to take responsibility for that."

Gary Grindler, the former Acting Deputy Attorney General, and Lanny Breuer, the Assistant Attorney General for the Criminal Division, both stated that neither ATF nor the U.S. Attorney's Office ever brought to their attention concerns about gunwalking in Operation Fast and Furious, and that, if they had been told, they "would have stopped it."

When allegations of gunwalking three years earlier in Operation Wide Receiver were brought to the attention of Mr. Breuer in 2010, he immediately directed his deputy to share their concerns directly with ATF's leadership. He testified, however, that he regretted not raising these concerns directly with the Attorney General or Deputy Attorney General, stating, "if I had known then what I know now, I, of course, would have told the Deputy and the Attorney General."

The Committee has obtained no evidence indicating that the Attorney General authorized gunwalking or that he was aware of such allegations before they became public. None of the 22 witnesses interviewed by the Committee claims to have spoken with the Attorney General about the specific tactics employed in Operation Fast and Furious prior to the public controversy.

Testifying before the Senate Judiciary Committee, the Attorney General stated:

> This operation was flawed in its concept and flawed in its execution, and unfortunately we will feel the effects for years to come as guns that were lost during this operation continue to show up at crime scenes both here and in Mexico. This should never have happened and it must never happen again.

The strategy of forgoing immediate action in order to build a larger case is common in many law enforcement investigations, and the Committee has obtained no evidence to suggest that ATF agents or prosecutors in Arizona acted with anything but a sincere intent to stem illegal firearms trafficking.

Nevertheless, based on the evidence before the Committee, it is clear that ATF agents in Phoenix and prosecutors in the Arizona U.S. Attorney's Office embarked on a deliberate strategy not to arrest suspected straw purchasers while they attempted to make larger cases against higher-level targets. Although these officials claimed they had no probable cause to arrest any straw purchasers at the time, allowing hundreds of illegally purchased military-grade assault weapons to fall into the hands of violent drug cartels over the course of five years created an obvious and inexcusable threat to public safety on both sides of the border.

II. METHODOLOGY

Over the past year, the Committee has conducted an investigation into firearms trafficking investigations run by the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). This inquiry was originally brought to the Committee's attention by Senator Charles Grassley, the Ranking Member of the Senate Judiciary Committee, who had asked ATF to respond to allegations that agents had knowingly allowed the sale of firearms to suspected straw purchasers during Operation Fast and Furious. The Committee has been joined in its investigation by Majority and Minority staff of the Senate Judiciary Committee.

To date, there have been nine congressional hearings relating to these topics, including three before this Committee. Attorney General Eric Holder has agreed to testify before the Committee on February 2, 2011. He has testified previously on five other occasions regarding these issues, including before the Senate and House Judiciary Committees in November and December 2011, respectively.

Committee staff have interviewed 22 witnesses from the ATF Phoenix Field Division, the U.S. Attorney's Office for the District of Arizona, ATF headquarters, and the Department of Justice. Committee staff have also interviewed multiple Federal firearms dealers. The Department has made numerous officials available for briefings, transcribed interviews, and hearings, including the former Deputy Attorney General, the Assistant Attorney General for the Criminal Division, the Deputy Assistant Attorney General for the Criminal Division, and the U.S. Attorney for the District of Arizona. The Department has also organized briefings during the course of the investigation, including with senior leaders from the Federal Bureau of Investigation (FBI) and Drug Enforcement Agency (DEA).

In March 2011, the Committee sent letters to ATF and the Department of Justice requesting documents and communications. Committee Chairman Darrell Issa subsequently issued subpoenas for these documents in March and October 2011, and he has issued numerous document requests to other agencies, including the FBI and DEA.

The Committee has now obtained more than 12,000 pages of internal emails, reports, briefing papers, and other documents from various Federal agencies, whistleblowers, firearms dealers, and other parties. The Department of Justice has produced approximately 6,000 pages of documents to the Committee, including sensitive law enforcement materials related to the pending prosecution of the defendants in the underlying Fast and Furious case.

The Department has declined to produce some documents, including "reports of investigation" and prosecutorial memoranda in the underlying cases. The Department has stated that providing these particular documents at this time could compromise the prosecution of 20 firearms trafficking defendants scheduled for trial in September. In addition, the Department has not provided documents related to its internal deliberations about responding to this congressional investigation, with the exception of documents and correspondence related to the drafting of the February 4, 2011, letter to Senator Grassley, which the Department formally withdrew on December 2, 2011. The Deputy Attorney General explained this policy in a letter to the Committee:

> The Department has a long-held view, shared by Administrations of both political parties, that congressional requests seeking information about the Executive Branch's deliberations in responding to congressional requests implicate significant confidentiality interests grounded in the separation of powers under the U.S. Constitution.[1]

The letter stated that the Department made an exception to this policy and provided documents relating to the drafting of the February 4 letter because Congress had unique equities in understanding how inaccurate information had been relayed to it.[2]

On November 4, 2011, Ranking Member Elijah Cummings requested a hearing with former Attorney General Michael Mukasey in light of documents obtained by the Committee indicating that the former Attorney General was briefed in 2007 on an unsuccessful coordinated delivery operation, as well as a proposal to expand such operations in the future. Ranking Member Cummings wrote:

> Given the significant questions raised by the disclosures in these documents, our Committee's investigation will not be viewed as credible, even-handed, or complete unless we hear directly from Attorney General Mukasey.[3]

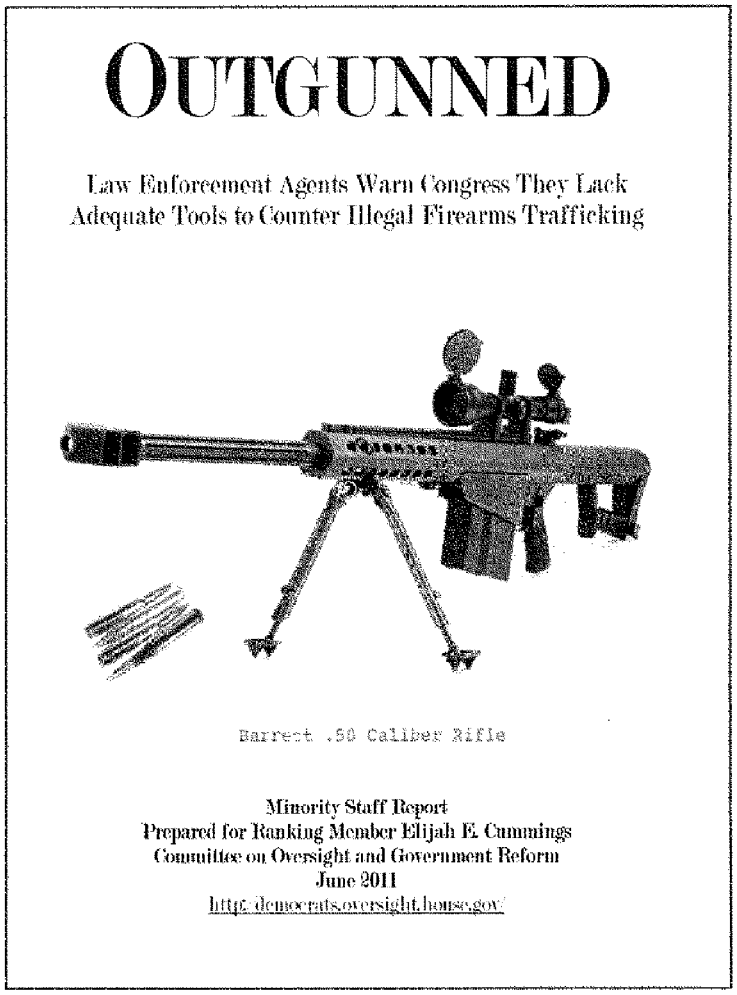
The Committee has not held a hearing with Mr. Mukasey, nor has it conducted an interview with him, depriving the Committee of important information directly relevant to the origin of these operations.

In addition, on October 28, 2011, Ranking Member Cummings requested a public hearing with Kenneth Melson, the former Acting Director of ATF. He wrote:

> Since the Attorney General has now agreed to appear before Congress in December, I believe Members also deserve an opportunity to question Mr. Melson directly, especially since he headed the agency responsible for Operation Fast and Furious.[4]

To date, the Committee has declined to hold this hearing.

In June 2011, Ranking Member Cummings issued a report entitled "Outgunned: Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking."[5] He also hosted a Minority Forum of experts regarding the larger problem of firearms trafficking and the lack of law enforcement tools to stem this tide.[6]



OUTGUNNED

Law Enforcement Agents Warn Congress They Lack Adequate Tools to Counter Illegal Firearms Trafficking

Barrett .50 Caliber Rifle

Minority Staff Report
Prepared for Ranking Member Elijah E. Cummings
Committee on Oversight and Government Reform
June 2011
http://democrats.oversight.house.gov/

III. BACKGROUND

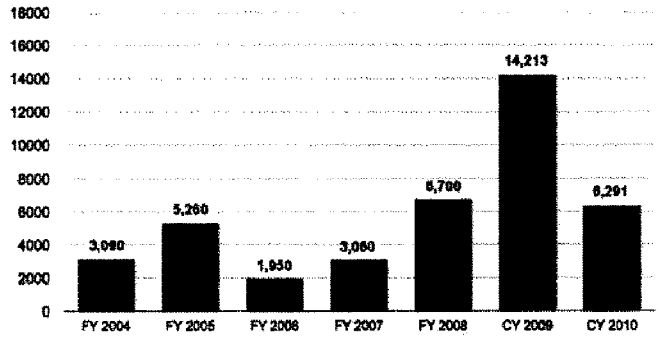
Over the past five years, the Mexican government has been locked in a battle with drug trafficking organizations seeking control of lucrative trafficking routes that carry billions of dollars in narcotics destined for the United States. This battle is fueled in part by the tens of thousands of military-grade weapons that cross the U.S. border into Mexico every year. In particular, law enforcement officials have reported that the "weapons of choice" for international drug cartels are semi-automatic rifles and other assault weapons. These weapons are frequently purchased in the United States because they are generally illegal to purchase or possess in Mexico.[7] According to the latest statistics from the Mexican Attorney General's office, 47,515 people have been killed in drug-related violence since 2006.[8]

On November 1, 2011, Assistant Attorney General Lanny Breuer testified before the Senate Judiciary Committee that the vast majority of guns recovered in Mexico were imported illegally from the United States:

> From my understanding, 94,000 weapons have been recovered in the last five years in Mexico. Those are just the ones recovered, Senator, not the ones that are in Mexico. Of the 94,000 weapons that have been recovered in Mexico, 64,000 of those are traced to the United States.[9]

These statistics are consistent with reports from the Mexican government. In May 2010, Mexican President Felipe Calderon stated before a joint session of

NUMBER OF FIREARMS SEIZED IN MEXICO AND TRACED BACK TO THE UNITED STATES, 2004 - 2010



Sources: Halting U.S. Firearms Trafficking to Mexico: A Report by Senators Dianne Feinstein, Charles Schumer and Sheldon Whitehouse to the United States Senate Caucus on International Narcotics Control (June 2011); Government Accountability Office Report, Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges; and Letter from ATF Acting Director Kenneth Melson to Senator Dianne Feinstein (June 2009). Note: FY= Fiscal Year; CY= Calendar Year.

Congress that, of the 75,000 guns and assault weapons recovered in Mexico over the past three years, more than 80% were traced back to the United States.[10]

ATF is the primary U.S. law enforcement agency charged with combating firearms trafficking from the United States to Mexico. ATF enforces Federal firearms laws and regulates the sale of guns by the firearms industry under the Gun Control Act of 1968.[11] ATF reports to the Attorney General through the Office of the Deputy Attorney General.[12] ATF is organized into 25 Field Divisions led by Special Agents in Charge who are responsible for multiple offices within their jurisdiction.[13] In Phoenix, the Special Agent in Charge is currently responsible for offices in Phoenix, Flagstaff, Tucson, and Yuma, Arizona, as well as Albuquerque, Las Cruces, and Roswell, New Mexico.[14]

The U.S. Attorney for the District of Arizona is the chief Federal law enforcement officer in the State of Arizona. The District of Arizona has approximately 170 Assistant United States Attorneys and approximately 140 support staff members split equally between offices in Phoenix and Tucson.[15] As part of its responsibilities, the U.S Attorney's Office has primary responsibility for prosecuting criminal cases against individuals who violate Federal firearms trafficking laws in its region.[16]

Attorneys from the Department's Criminal Division in Washington, D.C. serve as legal experts on firearms-related issues and assist in prosecuting some firearms trafficking cases.[17] In addition to developing and implementing strategies to attack firearms trafficking networks, Criminal Division attorneys occasionally assist the U.S. Attorneys' offices in prosecuting firearms trafficking cases.[18]

In 2006, ATF implemented a nationwide program called Project Gunrunner to attack the problem of gun trafficking to Mexico.[19] Project Gunrunner is part of the Department's broader Southwest Border Initiative, which seeks to reduce cross-border drug and firearms trafficking and the high level of violence associated with these activities on both sides of the border.[20]

In June 2007, ATF published a strategy document outlining the four key components to Project Gunrunner: the expansion of gun tracing in Mexico, international coordination, domestic activities, and intelligence. In implementing Project Gunrunner, ATF has focused resources on the four Southwest Border States. Additionally, Attorney General Holder has testified that, since his confirmation in 2009, the Department of Justice has made combating firearms trafficking to Mexico a top priority.[21]

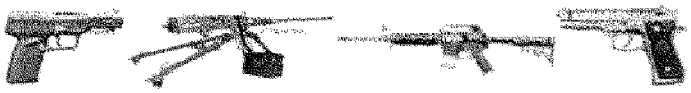
In November 2010, the Department of Justice Inspector General issued a report examining the effectiveness of Project Gunrunner in stopping the illicit trafficking of guns from the United States to Mexico. The Inspector General found

that "ATF's focus remains largely on inspections of gun dealers and investigations of straw purchasers rather than on higher-level traffickers, smugglers, and the ultimate recipients of the trafficked guns." The report recommended that ATF "[f]ocus on developing more complex conspiracy cases against higher level gun traffickers and gun trafficking conspirators." The report also found that U.S. Attorneys' offices often declined Project Gunrunner cases because firearms investigations are often difficult to prosecute and result in lower penalties.[22]

Typical firearms trafficking cases involve a "straw purchase" in which the actual buyer of a firearm uses another person, "the straw purchaser," to execute the paperwork necessary to purchase the firearm from a gun dealer.[23] The actual buyer typically is someone who is prohibited from buying a firearm and cannot pass the background check or who does not want a paper trail documenting the purchase. Gun trafficking organizations regularly use straw purchasers who deliver firearms to intermediaries before other members of the organizations transfer the guns across the border.[24]

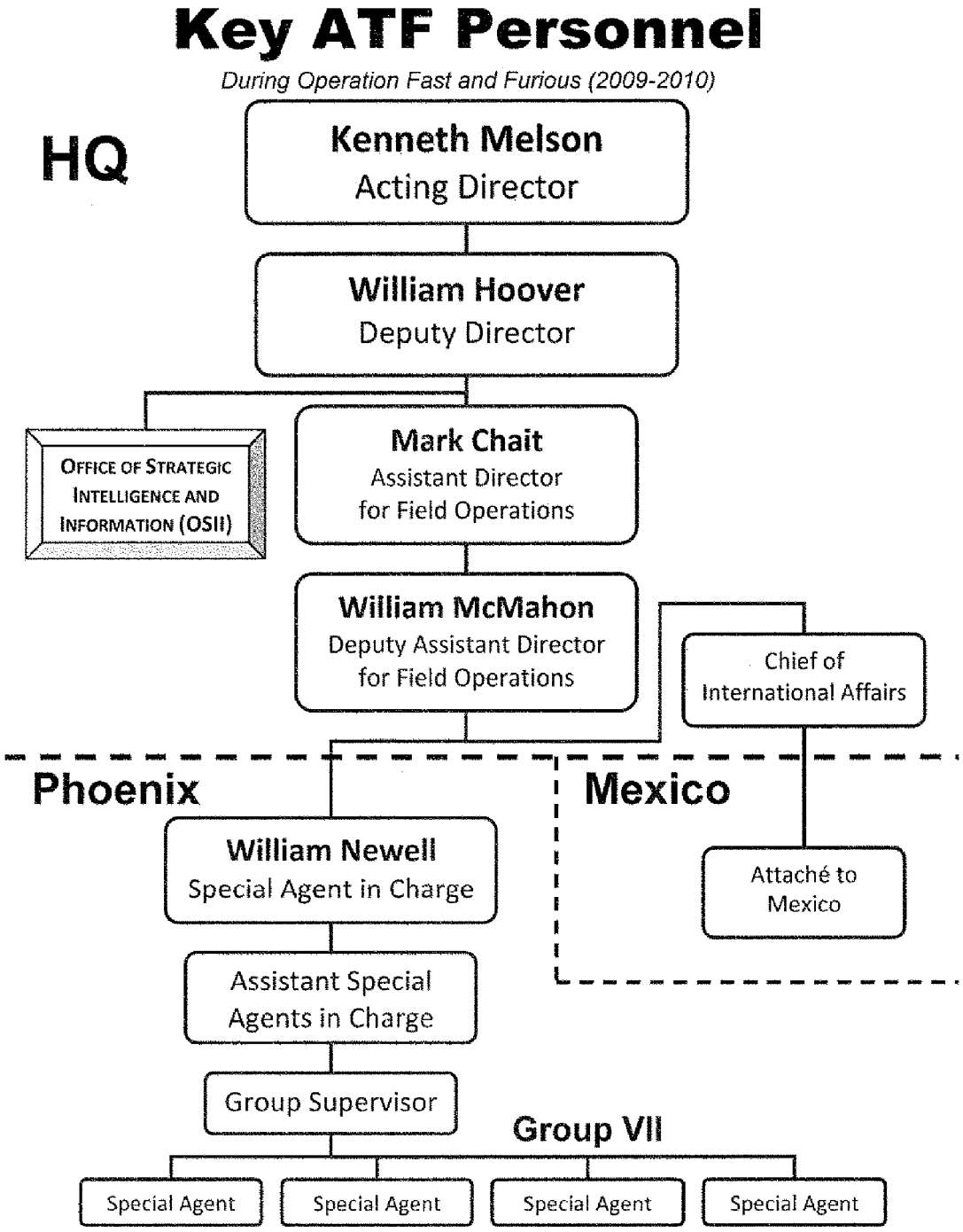
There is no Federal statute specifically prohibiting firearms trafficking or straw purchases. Instead, ATF agents and Federal prosecutors use other criminal statutes, including: (1) 18 USC § 924(a)(1)(A) which prohibits knowingly making a false statement on ATF Form 4473; (2) 18 USC § 922(a)(6) which prohibits knowingly making a false statement in connection with a firearm purchase; (3) 18 USC § 922(g)(1) which prohibits possession of a firearm by a convicted felon; and (4) 18 USC § 922(a)(1)(A) which prohibits engaging in a firearms business without a license.[25]

CURRENT WEAPONS OF CHOICE



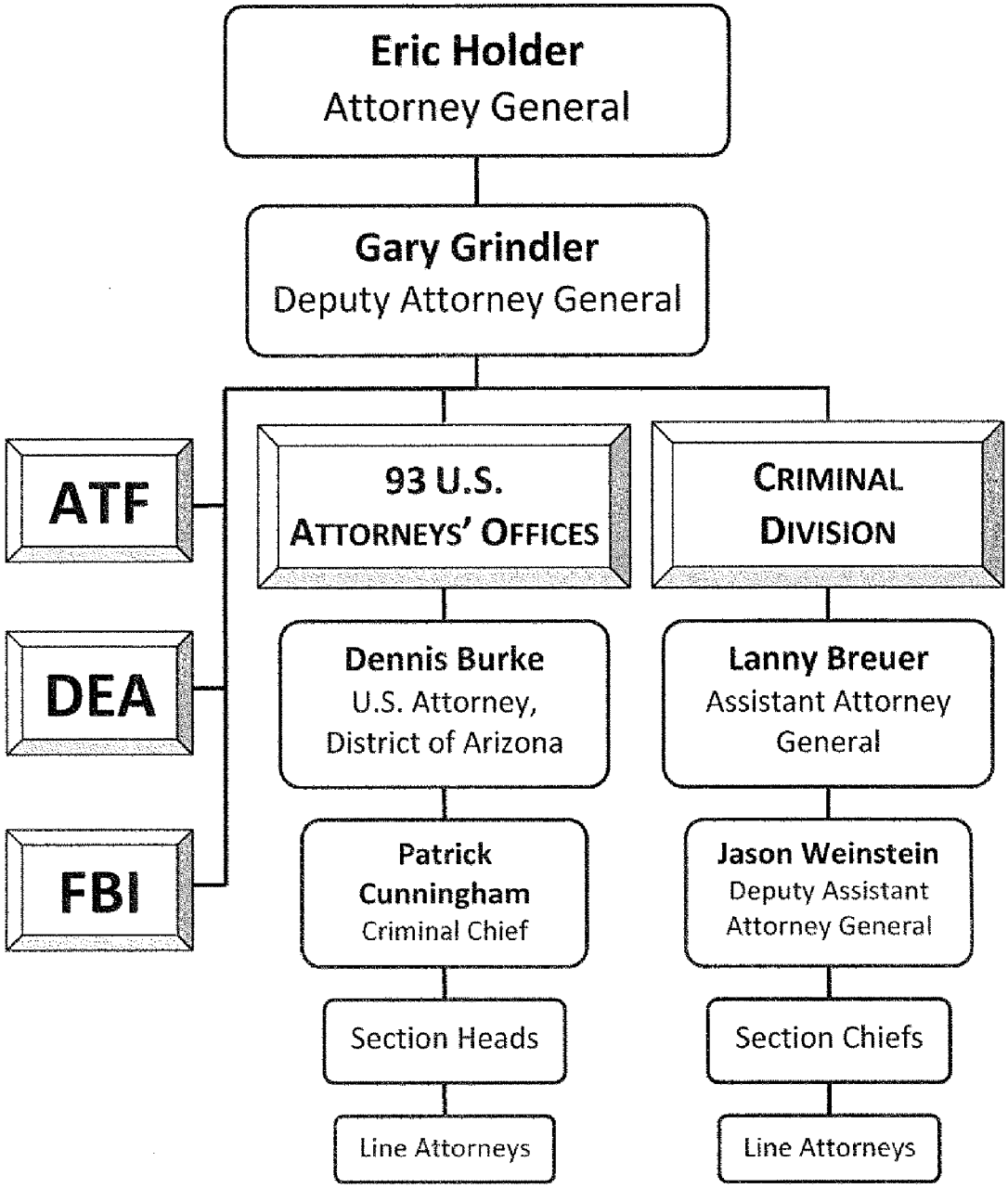
Primary Weapons of Choice	Secondary Market Inspection Weapons of Choice
Bushmaster XM15 Rifles	Colt AR15 Sporter & Bushmaster XM15 rifles
Romarm Cugir 7.62 x 39mm rifles	Romarm 7.62 x 39mm rifles
FN 5.7 x 28mm pistols	DPMS and Olympic Arms .223 rifles
.50 caliber rifles (Barrett, Beowulf)	Norinco, Polytech, and Maadil AKS rifles
DPMS .223 rifles	Alexander Arms Beowulf .50 rifles
Beretta Model 92 pistols	Beretta and Taurus 9mm pistols
Taurus PT 9mm pistols	Colt .38 Super & .45 Pistols
Colt .38 Super pistols	

Source: Bureau of Alcohol, Tobacco, Firearms and Explosives, Weapons of Choice Presentation (2003).


Key ATF Personnel
During Operation Fast and Furious (2009-2010)
HQ
Kenneth Melson
Acting Director
William Hoover
Deputy Director
Office of Strategic Intelligence and Information (OSII)
Mark Chait
Assistant Director for Field Operations
William McMahon
Deputy Assistant Director for Field Operations
Chief of International Affairs
Phoenix
Mexico
William Newell
Special Agent in Charge
Attaché to Mexico
Assistant Special Agents in Charge
Group Supervisor
Group VII
Special Agent
Special Agent
Special Agent
Special Agent

Key DOJ Personnel

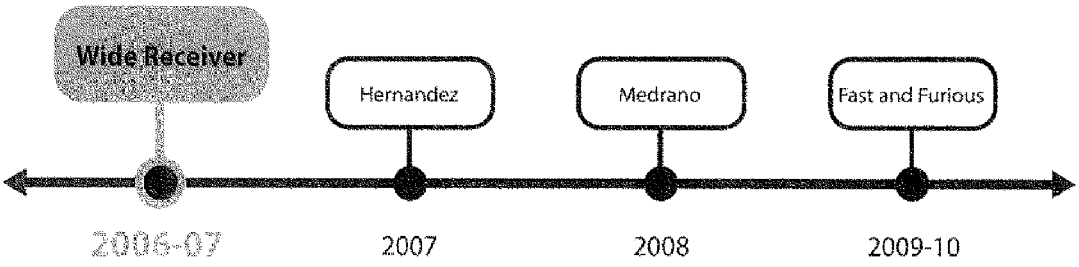
During Operation Fast and Furious (2009-2010)



IV. FINDINGS

A. ATF Phoenix Field Operations Involving "Gunwalking"

Documents obtained by the Committee and transcribed interviews conducted by Committee staff have identified a series of gunwalking operations conducted by ATF's Phoenix Field Division. Beginning in 2006, each of these investigations involved various incarnations of the same activity: ATF-Phoenix agents were contemporaneously aware of suspected illegal firearms purchases, they did not typically interdict the weapons or arrest the straw purchasers, and those firearms ended up in the hands of criminals on both sides of the border.



1. Operation Wide Receiver (2006-07)

Operation Wide Receiver began in early 2006 when ATF agents in Tucson opened an investigation of a suspected straw purchaser after receiving information from a cooperating gun dealer. Documents indicate that agents worked closely with this dealer, including by contemporaneously monitoring firearms sales to known straw purchasers without arrests or interdiction, and that they sought authorization for the expansion of this operation from then-U.S. Attorney for the District of Arizona, Paul Charlton.

The evidence also indicates that, between March 2006 and mid-2007, ATF agents had contemporaneous knowledge of planned sales of firearms to known straw purchasers and repeatedly designed surveillance operations of these illegal firearms purchases without effectuating arrests. According to documents obtained by the Committee, agents avoided interdicting weapons despite having the legal authority to do so in order to build a bigger case. Despite repeated failed attempts to coordinate surveillance with Mexican law enforcement, the ATF agents continued to attempt these operations.

Although the operational phase of the investigation ended in 2007, the case was not prosecuted for more than two years, during which time no arrests were made and the known straw purchasers remained at large. A prosecutor from the Criminal Division of the Department of Justice who was assigned to Operation Wide Receiver in 2009 and reviewed the case file raised concerns that many guns had "walked" to Mexico.

ATF-Phoenix monitored gun dealer selling to straw buyers

In March 2006, ATF-Phoenix agents received a tip from a Federal Firearms Licensee (FFL) in Tucson, Arizona, that a suspected straw purchaser had purchased six AR-15 lower receivers and placed an order for 20 additional lower receivers.[26] The agents opened an investigation of the purchaser because the nature of the transaction suggested a possible connection to illegal firearms trafficking.[27]

Some military-style firearms consist of an upper and lower receiver, with the lower receiver housing the trigger mechanism, and the upper receiver including the barrel of the firearm. According to a memorandum from the U.S. Attorney's Office, ATF had information that the suspects were obtaining both receivers and assembling them to create illegal firearms.[28] The firearms were illegal because the barrels were 10.5 inches in length, and rifles with barrels shorter than 16 inches must be registered and licensed with ATF.[29]

According to summaries prepared subsequently by a Department of Justice attorney prosecuting the case, "The FFL agreed to work with ATF to target the persons who were interested in purchasing large quantities of lower receivers for AR-15s." Specifically, "The FFL agreed to consensual recordings both of the purchases and phone calls."[30] Soon thereafter, ATF-Phoenix briefed prosecutors in the Arizona U.S. Attorney's Office that several suspicious individuals were purchasing "large quantities of lower receivers" from a Tucson FFL.[31]

In a June 22, 2006, memorandum, the Special Agent in Charge of ATF-Phoenix explained that the three suspects in the case had purchased a total of 126 AR-15 lower receivers. According to the memo, one of the suspected straw purchasers "advised the CS [confidential source] that he takes the firearms to a machine shop at or near Phoenix, AZ and they are converted into machine guns." The ATF agents also suspected that these firearms were making their way to Mexico and into the hands of a dangerous drug cartel. Specifically, the Special Agent in Charge wrote that, "ATF just recently tracked the vehicle to Tijuana, Mexico,"and one suspected straw purchaser "stated that these straw purchased firearms are going to his boss in Tijuana, Mexico where some are given out as gifts."[32]

ATF agents learned that the suspected straw purchasers were seeking a new supplier of upper receivers:

> The purchasers have asked the FFL to provide the uppers to them as well, indicating that they are not pleased with their current source for the uppers. The FFL has expressed reluctance to the purchasers regarding selling them both the lowers and the 10.5 inch uppers, as that would look very suspicious as if he was actually providing them with an illegal firearm. The purchasers are well aware that it is illegal to place a 10.5 inch upper on the lowers they are purchasing from the FFL. The FFL has indicated that he could try to find another 3rd party source of uppers for the purchasers.[33]

According to legal research provided by ATF counsel to attorneys in the U.S. Attorney's Office, it is illegal to possess both the upper and lower receivers, even if they are not assembled: "The possessor does not have to assemble the lower and the upper so long as the firearm is in actual or constructive possession of the offender, and can be 'readily restored' to fire."[34]

Despite evidence that the suspects illegally possessed both upper and lower receivers, were assembling them, and were transporting them to Mexico, ATF did not arrest the suspects. On March 31, 2006, the Resident Agent in Charge of the Tucson office—a local office that reports to the Special Agent in Charge of the Phoenix Field Division—wrote an email explaining that they had enough evidence to arrest the suspects, but that they were waiting to build a bigger case. He wrote:

> We have two AUSA assigned to this matter, and the USAO @ Tucson is prepared to issue Search and Arrest Warrants. We already have enough for the 371 and 922 a6 charges, but we want the Title II manufacturing and distribution pieces also—we want it all.[35]

ATF-Phoenix sought U.S. Attorney's approval to walk guns

The evidence indicates that, rather than arrest the straw buyers, the ATF Phoenix Field Division sought the approval of the U.S. Attorney's Office to let the guns walk in June 2006. The prosecutors handling the case wrote a memorandum to Paul Charlton, U.S. Attorney for the District of Arizona, which outlined the request. They wrote:

> ATF is interested in introducing a CI [confidential informant] to act as this source of uppers. This would further the investigation in that it would provide more solid evidence that the purchasers are in fact placing illegal length uppers on the lowers that they are purchasing from the currently-involved FFL. It may also lead to discovery of more information as to the ultimate delivery location of these firearms and/or the actual purchaser.[36]

ATF-Phoenix and the Arizona U.S. Attorney's Office both understood that ATF was already letting firearms walk by working with a cooperating FFL to provide "lower receivers" to straw purchasers trafficking them to Mexico. According to the prosecutors' memorandum to U.S. Attorney Charlton:

> [The ATF Agent] pointed out that these same exact firearms are currently being released into the community, the only difference being that at this time ATF is only involved in providing the lower receiver. We know that an illegal upper is being obtained from a third party, but the government is not currently involved in that aspect.[37]

The memo to U.S. Attorney Charlton then relayed ATF-Phoenix's request:

> The question was posed by RAC [Resident Agent in Charge] Higman as to the U.S. Attorney's Office's position on the possibility of allowing an indeterminate number of illegal weapons, both components of which (the upper and the lower) were provided to the criminals with ATF's knowledge and/or participation, to be released into the community, and possibly into Mexico, without any further ability by the U.S. Government to control their movement or future use.

The memo further stated that the proposed tactics were controversial and opposed by ATF's legal counsel:

> [The ATF agent] indicated that ATF's legal counsel is opposed to this proposed method of furthering the investigation, citing moral objections. Recognizing that it will eventually be this office that will prosecute the individuals ultimately identified by this operation, RAC Higman has requested that we ascertain the U.S. Attorney's Office's position with regard to this proposed method of furthering the investigation.[38]

When the Chief of the Criminal Division in the U.S. Attorney's Office sent the prosecutor's memo to U.S. Attorney Charlton, she accompanied it with an email in which she stated that it "does a very good job outlining the investigation and the potential concerns. This is obviously a call that needs to be made by you Paul."[39] U.S. Attorney Charlton responded the next day: "Thanks—I'm meeting with the ATF SAC [Special Agent in Charge William Newell] on Tuesday and I'll discuss it with him then."[40]

Although the Committee has obtained no document memorializing the subsequent conversation between U.S. Attorney Charlton and the Special Agent in Charge, documents obtained by the Committee indicate that ATF-Phoenix went forward with their plans to observe or facilitate hundreds of firearms purchases by

the suspected straw purchasers without arrests. Committee staff did not conduct a transcribed interview of Mr. Charlton.

United States Attorney's Office
District of Arizona

Memorandum

To: Paul K. Charlton, United States Attorney for the District of Arizona

From: Jennifer J. Maldonado, Assistant U.S. Attorney
David P. Petermann, Assistant U.S. Attorney

Subject: Operation Wide Receiver, Policy Question

Date: July 13, 2006

[illegible] met with AUSAs Maldonado and Petermann on June 30, 2006 with respect to the subject investigation. The question was posed by RAC Hagman as to the U.S. Attorney's Office's position on the possibility of allowing an undeterminate number of illegal weapons, both components of which (the upper and the lower) were provided to the criminals with ATF's knowledge and/or participation, to be released into the community, and possibly into Mexico, without any further ability by the U.S. Government to [illegible] these weapons in future use. Hagman pointed out that these same [illegible]

ATF-Phoenix continued to walk guns after consulting with U.S. Attorney

In October 2006, ATF agents planned a surveillance operation to observe a suspect purchase AR-15 lower receivers and two AR-15 rifles, determine if the suspect was going to make additional purchases, and identify any of his associates.[41] The Operational Plan noted:

> It is suspected that [the suspect] will now be moving the firearms to Tijuana himself. We are not prepared to make any arrests at this time because we are still attempting to coordinate our efforts with AFI [Agencia Federal de Investigación] in Mexico. ... If it is determined that [the suspect] has spotted the surveillance unit, surveillance will be stopped immediately.[42]

Documents indicate that ATF agents observed the suspect purchase five AR-15 lower receivers and terminated surveillance after three hours.[43] Notes taken after the investigation explained that the surveillance included audio recordings of the suspect stating that he "is now personally transporting the firearms to Tijuana, Mexico himself."[44]

On December 5, 2006, Special Agent in Charge Newell wrote that another key suspect in the Wide Receiver investigation had recently "purchased a total of ten (10)

AR-15 type lower receivers on two separate purchases."[45] He also wrote that, during those transactions, the suspect told the confidential source that he was taking the firearms to Mexico and would soon be ordering an additional 50 lower receivers.[46] Special Agent in Charge Newell wrote that the Tucson field office was planning to secure the cooperation of Mexican authorities:

> The Tucson II Field Office has maintained contact with the ATF Mexico City Country Office in an effort to secure the cooperation and join investigation with the Agencia Federal de Investigación (Mexico). Three Tucson II Field Office SA have obtained official U.S. Government passports in anticipation of a coordination meeting with the AFT early during calendar year 2007.[47]

On February 23, 2007, ATF agents planned to conduct a traffic stop of one suspected straw purchaser "with the assistance of the Tucson Police Department."[48] Although the Operational Plan indicated that "[p]robable cause exists to arrest [the suspect]," the agents' goal was to lawfully detain him at the traffic stop and bring him to the ATF office for questioning.[49] According to a memorandum from Special Agent in Charge Newell, between February 7 and April 23, 2007, the suspect and co-conspirators together purchased and ordered 150 firearms, including AK-47 and AR-15 rifles and pistols.[50] Although ATF apparently had probable cause for arrest, on February 27, 2007, the subject was interviewed by ATF agents and released.[51] The documents do not indicate why he was not arrested and prosecuted at that time.

ATF agents unsuccessfully attempted to coordinate with Mexico

The documents indicate that, although ATF had sufficient evidence to arrest the suspected straw purchasers, the agents continued to press forward with plans to attempt coordinated surveillance operations with Mexico. In April 2007, the ATF agents in charge of Operation Wide Receiver were unsure whether they could successfully coordinate surveillance with their Mexican counterparts. On April 10, 2007, the case agent for Wide Receiver wrote to a Tucson Police Department (TPD) officer:

> Assuming that the MCO [ATF's Mexico Country Office] can coordinate with the Mexican authorities, we anticipate that Tucson VCIT will hand off his surveillance operation at the U.S. / Mexican border. No ATF SA or local officers working at our direction will travel into Mexico. Through MCO we have requested that the Mexican authorities pick up the surveillance at the border and work to identify persons, telephone numbers, "stash" locations and source(s) of money supply in furtherance of this conspiracy.[52]

According to an ATF Operational Plan, just one day later, ATF agents and Tucson Police officers conducted surveillance and recorded the "planned arrival of [the suspect] and other persons at the FFL."[53] The Operational Plan stated that U.S. law enforcement would watch the "firearms cross international lines and enter Mexico. ... If the Mexican authorities decline or fail to participate in this operation the firearms traffickers will be arrested prior to leaving the United States."[54] Although the agents obtained an electronic record of the sale and initiated surveillance, the plan failed according to a summary prepared by one agent:

> ATF agents in conjunction with TPD VCIT Task Force Officers conducted a surveillance of suspected firearms traffickers in furtherance of this investigation. Suspects purchased 20+ firearms which totaled over $35,000.00 in retail cost. The surveillance successfully obtained electronic evidence of the transaction, further identified the traffickers and additional suspect vehicles. The traffickers were followed to a neighborhood on the Southside of Tucson and then later lost. The suspects are planning on making a purchase of 20-50 M4 rifles and are negotiating this next deal. The investigation continues.[55]

Despite the surveillance of the straw purchase and other evidence collected during the April 11, 2007, operation, the suspects were not arrested even after they were later located. Instead, more operations were planned.

An April 23, 2007, memo from Special Agent in Charge Newell to the Chief of Special Operations requesting additional funding for Operation Wide Receiver documented the failure to coordinate surveillance with Mexican law enforcement and public safety risks associated with continuing on that course:

> To date, the Tucson II Field Office and TPD SID have been unable to surveil the firearms to the International border. From contact with those offices, the Mexican Federal law enforcement authorities understand that the surveillance is difficult and that several firearms will likely make it to Mexico prior to a U.S. law enforcement successful surveillance of firearms to the international border.[56]

Two weeks later, on May 7, 2007, ATF agents and Tucson Police conducted surveillance of another "planned arrival" of a suspected straw purchaser and his associates at an FFL.[57] The Operational Plan shows that ATF agents had advance notice that the suspect had contacted the FFL to arrange the purchase of more than 20 firearms, planned to purchase the firearms from the FFL later in the day, and had made arrangements for a vehicle to transport the weapons into Mexico that night.[58] The Operational Plan indicated that "[i]f the Mexican authorities decline or fail to participate, the firearms traffickers will be arrested prior to leaving the

United States."[59] ATF agents contacted Mexican law enforcement in advance of the operation and they agreed to assist with surveillance of the suspects if they entered Mexico.[60] According to a subsequent summary of these events:

> [The suspects] were scheduled to purchase the ordered firearms. [Redacted] cancelled at the last minute, but [the suspect] purchased 15 firearms and was surveilled to his residence at [redacted]. Surveillance was discontinued the following day due to neighbors becoming suspicious of surveillance vehicles."[61]

The suspects were not arrested, the firearms were not interdicted, and the investigation continued in anticipation of the suspects' next major purchase.

ATF agents expressed concern about gunwalking

Agents in ATF's Phoenix Field Division began to express concern that Operation Wide Receiver was not yielding the desired results. In a June 7, 2007, email, one special agent on the case wrote to his supervisor:

> We have invested a large amount of resources in trying to get the load car followed to Mexico and turning it over to PGR [Mexican federal prosecutors] and are preparing to expend even more. We already have numerous charges up here and actually taking in to Mexico doesn't add to our case specifically at that point. We want the money people in Mexico that are orchestrating this operation for indictment but obviously we may never actually get our hands on them for trial, so the real beneficiary is to PGR.[62]

Despite the agent's concerns, Operation Wide Receiver remained on the same course with another "planned arrival" attempted on June 26, 2007.[63] The Operational Plan indicated that ATF agents had advance notice that the suspect had been in contact with the FFL, that the suspect was "extremely anxious" to purchase more firearms, and that firearms are to be purchased and then continue to "unknown locations throughout Tucson and Southern Arizona."[64] Documents show that ATF agents and Tucson police were unable to follow the firearms to the Mexican border.[65]

In an email sent on June 26, 2007, as the surveillance operation was set to begin, the ATF case agent for Operation Wide Receiver expressed reluctance about the repeated failures to coordinate surveillance of firearms traffickers with Mexican law enforcement.[66] He wrote to a prosecutor at the Texas U.S. Attorney's Office:

> We anticipate surveillance this evening where the subject(s) of interest are scheduled to purchase approx. $20K of associated firearms for

> further shipment to Caborca, Mx, and we are coordinating with the Mexican authorities in the event that the surveillance is successful. We have reached that stage where I am no longer comfortable allowing additional firearms to 'walk,' without a more defined purpose.[67]

Criminal Division took over prosecution and found gunwalking

In late 2007, the operational phase of Operation Wide Receiver was terminated, and the case was passed to the U.S. Attorney's Office for prosecution. The case then sat idle for nearly two years without indictments or arrests. The first prosecutor assigned to the case became a magistrate judge, and the second prosecutor did not open the case file for more than six months.[68]

In 2009, the Department of Justice's Criminal Division in Washington, D.C. offered to assign prosecutors to support firearms trafficking cases in any of the five border-U.S. Attorneys' offices.[69] The U.S. Attorney's Office in Arizona accepted the offer and asked for assistance with the prosecution of targets in Operation Wide Receiver.[70] In September 2009, the Criminal Division assigned an experienced prosecutor to take over the case.[71]

After reviewing the investigative files from 2006 and 2007, the Criminal Division prosecutor quickly realized that there were serious questions about how the case had been handled. On September 23, 2009, she wrote an email to her supervisors giving a synopsis of the case and its problems: "In short it appears that the biggest problem with the case is its [sic] old should have been taken down last year AND a lot of guns seem to have gone to Mexico."[72]

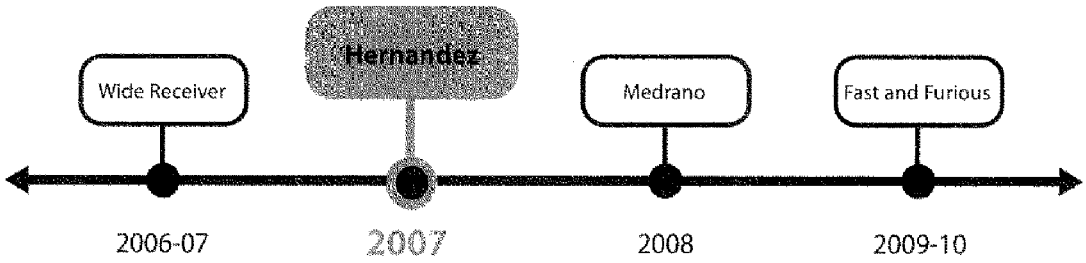
As she prepared the case for indictment, she continued to update her supervisors as new details emerged from the case file. On March 16, 2010, she sent an email to her supervisor:

> It is my understanding that a lot of those guns "walked." Whether some or all of that was intentional is not known. The AUSA seemed to think ATF screwed up by not having a mechanism in place to seize weapons once they crossed the border.[73]

The prosecutor also found evidence that guns involved in Operation Wide Receiver were connected to crime scenes in Mexico. She wrote that "13 of the purchased firearms have been recovered in Mexico in connection with crime scenes, including the April 2008 Tijuana gun battle" and that "[t]wo potential defendants were recently murdered in Mexico."[74]

The Criminal Division proceeded with prosecutions relating to the investigation. In May 2010, one suspect pleaded guilty to forfeiture charges pre-

indictment while two additional co-conspirators were indicted in federal court.[75] On October 27, 2010, seven additional suspects were indicted in the District of Arizona on gun-trafficking related charges.[76]



2. The Hernandez Case (2007)

According to documents obtained by the Committee, agents in the ATF Phoenix Field Division unsuccessfully attempted a second operation in the summer of 2007 after identifying Fidel Hernandez and several alleged co-conspirators as suspected straw purchasers seeking to smuggle firearms into Mexico. Despite failed attempts to coordinate with Mexican authorities, ATF agents sought approval from the U.S. Attorney's Office to expand so-called "controlled deliveries." In addition, documents obtained by the Committee indicate that then-Attorney General Michael Mukasey was personally briefed on these failed attempts and was asked to approve an expansion of these tactics. During the course of the investigation, Hernandez and his co-conspirators reportedly purchased more than 200 firearms.

ATF-Phoenix watched guns cross border without interdiction

According to their Operational Plan, ATF-Phoenix Field Division agents initiated a firearms trafficking investigation in July 2007 against Fidel Hernandez and his associates who, between July and October 2007, "purchased over two hundred firearms" and were "believed to be transporting them into Mexico."[77] ATF analysts discovered that "Hernandez and vehicles registered to him had recently crossed the border (from Mexico into the U.S.) on 23 occasions" and that "four of their firearms were recovered in Sonora, Mexico."[78]

According to contemporaneous ATF documents, ATF-Phoenix unsuccessfully attempted a cross-border operation in September 2007 in coordination with Mexican law enforcement authorities:

> On September 26 and 27, 2007, Phoenix ATF agents conducted nonstop surveillance on Hernandez and another associate, Carlos Morales. ATF had information that these subjects were in possession

> of approximately 19 firearms (including assault rifles and pistols) and were planning a firearm smuggling trip into Mexico. The surveillance operation was coordinated with Tucson I Field Office and the ATF Mexico Country Attaché. The plan, agreed to by all parties and authorized by the Phoenix SAC, was to follow these subjects to the border crossing in Nogales, Arizona while being in constant communication with an ATF MCO [Mexico Country Office] agent who would be in constant contact with a Mexican law enforcement counterpart at the port of entry and authorized to make a stop of the suspects' vehicle as it entered into Mexico.
>
> On September 27, 2007, at approximately 10:00 pm, while the Phoenix agents, an MCO agent and Mexican counterparts were simultaneously on the phone, the suspects' vehicle crossed into Mexico. ATF agents observed the vehicle commit to the border and reach the Mexican side until it could no longer be seen. The ATF MCO did not get a response from the Mexican authorities until 20 minutes later when they informed the MCO that they did not see the vehicle cross.[79]

ATF headquarters raised concerns about operational safeguards

Failed attempts to coordinate with Mexican authorities to capture suspected firearms traffickers as part of controlled deliveries raised serious concerns at ATF headquarters. On September 28, 2007, the day after the failed attempt, Carson Carroll, ATF's then-Assistant Director for Enforcement Programs, notified William Hoover, ATF's then-Assistant Director of Field Operations, that they had failed in their coordination. Mr. Carroll stated that when the suspected firearms traffickers were observed purchasing a number of firearms from an FFL in Phoenix, Arizona, ATF officials "immediately contacted and notified the GOM [Government of Mexico] for a possible controlled delivery of these weapons southbound to the Nogales, AZ., US/Mexico Border."[80] Mr. Carroll continued:

> ATF agents observed this vehicle commit to the border and reach the Mexican side until it could no longer be seen. We, the ATF MCO did not get a response from the Mexican side until 20 minutes later, who then informed us that they did not see the vehicle cross.[81]

According to internal ATF documents, ATF agents attempted a second cross-border controlled delivery with Mexican authorities on October 4, 2007. That operation also failed to lead to the successful capture of the subject in Mexico.[82]

That same day, Assistant Director Hoover sent an email to Assistant Director Carroll and ATF-Phoenix Field Division Special Agent in Charge William Newell demanding a call to discuss the investigation:

> Have we discussed the strategy with the US Attorney's Office re letting the guns walk? Do we have this approval in writing? Have we discussed and thought thru the consequences of same? Are we tracking south of the border? Same re US Attorney's Office. Did we find out why they missed the handoff of the vehicle? What are our expected outcomes? What is the timeline?[83]

The next day, Assistant Director Hoover wrote Mr. Carroll again:

> I do not want any firearms to go South until further notice. I expect a full briefing paper on my desk Tuesday morning from SAC Newell with every question answered. I will not allow this case to go forward until we have written documentation from the U.S. Attorney's Office re full and complete buy in. I do not want anyone briefed on this case until I approve the information. This includes anyone in Mexico.[84]

Mr. Hoover's concerns seem to have temporarily halted controlled delivery operations in the Hernandez investigation. On October 6, 2007, Special Agent in Charge Newell wrote to Assistant Director Carroll:

> I'm so frustrated with this whole mess I'm shutting the case down and any further attempts to do something similar. We're done trying to pursue new and innovative initiatives—it's not worth the hassle.[85]

Nevertheless, Mr. Newell insisted that he did have approval from the U.S. Attorney's Office. He wrote:

> We DO have them [the U.S. Attorney's Office] on board and as a matter of fact they (Chief of Criminal John Tucchi) recently agreed to charge the firearms recipients in Mexico (if we could fully [ID] them via a controlled delivery) with a conspiracy charge in US court.[86]

Despite the concerns expressed by Assistant Director Hoover, ATF operational plans show that additional controlled deliveries were planned for October 18, November 1, and November 26-27, 2007.[87] The documents describe ATF plans to observe the purchases at the FFL, follow the suspects "from the FFL in Phoenix, AZ to the Mexican port of entry in Nogales, Arizona," allow the suspects to "cross into Mexico," and allow "Mexican authorities to coordinate the arrest of the subjects."[88]

Attorney General Mukasey briefed and asked to "expand" operations

In the midst of these ongoing operations, on November 16, 2007, Attorney General Michael Mukasey received a memorandum in preparation for a meeting

with Mexican Attorney General Medina Mora. The memo described the Hernandez case as "the first ever attempt to have a controlled delivery of weapons being smuggled into Mexico by a major arms trafficker."[89] The briefing paper warned the Attorney General that "the first attempts at this controlled delivery have not been successful."[90] Despite these failures, the memorandum sought to expand such operations in the future:

> ATF would like to expand the possibility of such joint investigations and controlled deliveries—since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a single smuggler.[91]

This briefing paper was prepared by senior officials at ATF and the Department of Justice only weeks after Assistant Director Hoover had expressed serious concerns with the failure of these tactics.[92]

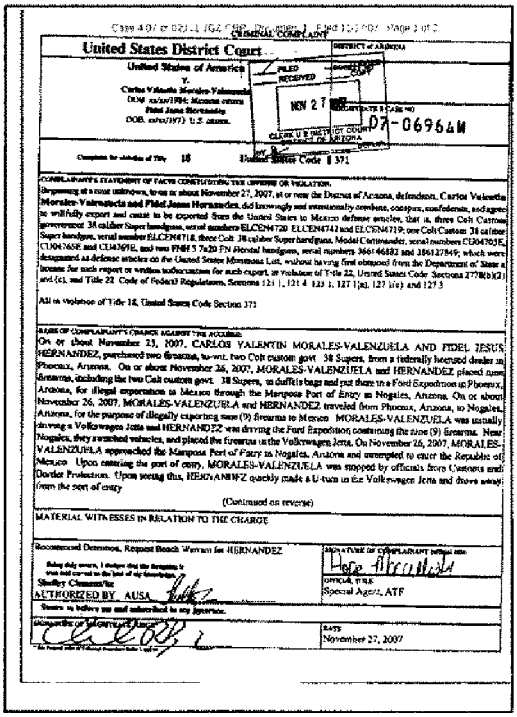
The emails exchanging drafts of the Attorney General's briefing paper also make clear that ATF officials understood that these were not, in fact, the first operations that allowed guns to "walk." Assistant Director Carroll wrote to Assistant Director Hoover: "I am going to ask DOJ to change 'first ever'... there have [been] cases in the past where we have walked guns."[93] That change never made it into the final briefing paper for Attorney General Mukasey.

Ten days after Attorney General Mukasey was notified about the failed surveillance operations and was asked to expand the use of the cross-border gun operations, ATF agents planned another surveillance operation in coordination with Mexico. The Operational Plan stated:

> 1) Surveillance units will observe [redacted] where they will attempt to confirm the purchase and transfer of firearms by known targets.
>
> 2) Once the transfer of firearms is confirmed through surveillance, units will then follow the vehicle and its occupants from the FFL in Phoenix, AZ to the Mexican port of entry in Nogales, Arizona. Once the subjects cross into Mexico, ATF attachés will liaison with Mexican authorities to coordinate the arrest of the subjects.
>
> 3) ATF agents will not be involved with the arrest of the subjects in Mexico but will be present to coordinate the arrest efforts between surveillance units and Mexican authorities as well as to conduct post-arrest interviews.[94]

As part of this operation, surveillance units were monitoring the FFL during normal business hours in order to observe large firearms transfers by their known targets.[95]

The Committee has not received any documents indicating that ATF-Phoenix agents were able to successfully coordinate with Mexican law enforcement to interdict firearms in the Hernandez case. During the course of the investigation, Hernandez and his co-conspirators purchased more than 200 firearms. In multiple instances, ATF agents witnessed Hernandez and his associates take these weapons into Mexico.[96]



CRIMINAL COMPLAINT

United States District Court

DISTRICT of ARIZONA

United States of America

v.

Carlos Valentin Morales Valenzuela

DOB: xx/xx/1984; Mexico citizen

Fidel Jesus Hernandez

DOB: xx/xx/1977; U.S. citizen

FILED

RECEIVED

NOV 27

CLERK U.S. DISTRICT COURT

DISTRICT OF ARIZONA

DEPUTY

MAGISTRATE'S CASE NO.

07-06964M

Complaint for violation of Title 18 United States Code § 371

CONSPIRACY'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION:

Beginning at a time unknown, to wit: on or about November 27, 2007, at or near the District of Arizona, defendants, Carlos Valentin Morales-Valenzuela and Fidel Jesus Hernandez, did knowingly and intentionally combine, conspire, confederate, and agree to willfully export and cause to be exported from the United States to Mexico defense articles, that is, three Colt Customs government 38 caliber Super handguns, serial numbers ELCEN6720 ELCEN6743 and ELCEN6719; one Colt Custom 38 caliber Super handgun, serial number ELCEN6718; three Colt 38 caliber Super handguns, Model Commander, serial numbers CD04780JE, CD04365E and CD4369JE; and two FN/FI 5.7x28 FN Herstal handguns, serial numbers 386146882 and 386127849; which were designated as defense articles on the United States Munitions List, without having first obtained from the Department of State a license for such export or written authorization for such export, in violation of Title 22, United States Code Sections 2778(b)(2) and (c), and Title 22 Code of Federal Regulations, Sections 121.1, 121.4, 123.1, 127.1(a), 127.1(c) and 127.3

All in violation of Title 18, United States Code Section 371

BASIS OF COMPLAINANT'S CHARGE AGAINST THE ACCUSED:

On or about November 23, 2007, CARLOS VALENTIN MORALES-VALENZUELA AND FIDEL JESUS HERNANDEZ, purchased two firearms, to-wit: two Colt custom govt 38 Supers, from a federally licensed dealer in Phoenix, Arizona. On or about November 26, 2007, MORALES-VALENZUELA and HERNANDEZ placed these firearms, including the two Colt custom govt 38 Supers, in duffel bags and put them in a Ford Expedition in Phoenix, Arizona, for illegal exportation to Mexico through the Mariposa Port of Entry in Nogales, Arizona. On or about November 26, 2007, MORALES-VALENZUELA and HERNANDEZ traveled from Phoenix, Arizona, to Nogales, Arizona, for the purpose of illegally exporting nine (9) firearms to Mexico. MORALES-VALENZUELA was usually driving a Volkswagen Jetta and HERNANDEZ was driving the Ford Expedition containing the nine (9) firearms. Near Nogales, they switched vehicles, and placed the firearms in the Volkswagen Jetta. On November 26, 2007, MORALES-VALENZUELA approached the Mariposa Port of Entry in Nogales, Arizona and attempted to enter the Republic of Mexico. Upon entering the port of entry, MORALES-VALENZUELA was stopped by officials from Customs and Border Protection. Upon seeing this, HERNANDEZ quickly made a U-turn in the Volkswagen Jetta and drove away from the port of entry.

(Continued on reverse)

MATERIAL WITNESSES IN RELATION TO THE CHARGE

Recommended Detention, Request Bench Warrant for HERNANDEZ

Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.

Shelley Chanmugam

AUTHORIZED BY AUSA

Sworn to before me and subscribed in my presence.

SIGNATURE OF COMPLAINANT

OFFICIAL TITLE

Special Agent, ATF

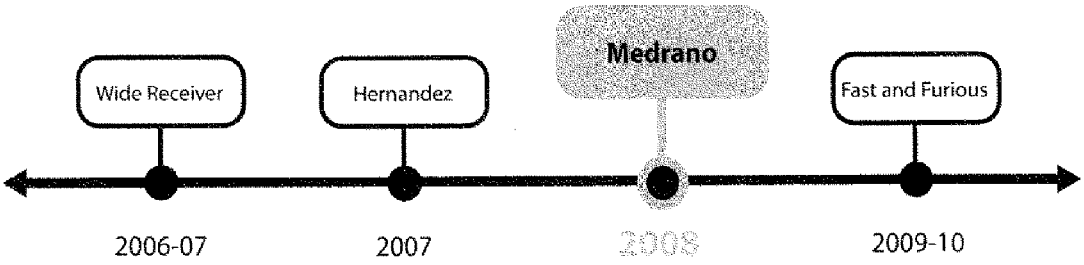
DATE

November 27, 2007

Hernandez and his associate were arrested in Nogales, Arizona on November 27, 2007, while attempting to cross the border into Mexico.[97] The defendants were charged with Conspiracy to Export Firearms, Exporting Firearms, and two counts of Attempted Exportation of Firearms. The defendants were brought to trial in 2009, but acquitted after prosecutors were unable to obtain the cooperation of the Mexican law enforcement officials who had recovered firearms purchased by Hernandez. An ATF briefing paper from 2009 summarized the result:

> The judge also would not allow us to introduce evidence of how the guns were found in Mexico unless we could produce the Mexican Police Officials who located the guns. We were unable to obtain the cooperation of Mexican law enforcement to identify and bring these witnesses to trial to testify.[98]

At the conclusion of the trial, the jury was unable to reach a verdict on three counts of the indictment, and the defendants were acquitted on a fourth charge.[99]



3. The Medrano Case (2008)

In February 2008, ATF agents in Phoenix began investigating a straw purchasing network led by Alejandro Medrano. Documents obtained by the Committee indicate that on multiple occasions throughout 2008, ATF agents were aware that Medrano and his associates were making illegal firearms purchases and trafficking the weapons into Mexico. According to documents obtained by the Committee, ATF-Phoenix did not arrest suspects for approximately one year while their activities continued, instead choosing to continue surveillance. During the summer of 2008, agents from U.S. Immigration and Customs Enforcement (ICE) raised concerns about the tactics being used, but the tactics continued for several more months. On December 10, 2008, a criminal complaint was filed against Medrano and his associates in the United States District Court for the District of Arizona, and the targets were later sentenced to varying prison sentences.

ATF agents watched as firearms crossed the border

An ATF-Phoenix Operational Plan obtained by the Committee describes an instance on June 17, 2008, in which ATF agents watched Medrano and an associate, Hernan Ramos, illegally purchase firearms at an FFL in Arizona, load them in their car, and smuggle them into Mexico:

> Agents observed both subjects place the firearms in the backseat and trunk [of a vehicle]. Agents and officers surveilled the vehicle to Douglas, AZ where it crossed into Mexico at the Douglas Port of Entry (POE) before a stop could be coordinated with CBP [Customs and Border Protection].[100]

Neither Medrano nor Ramos was arrested or detained at the time or in the months after. The Operational Plan does not include any indication that ATF agents attempted to coordinate with Mexican law enforcement. The fact that the suspects continued to make firearms purchases in the United States and take them to Mexico suggests that they were not intercepted by Mexican law enforcement.

In the two months following these surveillance operations, Medrano and his co-conspirators purchased several additional firearms at gun shows and from FFLs in the Phoenix area.[101] The suspects also continued to travel back and forth to Mexico.[102] The ATF Operational Plan also stated:

> The group particularly targeted gun shows where several members purchased firearms from various FFL'S. According to TECS [the Treasury Enforcement Communications System, a government database used to track individuals' travel patterns], identified subjects routinely crossed into Mexico prior to and following a large number of firearms purchases. While only purchasing a small number of firearms, MEDRANO crossed into Mexico utilizing several vehicles that were not registered to him or his immediate family. MEDRANO routinely returned to the US on foot while other identified subjects drove a vehicle into the US. It is believed that identified subjects entering the US on foot were carrying bulk cash to pay for future firearms.[103]

According to the Operational Plan, multiple firearms connected to the network were recovered in Mexico, some very soon after they were sold:

> Hernan RAMOS purchased a 7.62 caliber rifle in February 2008 that was recovered in June 2008. Jose ARIZMENDIZ purchased two pistols that were recovered at the same location in Mexico. One of the pistols had a time to crime of fifteen (15) days.[104]

ICE agents raised concerns

Documents obtained by the Committee indicate that in the summer of 2008, ATF agents handling the Medrano investigation met with ICE agents to coordinate surveillance of another cross-border smuggling attempt. At this meeting, ICE agents balked when they learned about the tactics being employed by ATF-Phoenix. On August 12, 2008, the head of ICE's offices in Arizona wrote to ATF Special Agent in Charge Newell asking for an in-person meeting about the dispute among agents over ATF operational plans to allow straw purchased guns to cross the border:

> One of [the ICE] groups worked with your guys over the weekend on a surveillance operation at a Tucson gun show. While we had both met in advance with the USAO, our agents left that meeting with the understanding that any weapons that were followed to the border would be seized. On Friday night, however, our agents got an op plan that stated that weapons would be allowed to go into Mexico for further surveillance by LEAs [law enforcement agents] there.[105]

In his response, Mr. Newell acknowledged that letting guns cross the border was part of ATF's plan, but stated that he needed more information about what had happened:

> I need to get some clarification from my folks tomorrow because I was told that your folks were aware of the plan to allow the guns to cross, in close cooperation with both our offices in Mexico as well as Mexican Feds.[106]

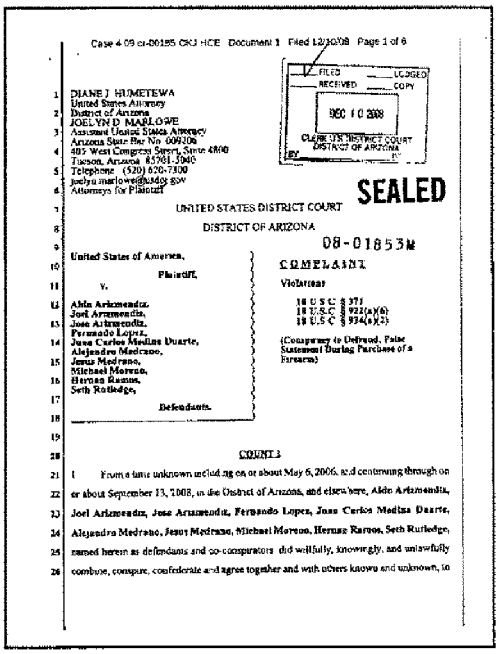
Although the subsequent correspondence does not explain how this dispute was resolved, the Medrano trafficking network reportedly supplied over 100 assault rifles and other weapons "to a member of the Sinaloan drug cartel known as 'Rambo.'"[107]

Criminal complaint also confirms "gunwalking"

On December 10, 2008, Federal prosecutors filed a complaint in the United States District Court for the District of Arizona that describes in detail gun trafficking activities conducted by Medrano and his associates that involved more than 100 firearms over the course of the year. The complaint confirms that ATF agents watched as Medrano and his associates trafficked illegal firearms into Mexico. For example, the complaint discusses the incident on June 17, 2008, discussed above, in which ATF agents observed the suspects purchase weapons, load them in their car, and drive them to Mexico. The complaint states:

> On or about June 17, 2008, at or near Tucson, Arizona, Alejandro Medrano and Hernan Ramos went together to Mad Dawg Global, a federally licensed firearms dealer, where Hernan Ramos purchased six (6) .223 caliber rifles for approximately $4800.00 and falsely represented on the 4473 that he was the actual purchaser. Both Alejandro Medrano and Hernan Ramos placed the six (6) rifles in the back seat of their vehicle.[108]

The complaint then explains that the suspects drove these firearms across the border. It states:



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CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY

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Attorneys for Plaintiff

SEALED

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

08-01853M

United States of America,
Plaintiff,
v.
Aldo Arizmendia,
Joel Arizmendia,
Jose Arizmendia,
Fernando Lopez,
Juan Carlos Medina Duarte,
Alejandro Medrano,
Jesus Medrano,
Michael Moreno,
Hernan Ramos,
Seth Rutledge,
Defendants.

COMPLAINT

Violations:

18 U.S.C. § 371
18 U.S.C. § 922(a)(6)
18 U.S.C. § 924(a)(2)

(Conspiracy to Defraud, False Statement During Purchase of a Firearm)

COUNT 1

1. From a time unknown including on or about May 6, 2006, and continuing through on or about September 13, 2008, in the District of Arizona, and elsewhere, Aldo Arizmendia, Joel Arizmendia, Jose Arizmendia, Fernando Lopez, Juan Carlos Medina Duarte, Alejandro Medrano, Jesus Medrano, Michael Moreno, Hernan Ramos, Seth Rutledge, named herein as defendants and co-conspirators did willfully, knowingly, and unlawfully combine, conspire, confederate and agree together and with others known and unknown, to

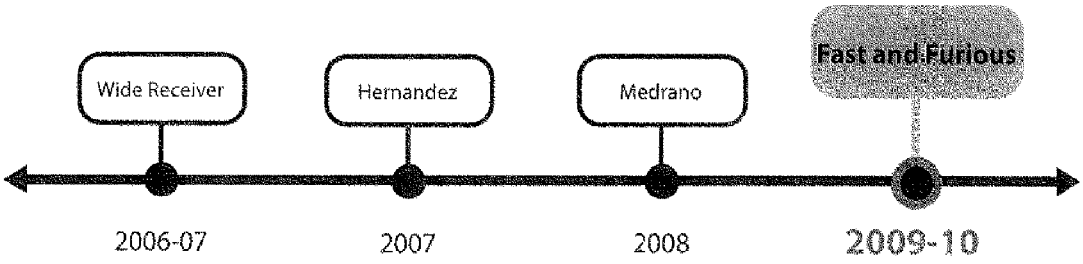
> Alejandro Medrano drove Hernan Ramos's vehicle with Hernan Ramos as a passenger from Mad Dawg Global in Tuscon, Arizona, to the Douglas Port of Entry where they both entered into Mexico with at least the six (6) .223 caliber rifles in the vehicle.[109]

The complaint states that the information was obtained by ATF agents conducting surveillance:

> ATF Special Agents conducted surveillance, recorded firearms transactions, and identified the dates and times that the conspirators herein crossed the international border either in vehicles or on foot.[110]

The complaint also describes how quickly Medrano and his associates traveled back and forth between the United States and Mexico for additional firearm purchases. For example, in one instance on May 21, 2008, Hernan Ramos entered the United States and returned to Mexico "less than two hours later in the same vehicle." The complaint also states that in another instance on August 13, 2008, Medrano and an associate entered the United States "driving a vehicle which had entered into Mexico approximately fifteen minutes earlier."[111]

On August 9, 2010, Medrano was "sentenced to 46 months in prison for his leadership role in the conspiracy."[112] Ramos was sentenced to 50 months in prison and "[m]ost of the remaining defendants in the conspiracy received prison terms ranging from 14 to 30 months."[113] Many of the firearms purchased by the Medrano network were subsequently recovered in Mexico.[114]



4. Operation Fast and Furious (2009-10)

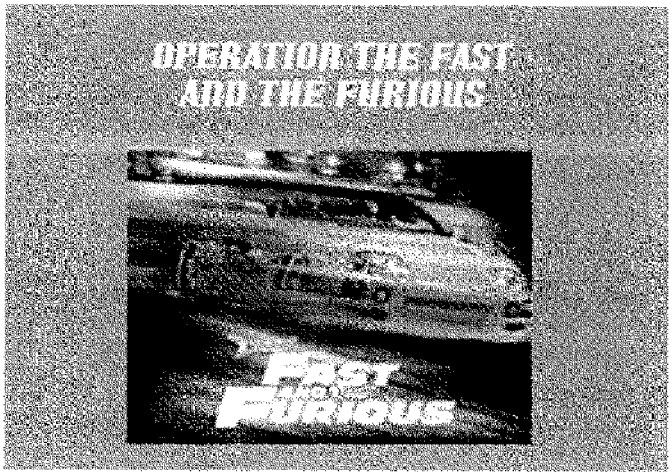
The investigation that became known as Operation Fast and Furious began in the ATF Phoenix Field Division in October 2009. Despite having identified 20 suspects who paid hundreds of thousands of dollars in cash to buy hundreds of military-grade firearms on behalf of the same trafficking ring, ATF-Phoenix and the Arizona U.S. Attorney's Office asserted that they lacked probable cause for any arrests. Three months into the investigation, they agreed instead on a broader

strategy to build a bigger case against cartel leaders, rather than straw purchasers, through long-term surveillance and wiretaps. While they pursued this broader strategy, ATF-Phoenix agents did not interdict hundreds of firearms purchased and distributed by the suspects under their surveillance. In March 2010, the Deputy Director of ATF became concerned with the operation and ordered an "exit" strategy to bring indictments within 90 days. The documents indicate that ATF-Phoenix field agents chafed against this directive, however, and allowed suspect purchases to continue for months in an effort to salvage the broader goal of the investigation. In January 2011, the U.S. Attorney's Office indicted 19 straw purchasers and the local organizer of the network, all of whom had been identified at the beginning of the investigation in 2009.

Initiated by ATF-Phoenix in the Fall of 2009

According to documents obtained by the Committee, the investigation that became known as Operation Fast and Furious started in October 2009 when ATF agents received a tip that four suspected straw purchasers had acquired numerous AK-47 style rifles from the same gun dealer. ATF also received a tip about a man named Uriel Patino who had purchased numerous AK-47 rifles from the same dealer.[115]

ATF-Phoenix presentation on Fast and Furious



The next month, ATF identified six additional suspected straw purchasers and two local properties that were being utilized as firearm drop locations.[116] On November 20, 2009, some of the guns purchased by the suspects were recovered in Naco, Mexico, including firearms with a "short time to crime." Two additional suspects were identified based on the firearms recovered in Naco.[117]

The case continued to grow in December with the identification of seven additional suspected straw purchasers and Manuel Celis-Acosta, a suspect connected to a large-scale Drug Enforcement Administration (DEA) investigation.[118]

A Briefing Paper prepared by ATF-Phoenix noted the size of the organization and the rapid pace of firearm purchases in those initial months of the investigation. It stated:

> It should also be noted that the pace of firearms procurement by this straw purchasing group from late September to early December, 2009 defied the "normal" pace of procurement by other firearms trafficking groups investigated by this and other field divisions. This "blitz" was extremely out of the ordinary and created a situation where measures had to be enacted in order to slow this pace down in order to perfect a criminal case.[119]

The Briefing Paper stated that the investigation had identified more than 20 individual straw purchasers, all connected to the same trafficking ring, who "had purchased in excess of 650 firearms (mainly AK-47 variants) for which they have paid cash totaling more than $350,000.00"[120]

Prosecutors claimed no probable cause to arrest straw buyers

According to documents obtained by the Committee, on January 5, 2010, ATF-Phoenix officials working on the investigation had a meeting with the lead prosecutor on the case, Arizona Assistant U.S. Attorney Emory Hurley. The ATF agents and the prosecutor wrote separate memos following the meeting reflecting a consensus that no probable cause existed to arrest any of the straw purchasers despite the significant number of firearms that had been purchased. The ATF-Phoenix Briefing Paper, prepared three days after the meeting, stated:

> On January 5, 2010, ASAC Gillett, GS [Group Supervisor] Voth, and case agent SA MacAllister met with AUSA Emory Hurley who is the lead federal prosecutor on this matter. Investigative and prosecutions strategies were discussed and a determination was made that there was minimal evidence at this time to support any type of prosecution; therefore, additional firearms purchases should be monitored and additional evidence continued to be gathered. This investigation was briefed to United States Attorney Dennis Burke, who concurs with the assessment of his line prosecutors and fully supports the continuation of this investigation.[121]

Similarly, the prosecutor wrote a memo to his direct supervisor, stating: "We have reviewed the available evidence thus far and agree that we do not have any chargeable offenses against any of the players."[122]

During a transcribed interview with Committee staff, the ATF-Phoenix Group Supervisor who oversaw the operation and participated in the meeting explained that he had to follow the prosecutor's probable cause assessment:

> I don't think that agents in Fast and Furious were forgoing taking action when probable cause existed. We consulted with the U.S.

> Attorney's Office. And if we disagree, I guess we disagree. But if the U.S. Attorney's Office says we don't have probable cause, I think that puts us in a tricky situation to take action independent, especially if that is contradictory to their opinion.[123]

In another exchange, the Group Supervisor explained the prosecutor's assessment with respect to Uriel Patino, the single largest suspected straw purchaser in the Fast and Furious network:

> Q: Does that meet your understanding of probable cause to interdict a gun when Uriel Patino goes in for the fifth or sixth or 12th time to purchase more and more guns with cash?
>
> A: We talked that over at the U.S. Attorney's Office, and the conclusion was that we would need independent probable cause for each transaction. Just because he bought 10 guns yesterday doesn't mean that the 10 he is buying today are straw purchased. You can't transfer probable cause from one firearm purchase to the next firearm purchase. You need independent probable cause for each occurrence.
>
> Q: And it doesn't matter not just that he bought 10 last week and 20 the week before, but that five of them ended up in Mexico at a crime scene, at a murder?
>
> A: Again, in talking to the U.S. Attorney's Office, unless we could prove that he took them to Mexico, the fact that he sold them or transferred them to another [non-prohibited] party doesn't necessarily make him a firearms trafficker. If he sells them to his neighbor lawfully and then his neighbor takes them to Mexico, it is the neighbor who has done the illegal act, not Patino, who sold them to his neighbor.[124]

Although the determination of whether sufficient probable cause existed to make arrests ultimately rested with the prosecutor, documents obtained by the Committee indicate that all of the participants agreed with the strategy to proceed with building a bigger case and to forgo taking down individual members of the straw purchaser network one-by-one. The ATF Briefing Paper stated:

> Currently our strategy is to allow the transfer of firearms to continue to take place albeit, at a much slower pace, in order to further the investigation and allow for the identification of additional co-conspirators who would continue to operate and illegally traffic

> firearms to Mexican DTOs [drug trafficking organizations] which are perpetrating armed violence along the Southwest Border.[125]

During his transcribed interview with Committee staff, Special Agent in Charge Newell explained:

> [T]he goal was twofold. It was to identify the firearms-trafficking network, the decision-makers, and not just focus on the straw purchasers. We would go after the decision-makers, the people who were financing.[126]

He stated that it was critical to identify the network rather than arresting individual straw purchasers one-by-one:

> The goal of the investigation, as I said before, was to identify the whole network, knowing that if we took off a group of straw purchasers this, as is the case in hundreds of firearms trafficking investigations, some that I personally worked as a case agent, you take off the low level straw purchaser, all you're doing is one of – you're doing one of two things, one of several things. You're alerting the actual string-puller that you're on to them, one, and, two, all they are going to do is go out and get more straw purchasers.
>
> Our goal in this case is to go after the decision-maker, the person at the head of the organization, knowing that if we remove that person, in the sense of prosecute that person, successfully, hopefully, that we would have much more impact than just going after the low-level straw purchaser.[127]

Prosecutor encouraged U.S. Attorney to "hold out for bigger" case

In addition to finding no probable cause to arrest suspected straw purchasers who had already purchased hundreds of firearms, the lead prosecutor recommended against employing traditional investigative tactics against the suspects. In a memorandum to his supervisor on January 5, 2010, Mr. Hurley wrote:

> In the past, ATF agents have investigated cases similar to this by confronting the straw purchasers and hoping for an admission that might lead to charges. This carries a substantial risk of letting the members of the conspiracy know that they are the subject of an investigation and not gain any useful admissions from the straw buyer. In the last couple of years, straw buyers appear to be well coached in how to avoid answering question about firearms questions. Even when the straw buyers make admissions and can be prosecuted, they

> are easily replaced by new straw buyers and the flow of guns remains unabated.[128]

The lead prosecutor noted that ATF-Phoenix was aware that ATF headquarters would likely object to both the strategy of trying to build a bigger case and the proposal to forgo using traditional law enforcement tactics:

> ATF [Phoenix] believes that there may be pressure from ATF headquarters to immediately contact identifiable straw purchasers just to see if this develops any indictable cases and to stem the flow of guns. Local ATF favors pursuing a wire and surveillance to build a case against the leader of the organization. If a case cannot be developed against the hub of the conspiracy, he will be able to replace the spokes as needed and continue to traffic firearms. I am familiar with the difficulties of building a case only upon the interviews of a few straw purchasers and have seen many such investigations falter at the first interview. I concur with Local ATF's decision to pursue a longer term investigation to target the leader of the conspiracy.[129]

Later the same day, January 5, 2010, the lead prosecutor's supervisor forwarded the memorandum to U.S. Attorney Dennis Burke, recommending that he agree to both the strategy and tactics. The supervisor's email to Mr. Burke stated:

> Dennis—Joe Lodge has been briefed on this but wanted to get you a memo for your review. Bottom line – we have a promising guns to Mexico case (some weapons already seized and accounted for), local ATF is on board with our strategy but ATF headquarters may want to do a smaller straw purchaser case. We should hold out for the bigger case, try to get a wire, and if it fails, we can always do the straw buyers. Emory's memo references that this is the "Naco, Mexico seizure case"—you may have seen photos of that a few months ago.[130]

Mr. Burke responded two days later with a short message: "Hold out for bigger. Let me know whenever and w/ whomever I need to weigh-in."[131]

Although Mr. Burke agreed with the proposal to target the organizers of the firearms trafficking conspiracy, he told Committee staff that neither ATF-Phoenix nor his subordinates suggested that agents would be letting guns walk as part of the investigation. As discussed in Section C, below, Mr. Burke stated in his transcribed interview that he was under the impression that ATF-Phoenix was coordinating interdictions with Mexican officials. Mr. Burke stated:

> I was under the opposite impression, which was that based on his [Mr. Newell's] contacts and the relationships with Mexico and what they

were doing, that they would be working with Mexico on weapons transferred into Mexico.[132]

According to documents obtained by the Committee, Mr. Burke also received explicit assurances from the lead prosecutor on the case, Mr. Hurley, that ATF-Phoenix agents "have not purposely let guns 'walk.'"[133]

ATF-Phoenix sought funding and wiretaps to target higher-level suspects

To secure additional resources for Operation Fast and Furious, including agents, funding, and sophisticated investigative tools, ATF-Phoenix requested funding from the Organized Crime Drug Enforcement Task Forces (OCDETF) Program, which provides funding "to identify, disrupt, and dismantle the most serious drug trafficking and money laundering organizations and those primarily responsible for the nation's drug supply."[134]

In January 2010, ATF-Phoenix submitted an investigative strategy in its application for funding from OCDETF.[135] ATF-Phoenix and the U.S. Attorney's Office used evidence gathered from another agency's investigation to draft its proposal.[136] The application explained that the goal Operation Fast and Furious was to bring down a major drug trafficking cartel:

> The direct goal of this investigation is to identify and arrest members of the CONTRERAS DTO [Drug Trafficking organization] as well as seize assets owned by the DTO. Based upon the amount of drugs this organization distributes in the US it is anticipated that the investigation will continue to expand to other parts of the US and enable enforcement operations in multiple jurisdictions. In addition to the CONTRERAS DTO, this investigation is intended to identify and expand to the hierarchy within the Mexico-based drug trafficking organization that directs the CONTRERAS DTO.[137]

ATF-Phoenix's proposal for Operation "The Fast and the Furious" was approved by an interagency group of Federal law enforcement officials in Arizona in late January 2010.[138]

ATF-Phoenix also drafted a proposal to conduct a wiretap with the goal of obtaining evidence to connect the straw purchasers to the leaders of the firearms trafficking conspiracy.[139] During his transcribed interview with Committee staff, U.S. Attorney Burke explained the purpose behind this wiretap application:

> [T]he belief was, at least in I think January 2010, was when they first, my recollection is that they first started referencing the interest in

> getting the [wiretap]. But the point being that they were going to try to reach beyond just the straw purchasers and figure out who the actual recruiters were and organizers of the gun trafficking ring.[140]

ATF-Phoenix submitted its wiretap application with the necessary affidavits and approvals from the Department of Justice, Office of Enforcement Operations, and received federal court approval for its first wiretaps.[141]

ATF-Phoenix agents watched guns walk

Documents obtained by the Committee indicate that while ATF-Phoenix and the U.S. Attorney's Office pursued their strategy of building a bigger case against higher-ups in the firearms trafficking conspiracy, ATF-Phoenix field agents continued daily surveillance of the straw purchaser network. With advance or real-time notice of many purchases by the cooperating gun dealers, the agents watched as the network purchased hundreds of firearms. One ATF-Phoenix agent assigned to surveillance described a common scenario:

> [A] situation would arise where a known individual, a suspected straw purchaser, purchased firearms and immediately transferred them or shortly after, not immediately, shortly after they had transferred them to an unknown male. And at that point I asked the case agent to, if we can intervene and seize those firearms, and I was told no.[142]

When asked about the number of firearms trafficked in a given week, one agent answered:

> Probably 30 or 50. It wasn't five. There were five at a time. These guys didn't go to the FFLs unless it was five or more. And the only exceptions to that are sometimes the Draco, which were the AK-variant pistols, or the FN Five-seveN pistols, because a lot of FFLs just didn't have ... 10 or 20 of those on hand.[143]

Agents told the Committee that they became increasingly alarmed as this practice continued, which they viewed as a departure from both protocol and their expectations as law enforcement officials. One agent stated:

> We were walking guns. It was our decision. We had the information. We had the duty and the responsibility to act, and we didn't do so. So it was us walking those guns. We didn't watch them walk, we walked.[144]

ATF Deputy Director Hoover ordered an "exit strategy"

The documents obtained and interviews conducted by the Committee indicate that, following a briefing in March 2010, ATF Deputy Director William Hoover ordered an "exit strategy" in order to extract ATF-Phoenix from this operation. At the March briefing, the ATF Intelligence Operations Specialist and the Group Supervisor made a presentation regarding Operation Fast and Furious that covered the suspects, the number of firearms each had purchased, the amount of money each had spent, the known stash houses where guns were deposited, and the locations in Mexico where Fast and Furious firearms had been recovered. The briefing also included Assistant Director for Field Operations Mark Chait and Deputy Assistant Director for Field Operations William McMahon, four ATF Special Agents in Charge from ATF's Southwest border offices, and others.

In his transcribed interview with Committee staff, Deputy Director Hoover stated that he became concerned sometime after the briefing about the number of guns being purchased and ordered an "exit strategy" to close the case and seek indictments within 90 days:

Q: It's our understanding that you and Mr. Chait, in March approximately, asked for an exit strategy for the case?

A: That is correct. ...

Q: And if you could tell us what led to that request?

A: We received a pretty detailed briefing in March, I don't remember the specific date, I'm going to say it's after the 15th of March, about the investigation, about the number of firearms purchased by individuals. ... That would have been by our Intel division in the headquarters. ... During that briefing I was, you know, just jotting some notes. And I was concerned about the number of firearms that were being purchased in this investigation, and I decided that it was time for us to have an exit strategy and I asked for an exit strategy. It was a conversation that was occurring between Mark Chait, Bill McMahon and myself. And I asked for the exit strategy 30, 60, 90 days, and I wanted to be able to shut this investigation down.

Q: And by shutting the investigation down, you were interested in cutting off the sales of weapons to the suspects, correct?

A: That's correct.

Q: And you were worried, is it fair to say, that these guns were possibly going to be getting away and getting into Mexico and showing up at crime scenes?

A: I was concerned not only that that would occur in Mexico, but also in the United States.[145]

Other than requesting an exit strategy, Mr. Hoover did not recall making any other specific demands because he generally "allowed field operations to run that investigation."[146]

ATF-Phoenix did not follow the 90-day exit strategy and continued the operation

In April 2010, more than one month after Deputy Director Hoover's demand for an exit strategy, ATF-Phoenix still had not provided it, and Special Agent in Charge Newell expressed his frustration with perceived interference from ATF headquarters that he believed could prevent him from making a larger case. In an April 27, 2010, email to Deputy Assistant Director McMahon, he wrote:

> I don't like HQ driving our cases but understand the "sensitivities" of this case better than anyone. We don't yet have the direct link to a DTO that we want/need for our prosecution, [redacted]. Once we establish that link we can hold this case up as an example of the link between narcotics and firearms trafficking which would be great on a national media scale but if the Director wants this case shut down then so be it.[147]

Although Mr. Newell delivered an exit strategy that day at Mr. McMahon's reminder, the operation continued to grow and expand rather than wind down over the months to follow.[148] In June 2010, three months after Deputy Director Hoover's directive, the operational phase of the case was still continuing. On June 17, 2010, the ATF-Phoenix Group Supervisor received an email from a cooperating gun dealer raising concerns about how the firearms he was selling could endanger public safety. The dealer stated:

> As per our discussion about over communicating I wanted to share some concerns that came up. Tuesday night I watched a segment of a Fox News report about firearms and the border. The segment, if the information was correct, is disturbing to me. When you, Emory and I met on May 13th I shared my concerns with you guys that I wanted to make sure that none of the firearms that were sold per our conversation with you and various ATF agents could or would ever end up south of the border or in the hands of the bad guys. I guess I

> am looking for a bit of reassurance that the guns are not getting south or in the wrong hands. I know it is an ongoing investigation so there is limited information you can share with me. But as I said in our meeting, I want to help ATF with its investigation but not at the risk of agents safety because I have some very close friends that are US Border Patrol agents in southern AZ as well as my concern for all the agents safety that protect our country.[149]

A month later, on July 14, 2010, Special Agent in Charge Newell sent an email to an ATF colleague in Mexico stating that ATF was "within 45-60 days of taking this [Operation Fast and Furious] down IF the USAO goes with our 846/924(c) conspiracy plan."[150] At that time, the case was still months away from indictment.

In August 2010, the operation continued, with another cooperating gun dealer writing to the ATF-Phoenix Group Supervisor seeking advice about a large purchase order made by Uriel Patino, who personally purchased more than 600 assault weapons from a small handful of cooperating gun dealers. The dealer stated:

> One of our associates received a telephone inquiry from Uriel Patino today. Uriel is one of the individuals your office has interest in, and he looking to purchase 20 FN-FNX mm firearms. We currently have 4 of these firearms in stock. If we are to fulfill this order we would need to obtain the additional 16 specifically for this purpose.
>
> I am requesting your guidance as to weather [sic] or not we should perform the transaction, as it is outside of the standard way we have been dealing with him.[151]

The Group Supervisor wrote back requesting that the gun dealer fulfill the order:

> [O]ur guidance is that we would like you to go through with Mr. Patino's request and order the additional firearms he is requesting, and if possible obtain a partial down payment. This will require further coordination of exact details but again we (ATF) are very much interested in this transaction and appreciate your [] willingness to cooperate and assist us.[152]

During a transcribed interview with Committee staff, another cooperating gun dealer explained that ATF agents had promised to address the concerns he raised about their capability to interdict these weapons:

> I was assured in no uncertain terms—and let me be straight about this. She assured that they would have enough agents on sight to surveil the sale and make sure that it didn't get away from them, as it was stated

> to me. ... To continue, we went along with these sales at their request. ATF would want us to continue with them, and we did so.[153]

Indictments delayed for months

By August 2010, rather than indicting the suspects in Operation Fast and Furious, ATF-Phoenix and the prosecutor were still in the process of compiling evidence to make indictment decisions. During his transcribed interview with Committee staff, Special Agent in Charge Newell stated:

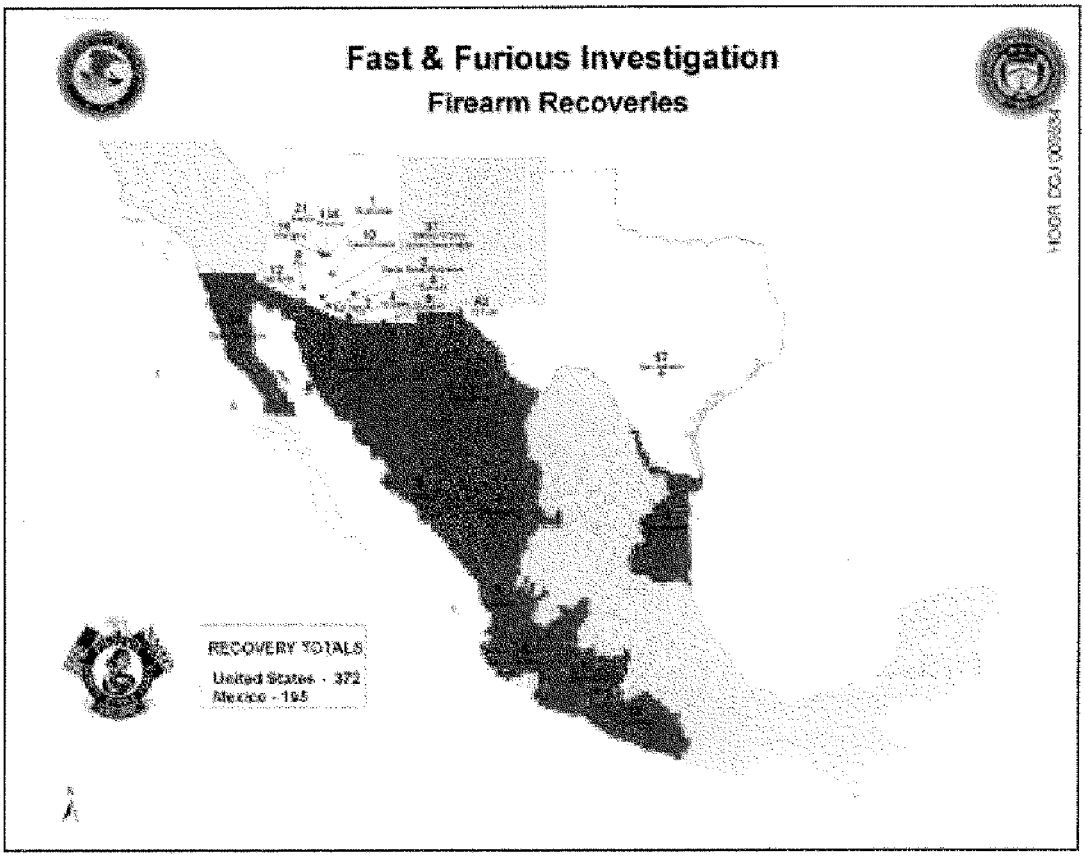
> Well, the next phase in the investigation, it really moves from an investigation phase to prosecution phase at that point in the sense of getting the case ready for indictment. So I know that the case agent ... as well as the others were meeting regularly with the AUSA Emory Hurley, compiling all the different pieces of evidence specific to each individual prospective defendant, to get to a point where we met what we felt in conjunction with the U.S. Attorney's Office, in coordination with them, that met the burden of proof to be able to seek an indictment.[154]

Mr. Newell stated that he understood that this process of "compiling" evidence takes significant time and, as a result, "we were hoping to get indictments in, as I recall, I think it was maybe October, November roughly."[155] Mr. Newell attributed the delay in the indictments to "a combination of workload [at the U.S. Attorney's Office] and the fact that there was a lot of work that needed to be done as far as putting the charges together."[156]

In contrast, U.S. Attorney Burke informed Committee staff that the delay in the indictments was because ATF-Phoenix failed to produce to the prosecutor the completed case file until October 2010:

> There is a formal process when an agency gives us a case with their cover, and the actual full documentation of the case was given to us, our office in October 2010, and I believe it was represented that it was given to us in August 2010.[157]

On January 19, 2011, ten months after Deputy Director Hoover ordered an exit strategy, the U.S. Attorney's Office filed an indictment against Manuel Celis-Acosta and 19 straw purchasers that included counts for conspiracy, dealing in firearms without a license, conspiracy to possess a controlled substance with intent to distribute, possession with intent to distribute marijuana, conspiracy to possess a firearm in furtherance of a drug trafficking offense, false statements in connection with acquisition of firearms, conspiracy to commit money laundering, money laundering, and aiding and abetting.[158]



Department of Justice, Report of Firearms Recoveries as of Indictment of Suspects (Jan. 21, 2011)

B. Challenges Specific to the Arizona U.S. Attorney's Office

Numerous ATF agents in Phoenix and senior ATF officials in Washington, D.C. informed the Committee that the U.S. Attorney's Office in Arizona historically has been reluctant to prosecute firearms traffickers. Due to the Federal prosecutors' analysis of heightened evidentiary thresholds in their district, agents reported that they faced significant challenges over the course of many years getting the U.S. Attorney's Office in Arizona to arrest, prosecute, and convict firearms traffickers.

"Viewed as an obstacle more than a help"

In testimony before the Committee, ATF Special Agent Peter Forcelli stated that within a few weeks of transferring to the Phoenix Field Division from New York in 2007, he noticed a difference in how Federal prosecutors in Arizona handled gun cases:

> In my opinion, dozens of firearms traffickers were given a pass by the U.S. Attorney's Office for the District of Arizona. Despite the existence of "probable cause" in many cases, there were no indictments, no prosecutions, and criminals were allowed to walk free.[159]

Special Agent Forcelli testified that "this situation wherein the United States Attorney's Office for Arizona in Phoenix declined most of our firearms cases, was at least one factor which led to the debacle that's now known as 'Operation Fast and Furious.'"[160] He added that little improvement has been made to date:

> I would say, if anything, we have gone from a 'D-minus' to maybe a 'D.' It is still far from, again, effective or far from what, you know, the taxpayers deserve. But it is still very bad. I mean I wouldn't say it is effective. ... Guns in the hands of gang members or cartel traffickers, that's pretty concerning.[161]

He added: "the U.S. Attorney's Office is kind of viewed as an obstacle more than a help in criminal prosecutions here in Arizona, here in the Phoenix area."[162]

In his transcribed interview with Committee staff, Acting ATF Director Kenneth Melson stated that Arizona historically has been a very difficult place to prosecute firearms traffickers. He stated:

> A: We have had, as Peter Forcelli said, a long history with the District of Arizona going back to Paul Charlton, if not earlier, where it was difficult to get these cases prosecuted. Diane

Humetewa was the second U.S. Attorney there who had issues with our cases and wouldn't prosecute. I was head of the Executive Office for U.S. Attorneys at the time. I know exactly what was going on there and the issues we had with getting cases prosecuted in the District of Arizona.

Q: What was going on there?

A: Well, they—

Q: Were they prosecuting gun cases?

A: No, no. And they had a limit—for example, they wouldn't take any case that had less than 500 pounds of marijuana coming across the border with people in custody of it. We had to take some of our most significant cases to the state courts to try because they wouldn't take them.

Q: So is it fair to say there was a frustration—I believe you said earlier there was a frustration and aggravation with the Arizona U.S. Attorney's office, is that fair?

A: Yes, I think there was a frustration. Peter Forcelli said it really like it was. Let me say it, Dennis Burke has really made a change in the office. And he has turned that office around, maybe not 180 degrees but he's getting there. He's at least at 45 or 50 degrees. We have gotten more prosecutions out of his office than before, but historically, we have had a real hard time getting prosecutions. And when we do, we get no sentences. The guidelines are so low.[163]

Evidentiary thresholds in Arizona

According to ATF officials, prosecutors in the Arizona U.S. Attorney's Office insisted that they could not prosecute firearms cases without physical possession of the firearms at issue. The prosecutors referred to this as the doctrine of *corpus delicti* ("body of the crime").[164] Because it was difficult to get Mexican authorities to cooperate in returning recovered firearms from that country, agents claimed that this created an effective bar to prosecution of many trafficking suspects. Agents told the Committee that prosecutors in the Arizona U.S. Attorney's Office applied the *corpus delicti* doctrine to refuse to prosecute cases even when suspects confessed to committing the crime.[165]

ATF counsel strongly disagreed with the U.S. Attorney's Office that firearms had to be present to prove that straw purchasers had lied on the Federal forms they

filled out when purchasing firearms. According to Special Agent in Charge Newell, the other other U.S. Attorneys' offices in his jurisdiction—New Mexico, Colorado, Wyoming, and Utah—did not share Arizona's interpretation of this evidentiary standard.[166]

On February 24, 2010, ATF counsel prepared a memorandum criticizing the *corpus delicti* doctrine as interpreted by the Arizona U.S. Attorney's Office. The memo stated:

> In furtherance of ATF's primary investigative authority and the Southwest Border Initiative, ATF agents spend a very significant number of hours—and often place themselves in dangerous circumstances—investigating alleged straw transactions as part of firearms trafficking cases. In recent years, few of these investigations have resulted in Federal prosecutions in the District of Arizona. It is our desire to work with your office to adjust the scope of our investigations and/or our investigative procedures to provide straw purchaser cases that fall within the prosecution guidelines of your office.[167]

According to ATF agents in Phoenix, the U.S. Attorney's Office also established additional evidentiary hurdles that made prosecuting firearms cases difficult, including requiring independent evidence of illegality for each firearms transaction. According to ATF agents, prosecutors would not build a case based on a pattern of multiple successive firearms purchases followed in quick succession by trips to Mexico. Instead, agents had to prove that each transaction, standing by itself, was illegal. The ATF-Phoenix Group Supervisor for Fast and Furious told the Committee how this policy applied:

> We talked that over at the U.S. Attorney's Office, and the conclusion was that we would need independent probable cause for each transaction. Just because he bought 10 guns yesterday doesn't mean that the 10 he is buying today are straw purchased. You can't transfer probable cause from one firearm purchase to the next firearm purchase. You need independent probable cause for each occurrence.[168]

The ATF Group Supervisor explained that application of this requirement meant that agents could not rely on prior actions as the basis for arresting suspected straw purchasers or interdicting weapons.[169]

ATF agents also informed the Committee that the Arizona U.S. Attorney's Office required proof, by clear and convincing evidence, that every person in a chain of people who possessed the firearm had the intent to commit a crime.[170] Agents

understood this to mean that they would not have sufficient probable cause to arrest a suspect or interdict weapons when suspects transferred guns to non-prohibited persons who then trafficked the guns to Mexico.[171]

DEA photo from announcement of Fast and Furious indictments (January 2011)

C. No Evidence that Senior Officials Authorized or Condoned Gunwalking in Fast and Furious

Contrary to some claims, the Committee has obtained no evidence that Operation Fast and Furious was conceived and directed by high-level political appointees at the Department of Justice. Rather, the documents obtained and interviews conducted by the Committee reflect that Fast and Furious was the latest in a series of fatally flawed operations run by ATF's Phoenix Field Division and the Arizona U.S. Attorney's Office during both the previous and current administrations.

The Acting Director of ATF, the Deputy Director of ATF, and the U.S. Attorney in Arizona each told the Committee that they did not approve of gunwalking in Operation Fast and Furious, were not aware that agents in ATF-Phoenix were using the tactic, and never raised any concerns with senior officials at the Department of Justice in Washington, D.C. In addition, the Deputy Attorney General and Assistant Attorney General for the Criminal Division both stated that ATF and prosecutors never raised concerns about gunwalking in Operation Fast and Furious to their attention, and that, if they had been told about gunwalking, they would have shut it down. The Attorney General has stated consistently that he was not aware of allegations of gunwalking until 2011, and the Committee has received no evidence that contradicts this assertion.

Attorney General Holder

The Attorney General has stated repeatedly that he was unaware that gunwalking occurred in Operation Fast and Furious until the allegations became public in early 2011.[172] In testimony before the Senate Judiciary Committee, Attorney General Holder was unequivocal in his criticism of the controversial tactics employed in Fast and Furious:

> *"This should never have happened and it must never happen again."*
> *-Attorney General Holder*

> Now I want to be very clear, any instance of so called gunwalking is simply unacceptable. Regrettably this tactic was used as part of Fast and Furious which was launched to combat gun trafficking and violence on our Southwest border.
>
> This operation was flawed in its concept and flawed in its execution, and unfortunately we will feel the effects for years to come as guns that were lost during this operation continue to show up at crime scenes

> both here and in Mexico. This should never have happened and it must never happen again.[173]

Testifying before the House Judiciary Committee, the Attorney General rejected the allegation that senior leaders at the Department of Justice approved of gunwalking in Operation Fast and Furious:

> I mean, the notion that people in the—in Washington, the leadership of the Department approved the use of those tactics in Fast and Furious is simply incorrect. This was not a top-to-bottom operation. This was a regional operation that was controlled by ATF and by the U.S. Attorney's Office in Phoenix.[174]

The Committee has obtained no evidence indicating that the Attorney General authorized gunwalking or that he was aware of such allegations before they became public. None of the 22 witnesses interviewed by the Committee claims to have spoken with the Attorney General about the specific tactics employed in Operation Fast and Furious prior to the public controversy.

To the contrary, the evidence received by the Committee supports the Attorney General's assertion that the gunwalking tactics in Operation Fast and Furious were developed in the field. The leaders of the two components with management responsibility for Operation Fast and Furious—ATF and the U.S. Attorney's Office—informed the Committee that they themselves were not aware of the controversial tactics used in Operation Fast and Furious and did not brief anyone at Justice Department headquarters about them. Similarly, the Attorney General's key subordinates—the Deputy Attorney General and the Assistant Attorney General for the Criminal Division—informed the Committee that they were never briefed on the tactics by ATF or the U.S. Attorney's Office and never raised concerns about the operation to the Attorney General.

In 2010, the Office of the Attorney General received six reports from the National Drug Intelligence Center that contained a brief, one paragraph overview of Operation Fast and Furious. None of the information in the documents discussed the controversial tactics used by ATF agents in the case. One typical paragraph read:

> From August 2 through August 6, the National Drug Intelligence Center Document and Media Exploitation Team at the Phoenix Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force will support the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Phoenix Field Division with its investigation of Manuel Celis-Acosta as part of OCDETF Operation Fast and the Furious. This investigation, initiated in September 2009 in conjunction with the Drug Enforcement Administration, Immigration and Customs Enforcement,

> and the Phoenix Police Department, involves a Phoenix-based firearms trafficking ring headed by Manuel Celis-Acosta. Celis-Acosta and [redacted] straw purchasers are responsible for the purchase of 1,500 firearms that were then supplied to Mexican drug trafficking cartels. They also have direct ties to the Sinaloa Cartel which is suspected of providing $1 million for the purchase of firearms in the greater Phoenix area.[175]

In his October 7, 2011, letter, the Attorney General explained that he never reviewed the reports and that his staff typically reviews these reports. He also testified that even if he had reviewed them personally, they did not indicate anything problematic about the case because "the entries suggest active law enforcement action being taken to combat a firearms trafficking organization that was moving weapons to Mexico."[176]

Documents provided to the Committee indicate that in December 2010, the Arizona U.S. Attorney's Office was preparing to inform the Attorney General's Office about the general status of upcoming indictments in Operation Wide Receiver when news of Agent Terry's death broke.

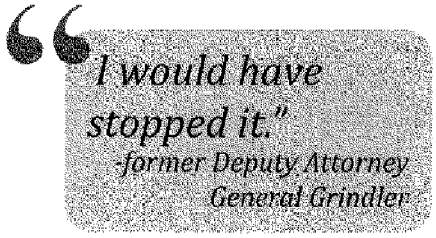
On December 14, 2010, Monty Wilkinson, the Attorney General's Deputy Chief of Staff, sent an email to U.S. Attorney Burke asking if he was available for a call that day.[177] The next day, U.S. Attorney Burke replied, apologized for not responding sooner, and said he would call later in the day.[178] He also stated that the U.S. Attorney's Office had a large firearms trafficking case he wanted to discuss that was set to be indicted in the coming weeks.[179]

Several hours later on December 15, 2010, U.S. Attorney Burke learned that Agent Terry had been murdered.[180] He alerted Mr. Wilkinson, who replied, "Tragic, I've alerted the AG, the Acting DAG, Lisa, etc."[181]

Later that same day, U.S. Attorney Burke learned that two firearms found at Agent Terry's murder scene had been purchased by a suspect in Operation Fast and Furious. He sent an email to Mr. Wilkinson forwarding this information and wrote: "The guns found in the desert near the murder [sic] BP officer connect back to the investigation we were going to talk about—they were AK-47's purchased at a Phoenix gun store."[182] Mr. Wilkinson replied, "I'll call tomorrow."[183]

In his interview with Committee staff, U.S. Attorney Burke stated that he did not recall having any subsequent conversation with Mr. Wilkinson that "included the fact that Fast and Furious guns were found at the scene" of Agent Terry's murder.[184] In a November 2011 hearing of the Senate Judiciary Committee, Senator Charles Grassley asked Attorney General Holder, "Did Mr. Wilkinson say anything to you about the connection between Agent Terry's death and the ATF operation?"

Attorney General Holder responded, "No, he did not."[185] In a January 27, 2011, letter to the Committee, the Department stated that Mr. Wilkinson "does not recall a follow-up call with Burke or discussing this aspect of the matter with the Attorney General."[186]



Deputy Attorney General Grindler

During his interview with Committee staff, Gary Grindler, the former Acting Deputy Attorney General stated that he was not aware of the controversial tactics that ATF-Phoenix employed in Operation Fast and Furious, never authorized them, and never briefed anyone at the Department of Justice about them.[187]

In March 2010, Acting ATF Director Melson and Deputy Director Hoover met with Mr. Grindler for a monthly check-in meeting and shared information about Operation Fast and Furious and other matters. As part of this briefing, Mr. Melson and Mr. Hoover stated that they discussed the total number of firearms purchased by individual suspects in Operation Fast and Furious, the total amount of money spent on purchasing these firearms, and a map displaying seizure events for the case in both the United States and Mexico.[188]

Mr. Grindler stated that neither of ATF's senior leaders raised any concerns with him about Operation Fast and Furious at that briefing or mentioned gunwalking:

> Q: And to your recollection, did Director Melson or Deputy Director Hoover ever tell you that they were deliberately allowing firearms to be transferred to Mexico in order to use them as a predicate for cases in the United States?
>
> A: I mean, I am extraordinarily confident that they didn't tell me that. That is just an absurd concept. If that had been told to me, I would not only have written something, but done something about it.
>
> Q: What would you have done?
>
> A: I would have stopped it. I would have asked for detailed briefings about this matter and figure out more clearly what's going on here.[189]

Deputy Director Hoover corroborated Mr. Grindler's account. In his interview with the Committee, Mr. Hoover explained that he did not inform the

Deputy Attorney General about gunwalking in Operation Fast and Furious because he did not know about it himself:

> A: Well, there's been reports that the Deputy Attorney General's office was aware of the techniques being employed in Fast and Furious, and that's not the case, because I certainly didn't brief them on the techniques being employed in Fast and Furious.
>
> Q: Because you didn't know?
>
> A: Right.[190]

When asked whether he ever discussed his briefing on Operation Fast and Furious with the Attorney General, Mr. Grindler said, "I don't have any recollection of advising the Attorney General about this briefing in 2010."[191]

Acting ATF Director Melson

In an interview with Committee staff on July 4, 2011, then-Acting ATF Director Kenneth Melson stated that he was not aware of the controversial tactics that the ATF-Phoenix Field Division employed, never authorized them, and never briefed anyone at the Department of Justice about them. Mr. Melson stated:

> I don't believe that I knew or that [Deputy Director] Billy Hoover knew that they were—that the strategy in the case was to watch people buy the guns and not interdict them at some point. That issue had never been raised. It had never been raised to our level by the whistleblowers in Phoenix—that stayed in-house down there. The issue was never raised to us by ASAC [Assistant Special Agent in Charge] Gillett who was supervising the case.
>
> It unfortunately was never raised to my level by SAC [Special Agent in Charge] Newell who should have known about the case, if he didn't, and recognize the issue that was percolating in his division about the disagreement as to how this was occurring. Nor was it raised to my level by DAD [Deputy Assistant Director] McMahon who received the briefing papers from [Phoenix Group Supervisor] Voth and may have had other information on the case. Nor was it given to me by a Deputy Assistant Director in OSII, the intel function, when he briefed this case the one time I wasn't there and he raised an objection to it and saw nothing change.[192]

Director Melson also denied that Department of Justice or senior ATF officials devised or authorized those tactics:

> Q: Did you ever use or authorize agents to use a tactic of non-intervention to see where the guns might go?
>
> A: I don't believe I did.
>
> Q: Did you ever tell agents not to use or authorize agents not to use other common investigative techniques like "knock and talks" or police pullovers in order to see where the guns might go in this case?
>
> A: No.
>
> Q: Did anyone at the Department of Justice ever tell you or tell anyone else at headquarters and it got to you that those tactics were authorized as part of a new strategy in order to follow the guns, let the guns go, see where they might end up?
>
> A: No.[193]

Documents obtained by the Committee indicate that Mr. Melson received three briefings regarding Fast and Furious in the early months of the operation and had regular status updates thereafter. He stated that "the general assumption among the people that were briefed on this case was that this was like any other case that ATF has done."[194] In addition to stating that he was not aware of the controversial tactics in Operation Fast and Furious, Mr. Melson stated that he did not know the full scope or scale of criminal activity by suspects until after concerns about gunwalking became public.

After the public controversy broke, Mr. Melson requested copies of Operation Fast and Furious case files to review for himself. He told Committee staff that he became extremely concerned after reviewing them:

> I think I became fully aware of what was going on in Fast and Furious when I was reading the ROIs. And I remember sitting at my kitchen table reading the ROIs, one after another after another, I had pulled out all Patino's—and ROIs is, I'm sorry, report of investigation—and you know, my stomach being in knots reading the number of times he went in and the amount of guns that he bought.

> And this is why I wish the people in Phoenix had alerted us during this transaction to exactly this issue, so we could have had at least made a judgment as to whether or not this could continue or not.[195]

ATF Deputy Director Hoover

During his interview with Committee staff, then-Deputy Director William Hoover stated that he had not been aware of the tactical details in Operation Fast and Furious and had not raised any concerns with Acting ATF Director Melson or anyone at Justice Department headquarters.[196] Deputy Director Hoover rejected the suggestion that senior management officials at ATF or the Department of Justice were responsible for any of the controversial tactical decisions made in Operation Fast and Furious:

> Q: But you don't believe that this is some sort of top-down—it wasn't a policy or some tactical strategy from either ATF management or main Justice to engage in what happened here in Phoenix in Fast and Furious?
>
> A: No, sir. It's my firm belief that the strategic and tactical decisions made in this investigation were born and raised with the U.S. Attorney's Office and with ATF and the OCDETF strike force in Phoenix.[197]

Mr. Hoover's subordinates also informed the Committee that they did not warn him about gunwalking allegations in Operation Fast and Furious because they were unaware of them. Assistant Director for Field Operations Mark Chait told the Committee that he was "surprised" when he learned of allegations that gunwalking occurred in Operation Fast and Furious in February 2011.[198] Deputy Assistant Director for Field Operations William McMahon, the supervisor above the Phoenix Field Division, stated:

> I don't think at any point did we allow guns to just go into somebody's hands and walk across the border. I think decisions were made to allow people to continue buying weapons that we suspected were going to Mexico to put our case together. But I don't believe that at any point we watched guns going into Mexico. I think we did everything we could to try to stop them from going to Mexico.[199]

Although Mr. Hoover stated that he was unaware of gunwlking allegations in Operation Fast and Furious prior to the public controversy, he informed Committee staff that he became concerned in March 2010 about the number of guns being purchased.[200] As discussed above, Mr. Hoover received a briefing in March 2010 during which ATF officials described the suspects, the number of firearms, the

amount of money each had spent, known stash houses, and the locations where firearms had been recovered. Mr. Hoover told the Committee that he ordered an "exit strategy" to close the case and seek indictments within 90 days.

Apart from whether Mr. Hoover was aware of specific gunwalking allegations in Operation Fast and Furious, it remains unclear why he failed to inform Acting ATF Director Melson or senior Justice Department officials about his more general concerns with the investigation or his directive for an exit strategy.

During his interview with Committee staff, Deputy Director Hoover took substantial personal responsibility for ATF's actions in Operation Fast and Furious. He stated:

> I blame no one else. I blame no one else – not DEA, not the FBI, not the U.S. Attorney's Office. If we had challenges, then we need to correct those challenges. I am the deputy director at ATF, and, ultimately, you know, everything flows up, and I have to take responsibility for the mistakes that we made.[201]

United States Attorney Burke

During an interview with Committee staff, Arizona U.S. Attorney Dennis Burke stated that neither he nor anyone above him ever authorized non-interdiction of weapons or letting guns walk in Operation Fast and Furious:

> Q: To your knowledge as the U.S. Attorney for the District of Arizona, did the highest levels of the Department of Justice authorize [the] non-interdiction of weapons, cutting off of surveillance, as an investigative tactic in Operation Fast and Furious?
>
> A: I have no knowledge of that.
>
> Q: Do you believe you would have known if that was the case?
>
> A: Yes.
>
> Q: Did you ever authorize those tactics?
>
> A: No.
>
> ...
>
> Q: Did anyone ever discuss—from the Department of Justice main headquarters—your supervisors—ever discuss with

you or raise to your attention that there was a new policy with respect to interdiction of weapons or surveillance of firearms?

A: No. Not that I can recall at all.

Q: And did anyone ever—from the Department of Justice, Main Justice I will call it, ever tell you that you were authorized to allow weapons to cross the border when you otherwise would have had a legal authority to seize or interdict them because they were a suspected straw purchase or it was suspected that they were being trafficked in a firearms scheme?

A: I have no recollection of ever being told that.[202]

Although U.S. Attorney Burke agreed with ATF-Phoenix's proposal to build a "bigger" case that targeted the organizers of the firearms trafficking conspiracy, he stated that ATF-Phoenix never indicated that agents would be letting guns walk as part of the investigation:

Q: Did you ever discuss with him [Special Agent in Charge Newell] a deliberate tactic of non-interdiction to see where the weapons ended up? To see if they ended up with the DTO in Mexico?

A: I do not recall that at all.

Q: Would that stick out in your mind at this point if he had said we're going to let the guns go, find them in crime scenes in Mexico, and then use that to make a connection to a DTO?

A: I don't recall that at all. I was under the opposite impression, which was that based on his contacts and the relationships with Mexico and what they were doing, that they would be working with Mexico on weapons transferred into Mexico.[203]

Emails from Special Agent in Charge Newell touting recent seizures of firearms in both the United States and in Mexico are consistent with U.S. Attorney Burke's statement that he believed ATF-Phoenix was coordinating interdiction with appropriate law enforcement agencies on both sides of the border. For example, on June 24, 2010, Mr. Newell sent an email to Mr. Burke with a picture of a .50 caliber weapon that had been recovered, stating: "Never ends ... our folks are working non-stop around the clock 7 days a week. But they are making some great seizures and gleaning some great Intel."[204]

The lead prosecutor on the case, Emory Hurley, sent Mr. Burke similar updates. On August 16, 2010, for example, Mr. Hurley prepared a memorandum asserting that "the investigation has interdicted approximately 200 firearms, including two .50 caliber rifles" and stating, "[a]gents have not purposely let guns 'walk.'"[205]

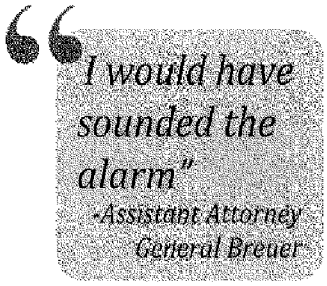
Criminal Division review of Fast and Furious wiretap applications

In testimony before a Subcommittee of the Senate Judiciary Committee on November 1, 2011, Assistant Attorney General Lanny Breuer stated that he first became aware of the controversial tactics in Operation Fast and Furious after they became public:

> I found out first when the public disclosure was made by the ATF agents early this year. When they started making those public statements, of course, at that point, as you know, both the leadership of ATF and the leadership of the U.S. Attorney's Offices adamantly said that those allegations were wrong.
>
> But as those allegations became clear, that is when I first learned that guns that could—that ATF had both the ability to interdict and the legal authority to interdict, that they failed to do so. That is when I first learned that, Senator.[206]

Similarly, in an interview with Committee staff, Deputy Assistant Attorney General Jason Weinstein stated:

> I did not know at any time during the investigation of Fast and Furious that guns had walked during that investigation. I first heard of possible gunwalking in Fast and Furious when the whistleblower allegations were made public in early 2011. Had I known about gunwalking in Fast and Furious before the allegations became public, I would have sounded the alarm about it.[207]



Mr. Breuer and Mr. Weinstein also rejected the allegation that they should have been able to identify gunwalking in Operation Fast and Furious based on the Criminal Division's legal reviews of wiretap applications submitted by the Arizona U.S. Attorney's Office.

Federal law requires that senior Department officials approve all Federal law enforcement applications to Federal judges for the authority to conduct wiretaps.[208] The Department has assigned that legal review duty to the Office of

Enforcement Operations in the Criminal Division.[209] During Operation Fast and Furious, numerous wiretap applications were submitted to the Criminal Division to determine whether they satisfied the legal threshold established under the Fourth Amendment to the United States Constitution. Drafts of the applications were sent to the Office of Enforcement Operations, which prepared cover memos for final review and approval by a Deputy Assistant Attorney General.[210] The wiretap applications are under court seal and therefore have not been produced to the Committee.

Mr. Weinstein informed the Committee that he reviewed the cover memoranda prepared by the Office of Enforcement Operations for three wiretap applications in Operation Fast and Furious and that he approved all three.[211] He stated that his general practice was to read the cover memo first and examine the underlying affidavit only if there were issues or questions necessary to the probable cause determination that the summary memo did not provide.[212] Mr. Weinstein stated that he believed his practice was consistent with the conduct across various administrations.[213]

Mr. Weinstein rejected the criticism that he should have identified gunwalking in Operation Fast and Furious based on his review of the memoranda summarizing the wiretap affidavits in the case. Although he could not comment on the contents of the documents because they are under seal by a Federal District Court judge, he stated:

> It's not a fair criticism. As I said earlier, I can't comment on the contents. What I can say is I obviously have a sensitive radar to gunwalking, since that's been the focus of my life, my professional life, is keeping guns out of the hands of criminals. So when I saw in Wide Receiver that an investigation, however well intentioned it may have been, was being conducted in a way that put guns in the hands of criminals, I reacted pretty strongly to it. Had I seen anything at any time during the investigation of Fast and Furious that raised the same concerns, I would have reacted. And I would have reacted even more strongly because that would have meant it was still going on and that Wide Receiver was not in fact an isolated incidence as I believed it to be.[214]

"The focus of my life, my professional life, is keeping guns out of the hands of criminals."
-Deputy Assistant Attorney General Weinstein

In testimony before the Senate Judiciary Committee, Mr. Breuer made clear that his staff reviews wiretap affidavits to determine the legal sufficiency of the

request rather than to conduct oversight of investigative tactics in law enforcement investigations. He stated:

> [A]s Congress made clear, the role of the reviewers and the role of the deputy in reviewing Title III applications is only one. It is to ensure that there is legal sufficiency to make an application to go up on a wire and legal sufficiency to petition a Federal judge somewhere in the United States that we believe it is a credible request. But we cannot—those now 22 lawyers that I have who review this in Washington, and it used to only be 7, cannot and should not replace their judgment, nor can they, with the thousands of prosecutors and agents all over the country.
>
> Theirs is a legal analysis: Is there a sufficient basis to make this request? We must and have to rely on the prosecutors and their supervisors and the agents and their supervisors all over the country to determine that the tactics that are used are appropriate.[215]

Criminal Division response to Wide Receiver

Questions have been raised about whether Mr. Breuer or Mr. Weinstein should have been aware of gunwalking in Operation Fast and Furious because they learned about similar tactics in a different case dating back to 2006 and 2007, Operation Wide Receiver. Documents obtained by the Committee indicate that as soon as they learned about gunwalking during the previous Administration, Mr. Breuer and Mr. Weinstein took immediate steps to register their concerns directly with the highest levels of ATF leadership, but they did not inform the Attorney General or the Deputy Attorney General.

In March 2010, a Criminal Division supervisor sent an email to Mr. Weinstein regarding the Wide Receiver case stating that, "with the help of a cooperating FFL, the operation has monitored the sale of over 450 weapons since 2006."[216] In response, Mr. Weinstein expressed concern, writing: "I'm looking forward to reading the pros[ecution] memo on Wide Receiver but am curious—did ATF allow the guns to walk, or did ATF learn about the volume of guns after the FFL began cooperating?"[217] The supervisor inaccurately responded: "My recollection is they learned afterward."[218] As discussed above, ATF Operational Plans and other documents provided to the Committee show that ATF agents in Arizona were contemporaneously aware of the illegal straw purchases.

The next month, Mr. Weinstein received and reviewed a copy of the prosecution memorandum prepared by the criminal prosecutor in the Wide Receiver case.[219] On April 12, 2010, Mr. Weinstein wrote to the prosecutors stating:

> ATF HQ should/will be embarrassed that they let this many guns walk—I'm stunned, based on what we've had to do to make sure not even a single operable weapon walked in UC [undercover] operations I've been involved in planning—and there will be press about that.[220]

In his interview with Committee staff, Mr. Weinstein explained that "there was no question from the moment those sales were completed that ATF had a lot of evidence that those sales were illegal. That's pretty rare. And it's that specific fact that set me off on Wide Receiver."[221] He also stated that the gunwalking tactics used in Wide Receiver "were unlike anything I had encountered in my career as a prosecutor."[222] As a former prosecutor in the U.S. Attorney's Office in Baltimore, he added:

> One of my priorities in all of the work I did in Maryland was to stop guns from getting to criminals and get guns out of the hands of criminals who managed to get their hands on them. But I was very sensitive about any situation or any operation that might result in law enforcement, however inadvertently, putting a gun into the hands of a criminal. And so all of the operations that I participated in designing, and I referred to this in the email, were designed to make sure that not even a single operable weapon got in the hands of a criminal.[223]

After reading the prosecution memorandum, Mr. Weinstein contacted his supervisor, Assistant Attorney General Breuer. On April 19, 2010, they met to discuss Mr. Weinstein's concerns about ATF-Phoenix's handling of the case.[224] According to Mr. Weinstein, Mr. Breuer shared his shock about the gunwalking tactics used in Wide Receiver:

> [T]here's no question in my mind from his reaction at the meeting that Mr. Breuer shared the same concerns that I did. As I indicated in my opening, Mr. Breuer has made helping Mexico and stopping guns from getting to Mexico a top priority. I had commented to somebody in my office that I traded when I came from Baltimore to the Criminal Division, I traded having a boss come into my office every day and ask me what am I doing to keep the murder rate down, to a boss who is asking me virtually every day, what am I doing to stop guns from going to Mexico? So when he heard about this he had the same reaction I did.[225]

According to Mr. Weinstein, Mr. Breuer directed him to immediately register their concerns "directly with the leadership of ATF."[226] The next day, Mr. Weinstein contacted ATF Deputy Director Hoover to request a meeting.[227] On April 28, 2010, Mr. Weinstein and Mr. Hoover met and were joined by the Acting Chief of the Organized Crime and Gang Section at DOJ, James Trusty and ATF Deputy Assistant

Director William McMahon.[228] Mr. Weinstein told the Committee that he expressed his serious concerns about ATF-Phoenix's management of Wide Receiver and the fact that so many firearms had been allowed to walk. Notes taken at that meeting indicate that of 183 guns sold in the first part of Operation Wide Receiver, the "vast majority walk[ed]" and were linked to "violent crime."[229] Mr. Weinstein stated:

> [A]t the meeting the first topic on the agenda was to talk about the tactics. And so Mr. Trusty and I went through the facts of the case and I explained my concerns about the tactics. The meeting was nearly 2 years ago now, and as I sit here today I just can't recall the specific words used, but my strong memory from that meeting is that Mr. Hoover had the same reaction I did; that is, that he shared my concerns about the tactics. And I walked away from that meeting being satisfied that although this had happened in '06 and '07, this was not the kind of thing that would be happening under Mr. Hoover's watch. I wish I could remember the exact words used, but that's the strong sense I walked away with.[230]

Although neither Mr. Breuer nor Mr. Weinstein had direct supervisory authority over ATF, Mr. Weinstein told the Committee that the seriousness of issue compelled them to request the meeting. Mr. Weinstein stated:

> I raised this with Mr. Hoover because I knew it was something he would be concerned about, and he was concerned about it. I didn't direct him. It's not my place to direct him. I didn't ask him to do anything in particular. His reaction, as I said, was exactly what I expected, which was concern about the tactics. And so I just walked away. I walked away feeling there was no reason to worry that this was the kind of thing that he would tolerate.[231]

Mr. Weinstein stated that he relayed the details of the meeting to Mr. Breuer, and at that time both of them believed that they had satisfied their duty to address the issue with the appropriate managers.[232] Mr. Weinstein also noted that he believed the gunwalking in Wide Receiver was an "extreme aberration from years ago."[233]

Despite raising these concerns about gunwalking in Operation Wide Receiver immediately with senior ATF leadership, Mr. Breuer later expressed regret for not raising these concerns directly with the Attorney General or Deputy Attorney General. During an exchange at a hearing with Senator Grassley, Mr. Breuer stated:

> I regret the fact that in April of 2010, I did not. At the time, I thought that we—dealing with the leadership of ATF was sufficient and reasonable. And frankly, given the amount of work I do, at the time,

> I thought that that was the appropriate way of dealing with it. But I cannot be more clear that knowing now—if I had known then what I know now, I, of course, would have told the Deputy and the Attorney General.[234]

Criminal Division interactions with Mexican Officials

According to documents obtained by the Committee, Assistant Attorney General Breuer met with senior officials from the Mexican government in Mexico on February 2, 2011, to discuss potential areas of cooperation to fight transnational organized crime and drug trafficking.[235] According to a summary, the group discussed a wide range of issues including U.S. extradition requests to Mexico, firearms trafficking, and a cooperative security agreement between the United States, Mexico, and countries in Central America.[236]

With respect to combating firearms trafficking, the Mexican Undersecretary for North America explained that "greater coordination and flow of information would be helpful to combat arms trafficking into Mexico."[237] Mr. Breuer responded by telling the Mexican officials that the Department had sought to increase penalties for straw purchasers and desired their support for such measures. According to the summary, Mr. Breuer also made a suggestion about one way the two countries could increase coordination:

> AAG Breuer suggested allowing straw purchasers cross into Mexico so SSP [Mexican federal police force] can arrest and PGR [the Mexican Attorney General's Office] can prosecute and convict. Such coordinated operations between the US and Mexico may send a strong message to arms traffickers.[238]

Documents produced to the Committee indicate that this summary of Mr. Breuer's meeting was shared with Acting ATF Director Melson in anticipation of his February 8, 2011, meeting with the U.S. Ambassador to Mexico.[239] According to a summary of this latter meeting, Mr. Melson discussed with the Ambassador the possibility of controlled firearms deliveries, but the Department of Justice Attaché who was also present raised concern about the "inherent risk" of such joint operations:

> Melson and the Ambassador discussed the possibility of allowing weapons to pass from the US to Mexico and US law enforcement coordinating with SSP and PGR to arrest and prosecute the arms trafficker. I raised the issue that there is an inherent risk in allowing weapons to pass from the US to Mexico; the possibility of the GoM [Government of Mexico] not seizing the weapons; and the weapons being used to commit a crime in Mexico.[240]

The documents obtained by the Committee do not indicate that any action was taken after this meeting regarding efforts to coordinate operations with Mexican authorities.

As described in the section above on the Hernandez case, the memo prepared for Attorney General Mukasey in 2007 similarly explained that "ATF would like to expand the possibility of such joint investigations and controlled deliveries—since only then will it be possible to investigate an entire smuggling network, rather than arresting simply a single smuggler.[241] The memo provided to Attorney General Mukasey was explicit, however, in warning that previous operations "have not been successful."[242]

D. Department Responses to Gunwalking in Operation Fast and Furious

Inaccurate information initially provided to Congress

On January 27, 2011, Senator Charles Grassley wrote a letter to the Department of Justice relaying allegations from whistleblowers that ATF-Phoenix had walked guns in Operation Fast and Furious.[243] On February 4, 2011, Ron Weich, the Assistant Attorney General for Legislative Affairs, sent a written response that stated:

> [T]he allegation described in your January 27 letter—that ATF "sanctioned or otherwise knowingly allowed the sale of assault weapons to a straw purchaser who then transported them into Mexico"—is false. ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico.[244]

As this report documents, it became apparent during the course of the Committee's investigation that this statement in the Department's letter was inaccurate and, on December 2, 2011, the Deputy Attorney General formally withdrew the Department's February 4th letter.[245] On the same day, the Department provided the Committee with more than 1,000 pages of internal emails, notes, and drafts from all of the parties involved in the drafting of the February 4 letter, as well as a lengthy explanation of how the inaccurate information was included in the letter. According to the Department:

> Department personnel, primarily in the Office of Legislative Affairs, the Criminal Division and the Office of the Deputy Attorney General, relied on information provided by supervisors from the components in the best position to know the relevant facts: ATF and the U.S. Attorney's Office in Arizona, both of which had responsibility for Operation Fast and Furious. Information provided by those supervisors was inaccurate.[246]

The documents obtained by the Committee and the interviews conducted by Committee staff support this explanation.

Documents obtained by the Committee indicate that, during the drafting of the letter, senior ATF officials insisted that ATF-Phoenix had not allowed guns to walk in Operation Fast and Furious. Detailed notes of a meeting with Acting Director Melson taken by a Department of Justice official state that ATF "didn't let a guns [sic] walk," and "didn't know they were straw purchasers at the time."[247]

Additional notes taken of a meeting with Deputy Director Hoover state that "ATF doesn't let guns walk," and "we always try to interdict weapons purchased illegally."[248]

Both Acting ATF Director Melson and ATF Deputy Director Hoover told the Committee that they did not intend to mislead the Department or Congress and that they sincerely believed that guns had not walked in Operation Fast and Furious at the time the letter was drafted.[249]

The U.S. Attorney's Office in Arizona also adamantly denied allegations of gunwalking. On January 31, 2011, U.S. Attorney Burke wrote to senior Department officials that the allegations "are based on categorical falsehoods."[250] Mr. Burke and the Chief of the Criminal Division at the U.S. Attorney's Office sent a series of emails over the course of that week continuing to deny the allegations and pressing for a strong response.[251]

In his interview with Committee staff, U.S. Attorney Burke stated that, after later learning about the scope of gunwalking in Operation Fast and Furious, he deeply regretted conveying "inaccurate" information to senior Department officials drafting the February 4 response, but that it "was not intentional."[252]

The Committee was not able to interview one witness from the U.S. Attorney's Office, the former Criminal Chief, Patrick Cunningham. In a letter on January 19, 2011, Mr. Cunningham's attorney informed the Committee that he was exercising his Fifth Amendment right against self-incrimination. The letter stated:

> I am writing to advise you that my client is going to assert his constitutional privilege not to be compelled to be a witness against himself. The Supreme Court has held that "one of the basic functions of the privilege is to protect innocent men." *Grunewald v. United States*, 353 U.S. 391,421 (1957); *see also Ohio v. Reiner*, 532 U.S.17 (2001) (per curiam). The evidence described above shows that my client is, in fact, innocent, but he has been ensnared by the unfortunate circumstances in which he now stands between two branches of government. I will therefore be instructing him to assert his constitutional privilege.[253]

During his interview with Committee staff, U.S. Attorney Burke stated that Mr. Cunningham adamantly denied that gunwalking occurred in Operation Fast and Furious.[254] Similarly, Deputy Assistant Attorney General Weinstein informed Committee staff that Mr. Cunningham continued to assert that gunwalking had not occurred in Operation Fast and Furious after the February 4, 2011, letter.[255]

Within the Criminal Division, Mr. Weinstein informed the Committee that he offered to assist in the drafting of the February 4 letter "to be helpful," but that he

had no independent knowledge of Operation Fast and Furious and relied on ATF and the U.S. Attorney's Office for information. He stated:

> As the Department prepared its response, I and others in Main Justice were repeatedly and emphatically assured by supervisors in the relevant components who were in position to know the case best—that is the Arizona U.S. Attorney's Office and ATF leadership—that no guns had been allowed to walk in connection with Fast and Furious; and it was on that basis that the Department provided inaccurate information to Congress in the February 4th letter.
>
> Now much attention has been paid to the sentence in that letter that reads, "ATF makes every effort to interdict weapons that have been purchased illegally and prevent their transportation to Mexico." As the documents you've received made clear, I and others at Main Justice received multiple assurances from the U.S. Attorney's Office and from ATF that this statement, like the other information in the letter, was true. ...
>
> Given what I know now, of course, I wish I had not placed such faith in the assurances provided to me by the leadership of the U.S. Attorney's Office and ATF. But given what I knew then and given the strength of those assurances I believed at the time that it was entirely appropriate to do so. I trusted what was said to me and I firmly believed at that time that in fact ATF had not let guns walk in Fast and Furious. Obviously, time has revealed the statements made to me and others to be inaccurate, and that is beyond disappointing to me.[256]

Mr. Weinstein also explained why he did not raise concerns about gunwalking during the previous administration in Operation Wide Receiver in 2006 and 2007. During his interview with Committee staff, he stated:

> Now some have said that because I knew about Wide Receiver at the time I assisted with the February 4th letter, I knew that statement to be untrue, and that is just not correct. Let me explain why.
>
> Wide Receiver was an old case in which inappropriate tactics had been used in the investigative phase years earlier. This occurred under a prior administration, under a different U.S. Attorney's Office management and different ATF management. Because of the repeated assurances I and others received in February 2011, from the then current leadership of the U.S. Attorney's Office in ATF that guns had not walked in Fast and Furious and from ATF that it was making every effort to interdict guns, I did not make any connection between

Wide Receiver and Fast and Furious. For that reason, I simply was not thinking about Wide Receiver as I assisted with the February 4th letter which I understood to be about Fast and Furious.[257]

Mr. Weinstein also rebutted the allegation of an intentional cover-up:

Q: Mr. Weinstein, during the drafting of the February 4th letter, did you intentionally try to mislead Congress?

A: Absolutely not.

Q: To your knowledge, did Mr. Breuer ever try to intentionally mislead Congress?

A: Absolutely not.

Q: To your knowledge, did anyone else at Main Justice, during the drafting of the February 4th letter, intentionally try to mislead Congress?

A: Absolutely not.[258]

Request for IG investigation and reiteration of Department policy

Soon after the Attorney General became aware of allegations relating to gunwalking in Operation Fast and Furious, he took several steps to address them. First, the Attorney General requested that the Inspector General investigate Operation Fast and Furious and the Department's response to Senator Grassley's letter.[259] Testifying before a Senate Appropriations Subcommittee, the Attorney General stated:

> It is true that there have been concerns expressed by ATF agents about the way in which this operation was conducted, and on that I took those allegations, those concerns, very seriously and asked the Inspector General to try to get to the bottom of it. An investigation, an inquiry is now under way.
>
> I've also made clear to people in the Department that letting guns walk—I guess that's the term that the people use—that letting guns walk is not something that is acceptable. Guns are—are different than drug cases or cases where we're trying to follow where money goes.
>
> We cannot have a situation where guns are allowed to walk, and I've made that clear to the United States Attorneys as well as the Agents in Charge in the various ATF offices.[260]

On March 9, 2011, Deputy Attorney General James Cole hosted a conference call with Southwest Border United States Attorneys in which he reiterated the Department's policy against gunwalking. After the call, Mr. Cole followed up with an email summarizing the conversation:

> As I said on the call, to avoid any potential confusion, I want to reiterate the Department's policy: We should not design or conduct undercover operations which include guns crossing the border. If we have knowledge that guns are about to cross the border, we must take immediate action to stop the firearms from crossing the border, even if that prematurely terminates or otherwise jeopardizes an investigation.[261]

Personnel actions

Justice Department officials have explained that, although they are awaiting the findings from the Inspector General's investigation before making any final personnel determinations, they have removed the key players in Operation Fast and Furious from any further operational duties.

At the U.S. Attorney's Office for the District of Arizona, all of the key personnel have resigned, been removed, or been relieved of their relevant duties in the aftermath of Operation Fast and Furious. On August 30, 2011, Dennis Burke resigned as the U.S. Attorney.[262] In January 2012, the Chief of the Criminal Division, Patrick Cunningham, resigned his position and left the U.S. Attorney's Office.[263] The Section Head responsible for supervising Operation Fast and Furious resigned his supervisory duties in the fall of 2011, and the Assistant U.S. Attorney who was responsible for managing Operation Fast and Furious was moved out of the criminal division to the civil division.[264]

On August 30, 2011, the Justice Department removed Kenneth Melson as the acting head of ATF and reassigned him to a position as a forensics advisor in the Department's Office of Legal Policy.[265] On October 5, 2011, ATF removed Deputy Director William Hoover from his position and subsequently reassigned to a non-operational role.[266] Also on October 5, 2011, ATF removed Assistant Director for Field Operations Mark Chait from his position and subsequently placed him in a non-operational role as well.[267] Deputy Assistant Director for Field Operations William McMahon was also reassigned as a Deputy Assistant in the ATF Office of Professional Responsibility and Security Operations on May 13, 2011, and was later reassigned to a non-operation position.[268]

ATF supervisors from the Phoenix Field Division have also been reassigned. Special Agent in Charge William Newell was reassigned to an administrative position as a special assistant in the ATF Office of Management.[269] Assistant Special

Agent in Charge George Gillett was reassigned as a liaison to the U.S. Marshal's Service.[270] The former Supervisor of Group VII, David Voth, was reassigned to ATF's Tobacco Division.[271]

Agency reforms

On January 28, 2011, Deputy Attorney General James Cole sent a letter to Congress explaining that the Department was "undertaking key enhancements to existing Department policies and procedures to ensure that mistakes like those that occurred in Wide Receiver and Fast and Furious are not repeated."[272] The letter detailed numerous reforms, including:

- Implementing a new Monitored Case Program to increase coordination between ATF headquarters and the field for sensitive investigations and to improve oversight;
- Clarifying the prohibition on gunwalking and providing guidance on responding to a gun dealer concerns about suspicious purchasers;
- Revising ATF's Confidential Informants Usage Policy and its Undercover Operations Policy and establishing committees on undercover operations and confidential informants;
- Providing training to personnel in ATF's Phoenix Field Division to address U.S.-Mexico cross-border firearms trafficking issues, improve techniques and strategies, and educate agents on the applicable law; and
- Restructuring ATF's Office of the Ombudsman by appointing a senior special agent as Chief ATF Ombudsman and adding a full-time special agent to handle agent complaints.[273]

Deputy Attorney General Cole also outlined key improvements to ensure the "accuracy and completeness" of the information the Department provides to Congress. The Department issued a directive requiring the responding component to ensure that it supplies Congress with the most accurate information by soliciting information from employees with detailed personal knowledge of the relevant subject matter. Ultimate responsibility for submitting or reviewing a draft response to Congress is assigned to an appropriate senior manager, according to the new directive. Finally, the directive emphasizes the importance of accuracy and completeness of the information provided to Congress over the timeliness of responding to requests.[274]

V. RECOMMENDATIONS

As its title indicates, the Committee on Oversight and Government Reform has two primary missions. Not only is it charged with conducting oversight of programs to root out waste, fraud, and abuse, but it is also responsible for reforming these programs to ensure that government works more effectively and efficiently for the American people. For these reasons, set forth below are ten constructive recommendations intended to address operational problems identified during the course of this investigation.

These recommendations for both Executive and Congressional action are not intended to be comprehensive or exhaustive, and some already may be under consideration or in various stages of implementation at the Department of Justice and ATF.

Strictly Enforce the Prohibition on Gunwalking Across Law Enforcement Agencies. Documents obtained by the Committee indicate that ATF lacked sufficient clarity regarding its operational policies and training for firearms trafficking cases. Following the public controversy over Fast and Furious, Acting ATF Director B. Todd Jones issued a memo strongly stating the Department's policy against gunwalking, and the Attorney General has used his position to publicly reiterate this prohibition. These measures should be complemented by efforts within each Federal law enforcement agency to establish clear operational policies with respect to suspect firearms transfers and provide appropriate training for field agents and supervisors.

Improve Management and Oversight of ATF Trafficking Investigations. Documents obtained by the Committee reveal a lack of adequate communication between ATF field offices and headquarters about significant trafficking investigations. In several cases, deficient communication was magnified by disagreements between the field and headquarters about tactics and strategy. ATF should improve its management of investigations by requiring operational approval of all significant gun trafficking investigations by senior ATF officials in order to ensure consistent application of ATF policies and procedures.

Require "Operational Safety Strategy" in Trafficking Investigations. As part of its broader effort to improve management and oversight of significant trafficking investigations, ATF should require that each Operational Plan developed in the field include an Operational Safety Strategy that analyzes the risks to agents and the public of firearms potentially being released into

the community and sets forth appropriate operational safeguards. Senior ATF officials should approve these plans in order to ensure that each specific operation has sufficient resources to implement the safeguards intended to protect agent and public safety.

Enhance the Accessibility and Responsiveness of the ATF Ombudsman. Documents obtained by the Committee indicate that Operation Fast and Furious was one of several deeply flawed operations run by ATF's Phoenix Field Division since 2006. Line agents reported to the Committee that they made their concerns about these controversial tactics public only after raising them first with their supervisors, but they stated that their concerns were not heeded. To ensure agents' concerns are communicated to ATF leadership, ATF should consider ways to improve its Office of the Ombudsman to make it more accessible and responsive to ATF line agents.

Conduct a Review of the U.S. Attorney's Office in Arizona. Documents and testimony received by the Committee indicate that the legal interpretations and prosecutorial decisions regarding firearms cases made by officials in the U.S. Attorney's Office in Arizona may differ substantially from those of other U.S. Attorneys' offices. Because it remains unclear to what extent these differences are the result of judicial, prosecutorial, or individual decisions, the Department of Justice should direct the Executive Office for United States Attorneys to conduct a thorough review of the Arizona U.S. Attorney's Office to ensure that it is doing everything it can to keep illegal guns off the streets and out of the hands of criminals.

Expand the Multiple Long Gun Sales Reporting Requirement. Numerous law enforcement agents testified before the Committee that obtaining reports on multiple purchases of long guns, including AK-47 variant assault weapons and .50 caliber semi-automatic sniper rifles that are now the "weapons of choice" for international drug cartels, would provide them with timely and actionable intelligence to help combat firearms trafficking rings. In July 2011, the Department of Justice issued a rule requiring such reports for weapon sales in certain states. Earlier this month, a Federal District Court upheld the rule, finding that "ATF acted rationally."[275] ATF should now expand the reporting requirement to apply to other states in which firearms trafficking networks are particularly active.

Confirm or Appoint a Permanent ATF Director. Consistent and strong leadership is vital to strengthening ATF and ensuring that policies and procedures are applied consistently. For six years, however, ATF has been forced to contend with temporary leadership because individual senators have blocked the confirmation of a permanent director. The Senate should

confirm a permanent director for ATF as soon as possible, and the President should consider a recess appointment if the Senate fails to do so.

Enact a Dedicated Firearms Trafficking Statute. During the Committee's investigation, multiple law enforcement agents warned that there is currently no Federal statute that specifically prohibits firearms trafficking and, as a result, prosecutors often charge traffickers with "paperwork violations" such as dealing in firearms without a license. The agents testified that these cases are difficult to prove and that U.S. Attorneys' offices frequently decline to prosecute. They stated that a Federal statute specifically dedicated to prohibiting firearms trafficking would help them disrupt, defeat, and dismantle firearms trafficking organizations. In July 2011, Ranking Member Elijah Cummings and Representative Carolyn Maloney introduced legislation in the House to establish such a firearms trafficking statute. Senator Kirsten Gillibrand has introduced a similar bill in the Senate. Congress should consider and pass this legislation without delay.

Provide ATF with Adequate Resources to Combat Illegal Gun Trafficking. Documents and testimony obtained by the Committee revealed that ATF line agents were drastically under-resourced, resulting in deficient surveillance of suspected straw purchasers and firearms traffickers. Over the past decade, ATF's budget has not kept pace with its law enforcement responsibilities, particularly in light of the exponential growth in illegal firearms trafficking to Mexico. Congress should appropriate the additional resources ATF needs to perform its mission and combat gun trafficking along the Southwest Border.

Repeal the Prohibition Against Reporting Crime Gun Trace Data. To increase transparency by ATF and oversight by Congress, Congress should repeal the prohibition against reporting crime gun trace data and require ATF to provide yearly reports to Congress that include aggregate statistics about crime gun trace data categorized by State and Federal Firearms Licensee, as well as aggregate gun trace data for guns that are recovered in Mexico, categorized by State and Federal Firearms Licensee. This information will assist Congress in understanding the problem of gun trafficking along the Southwest Border and assessing ATF's progress in fighting it.

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Mr. ISSA. Mr. Speaker, by direction of the Committee on Oversight and Government Reform, I call up the resolution (H. Res. 711) recommending that the House of Representatives find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 708, the resolution is considered read and shall be debatable for 50 minutes, equally divided and controlled by the chair and ranking minority member of the Committee on Oversight and Government Reform or their designees.

The text of the resolution is as follows:

H. RES. 711

Resolved, That Eric H. Holder, Jr., Attorney General of the United States, shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House of Representatives shall certify the report of the Committee on Oversight and Government Reform, detailing the refusal of Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, to produce documents to the Committee on Oversight and Government Reform as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Holder be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

The SPEAKER pro tempore. After debate on the resolution, it shall be in order to consider a motion to refer if offered by the gentleman from Michigan (Mr. DINGELL) or his designee which shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent.

The gentleman from California (Mr. ISSA) and the gentleman from Maryland (Mr. CUMMINGS) each will control 25 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. ISSA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and insert extraneous materials into the RECORD for both resolutions made in order under the rule.

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

There was no objection.

Mr. ISSA. Mr. Speaker, I yield myself 2 minutes.

I never thought that we would be here today. I never thought this point would come. Throughout 18 months of investigation, through countless areas of negotiations in order to get the minimum material necessary to find out the facts behind Fast and Furious and the murder of Border Patrol Agent Brian Terry, I always believed that, in time, we would reach an accommodation sufficient to get the information needed for the American people while at the same time preserving the ongoing criminal investigations.

I am proud to say that our committee has maintained the ability for the Justice Department to continue their ongoing prosecutions. Neither the majority nor the minority has allowed any material to become public to compromise that. However, the facts remain—in Fast and Furious, the Department of Justice permitted the sale of more than 2,000 weapons that fell into the hands of the Mexican drug cartels, which was both reckless and inexcusable. And it clearly was known by people, both career professionals and political appointees, from the lowliest members on the ground in Phoenix to high-ranking officials in the Department of Justice. But that's not what we're here for today.

Today we are here on a very narrow contempt, one that the Speaker of the House, in his wisdom and assistance, has helped us to fashion. Let it be clear: we still have unanswered questions on a myriad of areas related to Operation Fast and Furious. But today we are only here to determine how, over the 10 months from the time in which the American people and the Congress of the United States were lied to, given false—literally the reverse statement, that ''no guns were allowed to walk'' during those 10 months before the Justice Department finally owned up and recognized that they had to come clean that, in fact, Fast and Furious was all about gunwalking.

The Department of Justice maintained a series of documents. Many of these documents are believed to be communications between and with the very individuals at the heart of the decision to go forward with Fast and Furious. Therefore, we have focused our limited contempt on those documents. If our committee is able to receive the documents in totality that show who brought about the dishonest statement to Congress and who covered it up for 10 months, we believe that will allow us to backtrack to the individuals who ultimately believed in Fast and Furious, facilitated Fast and Furious, and ultimately made it responsible for Brian Terry's death.

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

Mr. ISSA. I yield myself an additional 15 seconds.

I won't read everything that's in my opening statement. But I will read just one more thing.

These words were said on the House floor in 2008 when Speaker PELOSI supported contempt. She said:

> Congress has the responsibility of oversight of the executive branch. I know that Members on both sides of the aisle take that responsibility very seriously. Oversight is an institutional obligation to ensure against abuse of power. Subpoena authority is a vital tool for that oversight.

Speaker PELOSI, 2008.

I reserve the balance of my time.

Mr. CUMMINGS. Mr. Speaker, I yield myself such time as I may consume.

Today, Mr. Speaker, is a historic day in many ways. On the one hand, in a landmark decision by Chief Justice John Roberts, the Supreme Court upheld the health care bill, ensuring that millions of American families will finally have access to effective and affordable health care.

On the other hand, Republican leaders of the House of Representatives are about to plunge into the history books as some of the most extreme and partisan ever. Rather than working together in a bipartisan way to create jobs and help our Nation's economic recovery, they're rushing to the floor under emergency procedures with a contempt resolution that is riddled with errors and is motivated by partisan politics.

When I first heard about the allegations of gunwalking at ATF, I was outraged. I fully supported our committee's goals of finding out how it started, how it was used, and how it may have contributed to the death of Border Patrol Agent Brian Terry. I made a personal commitment, which I will keep, to the Terry family to conduct a responsible and thorough inquiry.

But today's contempt vote is a culmination of one of the most highly politicized and reckless congressional investigations in decades. After receiving thousands of pages of documents from the Justice Department, conducting two dozen transcribed interviews, and hearing testimony from the Attorney General nine times, here are the facts:

First, the committee has obtained no evidence that the Attorney General authorized, condoned, or knew about gunwalking. Chairman ISSA admitted this just yesterday before the Rules Committee. We've seen no evidence that the Attorney General lied to Congress or engaged in a coverup. We've seen no evidence that the White House had anything to do with the gunwalking operations—Chairman ISSA admitted this on FOX News Sunday this past weekend.

Democrats wanted a real investigation. But Chairman ISSA refused 10 different requests to hold a hearing with the director of ATF, the agency that ran these misguided operations. Let me say that again. During this entire investigation, no Member of the House has been able to pose a single question to the head of ATF at a public hearing.

How could you have a credible investigation of gunwalking at ATF and never hold a single hearing with the leadership of the agency in charge? The answer is, you can't.

Based on the documents, we now know that gunwalking, in fact, started in 2006. Yesterday, Chairman ISSA said this about the misguided operations during the Bush administration: ''They were all flops. They were all failures.''

The committee has obtained documentary evidence that former Attorney General Mukasey was personally

briefed on these botched interdiction efforts during his tenure and that he was told they would be expanded. Chairman ISSA refused to call Mr. Mukasey for a hearing or even for a private meeting. During our committee's year and a half investigation, the chairman refused every single Democratic request for a witness.

Instead of taking any of these reasonable steps as part of a credible and even-handed investigation to determine facts, House Republican leaders rushed this resolution to the floor only 1 week after it was voted out of committee. In contrast, during the last Congress, House leaders continued to negotiate for 6 months to try to avoid contempt in the United States Attorneys investigation.

Mr. Speaker, some of my colleagues on the other side seem almost giddy about today's vote. After turning this investigation into an election year witch hunt, they have somehow convinced the Speaker to take it to the floor.

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And they are finally about to get the prize they have been seeking for more than a year: holding the Attorney General of the United States of America in contempt.

They may view today's vote as a success, but in reality, it is a sad failure—a failure of House leadership, a failure of our constitutional obligations, and a failure of our responsibilities to the American people.

I reserve the balance of my time.

Mr. ISSA. I yield 3 minutes to the gentleman from Pennsylvania, the distinguished Congressman MEEHAN, a former U.S. attorney in that district.

Mr. MEEHAN. Thank you, Mr. Chairman.

Mr. Speaker, this is not about politics, though there are some who want to suggest that it is because if they yell loud enough and long enough, it will deflect the truth of the matter. Frankly, it's not about ''gotcha.'' As a former prosecutor myself, the Attorney General personifies the pursuit of justice, and I want to see him do well. But it is about accountability.

Agent Brian Terry is dead, protecting our border, and 563 days later, the Terry family still does not know why it occurred. What they do know is that the very agency that initiated Fast and Furious, the Department of Justice under Attorney General Eric Holder, called the operation ''fatally flawed.'' And then the wagons got circled.

It's about the separation of powers. As uncomfortable as it may be, at times it's a fundamental tenet and a strength of our democracy that Congress is given not just the power, but the responsibility, to exercise its duty of oversight over the Executive, especially when, by their own admission, things have gone glaringly wrong.

Because the Justice Department has stubbornly resisted the legitimate inquiries of Congress over Operation Fast and Furious, there's so much we do not know. But because whistleblowers within the Department of Justice were outraged at mischaracterizations, there's a great deal that we do know.

What we do know is that we have been dealing with a systematic effort to deflect attention away from the decisions and the determinations that were made at the highest levels of the Department of Justice, where information was brought directly to individuals at the highest levels of the Department of Justice, information that was contained in wiretap affidavits that lay out in explicit detail the matters related to Fast and Furious.

Mr. Speaker, there is a famous quotation in the Department of Justice about the responsibility of the Attorney General not being to win cases, but to assure that justice is pursued and retained.

Mr. Speaker, it is incumbent and a responsibility on this House to do what is required to do in this circumstance and to support the request that we be given the documents to obtain the facts that will allow us to draw the conclusions which I believe will allow us to get to the bottom of this level.

Mr. CUMMINGS. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Illinois (Mr. QUIGLEY).

Mr. QUIGLEY. Those bringing this contempt vote say they want to talk about gunwalking and how to stop it. Okay, let's have that conversation.

They say they want to stop gun trafficking and keep our ATF agents safe. Well, then let's properly fund the ATF, which has the same number of agents since 1970.

They say they want to stop gun trafficking. Well, then appoint a permanent ATF Director, which the agency hasn't had in 6 years.

They say they want to stop gun trafficking. Well, then let's pass some laws which actually deter straw purchasers. Straw purchasers can currently buy thousands of AK–47s, lie on their paperwork, and the penalty is equivalent to a moving violation.

They say they want to stop gun trafficking. Well, then let's give the agents in the field what they've been asking for: the ability to track multiple purchases of long guns. These long guns include AK–47s, variant assault weapons, and .50 caliber semiautomatic sniper rifles, the weapons of choice for international drug cartels.

They say they want to stop gun trafficking. Well, then let's close the gun show loophole which currently allows anyone to purchase any gun they want without background check. Felons, domestic violence abusers, those with severe mental illness, even those on the terrorist watch list can currently walk into a gun show and purchase any gun they want.

Yes, 2,000 guns were allowed to walk to Mexico, but the truth is tens of thousands of guns flow across our border every year because of those lax gun laws. But those bringing this contempt vote don't want to have this conversation, and they aren't serious about stopping gun trafficking. They simply want to embarrass the administration, even though the committee's 16-month investigation found no evidence the Attorney General knew about gunwalking, even though there was no evidence of White House involvement in gunwalking, all of which Chairman ISSA admitted on national TV last week.

So if we're going to talk about gun trafficking, let's be clear: this is about politics, not safety.

Mr. ISSA. Mr. Speaker, the minority knows that, in fact, this contempt is all about the Attorney General's refusal to turn over documents, not whether or not it was his lieutenants or he that personally was involved in Fast and Furious.

With that, I yield 2 minutes to the distinguished former chairman of the Judiciary Committee, the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Speaker, this isn't about politics. This is about the Constitution, and it's about Congress's mandate to do oversight over both the executive and judicial branches of government.

The President is asserting executive privilege to attempt to shield these documents, and he is relying on a type of privilege called the deliberative process privilege. However, that privilege disappears when Congress is investigating evidence of wrongdoing.

In 1997, the U.S. Court of Appeals for the District of Columbia Circuit wrote, in part:

> Moreover, the privilege disappears altogether when there is any reason to believe government misconduct occurred.

In another case that was decided by the First Circuit in 1995, it says that the grounds that shielding internal government deliberations in this context does not serve ''the public's interest in honest, effective government.''

There's been misconduct that's already a matter of public record in two instances. The Justice Department wrote Senator GRASSLEY in January of 2011 saying that the ATF-sanctioned gunwalking across the border was false, and it took them 9 months to retract that letter. So they misled Congress, and then 9 months later they said, Oops, maybe we did mislead Congress and we'll withdraw the letter. And in May 2011, the Attorney General testified before the Judiciary Committee that he first heard of Operation Fast and Furious a few weeks before the hearing. Over 6 months later, he conceded that he should have said ''a few months.''

Now, this very clearly shows that Congress has got the obligation to get to the bottom of this and that the assertion of executive privilege by the President and the Attorney General is not based in law. We ought to go ahead and do our job and do our oversight. It's too bad that the Justice Department has decided to try to obstruct Congress' ability to do it.

Pass the resolution.

Mr. CUMMINGS. I yield 2 minutes to a member of the committee, the gentleman from Virginia (Mr. CONNOLLY).

Mr. CONNOLLY of Virginia. Mr. Speaker, the 112th Congress is on the verge of becoming the first in the history of the country to hold a sitting Cabinet member in contempt, cementing its legacy as the most partisan House of Representatives perhaps of all time. When they say it's not about politics, you can be sure it's about politics.

The majority's irresponsible and unprecedented contempt vote brings dishonor to this House, which has become so clouded in judgment, so besotted with rancor and partisanship, that it's incapable of addressing a fundamental separation of powers conflict in a serious and fair fashion.

In refusing to engage in good-faith negotiations with the Department of Justice and the Attorney General, the majority has exposed this contempt citation for what it really is: an extraordinarily shameful political witch hunt aimed at trashing an honorable man.

□ 1450

It is unacceptable that we are rushing to the floor this unprecedented contempt resolution. Yesterday, Ranking Member CUMMINGS sent a letter to the Speaker highlighting 100 errors, omissions, and mischaracterizations of fact contained in the contempt citation itself, rushed out of our committee last week on a party-line vote.

Although some of the contempt citation's flaws are simply misleading, others are significant legal deficiencies and may contain factual errors that call into question the very validity of the contempt citation itself.

For example, on pages 4 and 5, the contempt citation charges that senior officials at the Department of Justice headquarters ''ultimately approved and authorized'' Operation Fast and Furious. However, the contempt citation fails to mention that the committee has uncovered no evidence that DOJ officials, including the Attorney General, ever approved or authorized gunwalking in Operation Fast and Furious. In fact, the authorization originated at the ATF office in Phoenix, Arizona, not at DOJ headquarters in Washington.

On pages 16, 17, 19, 20, 21, 22, 25, 26, and 27, the contempt citation charges DOJ with not producing a series of documents that the chairman only recently acknowledged the Department is prohibited by law from providing due to the potential impact on ongoing prosecutions.

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

Mr. CUMMINGS. I yield the gentleman an additional 15 seconds.

Mr. CONNOLLY of Virginia. In fact, he had to amend his own subpoenas to delete documents in this very category. But his contempt citation has not caught up with his most recent version of his subpoena.

Clearly, the majority has not taken the necessary time to properly weigh this very serious charge. Regrettably, this deeply flawed and shoddy contempt citation is emblematic of the majority's reckless rush to judgment throughout this political prosecution.

I have been deeply troubled by the tone and tenor of some of the very hostile questioning and the utter and complete contempt and lack of respect given to the Attorney General of the United States.

When this chapter of congressional history is written, it will not be a brave, shining moment. It will be seen for what it is: a craven, crass, partisan move that brings dishonor to this body.

Mr. ISSA. I now yield 1 minute to the very distinguished and always participating member of the committee, the gentlewoman from New York (Ms. BUERKLE).

Ms. BUERKLE. Mr. Speaker, I thank the chairman for his steadfast work on behalf of truth in trying to get to the bottom of Fast and Furious.

Mr. Speaker, Syracuse, New York, in the heart of my district, is roughly 2,500 miles from Rio Rico, Arizona, where U.S. Border Patrol Agent Brian Terry was tragically shot and killed by an AK–47 assault rifle that the United States knowingly allowed into the hands of a suspected gun trafficker, yet every time I'm home, it is the issue first and foremost on the minds of my constituents. I listen to their calls, to their emails, and at our town halls. They want to know what happened, who knew what, and when did they know it. They ask me, they ask Washington, they ask the Department of Justice: How could the United States Government, the pillar of hope and freedom, have allowed for this, for one of their own representatives, one of their own good guys, to be so helplessly gunned down by a suspected criminal?

Mr. Speaker, I'm embarrassed to say that after 562 days, I still don't have an answer for them.

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

Mr. ISSA. I yield the gentlelady an additional 10 seconds.

Ms. BUERKLE. Mr. Speaker, I ask: Is this the hope that Americans are supposed to believe in out of the supposedly most-transparent government in the history of our Nation?

It is my hope, Mr. Speaker, that the district court judge will see through the Attorney General's contempt of Congress after it is passed in the House today. However, we must not be mistaken, even if the Attorney General is prosecuted, the case is not closed. We must not forget that guns leaked through this program claimed lives.

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

Mr. ISSA. I yield the gentlelady an additional 10 seconds.

Ms. BUERKLE. Mr. Speaker, after today's vote, we must continue our efforts to find more answers than there are questions relating to this administration's catastrophic Fast and Furious. The American people deserve to know those answers, and the family of Border Patrol Agent Brian Terry do as well.

Mr. CUMMINGS. Mr. Speaker, I yield the gentleman from Missouri (Mr. CLAY) 2 minutes, a member of the committee.

Mr. CLAY. Mr. Speaker, as a member of the Oversight Committee, I know that the gunwalking operations conducted by the ATF under both the previous and current administrations were absolutely wrong. But the leadership of this House is focused on shameful election-year political posturing instead of the real issue.

The Justice Department, long ago, ended the practice of allowing these guns to ''walk'' across the border, putting communities in Mexico at great risk. But the same people who have relentlessly pursued a baseless, partisan attack on Attorney General Holder and the President have ignored the desperate pleas of the Mexican Government—to strengthen American gun laws and curb the gun trafficking that gave rise to the strategy in the first place.

But focusing on the real issue would take time away from their playing politics with their oversight authority. Those on the other side of the aisle claim to be concerned about powerful assault weapons crossing the border into Mexico illegally, but how can they be completely fine with those same powerful assault weapons being sold right here in this country legally, putting our communities at even greater risk?

This is nothing more than a political witch hunt. The disgraceful posturing that I witnessed at last week's markup has been continued on the floor today. I agree that it never should have come to this, but we are here debating this resolution solely because of the majority. They created the scandal and produced a showdown during an election season just to smear an honorable, dedicated public servant and to embarrass his boss.

I urge my colleagues to reject this nakedly partisan abuse of power.

Mr. ISSA. Mr. Speaker, it is now my honor to yield 1 minute to the distinguished Speaker of the House, the gentleman from Ohio (Mr. BOEHNER).

Mr. BOEHNER. I thank my colleague for yielding.

It's important for the American people to know how we got here and to know the facts of this case.

The Congress asked the Justice Department for the facts related to Fast and Furious and the events that led to the death of U.S. Border Patrol Agent Brian Terry. The Justice Department did not provide the facts and the information that we've requested. Instead, the information came from people outside the Department, people who wanted to do the right thing.

In addition to not providing the information, the administration admitted misleading Congress, actually retracting a letter it had sent 10 months earlier.

I think all Members understand this is a very serious matter. The Terry family wants to know how this happened, and they have every right to have their answers. And the House needs to know how this happened, and it's our constitutional duty to find out.

So the House Oversight and Government Reform Committee issued a lawful and narrowly tailored subpoena. We've been patient, giving the Justice Department every opportunity to comply so we can get to the bottom of this for the Terry family. We showed more than enough good faith, but the White House has chosen to invoke executive privilege. That leaves us no other options. The only recourse left to the House is to continue seeking the truth and to hold the Attorney General in contempt of Congress.

Now, I don't take this matter lightly. I, frankly, hoped it would never come to this. The House's focus is on jobs and on the economy. But no Justice Department is above the law, and no Justice Department is above the Constitution, which each of us has sworn an oath to uphold.

So I ask the Members of this body to come together and to support this resolution so we can seek the answers that the Terry family and the American people deserve.

Mr. CUMMINGS. I yield myself 1 minute.

I want to say in response to the Speaker, we, too, are all saddened by the tragic death of Border Patrol Agent Brian Terry who gave his life in service to his country on December 15, 2010.

□ 1500

But, Mr. Speaker, despite what my colleagues have claimed, this contempt vote is not about getting documents that show how gunwalking was initiated and utilized in Operation Fast and Furious.

Now, the only documents in dispute are the documents created after Fast and Furious ended and after Brian Terry's death, but we pledge to continue to find all the answers with regard to the death of Brian Terry.

With that, I yield 2 minutes to the distinguished gentleman from Massachusetts (Mr. LYNCH), a member of the committee.

Mr. LYNCH. Mr. Speaker, I would add that we have 31 Democrats that signed a letter to the Department of Justice and to the White House in the aftermath of Agent Terry's death to fully cooperate in this investigation. However, I rise in strong opposition to this contempt resolution.

While criticism of the Department of Justice for oversight of the so-called ''gunwalking'' operations—conducted during both the Bush administration and the current administration—may be warranted, a finding of contempt against the sitting Attorney General of the United States is most certainly not.

In determining whether this House should hold our highest-ranking national law enforcement officer in contempt of Congress, let us remember that up until last week the majority of our committee had been demanding the production of documents that our Attorney General is legally prohibited from disclosing and that has caused much of the delay here. In other words, Mr. Holder would have broken the law and likely compromised existing criminal prosecutions if he adhered to the majority's unreasonable request for materials that related to ongoing criminal investigations, Federal wiretap communications under judicial seal, and documents also subject to grand jury secrecy rules.

Let us also be mindful that we are considering the extent of cooperation, or noncooperation, of an Attorney General who has appeared before Congress on nine separate occasions, whose Justice Department has produced over 7,600 pages of documents to oversight investigators and who continues to offer significant accommodations in response to extraordinary and ever-changing requests for information.

Meanwhile, the majority continues to deny any and all Democratic requests to publicly question, under oath, law enforcement officials, including former Director of the ATF, Ken Melson, the head of the very Agency that ran the gunwalking operations such as Fast and Furious.

Accordingly, it's become quite clear that what began as a legitimate and compelling oversight committee investigation into Operation Fast and Furious has deteriorated into an unfortunate example of politics and partisanship at their worst.

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

Mr. CUMMINGS. I yield the gentleman another 15 seconds.

Mr. LYNCH. In closing, I urge my colleagues on both sides of the aisle to oppose this contempt resolution.

Mr. ISSA. Mr. Speaker, I now yield 1 minute to the gentleman from Michigan (Mr. WALBERG).

Mr. WALBERG. Mr. Speaker, there is no joy in today's action; but the fact remains, 18 months after U.S. Border Patrol Agent Brian Terry was murdered, the Justice Department has failed to hold anybody accountable for the mistakes of Operation Fast and Furious.

As a member of the Oversight and Government Reform Committee, I have witnessed firsthand the stonewalling by the Department of Justice and Attorney General Holder. At every question, the Justice Department has refused to acknowledge what they know about the gunwalking tactics that led to Agent Terry's death. Most recently, they have hid behind the President's erroneous claims of executive privilege, an action the President denounced as lacking transparency when he was campaigning. The Department has stood in open defiance of Congress' moral and constitutional obligation to conduct oversight of this affair.

The family of Agent Terry deserves to know who approved Fast and Furious. They have the right to know who had the power to stop this program before he was murdered, and they need an explanation as to why the Department of Justice took 9 months to withdraw their false denial that they had ever let guns walk into Mexico.

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

Mr. ISSA. I yield the gentleman an additional 15 seconds.

Mr. WALBERG. To some on the other side of the aisle, it seems fine that the people who authorized this operation still work within the Department of Justice. I don't agree. They'd rather play politics than uphold Congress' right to investigate.

Today's vote is about accountability. It's about making sure another 2,000 firearms don't end up in the hands of Mexican drug cartels. And it's about bringing closure to the Terry family.

I urge my colleagues to support this resolution and honor the memory of Brian Terry.

Mr. CUMMINGS. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Speaker, this is a sad day for the House of Representatives. It is an irresponsible day for the House of Representatives. It is a day in which the majority party asked us to take an action that has never been taken in the history of America—never once—holding a Cabinet officer in contempt of the Congress.

Now, there have been previous contempt citations—some promoted by Democratic committees and some promoted by Republican committees. The average time between committee action and consideration on the floor of this House is 87 days; time to reflect on an extraordinarily important action with consequences beyond the knowledge of anybody sitting here today.

Now, I want to tell the chairman, with all due respect, I think this investigation has been extraordinarily superficial. I think the chairman has failed to call witnesses that could in fact give relevant, cogent testimony on the issues to bear. That ought to be done. That is why I will strongly support the motion of the gentleman from Michigan (Mr. DINGELL), who has served here longer than any of the rest of us and who is one of the strongest gun control rights supporters in this Congress.

What his motion says is: let us reflect. Let us bring thoughtful judgment. Let us not, every time that there is the opportunity, choose confrontation over cooperation and consensus. That has been the history of this Congress, confrontation over consensus every time, and America is suffering because of it.

I ask my friends on the Republican side of the aisle—who know me to be a bipartisan Member of this body who believes in this institution and who cares about its actions and the precedent that they will set—don't do this. Vote for this motion to refer. Give the chairman the opportunity he should have taken before to have a full hearing, calling former Attorney General Mukasey, calling the former head of the ATF, calling agents who were personally involved in this proceeding.

I venture to say that there are very few Members who will vote on this issue who have read the committee proceedings, very few Members who have read the minority report or the majority report. Yet they're about to take a historic vote to do what has never been done by any Congress—111 Congresses. Do not take this action.

This is not about Republicans or Democrats. This is about our Constitution, our country, our respect for a Nation of laws, not of men. That's what this vote is about. We ought not to be voting as Republicans and Democrats; we ought to be voting as Americans, Americans committed to justice and fair process.

□ 1510

I regret that I do not believe this committee has followed that. I believe that the political motivations behind this resolution are clear and pose a clear and present danger to this Nation.

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

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

Mr. HOYER. I want to thank the gentleman from Maryland, my colleague and my friend, for his leadership on this effort.

When we vote on this referral, let us vote as Americans, as I said, not as a partisan issue. You may have the Attorney General in the future. It's not the question of the party of the Attorney General. It is the question of whether or not this Congress is going to provide for equal treatment of all Attorney Generals and all Cabinet officers.

Let us vote for this motion to refer and give the committee the opportunity it should take, and let us vote down this motion that should fail, and let us vote down these motions for contempt, and let us thoughtfully consider the equities of this issue.

Mr. ISSA. Mr. Speaker, it is now my honor to yield 1 minute to the gentleman from Arizona (Mr. GOSAR), an active participant, and from the district from which this event sprung.

Mr. GOSAR. Mr. Speaker, finding Attorney General Eric Holder, Jr. in contempt of Congress is long overdue, but welcome news for the American people, and especially for Arizonans.

As I explained in my recent statement, Mr. Holder has shown his contempt and utter disdain for our constitutional rights, our border, Arizonans and all Americans; 115 Members of Congress agree that Americans lack confidence in Mr. Holder and his Department. Every Member of Congress should do their constitutional duty and hold the Attorney General to be in contempt today.

The people of Arizona, California, New Mexico, and Texas, who deal with the unsecured borders and violent Mexican cartels on a regular basis, now must also live in fear of these firearms.

Some have said that these charges against Attorney General Eric Holder are racially motivated, and I couldn't disagree more. The violent cartels armed by our government have no regard for party ID or race. Throughout our Nation and, specifically, in Arizona, folks from all political parties and all races are now living in danger of this lethal violence due to the actions of this administration.

Make no mistakes about it, today's vote is to deliver justice and accountability for the Brian Terry family and the over 300 Mexicans who have died as a result of Fast and Furious. Time's up.

Mr. CUMMINGS. I yield 30 seconds to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. I thank the gentleman for yielding.

On November 1, 2009, our Speaker stood on this floor, outraged about the process. We, too, are outraged about this process, and let me quote the Speaker:

> We will not stand for this. And I would ask my House Republican colleagues and those who believe that we should be here protecting the American people, protecting our Constitution, not vote on this bill. Let's just get up and leave.

My colleagues may well follow that advice.

Mr. ISSA. I yield myself 10 seconds, and have no doubt that the gentleman will walk off the floor. But his motion is asking us also to delay, into an election, getting an answer for the Terry family. I know that is not the wise course, and I strongly support that we do this today.

With that, I yield 1 minute to the gentleman from Idaho (Mr. LABRADOR).

Mr. LABRADOR. Mr. Speaker, I stand with a heavy heart in support of today's contempt resolution. It puts us another step closer to holding the Attorney General accountable for this severely flawed operation and his failure to cooperate with Congress.

The Attorney General has not only failed to produce all the relevant documents; he has misled this Congress and thereby prevented us from uncovering the truth. So how can the Members of the minority say that an investigation is superficial when we don't even have all the documents?

When the Attorney General was before the Committee on Oversight last year, I brought to light his historical pattern of willful ignorance. I highlighted his lack of knowledge when under oath. He knows nothing, he says nothing, and he seeks for nothing. Never in my life have I met a man more unconcerned with the search for the truth.

I've since become even more disturbed by the depth to which Mr. Holder and his allies will sink to stonewall justice.

Yes, this is an unprecedented day, I agree with you. But not until now have we had an Attorney General have to retract so many statements made to the Congress of the United States, the duly elected Representatives of the people of the United States.

Let us vote to support this motion for contempt.

Mr. CUMMINGS. Mr. Speaker, may I inquire as to how much time both sides have.

The SPEAKER pro tempore. The gentleman from Maryland has 6¼ minutes remaining. The gentleman from California has 11¼ minutes remaining.

Mr. CUMMINGS. I yield 2 minutes to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY. Mr. Speaker, the family of Brian Terry deserves our respect, our condolences and our best efforts to finish the mission, to put an end to gun violence on the southern border. But instead of going after gun violence, this investigation has gone after the man that tried to stop the gun violence, the Attorney General.

Chairman ISSA has acknowledged that Attorney General Holder did not know about the gunwalking operation. He has acknowledged that the President and the White House did not know about the gunwalking operation. Both the White House and the Attorney General have acknowledged that the gunwalking operation was a tragic mistake, that it was badly executed, and that it originated under the Bush administration.

It was Attorney General Holder that terminated the program and requested an extensive investigation of the operation and how it was conducted. And the documents that they're now requesting in this ''vast and spurious'' investigation have absolutely nothing to do with gunwalking.

If they were really interested in discovering the truth, the committee would have called Kenneth Melson, head of the ATF, as a witness. The chairman refused 10 different requests for a hearing with Mr. Melson—10 requests.

Republicans have not granted one single Democratic witness request in 16 months. Not one.

This is not about discovering the truth. This is about politics. This has become an obsessive political vendetta, pursuing a political agenda in a season of unusually ugly politics.

If they were serious about ending gun violence, they would do what many ATF agents have suggested and put some teeth in the law; and that is why I authored, with my colleagues, a bill to make gun trafficking a Federal offense and strengthen penalties for straw purchases.

This unprecedented contempt citation is politics at its worst and why this body is held in such low esteem by the public now.

Mr. ISSA. Mr. Speaker, I place in the RECORD at this time the statement by the Terry family regarding Congressman JOHN DINGELL's criticism of the contempt vote.

TERRY FAMILY STATEMENT WITH REGARD TO CONGRESSMAN JOHN DINGELL'S CRITICISM OF CONTEMPT VOTE

On Wednesday, Representative John Dingell invoked the Terry family name while saying he would not back the contempt resolutions but instead wants the Oversight and Government Reform Committee to conduct a more thorough investigation into Operation Fast and Furious.

Congressman Dingell represents the district in Michigan where Brian Terry was born and where his family still resides, but his views don't represent those of the Terry family. Nor does he speak for the Terry family. And he has never spoken to the Terry family.

His office sent us a condolence letter when Brian was buried 18 months ago. That's the last time we heard from him.

A year ago, after the House Oversight and Reform Committee began looking into Operation Fast and Furious, one of Brian's sisters called Rep. Dingell's office seeking help and answers. No one from his office called back.

Mr. Dingell is now calling for more investigation to be conducted before the Attorney General can be held in contempt of Congress.

The Terry family has been waiting for over 18 months for answers about Operation Fast and Furious and how it was related to Brian's death. If Rep. Dingell truly wants to support the Terry family and honor Brian Terry, a son of Michigan, he and other members of congress will call for the Attorney General to immediately provide the documents requested by the House Oversight and Government Reform Committee.

Mr. ISSA. Mr. Chairman, I'm sure that the gentlelady from New York recognizes that the right of a minority hearing has not been exercised, and that would have answered the questions, as they are well aware, about bringing Kenneth Melson before the committee. That would be their right. They did not exercise their right.

I yield 1 minute to the gentleman from Florida (Mr. MICA), the senior member of the committee.

Mr. MICA. I thank the gentleman for yielding.

When the Founding Fathers created our government and established the committees in Congress, they had authorizing committees and they had appropriating committees. In 1808, the predecessor of this committee was established for a fundamental reason, and that's to make certain that programs and funding were properly executed and used by agencies created by Congress.

Congress created the law that created the Department of Justice. Congress funded the programs that are under the Department of Justice. It's our responsibility to investigate when things go wrong. And things went wrong. An agent of the United States was murdered with weapons which were funded by the agency that we created.

All we have asked for is the documents. All we want are the facts, and we have been thwarted. Eric Holder, Attorney General of the United States, the highest judicial enforcement officer of the United States, has been in contempt, is in contempt, and is showing contempt for the Congress and the responsibility under the Constitution of this important committee of Congress.

I urge adoption of the contempt resolution against the Attorney General.

□ 1520

Mr. CUMMINGS. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. I thank the gentleman for yielding.

I rise in strong opposition to these contempt resolutions.

I spent 6 years as an assistant U.S. attorney, and I have great admiration and respect for the hardworking men and women of the Department. I have great respect for our Attorney General, who I think has been a superb Attorney General and is a man of great integrity. I, like most Americans, would like to know about the facts of Fast and Furious, about the problem of guns crossing our border, about the horrendous violence to the south of our border. But what we do today will shed no light on that.

What we do today will not improve the situation in terms of gun violence that has claimed the lives of tens of thousands of Mexican citizens and that has claimed the lives of an increasing number of Americans. What we are doing today is simply a partisan abuse of the contempt power. Thirteen percent of the American people think highly of Congress, and today those 13 percent are wondering why. What we do will cause no injury to the Department, but it will cause great injury to this House.

The Justice Department, after providing 8,000 documents and extensive testimony, is now being required to turn over privileged materials; and like all administrations before it, it has reluctantly used executive privilege to respectfully refuse to provide materials it cannot provide. So now we are here, bringing a contempt motion against the Attorney General, who our committee chairman acknowledges was not aware of Fast and Furious. They don't expect any documents to show he was aware of Fast and Furious. Yet we are going to hold this Cabinet official in contempt?

That is an outrageous abuse of the contempt power. What will happen when this Congress actually needs to use the contempt power for a legitimate purpose? Will anyone still recognize it?

I urge the Speaker to withdraw this motion as, indeed, Speaker Gingrich withdrew the motion in his day and let the parties work it out. We both know, Democrats and Republicans, how this will end. It will end with a settlement in court months or years from now and with the Department's providing the same documents it's offering to provide today. Let's end this partisan exercise now.

Mr. ISSA. I yield myself 15 seconds.

I respect my colleague from California, as we came in to Congress together some 12 years ago; but the fact is he talked about everything except the fact that Congress was lied to in a false letter and follow-up statement. Ten months went by. We're only asking for the information related to the false statements made to Congress during that intervening period and nothing more.

I reserve the balance of my time.

Mr. CUMMINGS. I yield 1 minute to the gentlewoman from California, the minority leader, Ms. PELOSI.

Ms. PELOSI. I thank the gentleman for yielding.

I commend him for his extraordinary patriotism, for his commitment to upholding our oath of office to protect and defend the Constitution, and for recognizing full well the congressional role of oversight of all branches of government. I think we all share the view that Congress has a legitimate role to play in oversight; thus, your committee has so much jurisdiction, and I respect that.

I think we also all agree—I think we all very, very much agree—that we are very sad and seek justice for the family of Border Patrol Agent Brian Terry. His loss is a tragedy for all who knew him, for all of us who care about him. We offer our condolences to his family. So sad. But that's not what we are here to debate, what we agree upon.

What we are here to debate is something very, very large because it is a major disagreement between the two sides of the aisle here—and I'm sorry to say that—about what our responsibilities are to the Constitution of the United States. The Constitution requires Congress and the executive branch to avoid unnecessary conflict and to seek accommodations that serve both their interests. That's how the Constitution guides us.

As Attorney General William French Smith, who served under President Ronald Reagan, said:

> The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge and, if possible, to meet the legitimate needs of the other branch.

Mr. Speaker, on the floor today, the Republicans in Congress are not making a principled effort to acknowledge or to meet the legitimate needs of the other branch. What they are doing is exploiting a very unfortunate circumstance for reasons that I cannot even characterize, so I won't; but I will say this without any fear of contradiction:

The basic premise that this debate is predicated on today is a false premise. It is factually not true. In how many more ways can I say that? So we have

a debate predicated on a false premise. What can that lead to that has any good outcome? It is a situation in which we have a contempt of Congress resolution against a sitting Cabinet member, which is the first time in the over-200-year history of our country that this has ever happened. Again, what is the motivation?

Secondly—and that's why I quoted the Constitution—this motion is not a principled effort to resolve the issue. If it were, we would not be able to measure in hours and days, not even weeks, the rush—the railroading—of a resolution of contempt of Congress that the Republicans passed last week and are bringing this week to the House floor.

I say this because I took considerable heat myself when we brought contempt charges against two staff people at the White House—Josh Bolton and Harriet Miers—4½ years ago. We were asking for some papers. We got nothing, as I said to my friends, not even a wrapper of a piece of gum. Nothing. Stonewalled. Nothing. Yet, at the time, our chairman of the Judiciary Committee, Mr. CONYERS, and our House leadership, Mr. HOYER and others, kept saying, Find a way. Exhaust every remedy so that we do not have to take this action of bringing a contempt charge to the floor of the House.

For over 200 days, we tried, we tried, we tried to resolve the situation. When we could not, we brought it to the floor—two staff people at the White House—which is in stark contrast to the rush of one week to the next for an unsubstantiated—not even factual—charge against the Attorney General of the United States.

It may just be a coincidence—I don't know—that the Attorney General of the United States, the chief legal officer of our country, has a responsibility to fight voter suppression, which is going on in our country; has refused to defend the constitutionality of DOMA because he doesn't believe it's constitutional; or has some major disagreements on immigration, which fall under the enforcement of immigration law.

□ 1420

It may just be a coincidence that those are part of his responsibilities, or maybe it isn't. But the fact is is that the chief legal officer of our country and his staff have to spend enormous psychic and intellectual energy and time dealing with this unprincipled effort on the part of the Republicans.

Just when you think you have seen it all, just when you think they couldn't possibly go any further over the edge, they come up with something like this. It's stunning. It really is. I don't mean that in meaning it's beautiful. It's stunning. It stops you in your tracks because you say: How far will they go? Have they no limits? Apparently, not.

The temptation is to say: Let's just ignore the whole thing, to not dignify what they're doing by even being present on the floor when they do this heinous act, the first time in the history of our country, to bring contempt against a Cabinet officer. You would think they'd be more careful about what they say. But being careful about what they say is apparently not part of their agenda.

I know in our caucus there is a mixed response to this. They're acting politically; we should act politically. We shouldn't vote on this; I want to vote ''no.'' I think Members have to make their own decision about that. I'm very moved by the efforts of our Congressional Black Caucus to say that they're going to walk out on this. Perhaps that's the best approach for us to take. How else can we impress upon the American people, without scaring them, about what is happening here?

What is happening here? What is happening here is shameful. What is happening here is something that we all have an obligation to speak out against. Because I'm telling you it is Eric Holder today, and it's anybody else tomorrow on any charge they can drum up.

As has been said, the fact is that the papers that they have seen, they know are exculpatory. That means there is no blame on the Attorney General, and they know that. That's why they don't want to bring those responsible for this before their committee, and that's why I commend Chairman DINGELL for his leadership in the motion that he will bring to the floor momentarily, a motion of referral, so that we can get to the bottom of this, so that we can see how this happened, so that we can offer some solace to Brian Terry's family, and so that we can have some sense of decency about what should happen on the floor of the House.

It seems to me the more baseless the charge, the higher up they want to go with the contempt. The less they have to say that is real, the higher up they want to bring the contempt charge.

I have always tried to make it a habit of not questioning the motivation of people. They believe what they believe, we believe what we believe, and we act upon our beliefs. It always interested me that in this Congress somebody can bring something to the floor that is not true. But if I were to call someone a misrepresenter of that information, my words would be taken down. So I guess that gives them liberty to say anything because it's in the form of a motion.

Let's make sure that we all take responsibility for doing the right thing by not letting there be an abuse of power, an abuse of this floor of the House, an abuse of the time of the executive branch, an abuse of the time of a member of the Cabinet who has serious responsibilities to our country.

I urge my colleagues to do what they want as far as walking off. I myself had said that I was coming to this floor to vote against this resolution. I thought it was so wrong that there was no question to take the opportunity to vote ''no.'' But listening to the debate, it is almost unbelievable. Not that what they're saying is believable, but unbelievable that they would say it.

I say to those who have a doubt about how they want to proceed, that instead of doing what I said before, which was just to come and treat this as a resolution before the Congress and express my ''no,'' after listening to the unconscionable presentation, I want to join my CBC colleagues in boycotting the vote when we have the walkout after we have the debate over Mr. DINGELL's motion.

We all take our responsibilities seriously here, and one of them first and foremost is to support, uphold, and defend the Constitution of the United States. That Constitution requires the Congress and the executive branch—as I began—to avoid unnecessary conflict and seek accommodation to serve both interests, the executive branch and the legislative branch. We are not upholding that aspect of the Constitution here.

I urge my colleagues to vote ''no,'' or a ''no'' vote, but to seriously reject. Let's hope that this will not be repeated. But I'm telling you, it's Eric Holder one day, and you don't know who it is the next because of the frivolousness with which they treat a serious responsibility of the House of Representatives. It's appalling.

Mr. ISSA. As I know the former Speaker of the House knows, the Attorney General is being held in contempt as the custodian of the records for refusing to deliver them, and not because we got to choose how far up or not to go.

With that, I yield 1 minute to the gentleman from Utah (Mr. CHAFFETZ).

Mr. CHAFFETZ. Mr. Speaker, Leader PELOSI seriously questioned our motivations here. Let me be crystal clear what my motivation is. We have a dead United States agent. We have more than 200 dead people in Mexico. We have more than 2,000 weapons that were knowingly and willfully given to the drug cartels. More than 1,000 of those weapons are still missing. Most of them are AK–47s. We have a duly issued subpoena that has not been responded to.

On February 4, 2011, on Department of Justice letterhead, they presented the United States Congress a letter that was a lie. It took them nearly 9 to 10 months to provide that information and say, Whoops, sorry. That's not good enough.

This is not about Eric Holder. This is about the Department of Justice and justice in the United States of America. I would hearken back to the June 3, 2011, letter that 31 brave Democrats sent to the White House. I will read part of this. And remember, this is about a year ago:

> It is equally troubling that the Department of Justice has delayed action and withheld information from congressional inquiries.

□ 1540

He went on to say:

While the Department of Justice can and should continue its investigation, those activities should not curtail the ability of Congress to fulfill its oversight duty. We urge you to instruct the Department of Justice to promptly provide complete answers to all congressional inquiries.

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

Mr. ISSA. I yield the gentleman an additional 15 seconds.

Mr. CHAFFETZ. Nothing's changed in over a year. But I will tell you this: Brian Terry doesn't have answers. You don't have answers. I don't have answers. I want all the facts. That's what we're asking for today, the facts, all of them.

Mr. CUMMINGS. I will remind the gentleman that all of this started under President Bush.

I reserve the balance of my time.

Mr. ISSA. I would recognize myself for 10 seconds.

The distinguished gentleman from Maryland can have an opinion, but he can't have his facts.

Fast and Furious was an OCDETF operation that began under President Obama and Attorney General Holder. No ifs, no ands, no buts. And I would trust that the gentleman would no longer make statements that would be less than truthful.

And I reserve the balance of my time.

Mr. CUMMINGS. I yield myself 15 seconds.

Again, the gentleman puts out statements in search of facts.

I reserve the balance of my time.

Mr. ISSA. With that, I yield 1 minute to the distinguished gentleman from Indiana (Mr. BURTON), the former chairman of the Oversight Committee.

Mr. BURTON of Indiana. I thank the gentleman for yielding.

There has been a lot of hyperbole and a lot of repetition, but a lot of the things that have been said haven't really been factual. So let's look at the facts:

Brian Terry was murdered. Hundreds of people have been murdered in Mexico with guns that went across the border. The Justice Department said in February of 2011 that they had no knowledge about this, and then 10 months later, they admitted they lied. Now they said they didn't know, and then they said they did. I don't know what you call that, but to me, it's a lie.

Then Chairman ISSA tried again and again to get information so we could get to the bottom of this, like the 32 Democrats wanted, and they refused. He sent subpoenas; they refused. They hid behind this being an ongoing investigation and they couldn't give those documents. We got a fraction of the documents that should have been given to us, but they wouldn't do that.

ISSA met with the Attorney General's people to try to come to some conclusion, some kind of a resolution of this so we wouldn't have to move the contempt citation; nothing, absolutely nothing.

And then finally, at the 11th hour, when we knew that we were going to have to move with the contempt citation, the President of the United States issues an executive order claiming executive privilege. Something is funny.

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

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

Mr. BURTON of Indiana. Something is wrong. There's just no question. Something is being hidden from the Congress and the American people. And no matter how much is being said here tonight, the fact of the matter is we aren't getting the information.

A Border Patrol agent has been killed, maybe two. Hundreds of people have been killed in Mexico with American guns that our government knew were going across that border. The Attorney General has not been giving us the information. The Justice Department has been hiding it from the Congress and the American people, and the President has claimed executive privilege. If that doesn't tell you something, nothing will.

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

Mr. ISSA. Mr. Speaker, I would inquire of how much time is remaining.

The SPEAKER pro tempore. The gentleman from California has 6½ minutes remaining. The gentleman from Maryland has 1¼ minutes remaining.

Mr. ISSA. I thank the Speaker.

I submit the following:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC, May 24, 2012.

Hon. ELIJAH E. CUMMINGS,
Ranking Member, Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR RANKING MEMBER CUMMINGS: Last February, I joined Senator Grassley in investigating Operation Fast and Furious, the reckless and fundamentally flawed program conducted by the Phoenix Field Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). As you know, during Fast and Furious, ATF agents let straw purchasers illegally acquire hundreds of firearms and walk away from Phoenix gun stores. The misguided goal of this operation was to allow the U.S.-based associates of a Mexican drug cartel to acquire firearms so they could be traced back to the associates once the firearms were recovered at crime scenes. On December 15, 2010, two guns from the Fast and Furious operation were the only ones found at the scene of U.S. Border Patrol Agent Brian Terry's murder.

AN ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE (0CDETF) WIRETAP CASE

Operation Fast and Furious got its name when it became an official Department of Justice Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force case. The OCDETF designation resulted in funding for Fast and Furious from the Justice Department's headquarters in Washington, D.C. The Strike Force designation meant that it would not be run by ATF, but would instead create a multi-agency task force led by the U.S. Attorney's Office. The designation also meant that sophisticated law enforcement techniques such as the use of federal wire intercepts, or wiretaps, would be employed. Federal wiretaps are governed by Title III of the Omnibus Crime Control and Safe Streets Act, and are sometimes referred to as ''T–IIIs.''

The use of federal wire intercepts requires a significant amount of case-related information to be sent to senior Department officials for review and approval. All applications for federal wiretaps are authorized under the authority of the Assistant Attorney General for the Criminal Division. In practice, a top deputy for the Assistant Attorney General has final sign-off authority before the application is submitted to a federal judge for approval. This deputy must ensure that the wiretap application meets statutory requirements and Justice Department policy. The approval process includes a certification that the wiretap is necessary because other investigative techniques have been insufficient. Therefore, making such a judgment requires a review of operational tactics. Since gunwalking was an investigative technique utilized in Fast and Furious, then either top deputies in the Criminal Division knew about the tactics employed as part of their effort to establish legal sufficiency for the application, or they approved the wiretap applications in a manner inconsistent with Department policies.

From the beginning, ATF was transparent about its strategy. An internal ATF briefing paper used in preparation for the OCDETF application process explained as much:

Currently our strategy is to allow the transfer of firearms to continue to take place, albeit at a much slower pace, in order to further the investigation and allow for the identification of co-conspirators who would continue to operate and illegally traffic firearms to Mexican DTOs which are perpetrating armed violence along the Southwest Border.

* * * * *

The ultimate goal is to secure a Federal T–III audio intercept to identify and prosecute all co-conspirators of the DTO. . . .

Tracking the illegally-purchased guns after they left the premises of Federal Firearms Licensees (FFLs) would allow ATF and federal prosecutors to build a bigger case, one aimed at dismantling what was believed to be a complex firearms trafficking network. The task force failed, however, to track the firearms. Instead, according to the testimony of ATF agents, their supervisors ordered them to break off surveillance shortly after the guns left the gun stores or were transferred to unknown third parties. Many of the firearms purchased were next seen at crime scenes on both sides of the border.

THE FAST AND FURIOUS GUN TRAFFICKING NETWORK WAS NOT COMPLEX

We now know the gun trafficking ring that Fast and Furious was designed to target was relatively straightforward. It involved approximately 40 straw purchasers; a moneyman, Manuel Celis-Acosta (Acosta), and; two figures tied to Mexican cartels. Acosta and the cartel figures were the top criminals targeted by ATF and the U.S. Attorney's Office.

On January 19, 2011, 20 suspects were indicted, including Acosta and 19 of his straw buyers. In all, it is believed that the Fast and Furious network purchased approximately 2,000 firearms. An internal ATF document dated March 29, 2011, shows that of the indicted defendants, only a select few purchased the majority of the firearms, and nearly all of the purchases occurred after ATF knew that these defendants were straw purchasers working with Acosta. These four indicted defendants alone illegally purchased nearly 1,300 firearms: Uriel Patina (720), Sean Steward (290), Josh Moore (141), and Alfredo Celis (134).

THE GOALS OF OUR INVESTIGATION

A central aim of our investigation has been to find out why and how such a dangerous

plan could have been conceived, approved, and implemented. Who in ATF and the Justice Department knew about the volume of guns being purchased? Who approved of the case at various stages as it unfolded? Under whose authority did this occur? Who could have—and should have—stopped it? By closely examining this disastrous program, our Committee hopes to prevent similar reckless operations from using dangerous tactics like gunwalking ever again. Our investigation also aims to determine what legislative actions might be necessary to ensure that such a program will not happen again.

THE DEPARTMENT'S FAILURE TO COMPLY WITH THE COMMITTEE'S SUBPOENAS

Our Committee is still entitled to thousands of documents responsive to our subpoenas. These documents will undoubtedly shed more light on the misguided tactics used in Operation Fast and Furious. If the Justice Department changes course and complies with the Committee's subpoenas, some of these documents will cover the targets of an FBI investigation of the individuals who were the link between the drug cartels and the Fast and Furious firearms trafficking ring. Other documents will chronicle the Department's response to allegations of whistleblowers following Agent Terry's death and how it shifted its position from the outright denial that there was any misconduct to the Department's formal withdrawal of its false statement in December 2011.

Most importantly, as you are well aware, we are still waiting for documents relating to the individuals who approved the tactics employed in Fast and Furious. In his recent letter to me, Deputy Attorney General James Cole asserted that such documents ''will not answer the question'' of what senior officials were in fact notified of the unacceptable tactics used in Fast and Furious. This statement is deeply misleading. We are aware of specific documents that lay bare the fact that senior officials in the Department's Criminal Division who were responsible for approving the applications in support of the Fast and Furious wiretap authorization requests were indeed made aware of these questionable tactics. Cole's letter goes on to state that ''Department leadership was unaware of the inappropriate tactics used in Fast and Furious until allegations about those tactics were made public in early 2011.'' That statement is even more misleading and utterly false. The information provided to senior officials in the affidavits accompanying the wiretaps includes copious details of the reckless investigative techniques involved. Senior department leaders were not only aware of these tactics. They approved them.

WIRETAP APPLICATION OBTAINED BY THE COMMITTEE

The Committee has obtained a copy of a Fast and Furious wiretap application, dated March 15, 2010. The application includes a memorandum dated March 10, 2010, from Assistant Attorney General of the Criminal Division Lanny A. Breuer to Paul M. O'Brien, Director, Office of Enforcement Operations, authorizing the wiretap application on behalf of the Attorney General. The memorandum from Breuer was marked specifically for the attention of Emory Hurley, the lead federal prosecutor for Operation Fast and Furious.

In response to your personal request, I am enclosing a copy of the wiretap application. Please take every precaution to treat it carefully and responsibly. I am hopeful that it will assist you in understanding the information brought to the attention of senior officials in the Criminal Division charged with reviewing the contents of the applications to determine if they were legally sufficient and conformed to Justice Department policy. The information is as vast as it is specific. This wiretap application, signed by Deputy Assistant Attorney General Kenneth Blanco under the authority of his supervisor, Assistant Attorney General Breuer, provides new insight into who knew—or should have known—what and when in Operation Fast and Furious.

To assist you in better understanding the facts, I appreciate the opportunity to provide relevant and necessary context for some of the information in this wiretap application. Due to the sensitivity of the document, individual targets and suspects will be referred to with anonymous designations. You will notice, however, that the individuals referred to in the wiretap application are well-known to our investigation. Although senior Department officials authorized this application on March 15, 2010, a mere four months after the investigation began, it contains a breathtaking amount of detail.

The detailed information about the operational tactics contained in the applications raises new questions about statements of senior Justice Department officials, including the Attorney General himself. Before the Senate Judiciary Committee on November 8, 2011, the Attorney General testified:

I don't think the wiretap applications—I've not seen—I've not seen them. But I don't know—I don't have any information that indicates that those wiretap applications had anything in them that talked about the tactics that have made this such a bone of contention and have legitimately raised the concern of members of Congress, as well as those of us in the Justice Department. I—I'd be surprised if the tactics themselves about gun walking were actually contained in those—in those applications. I have not seen them, but I would be surprise[d] [if that] were the case.

At a hearing before our Committee on February 2, 2012, the Attorney General also denied that any information relating to tactics appeared in the wiretap affidavits. He testified:

I think, first off, there is no indication that Mr. Breuer or my former deputy were aware of the tactics that were employed in this matter until everybody I think became aware of them, which is like January February of last year. The information—I am not at this point aware that any of those tactics were contained in any of the wiretap applications.

Contrary to the Attorney General's statements, the enclosed wiretap affidavit contains clear information that agents were willfully allowing known straw buyers to acquire firearms for drug cartels and failing to interdict them—in some cases even allowing them to walk to Mexico. In particular, the affidavit explicitly describes the most controversial tactic of all: abandoning surveillance of known straw purchasers, resulting in the failure to interdict firearms.

The Justice Department's Office of Enforcement Operations reviews the wiretap applications to ensure that they are both legally sufficient and conform to Justice Department policy. Deputy Attorney General James M. Cole has verified this understanding. In a letter he sent to Congress on January 27, 2012, he stated that the Department's ''lawyers help AUSAs and trial attorneys ensure that their wiretap packages meet statutory requirements and DOJ policies. When Assistant Attorney General Breuer testified last November about the wiretap approval process, however, he stated:

[The role of the reviewers and the role of the deputy in reviewing Title Three applications is only one. It is to insure that there is legal sufficiency to make an application to go up on a wire, and legal sufficiency to petition a federal judge somewhere in the United States that we believe it is a credible request. But we cannot—those now 22 lawyers that I have who review this in Washington—and it used to only be seven—can not and should not replace their judgment, nor can they, with the thousands of prosecutors and agents all over the country. Theirs is a legal analysis; is there a sufficient basis to make this request.

Assistant Attorney General Breuer failed to acknowledge that before a wiretap application can be authorized, it must adhere to Justice Department policy. Yet, the operational tactics included in the enclosed wiretap application—including abandoning surveillance and not interdicting firearms—violate Department policy. According to Deputy Attorney General Cole, operations allowing guns to cross the border do indeed violate Department policy. In an e-mail he sent to southwest border U.S. Attorneys on March 9, 2011, Deputy Attorney General Cole stated, ''I want to reiterate the Department's policy: We should not design or conduct undercover operations which include guns crossing the border.''

The Committee understands the limitations of the Office of Enforcement Operations function. Nevertheless, when presented with alarming details such as those contained in this application, a sensible lawyer—vested with the important responsibility of recommending to the Assistant Attorney General whether a wiretap should be authorized—must raise the alarm. Senior officials reviewing the application for legal sufficiency and/or whether Justice Department policy was followed, however, failed to identify major problems that these manifold facts suggested.

MARCH 2010 WIRETAP APPLICATION STATES THE MAIN SUSPECT HAD INTENT TO ACQUIRE FIREARMS FOR THE PURPOSE OF TRANSPORTING THEM TO MEXICO

According to the wiretap application obtained by the Committee, as early as December 2009, the task force had identified the main suspect in Fast and Furious (Target 1), a figure well-known to our investigation. The affidavit provides transcripts of entire conversations obtained through a prior DEA wire intercept. These conversations demonstrate that key suspects in Operation Fast and Furious were running a firearms trafficking ring. In one conversation that took place on December 11, 2009, Unknown Person 1 asks, ''Can you hold them [firearms] for me there for a little while there?'' Target 1 responds, ''Well it's that I do not want to have them at home, dude, because there is a lot of . . . uh, it's too much heat at my house.'' Unknown Person 1 then asked where he could store the firearms and Target 1 responds, ''[m]ake arrangements with that guy [Straw Purchaser X], call him back and make arrangements with him.'' The affidavit acknowledges that while monitoring the DEA target telephone numbers, law enforcement officers intercepted calls that demonstrated that Target 1 was conspiring to purchase and transport firearms for the purpose of trafficking the firearms from the United States to Mexico.

MARCH 2010 WIRETAP APPLICATION STATES THAT NEARLY 1,000 FIREARMS HAD ALREADY BEEN PURCHASED, AND THAT MANY WERE RECOVERED IN MEXICO

The Probable Cause section of the affidavit shows that ATF was aware that from September 2009 to March 15, 2010, Target I acquired at least 852 firearms valued at approximately $500,000 through straw purchasers. As of March 15, 2010, twenty-one straw purchasers had been identified. Between September 23, 2009, and January 27, 2010, 139 firearms purchased by these straw

purchasers were recovered—81 of which were in Mexico. These recoveries occurred one to 49 days after their purchase in Arizona.

MARCH 2010 WIRETAP APPLICATION DESCRIBES HOW SMUGGLERS WERE BRINGING FIREARMS INTO MEXICO

The wiretap affidavit details that agents were well aware that large sums of money were being used to purchase a large number of firearms, many of which were flowing across the border. For example, in the span of one month, Straw Purchaser Z bought 241 firearms from just three cooperating FFL,s. Of those, at least 57 guns were recovered shortly thereafter either in the possession of others or at crime scenes on both sides of the border. The wiretap affidavit even shows that ATF agents knew the tactics the smugglers were using to bring the guns into Mexico.

According to the affidavit: The potential interceptees conspire with each other and others known to illegally traffic firearms to Mexico. The potential interceptees purchase firearms in Arizona and transport them to Mexico or a location in close proximity of the United States/Mexico border. The potential interceptees deliver the firearms to individual(s) both known and unknown who then transport them into Mexico and/or the potential interceptees transport the firearms across the border and deliver them to customers both known and unknown.

The fact that ATF knew that Target 1 had acquired 852 firearms and had the present intent to move them to Mexico should have prompted Department officials to act. Department officials should have ensured that the firearms were interdicted immediately and that law enforcement took steps to disrupt any further straw purchasing and trafficking activities by Target 1. Similarly, by way of example, if Criminal Division attorneys were reviewing a wiretap affidavit that showed that human trafficking was taking place for the purpose of forcing humans into slavery, the attorneys should act to make sure such a practice would not continue. Accordingly, Target l's activities should have provoked an immediate response by the Criminal Division to shut him and his network down.

MARCH 2010 WIRETAP APPLICATION CONTAINS DETAILS OF DROPPED SURVEILLANCE

The wiretap affidavit also describes firearms purchases by individual straw purchasers. For example, Straw Purchaser Y purchased five AK–47 type firearms on December 10, 2009, and surveillance units observed Straw Purchaser Y travel from the FFL where he made the purchase to Target l's residence. The next day, surveillance units observed Straw Purchaser Y purchase an additional 21 AK–47 type firearms, and within an hour, arrive at Target l's home.

On December 8, 2009, agents observed Straw Purchaser Z purchase 20 AK–47 type firearms. While Straw Purchaser Z was making this purchase, Z saw a commercial delivery truck arrive at the gun store with a shipment of an additional 20 AK–47 type firearms. Straw Purchaser Z then told FFL employees that he wanted to purchase those additional firearms. Later that same day, Straw Purchaser Z returned to the FFL to buy them. After Straw Purchaser Z left the FFL with the firearms, Phoenix police officers conducted a vehicle stop on Straw Purchaser Z's vehicle and identified two of the passengers as Straw Purchaser Z and Target 1. The officers observed the firearms in the bed of the truck and asked the subjects about the firearms. Straw Purchaser Z told them he had purchased the firearms and they belonged to him. ATF agents continued surveillance until the vehicle arrived at Target l's residence.

The very next day, nine of these firearms were recovered during a police stop of a third person in Douglas, Arizona, on the U.S.-Mexico border. Five days later, Straw Purchaser Z bought another 43 firearms from an FFL. On December 24, 2009, Straw Purchaser Z bought even more firearms, purchasing 40 AK–47 type rifles from an FFL. All of these rifles were recovered on January 13, 2010, in El Paso, Texas, near the U.S./Mexico border. Although the individual found in possession of all these guns provided the first name of the purchaser, agents did not arrest the individual or the purchaser.

Though the wiretap application states that agents were conducting surveillance of known straw purchasers, none of these weapons were interdicted. No arrests were made.

MARCH 2010 WIRETAP DETAILS HOW FAST AND FURIOUS FIREARMS HAD BEEN FOUND AT CRIME SCENES IN MEXICO

The wiretap affidavit also details the very sort ''time-to-crime'' for many of the firearms purchased during Fast nd Furious. For example, on November 6, 2009, November 12, 2009, and November 14, 2009, Straw Purchaser Y purchased a total of 25 AK–47 type firearms from an FFL in Arizona. On November 20, 2009—just eight days later—Mexican officials recovered 17 of these firearms in Naco, Sonora, Mexico. Another straw purchaser, Straw Purchaser Q, purchased a total of 17 AK–47 type firearms from an FFL on November 3, 2009, November 10, 2009, and November 12, 2009. Then, on December 9, 2009, Mexican officials recovered 11 of these firearms in Mexicali, Baja California, Mexico, along with approximately 421 kilograms of cocaine, 60 kilograms of methamphetamine, 48 additional firearms, 392 ammunition cartridges, $2 million in U.S. currency, and $800,000 in Mexican currency.

Once again, although ATF was aware of these facts, no one was arrested, and ATF failed to even approach the straw purchasers. Upon learning these details through its review of this wiretap affidavit, senior Justice Department officials had a duty to stop this operation. Further, failure to do so was a violation of Justice Department policy.

STRAW PURCHASERS HAD MEAGER FINANCIAL MEANS

The affidavit provides details of the straw purchasers' financial records. As of March 15, 2010, just four straw purchasers had spent $373,206 in cash on firearms. Yet, these same straw purchasers had only minimal earnings in Fiscal Year (FY) 2009. Straw Purchaser Q earned $214 per week, while Straw Purchaser Y earned only $188 per week. Straw Purchaser Z earned $9,456.92 during FY 2009, and Straw Purchaser X did not report any income whatsoever.

Name	Money spent on firearms by 3/15/10	FY 2009 income*
Straw Purchaser Y	$128,580	$9,776
Straw Purchaser Q	64,929	11,128
Straw Purchaser X	39,663	None reported
Straw Purchaser Z	140,034	9,456
Total	$373,206	

*Incomes based on weekly incomes detailed in wiretap application.

These straw purchasers did not have the financial means to spend tens of thousands of dollars each on guns. Yet, ATF allowed them to continue acquiring firearms without approaching them to inquire how they were able to obtain the funds to do so. ATF also failed to alert the FFLs with this information so that they could make more fully informed decisions as to whether to continue selling to these straw purchasers.

CONCLUSION

The wiretap affidavit reveals a remarkable amount of specific information about Operation Fast and Furious. The affidavit reveals that the Justice Department has been misrepresenting important facts to Congress and withholding critical details about Fast and Furious from the Committee for months on end. As the primary investigative arm of Congress, our Committee has a responsibility to demand answers from the Department and continue the investigation until we get all the facts.

Sincerely,

DARRELL ISSA.
Chairman.

Mr. ISSA. I now yield 1 minute to the gentleman from Oklahoma (Mr. LANKFORD).

Mr. LANKFORD. Mr. Speaker, this is a truly sad day. This is not stunning, as I have heard. This is a deliberative process that we've tried to work through.

We have a border agent that's been killed. We have hundreds of Mexicans that have been killed. And the fingerprints on all of that go straight back to an operation that was done by the Federal Government. This is a moment to get all of the facts, to get it on the table, find out what happened, and to get it done.

Now, we started with a subpoena process, over 22 different categories. We narrowed that down to one. How do we get the documents from the time of February 4 of last year, when the Department of Justice told us one thing, and December, when they said, Oops, and changed their story? We found out that they had not told us the truth. And in that time period when they stalled, stalled, stalled, stalled, we just want the information on that. How did this occur?

This is essential because Phoenix ATF had a plan, Fast and Furious. It was then approved by the U.S. attorney in that area, and then went up the food chain to the Department of Justice, where it was signed off. This is not irrelevant. It is essential that we know the process of how this was done. If we're going to fix this problem, we've got to know the facts. Instead, they're being withheld.

Mr. CUMMINGS. I will continue to reserve the balance of my time.

Mr. ISSA. Mr. Speaker, as a point of inquiry, do I have the right to close?

The SPEAKER pro tempore. The gentleman from California has the right to close.

Mr. ISSA. Then I will reserve my right to close.

Mr. CUMMINGS. Does the gentleman have any further requests for time?

Mr. ISSA. No, I do not.

Mr. CUMMINGS. Mr. Speaker, as the Democratic leader said, there is no doubt that the Constitution gives Congress the right and responsibility to investigate. But the Constitution also requires something else. It requires Congress and the executive branch to avoid unnecessary conflict and deceit, accommodations that serve both of their interests.

In this case, the Attorney General has testified nine times. He has provided thousands of pages of documents. He has provided 13 pages of deliberative

internal documents, and he is willing to provide even more to me, the recent demands of Chairman ISSA.

But House Republican leaders are not honoring their constitutional obligations. In fact, they are running in the wrong direction as quickly as possible. It is fundamentally wrong to vote in favor of this resolution at this time when the Attorney General has been working with the House in good faith. I believe this action will undermine the standing of the House, will cement the Speaker's legacy, and will be recorded by history as a discredit to this institution.

With that, I yield back the balance of my time.

Mr. ISSA. I yield myself such time as I may consume.

Mr. Speaker, there's been a lot of talk about the documents that the Attorney General couldn't give us. These documents, documents under seal, would be an example of documents that we should not see, except in camera, and we've taken great care to ensure that no one outside Members of Congress and key staff have ever looked at them.

But I've looked at them, and what I know is that these documents, read by any person of ordinary learning, make it very clear that these wiretap applications were read and signed by individuals in the Department of Justice in Washington. And if you read them, you knew they were gunwalking. People will tell you differently. I give you my word: You read this, you know they were letting guns go to Mexico. They knew who the buyers were, who the intermediaries were, who the recipients were, and, most importantly, where they ended up. And there are reports in here, as part of the evidence given to judges in order to get wiretaps—there is evidence that they knew that, in fact, weapons had already ended up in Mexico.

That's before Brian Terry was killed. That's how Fast and Furious could have been stopped. That's how people could have been warned. In fact, that's at a time in which ATF agents in Mexico City, if they punched in the serial number of a weapon found there, they got an erroneous, an error. They did not get meaningful information because that was being blocked—not by ATF, per se, but by the Department of Justice under the auspices of the U.S. attorney and his bosses.

□ 1550

Now you're going to hear that this began under President Bush and Attorney General Mukasey. I'm going to tell you that's just false. What happened in previous administrations with some of the same local ATF agents was they exercised extremely bad judgment. They did things and pushed on programs that I believe were poorly conceived and poorly manned and as a result they lost track of weapons repeatedly. That happened. And it was wrong. The U.S. attorney at the time even declined prosecutions because of failed techniques.

All of these were shut down during the Bush administration. President Bush can take no credit for it. He didn't know it. As far as I know, the Attorney General didn't know. And anyone who saw the record of that should say: This was wrong-minded. But during this administration, during the time in which the Attorney General and his key lieutenants, including Lanny Breuer, were in charge, they reopened the prosecutions from a failed program called Wide Receiver and they opened Fast and Furious.

Now I'm the second child in a family. I have an older brother. I learned at a very young age you in fact cannot, when you do something wrong, say: My brother Billy did it. It doesn't work that way. You're responsible for what you do wrong, whether it happened before your watch or not. This happened on the Attorney General's watch.

But that's not why we're here today. We're here because when we asked legitimate questions about Brian Terry's murder, about Fast and Furious, we were lied to. We were lied to repeatedly and over a 10-month period. The fact is that is what we're here for. The American people want to know if you give false testimony to Congress.

The minority leader talked about, Why is there such a hurry? Why was there a 10-month delay? I was sworn in just a few days before this investigation began, and now we're nearing an election. We don't want to have this during an election. We want to have resolution for the Terry family.

The important thing is, we know enough to know that we have people who have told us under penalty of criminal prosecution—they have told Congress and their employees certain documents exist. And we've asked for those documents. And we've been denied them. We can't bring Kenneth Melson back in in good faith and say, Well, we've got to get them in front of our committee, if in fact there's documents he says exist. And they do, and they will not be given to us. We want to have those so we can ask the best questions.

You've heard earlier that in fact we've denied somehow due process to the minority. My ranking member is very capable, and has asked for minority days; in other words, hearings exclusively for him. He chose not to do it. When we were having the local ATF and other individuals in early on, all of whom worked for this government, he didn't even ask for any. It wasn't until we asked to have the Attorney General come in, based on these false statements and final retraction, that he suddenly wanted a previous Attorney General, who happened to say, No, I don't want to come. So on that particular day we would have had to subpoena him to get him in. I have no objection to having the former Attorney General in. I believe that on his watch and his predecessor's watch and his predecessor's watch and for a very long time we have not done a good job of overseeing the actions of field agents when it comes to guns.

But, again, we're here today, for the first time in over 200 years, to deal with an Attorney General who has flatout refused to give the information related to lies and a coverup exclusively within his jurisdiction. That's what we're voting on.

I urge a ''yes'' vote on the contempt on behalf of the Terry family.

I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate on the resolution has expired.

MOTION TO REFER

Mr. DINGELL. I have a motion at the desk.

The SPEAKER pro tempore. The Clerk will report the motion to refer.

The Clerk read as follows:

Mr. Dingell of Michigan moves to refer the resolution, H. Res. 711, to the Committee on Oversight and Government Reform with instructions to:

(1) Hold a bipartisan public hearing with testimony from Kenneth Melson, the former Acting Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives during Operation Fast and Furious.

(2) Hold a bipartisan public hearing with testimony from William Hoover, the former Acting Deputy Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives during Operation Fast and Furious.

(3) Hold a bipartisan public hearing with testimony from former Attorney General Michael Mukasey, who, according to documents produced to the committee, was informed during his tenure that, although efforts to coordinate firearm interdictions with Mexican law enforcement officials in 2007 ''have not been successful'', the ''ATF would like to expand'' such efforts.

(4) Conduct a bipartisan transcribed interview of Alice Fisher, who served as the Assistant Attorney General for the Criminal Division of the Department of Justice from 2005 to 2008, about her role in authorizing wiretaps in Operation Wide Receiver.

(5) Conduct a bipartisan transcribed interview of Kenneth Blanco, who serves as Deputy Assistant Attorney General at the Department of Justice and also authorized wiretaps in Operation Fast and Furious.

(6) Take such further actions as the committee, with full bipartisan consultation, deems appropriate to assure a thorough and vigorous investigation of this matter.

The SPEAKER pro tempore. Pursuant to House Resolution 708, the gentleman from Michigan (Mr. DINGELL) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. DINGELL. I yield myself 4 minutes.

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

Mr. DINGELL. I rise to offer this motion to refer so that this investigation can focus on the real issues at hand and to get the facts.

I begin by expressing my respect and affection for the chairman of the committee, Mr. ISSA. I want to see a proper investigation and the facts gotten about serious misbehavior and utter incompetence at the Bureau of Alcohol,

Tobacco, and Firearms and Explosives, called the ATF. This is a tragedy.

I have had the entirety of the motion read so that we can understand what a real investigation is. I didn't roll off the cabbage wagon yesterday, Mr. Speaker. I chaired committees for over 20 or 30 years, and I have conducted more investigations than any man in this particular body. It is clear that the events here were characterized by dishonest, evasive, and deceitful activities on the part of ATF personnel.

I want to find out what has happened. This is not the first time I've crossed swords with ATF and this is not the first time I have found them engaged in shameful, illegal, and improper behavior. In one instance, I caught them raiding the home of an individual. They shot him in the brain and they pitched his wife, in her underpants, out into the hall.

Operation Fast and Furious was a highly irresponsible operation that never should have occurred. People on both sides of this aisle agree to that. The American people want the answers and they deserve to have a proper, thorough, and bipartisan investigation that gets them the truth. My constituent Brian Terry wants the truth from the grave, and his families asks that we get the truth. With God as my judge, they deserve it, and they shall have it if I can get it for them.

I have shared scores of investigations and hearings over 50 years on wrongdoing which have collected hundreds of millions of dollars wrongfully taken from our people and have caught more than a few serious wrongdoers, who have paid proper penalties for their wrongdoing.

These investigations were always bipartisan, with both sides of the aisle actively participating and fully informed. The actions of the committee were unanimously conducted and supported by Members on both sides of the aisle. What we see before us does not follow that model, and it brings no respect to this body. As someone who holds the institution here in the highest regard, I find this to be most troubling.

Instead of going after the real answers and getting the facts about what happened at ATF, the majority of the committee has engaged in what appears to be a partisan political witch hunt, with the Attorney General as its target. Over the 16-month investigation, Democrats were not permitted to call a single witness to testify. So much for bipartisanship. The American people deserve better than this, Mr. Speaker. They deserve a legitimate inquiry based on facts which all Members of this body can support.

□ 1600

This is not a Second Amendment question. I have defended the Second Amendment more than any Member of this body, and I am a past member of the board of directors of NRA and a life member of that body. We deserve, and the American people deserve, a legitimate inquiry based on the facts.

It seems to me there's a simple way to resolve this dispute. First, adopt the resolution. Then see to it that the Attorney General produces the documents that are currently at issue, and I will actively support the gentleman and see to it that those facts and documents are presented.

Second, the House Republicans should give a good-faith commitment to work towards resolving the contempt fight. If the documents in fact are consistent with the Attorney General's testimony that he never authorized or approved or knew about gunwalking, then I think we should consider the matter of contempt resolved.

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

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

Mr. ISSA. Mr. Speaker, I claim time in opposition.

The SPEAKER pro tempore. The gentleman from California is recognized for 5 minutes.

Mr. ISSA. Mr. Speaker, I yield myself 1 minute.

I respect the gentleman from Michigan, the dean of the House, but you're just wrong. There were plenty of opportunities for the minority to ask for witnesses. They chose not to except at one hearing, and then they wanted the former Attorney General. They did not avail themselves of the procedures allowing them to have a hearing even though they know how to do it and have done it.

But more importantly, when you say you represent Brian Terry, you do not. The Terry family issued this statement, referring to Congressman DINGELL:

> His views don't represent those of the Terry family. Nor does he speak to the Terry family. And he has never spoken to the Terry family.

Secondly:

> His office sent us a condolence letter when Brian was buried 18 months ago. That's the last time we heard from him.

Third:

> A year ago, after the Oversight and Government Reform Committee began its work, one of Brian's sisters called Representative DINGELL's office seeking help and answers. No one from his office called back.

Lastly:

> If Rep. Dingell truly wants to support the Terry family and honor Brian Terry, a son of Michigan, he and other Members of Congress will call for the Attorney General to immediately provide the documents requested by the House Oversight and Government Reform Committee.

I reserve the balance of my time.

Mr. DINGELL. I yield myself the balance of my time.

Well, I was aware of this. I have communicated with the family my sorrow at their loss, and my office is setting up a meeting with the Terry family as soon as I can get back to Michigan.

My motion here would ensure that the witnesses the minority has requested, including the former Director of ATF during the time of this operation, are called for a full, open public hearing to ensure that the American people get the whole story.

I'm not here solely representing the interests of the Terry family. I'm here representing the interests of the whole country and all of the 800,000 people that I serve in the 15th District of Michigan.

As I've said on a number of occasions in the last year, Congress has two choices in their decisionmaking: we can work together and get something done, or we can play political football. I choose to get something done, which is why I have offered a resolution. And if you have listened to what I had read by the Clerk, you will observe that it says we want a full, thorough, bipartisan investigation. That's the way the matter should be done. And Members on this side will support the findings of that investigation if the chairman of that committee will permit this kind of undertaking to be begun.

I would observe this very interesting fact. The contempt resolution is going to give the same instructions to the same fellow who is under contempt. He will simply put it in his pocket, and we will find that this body has been weakened in its dealings with the executive branch.

I yield back the balance of my time.

Mr. ISSA. Mr. Speaker, I now yield all remaining time to the gentleman from South Carolina (Mr. GOWDY), an experienced prosecutor, to close.

The SPEAKER pro tempore. The gentleman from South Carolina is recognized for 4 minutes.

Mr. GOWDY. Mr. Speaker, I thank the chairman.

This is a sad day, Mr. Speaker, for those of us who respect the rule of law as the foundation of this Republic, for those of us who proudly worked for the Department of Justice, for those of us who believe the same rules apply to everyone regardless of whether they live simple lives of peace and quiet or whether they live and work in the towers of power, prestige, and authority. The same rules apply to everyone. It is the greatness of this country, Mr. Speaker. It is the greatness, the elegance, the simplicity of a woman who is blindfolded holding nothing but a set of scales and a sword.

The chief law enforcement official for this country is on the eve of being held in contempt of Congress because he refuses to follow the law. He refuses to allow Congress to find the truth, the whole truth. For those of you who want a negotiation, a compromise, an extraordinary accommodation, to use the Attorney General's words, for those of you who want to plea bargain, my question to you is simply this: Will you settle for 75 percent of the truth? Is 50 percent of the truth enough for you? Is a third? Or do you want it all? Because if you want all the truth, then you want all the documents.

If you've ever sat down, Mr. Speaker, with the parents who have lost a child

who has been murdered—and some of my colleagues on both sides of the aisle have been there—it is a humbling, emotional, life-altering experience. All they want is the truth. They want answers. They want justice, and they don't want part of it. They want all of it. And I will not compromise, Mr. Speaker, when it comes to finding the truth.

Congress is right to pursue this no matter where it takes us. No matter which administration was in power and no matter what the facts are, we are right to pursue this. And we are wrong if we settle for anything less than all the facts.

To my colleagues who are voting ''no,'' Mr. Speaker, let me ask this: Can you tell me, can you tell the American people why the Department of Justice approved this lethal, fatally flawed operation?

To those of you who are voting ''no,'' can you tell the American people how the tactic of gunwalking was sanctioned?

To those of you who are voting ''no,'' can you tell Brian Terry's family and friends how a demonstrably false letter was written on Department of Justice letterhead on February 4, and where would we be if we accepted that letter at face value? A letter written on Department of Justice letterhead, that is not just another political Cabinet agency. It is emblematic of what we stand for as a country—truth, justice, the equal application of law to everyone. That letter was written on America's stationery. That is what the Department of Justice is, and it was dead wrong. And where would we be if we took their word for it?

Our fellow citizens have a right to know the truth, and we have an obligation to fight for it, Mr. Speaker, the politics be damned. We have a right to fight for it.

I wish the Attorney General would give us the documents. I would rather have the documents than have this vote on contempt of Congress. But we cannot force him to do the right thing, and that does not relieve us of the responsibility for us to do the right thing. Even if the heavens may fall, Mr. Speaker, I want the truth. I want all of it. We should never settle for less than all of it, and we have to start today.

Mr. BRALEY of Iowa. Mr. Speaker, I opposed the contempt of Congress resolution today because I don't want political games or partisan politics to stand in the way of a serious effort to find the truth.

The best place to resolve this dispute isn't on the floor of the House in an election year, but in a federal court where both sides can present their cases and the debate won't turn into a political circus.

I've been disappointed by the failure of both House Republicans and the Justice Department to find a practical way to get the American people the full details of this tragedy without compromising existing court orders and other national security concerns. An American was murdered and we owe it to his family and the public to get to the bottom of what happened.

Mr. YOUNG of Alaska. Mr. Speaker, I've been very disturbed to hear today that it's inappropriate for the National Rifle Association to take a position on this resolution.

It should be clear to everyone that as a long-time NRA board member, I take a back seat to no one on Second Amendment issues. On this resolution, I can tell you that it is entirely appropriate for the NRA to take a position.

We are here today because Congress has a duty to hold our government accountable. We have a duty to ensure those in charge protect the public and the Constitution. Congress was misled when Administration officials initially briefed the appropriate Congressional committees. The U.S. Attorney General's office denied knowledge of a gun walking operation after whistleblowers reported troubling allegations. However, they later admitted certain officials with the Attorney General's office did have knowledge at the time Congress initially reviewed allegations of gun walking.

I am deeply troubled by reports the ATF forced law abiding gun dealers to do something they knew was wrong—to sell guns to individuals they normally would not sell to. The Administration designed this outrageous program to reportedly reduce gun violence along our SW border. And an innocent American Border Patrol agent paid the ultimate price for this ill-conceived plan.

There are those who believe that there were ulterior motives at play. We already know about at least three e-mails from ATF officials discussing how they could use information from ''Fast and Furious'' to make the case for a new gun control proposal—the Obama administration's proposal to impose a new—and, I believe, illegal—reporting requirement on dealers who sell multiple long guns to individuals in the southwest border states. The administration has defended that rule in court, and by their logic there's no reason it couldn't be expanded to all guns in all states.

That would be a system of national gun registration. And that makes this a Second Amendment issue.

We as elected lawmakers must have all relevant facts to hold whoever approved Operation Fast and the Furious accountable. I stand with my colleagues here today who believe that the Oversight Committee has been denied all relevant evidence on who approved this terrible operation. The Oversight Committee's investigation has been thorough. The committee has followed the evidence in pursuit of the truth, not in pursuit of a political agenda. What brings us here today is the fact that this effort has been stonewalled by this Justice Department and this White House. The American people deserve to know the truth. The family of Border Patrol agent Brian Terry deserves to know the truth. Members of Congress deserve to know the truth. Today's vote will bring us one step closer to learning the truth.

Mr. THORNBERRY. Mr. Speaker, it is unfortunate that the House must vote on whether to hold the Attorney General in contempt for refusing to produce documents in his Department. The underlying facts are disturbing and tragic, leading to the death of a Border Patrol officer and several hundred people in Mexico. The Attorney General should work with Congress to understand what went wrong rather than to withhold information and attempt to thwart the investigation.

The power of Congress to investigate and conduct oversight of federal agencies has been well established throughout our history. The late claim of Executive Privilege made here, on the other hand, is not consistent with precedent or previous court rulings. One can only conclude that the Attorney General, perhaps on the instruction of the President, is trying to prevent Congress and the American people from learning the truth.

Mr. HOLT. Mr. Speaker, the resolution before us today is an illegitimate, politically motivated smear campaign.

Never in the history of the House has a U.S. Attorney General been held in contempt. What makes this resolution particularly outrageous is that there is absolutely no basis for it.

The Attorney General has testified repeatedly about Operation Fast & Furious. The Justice Department has turned over thousands of pages of relevant records about this incident. None of that matters to the majority. Neither does the fact that these kinds of operations were undertaken by the Bush administration. And the majority does not want the public to know that not a single witness was allowed to testify before the House Oversight & Government Reform Committee about past ''gun walking'' episodes in the Bush administration. That's why this resolution and the Oversight Committee's ''hearings'' into Fast & Furious are not about ''gun walking''—they are about election year politics.

Rather than dealing with the substantive issue of illegal guns and how to reduce violent gun-related crime, today we have a political stunt that does nothing to solve the problem that cost the life of a federal agent. Mr. Speaker, the public see this for what it is: a politically motivated legislative lynching—and those who support this illegitimate resolution will have to answer for it to the voters.

Ms. RICHARDSON. Mr. Speaker, I rise in strong and unyielding opposition to resolution recommending that the House find Attorney General Eric Holder in contempt of Congress. This unprecedented resolution, which was passed out of committee on a party-line vote, is nothing more than an attempt by the majority Republican leadership to divert attention from its failure to address the real challenges facing our country.

The hard working and hard pressed people of the 37th Congressional District of California did not send me here to waste precious floor time debating this frivolous and partisan resolution. They want us to work together to create jobs for the unemployed, make education affordable, health care available, and protect the social safety net of Medicare, Social Security, Medicaid, and assistance programs to vulnerable families.

I oppose the resolution before us for several reasons:

1. The resolution relates to a document request involving allegations of ''gunwalkng'' in an ATF operation known as ''Operation Fast and Furious,'' but the documents now involved are completely unrelated to how ''gunwalking'' was utilized in the operation.

2. Over the past year, the Justice Department provided thousands of pages of responsive documents to the Oversight and Government Reform Committee and has made dozens of officials available for interviews and hearings, and the Attorney General has testified before Congress nine times on this topic.

3. The Committee's investigation identified no evidence that the Attorney General or senior Department officials were aware of gunwalking in Fast and Furious. To the contrary, as soon as the Attorney General became aware of the tactic, he put a halt to it, ordered an IG investigation, and instituted internal reform measures.

4. The House of Representatives has never held an Attorney General in contempt. The only precedent cited in the Issa contempt resolution is a committee contempt vote that took place in the 1990's against former Attorney General Janet Reno. That action was so widely discredited that Speaker Gingrich chose not to bring it to the floor for a vote.

5. During this investigation, the Committee refused every Democratic request for a hearing witness, including the head of ATF—the agency that actually ran the operation. This is not the way to conduct an oversight investigation unless you are interested in partisan political ploys instead of learning the facts.

Mr. Speaker, I must say that am offended that Attorney General Holder, a man of unimpeachable integrity and one who has served this nation with distinction for many years, has been subjected to such demeaning treatment by some in the majority. Even though Attorney General Holder has been forthright and forthcoming, some in this body accuse him of a cover-up or claim he has been obstructive. He has even been called a ''liar'' on national television. These unfounded charges are beyond the pale and reflect more on those who have uttered them that they do our Attorney General, the honorable Eric Holder.

I oppose this politically inspired resolution and urge my colleagues to join me.

Mr. REYES. Mr. Speaker, I rise today to express my opposition to the majority's decision to force a contempt vote on the floor. I want to mention the following points for the record.

There is no evidence that the attorney general authorized, condones, or knew about ''gun walking.'' Chairman DARRELL ISSA admitted this yesterday before the Rules Committee.

There is no evidence that the attorney general lied to Congress or engaged in a cover-up. Chairman ISSA also admitted this yesterday.

There is no evidence that the White House had anything to do with ''gun walking'' operations. Chairman ISSA admitted this on Fox News on Sunday.

Democrats wanted a real investigation, but Chairman ISSA refused TEN different requests from Democrats for a hearing with Ken Melson, the former Director of ATF—the agency in charge.

Chairman ISSA said this yesterday about ''gun walking'' operations under the Bush Administration: ''They were all flops. They were all failures.'' Yet, he has refused all Democratic requests to interview Bush Administration officials about their rules.

Despite finding no evidence that Attorney General Holder knew about ''gun walking'', the Committee has obtained documentary evidence showing that former Attorney General Mukasey was personally briefed on botched interdiction efforts during the Bush Administration and he was told that they would be expanded during his tenure. Chairman ISSA has refused to call on Mukasey for a hearing.

Republicans have not granted a single Democratic witness request during the entire 16 month so-called investigation. This has been a credible process.

As soon as Attorney General Holder learned about ''gun walking'', he immediately halted it and ordered an IG investigation.

In closing Mr. Speaker, I think the worst part is that the tragic death of a U.S. Border Patrol agent is being politicized and used as a way to score cheap political points. This is especially disappointing to me. As a former Border Patrol Agent and Sector Chief with 26½ years of law enforcement experience on the U.S.-Mexico Border, I expect that this body show more respect and more focus.

Instead of using this tragedy as a political ploy, this body needs to see this as a learning opportunity and a wake-up call. We must take action and provide ATF with the needed resources and tools it needs to tackle the issue of gun trafficking. I hope that this Congress is able to move on to enact the critical reforms needed to more effectively combat this threat—-and I will gladly work with my colleagues on both sides of the aisle on that particular effort.

Ms. JACKSON LEE of Texas. Mr. Speaker, I rise today to oppose H. Res 708, ''Resolution recommending that the House of Representatives find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform.''

Holding a sitting Attorney General in contempt would be unprecedented. In our Nation's history the House of Representatives has never held a sitting Attorney General in contempt of Congress.

In 1998, the then Chair of the House Oversight Committee led a vote to hold then Attorney General Janet Reno in contempt of Congress.

Attorney General Reno was also accused of withholding documents; however, the then Speaker of the House Newt Gingrich elected not to bring the Contempt Citation to the Floor. Attorney General Reno and House leadership were able to resolve their difference without holding our Nation's highest law enforcement officer in contempt. Today's conflict can also be resolved without holding Attorney General Holder in contempt.

I firmly believe and I am joined by at least 65 other colleagues who believe that the Attorney General is acting in good faith based upon his actions over the course of the past 15 months.

The Attorney General has testified before Congress no less than nine times in the last 15 months and has made himself available for meetings with Members of Congress. Further, the Department of Justice has cooperated with Congressional inquiries into this matter and is willing to continue to engage in discussions with Congressional leadership and others.

As of today, the Attorney General has produced more than 7,600 pages of documents as part of 47 separate productions, including sensitive law enforcement materials related to the pending prosecution of the defendants in the underlying Fast and Furious case.

Attorney General Holder has consistently expressed his willingness to find a resolution to the issues surrounding the narrow list of documents for which he is being cited.

Holding the Nation's top law-enforcement officer in contempt of Congress would be a drastic, disproportionate action on the part of this body.

A contempt citation should be an act of last resort, after lengthy preliminary procedures, negotiations, gathering of evidence through other methods, appeals to potential intercessors and intermediaries.

Contempt Citations have been extraordinarily rare which is evidenced by the fact that the House has declared just four people in contempt over the last three decades. For these reasons and more we request that you elect not to bring the Contempt Citation to the Floor this Thursday.

Mr. Speaker, I delivered a letter to you that was signed by 65 Members of this body stating the same, that this destructive piece of legislation should not be brought to the Floor today. It appears that this is nothing more than destructive election-year politics pure and simple. It is Republicans following through on their threats to use their authority to try to damage this Administration, politically, and this Attorney General, specifically, who has placed an emphasis on enforcing civil rights, voting rights and defending our justice system and the rule of law.

This kind of divisive politics hurts Americans who want their leaders focused on fixing real problems they face every day and hurts law enforcement agents who are putting their lives at risk in ongoing investigations that could be compromised by the Committee's political fishing expedition.

Congress has the answers to its questions about who designed this flawed operation and who authorized it—they just don't like it so they have ignored the evidence they received last year which shows this was a tactic that was designed and employed in the field and it dates back to the previous Administration.

This Attorney General is the one who put a stop to the tactic, called for an independent investigation and instituted reforms and personnel changes to ensure it doesn't happen again.

The Department has made extraordinary efforts to accommodate Congress by turning over almost 8,000 documents—including all the documents that relate to the tactics in this flawed investigation and the other flawed investigations that occurred in Arizona in the previous administration.

The Department has even turned over internal deliberative material to answer the Committee's questions and the AG offered to provide additional deliberative documentation to resolve the subpoena, but the Committee rejected that offer.

The documents at issue now are after-the-fact—they have nothing to do with the flawed tactics in any of the investigations dating back to the Bush Administration or who designed, approved or employed them.

The resolution relates to a document request involving allegations of ''gunwalking'' in an ATF operation known as ''Operation Fast and Furious,'' which came to light when two weapons involved in the operation were recovered at the murder scene of Border Patrol Agent Brian Terry.

However, the documents now at issue are completely unrelated to how ''gunwalking'' there is a question about whether gun-waling existed was utilized in the operation. Over the past year, the Justice Department has provided thousands of pages of documents to the Oversight and Government Reform Committee and has made dozens of officials available for interviews and hearings, and the Attorney

General has testified before Congress nine times on this topic. The evidence demonstrated that Fast and Furious was in fact the fourth in a series of gunwalking operations run out of the ATF field division in Phoenix over a span of five years beginning in 2006 during the Bush Administration.

The investigation identified no evidence that the Attorney General or senior Department officials were aware of gunwalking in Fast and Furious. To the contrary, as soon as the Attorney General became aware of the tactic, he put a halt to it, ordered an IG investigation, and instituted internal reform measures.

The House of Representatives has never held an Attorney General in contempt. The only precedent cited in the Issa contempt resolution is a committee contempt vote that took place in the 1990's held by then-Chairman Dan Burton against former Attorney General Janet Reno. That action became so widely discredited that Speaker Gingrich chose not to bring it to the Floor for a vote.

The current contempt debate no longer focuses on any documents relating to how gunwalking was initiated and utilized in Operation Fast and Furious. Since Republicans could identify no wrongdoing by the Attorney General, the Committee shifted just last week to focus exclusively on a single letter sent by the Department's Office of Legislative Affairs to Senator CHARLES GRASSLEY on February 4, 2011, initially denying allegations of gunwalking. The Department has already acknowledged that its letter was inaccurate, has withdrawn the letter, and has provided the Committee with more than 1,300 pages of documents relating to how it was drafted.

These documents show that Department staffers who drafted the letter did not intentionally mislead Congress, but instead relied on inaccurate assurances from ATF leaders and officials in Arizona who ran the operation. Despite these good faith efforts, House Republicans chose to move forward with a contempt resolution anyway.

Moving the goalposts again, the Committee is now demanding additional internal deliberative documents created even after the Grassley letter was sent. The Attorney General offered to provide them last week in exchange for a good faith commitment to move toward resolution of the contempt fight, but Chairman Issa flatly refused. When it became clear that contempt was inevitable, the Administration asserted executive privilege over this narrow category of deliberative Department documents, while indicating at the same time that it remains willing to continue negotiations.

The Issa contempt resolution is nothing more than a politically motivated, election-year ploy. During this investigation, the Committee refused every Democratic request for a hearing witness, including the head of ATF—the agency that actually ran the operation.

Chairman ISSA has acknowledged that "we do go down blind alleys regularly" and has made numerous unfounded claims, including accusing the FBI agents of concealing a "third gun" from the scene of Agent Terry's murder—a claim that the FBI quickly demonstrated to be completely unfounded.

Ms. MCCOLLUM. Mr. Speaker, today the House is voting on a Republican-Tea Party witch hunt intended to destroy an honorable man's character. This resolution of contempt targeting Attorney General Eric Holder is a shameful and shameless abuse of power by the majority party. The only reason this unprecedented attack is taking place on the House floor today, against our country's first African American Attorney General, is because the Tea Party Republican majority is pandering to birthers, NRA members and other extremist obsessed with defeating President Obama.

Attorney General Eric Holder has my full support and I reject this transparent political abuse of power.

I am strongly opposed to the House Republican resolution to hold Attorney General Eric Holder in contempt of Congress for failing to turn over documents pertaining to sensitive and on-going law enforcement activities to the House Oversight and Government Reform Committee.

The committee request is for documents related to Operation Fast and Furious, conducted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), which allowed the straw purchase of firearms in pursuit of prosecutions of gun smugglers. Two of the illegally purchased AK–47 assault weapons were found at the scene of a gun battle that resulted in the killing of U.S. Border Patrol agent Brian Terry on December 15, 2010. In his effort to cooperate with Chairman DARRELL ISSA, Attorney General Holder has provided the Oversight Committee with more than 7,600 pages of documents and participated in nine congressional hearings.

In 2006, under the Bush Administration, the ATF's Arizona office used the tactic of "gun walking" to allow guns to remain on the street after a potentially illegal sale to build a bigger case rather than interdicting them immediately. President Bush's attorney general, Michael Mukasey, received a briefing paper on November 16, 2007 on ATF cooperation with Mexico on "controlled deliveries" of weapons smuggling. The House Oversight Committee has failed to call any Bush Administration officials to testify on this matter.

This week, in Politico, a senior Republican House aide is quoted as saying, "The contempt of Holder is a dog whistle to the right-wing tea party community, saying that we are representing them . . . this is a way to say we're going after this administration, holding them accountable."

Further proof of the blatantly political nature of the Holder contempt vote is the decision by the National Rifle Association (NRA) to "score" the vote as part of their legislative report card to their membership. The NRA has long championed allowing the proliferation of assault weapons previously banned on American streets and sold over the counter, like the AK–47s found at Agent Terry's murder scene.

This entire episode is a stain on the reputation of this Republican led House of Representatives. It is appalling to know that the politics of personal destruction is the top policy priority of this Tea Party controlled House.

Again, I want to state my strong support for Attorney General Holder and the Obama Administration's efforts to cooperate with this ongoing congressional investigation.

The SPEAKER pro tempore. All time for debate on the motion to refer has expired.

Pursuant to House Resolution 708, the previous question is ordered on the motion to refer.

The question is on the motion to refer.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. DINGELL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX and House Resolution 708, this 15-minute vote on the motion to refer will be followed by 5-minute votes on a motion to recommit, if offered; adoption of the resolution, if ordered; motion to suspend on H.R. 1447, if ordered; and motion to suspend on H.R. 3173, if ordered.

The vote was taken by electronic device, and there were—yeas 172, nays 251, not voting 9, as follows:

[Roll No. 440]

YEAS—172

Ackerman
Andrews
Baca
Baldwin
Barber
Bass (CA)
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Bonamici
Boswell
Brady (PA)
Braley (IA)
Brown (FL)
Butterfield
Capps
Capuano
Carnahan
Carney
Carson (IN)
Castor (FL)
Chu
Cicilline
Clarke (MI)
Clarke (NY)
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Critz
Crowley
Cuellar
Cummings
Davis (CA)
Davis (IL)
DeFazio
DeGette
DeLauro
Deutch
Dicks
Dingell
Doggett
Doyle
Edwards
Ellison
Engel
Eshoo
Farr
Fattah
Filner
Frank (MA)
Fudge
Garamendi
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Hahn
Hanabusa
Hastings (FL)
Heinrich
Higgins
Himes
Hinchey
Hinojosa
Hirono
Holden
Holt
Honda
Hoyer
Israel
Jackson Lee (TX)
Johnson (GA)
Kaptur
Keating
Kildee
Kind
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maloney
Markey
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McNerney
Meeks
Michaud
Miller (NC)
Miller, George
Moore
Moran
Murphy (CT)
Nadler
Neal
Olver
Pallone
Pascrell
Pastor (AZ)
Pelosi
Perlmutter
Peters
Pingree (ME)
Polis
Price (NC)
Quigley
Rangel
Reyes
Richardson
Richmond
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schrader
Schwartz
Scott (VA)
Scott, David
Serrano
Sewell
Sherman
Shuler
Sires
Slaughter
Smith (WA)
Speier
Stark
Sutton
Thompson (CA)
Thompson (MS)
Tierney
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watt
Waxman
Welch
Wilson (FL)
Woolsey
Yarmuth

NAYS—251

Adams
Aderholt
Akin
Alexander
Altmire
Amash
Amodei
Austria
Bachmann
Bachus
Barletta
Barrow
Bartlett
Barton (TX)
Bass (NH)
Benishek
Berg
Biggert
Bilbray
Bilirakis
Black
Blackburn
Bonner
Bono Mack
Boren
Boustany
Brady (TX)
Brooks
Broun (GA)
Buchanan
Bucshon
Buerkle
Burgess
Burton (IN)
Calvert
Camp

Campbell
Canseco
Cantor
Capito
Carter
Cassidy
Chabot
Chaffetz
Chandler
Coble
Coffman (CO)
Cole
Conaway
Cravaack
Crawford
Crenshaw
Culberson
Davis (KY)
Denham
Dent
DesJarlais
Diaz-Balart
Dold
Donnelly (IN)
Dreier
Duffy
Duncan (SC)
Duncan (TN)
Ellmers
Emerson
Farenthold
Fincher
Fitzpatrick
Flake
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Gardner
Garrett
Gerlach
Gibbs
Gibson
Gingrey (GA)
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (MO)
Griffin (AR)
Griffith (VA)
Grimm
Guinta
Guthrie
Hall
Hanna
Harper
Harris
Hartzler
Hastings (WA)
Heck
Hensarling
Herger
Herrera Beutler
Hochul
Huelskamp
Huizenga (MI)
Hultgren
Hunter
Hurt
Issa
Jenkins
Johnson (IL)
Johnson (OH)
Johnson, Sam
Jones
Jordan
Kelly
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kissell
Kline
Labrador
Lamborn
Lance
Landry
Lankford
Latham
LaTourette
Latta
LoBiondo
Long
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marino
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McIntyre
McKeon
McKinley
McMorris Rodgers
Meehan
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mulvaney
Murphy (PA)
Myrick
Neugebauer
Noem
Nugent
Nunes
Nunnelee
Olson
Owens
Palazzo
Paul
Paulsen
Pearce
Pence
Peterson
Petri
Pitts
Platts
Poe (TX)
Pompeo
Posey
Price (GA)
Quayle
Rahall
Reed
Rehberg
Reichert
Renacci
Ribble
Rigell
Rivera
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross (AR)
Ross (FL)
Royce
Runyan
Ryan (WI)
Scalise
Schilling
Schmidt
Schock
Schweikert
Scott (SC)
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Southerland
Stearns
Stivers
Sullivan
Terry
Thompson (PA)
Thornberry
Tiberi
Tipton
Turner (NY)
Turner (OH)
Upton
Walberg
Walden
Walsh (IL)
Walz (MN)
Webster
West
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Womack
Woodall
Yoder
Young (AK)
Young (FL)
Young (IN)

NOT VOTING—9

Bishop (UT)
Cardoza
Hayworth
Jackson (IL)
Johnson, E. B.
Lewis (CA)
Napolitano
Ryan (OH)
Stutzman

□ 1630

Messrs. THOMPSON of Pennsylvania, WALDEN, Ms. JENKINS, Mrs. ROBY, Messrs. MURPHY of Pennsylvania, SCALISE, KINGSTON, and HALL changed their vote from ''yea'' to ''nay.''

Mr. RICHMOND and Ms. LORETTA SANCHEZ of California changed their vote from ''nay'' to ''yea.''

So the motion to refer was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GRIMM. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 255, noes 67, answered ''present'' 1, not voting 109, as follows:

[Roll No. 441]

AYES—255

Adams
Aderholt
Akin
Alexander
Altmire
Amash
Amodei
Austria
Bachmann
Bachus
Barletta
Barrow
Bartlett
Barton (TX)
Bass (NH)
Benishek
Berg
Biggert
Bilbray
Bilirakis
Bishop (UT)
Black
Blackburn
Bonner
Bono Mack
Boren
Boswell
Boustany
Brady (TX)
Brooks
Broun (GA)
Buchanan
Bucshon
Buerkle
Burgess
Burton (IN)
Calvert
Camp
Campbell
Canseco
Cantor
Capito
Carter
Cassidy
Chabot
Chaffetz
Chandler
Coble
Coffman (CO)
Cole
Conaway
Cravaack
Crawford
Crenshaw
Critz
Culberson
Davis (KY)
Denham
Dent
DesJarlais
Diaz-Balart
Dold
Donnelly (IN)
Dreier
Duffy
Duncan (SC)
Duncan (TN)
Ellmers
Emerson
Farenthold
Fincher
Fitzpatrick
Flake
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Gardner
Garrett
Gerlach
Gibbs
Gibson
Gingrey (GA)
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (MO)
Griffin (AR)
Griffith (VA)
Grimm
Guinta
Guthrie
Hall
Hanna
Harper
Harris
Hartzler
Hastings (WA)
Hayworth
Heck
Hensarling
Herger
Herrera Beutler
Hochul
Huelskamp
Huizenga (MI)
Hultgren
Hunter
Hurt
Issa
Jenkins
Johnson (IL)
Johnson (OH)
Johnson, Sam
Jones
Jordan
Kelly
Kind
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kissell
Kline
Labrador
Lamborn
Lance
Landry
Lankford
Latham
Latta
LoBiondo
Long
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marino
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McIntyre
McKeon
McKinley
McMorris Rodgers
Meehan
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mulvaney
Murphy (PA)
Myrick
Neugebauer
Noem
Nugent
Nunes
Nunnelee
Olson
Owens
Palazzo
Paul
Paulsen
Pearce
Pence
Peterson
Petri
Pitts
Platts
Poe (TX)
Pompeo
Posey
Price (GA)
Quayle
Rahall
Reed
Rehberg
Reichert
Renacci
Ribble
Rivera
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross (AR)
Ross (FL)
Royce
Runyan
Ryan (WI)
Scalise
Schilling
Schmidt
Schock
Schweikert
Scott (SC)
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Southerland
Stearns
Stivers
Stutzman
Sullivan
Terry
Thompson (PA)
Thornberry
Tiberi
Tipton
Turner (NY)
Turner (OH)
Upton
Walberg
Walden
Walsh (IL)
Walz (MN)
Webster
West
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Womack
Woodall
Yoder
Young (AK)
Young (FL)
Young (IN)

NOES—67

Baldwin
Barber
Berkley
Berman
Bishop (NY)
Blumenauer
Bonamici
Braley (IA)
Capps
Cohen
Connolly (VA)
Cooper
Costello
Courtney
Cuellar
DeFazio
DeLauro
Deutch
Dicks
Dingell
Doggett
Eshoo
Farr
Green, Gene
Heinrich
Higgins
Himes
Hirono
Holden
Holt
Langevin
Larsen (WA)
LaTourette
Loebsack
Lofgren, Zoe
Luján
Lynch
McDermott
McNerney
Michaud
Miller (NC)
Miller, George
Moran
Murphy (CT)
Nadler
Pastor (AZ)
Perlmutter
Quigley
Rigell
Rothman (NJ)
Ryan (OH)
Sanchez, Loretta
Schrader
Schwartz
Sherman
Shuler
Slaughter
Smith (WA)
Speier
Sutton
Thompson (CA)
Tierney
Tsongas
Visclosky
Wasserman Schultz
Waxman
Welch

ANSWERED ''PRESENT''—1

Lipinski

NOT VOTING—109

Ackerman
Andrews
Baca
Bass (CA)
Becerra
Bishop (GA)
Brady (PA)
Brown (FL)
Butterfield
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Chu
Cicilline
Clarke (MI)
Clarke (NY)
Clay
Cleaver
Clyburn
Conyers
Costa
Crowley
Cummings
Davis (CA)
Davis (IL)
DeGette
Doyle
Edwards
Ellison
Engel
Fattah
Filner
Frank (MA)
Fudge
Garamendi
Gonzalez
Green, Al
Grijalva
Gutierrez
Hahn
Hanabusa
Hastings (FL)
Hinchey
Hinojosa
Honda
Hoyer
Israel
Jackson (IL)
Jackson Lee (TX)
Johnson (GA)
Johnson, E. B.
Kaptur
Keating
Kildee
Kucinich
Larson (CT)
Lee (CA)
Levin
Lewis (CA)
Lewis (GA)
Lowey
Maloney
Markey
Matsui
McCarthy (NY)
McCollum
McGovern
Meeks
Moore
Napolitano
Neal
Olver
Pallone
Pascrell
Pelosi
Peters
Pingree (ME)
Polis
Price (NC)
Rangel
Reyes
Richardson
Richmond
Roybal-Allard
Ruppersberger
Rush
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Scott (VA)
Scott, David
Serrano
Sewell
Sires
Stark
Thompson (MS)
Tonko
Towns
Van Hollen
Velázquez
Waters
Watt
Wilson (FL)
Woolsey
Yarmuth

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining.

□ 1639

Mr. LATOURETTE changed his vote from ''aye'' to ''no.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM TO INITIATE OR INTERVENE IN JUDICIAL PROCEEDINGS TO ENFORCE CERTAIN SUBPOENAS

Mr. ISSA. Mr. Speaker, pursuant to House Resolution 708, I call up the resolution (H. Res. 706) authorizing the Committee on Oversight and Government Reform to initiate or intervene in judicial proceedings to enforce certain subpoenas.

The Clerk read the title of the resolution.

The SPEAKER pro tempore (Mr. BASS of New Hampshire). Pursuant to House Resolution 708, the resolution is considered read.

The text of the resolution is as follows:

H. RES. 706

Resolved, That the Chairman of the Committee on Oversight and Government Reform is authorized to initiate or intervene in judicial proceedings in any Federal court of competent jurisdiction, on behalf of the Committee on Oversight and Government Reform, to seek declaratory judgments affirming the duty of Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, to comply with any subpoena that is a subject of the resolution accompanying House Report 112–546 issued to him by the Committee as part of its investigation into the United States Department of Justice operation known as ''Fast and Furious'' and related matters, and to seek appropriate ancillary relief, including injunctive relief.

SEC. 2. The Committee on Oversight and Government Reform shall report as soon as practicable to the House with respect to any judicial proceedings which it initiates or in which it intervenes pursuant to this resolution.

SEC. 3. The Office of General Counsel of the House of Representatives shall, at the authorization of the Speaker, represent the Committee on Oversight and Government Reform in any litigation pursuant to this resolution. In giving that authorization, the Speaker shall consult with the Bipartisan Legal Advisory Group established pursuant to clause 8 of rule II.

The SPEAKER pro tempore. The gentleman from California (Mr. ISSA) and the gentleman from Maryland (Mr. CUMMINGS) each will control 10 minutes.

The Chair recognizes the gentleman from California.

Mr. ISSA. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, we've just had a very important vote and some would ask what this second vote is about.

This second vote is a simple authorization for the committee involved to be able to essentially hire counsel that would allow us to go into court to seek a declaratory judgment by the Federal court to enforce the subpoenas that have been presented by this committee to the Attorney General of the United States. It's a simple, straightforward resolution.

Why is it important? One of our obligations under the Constitution is to provide oversight of the executive branch. There are those in this body who have been here and engaged in debate with respect to important items such as the PATRIOT Act and FISA. One of the things that we've attempted to assure our constituents was that we would ensure that the constitutional rights of Americans would not be trampled upon as we carry out the appropriate responsibility of protecting this country and our constituents against terrorist attack. That requires us to provide active oversight over the executive branch.

Similarly, in this case, we have an obligation to stand in the shoes of those we represent, to oversee the operations of the executive branch—in this case, the Department of Justice—to ensure that they are following the law.

□ 1650

One manner in which that can be frustrated is by a department—in this case, the Department of Justice—that refuses to respond to lawful subpoenas and give us the information so that we can do that oversight. That is what we were talking about.

This Congress, this House of Representatives, was misled. I don't know whether it was intentional or not. I do know we were misled by a representation from the Justice Department in an official response to an inquiry by the Congress of the United States. That was not corrected for 10 months.

You can look at it a couple of ways. One is that there was an attempt to slow-walk the Congress so that it could not carry out its constitutional responsibility. There is a lot of talk on this floor by both Democrats and Republicans as to how we have an obligation to oversee the executive branch. In fact, one of the genius points of our Founding Fathers' Constitution is that conflict between or among the three branches of government, that natural tension. But that natural tension cannot exist and we cannot do that which we are called upon under the Constitution to do faithfully if we are denied information to oversee the operations of the Department of Justice.

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

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

Mr. DANIEL E. LUNGREN of California. So all we are doing simply is asking for the authorization so that this committee can have the representation of counsel to see that these subpoenas are carried out. Since we have been given every sense from the Justice Department that it would be folly, in a sense, to suggest that they would carry out the actions that we just voted upon against the Attorney General, this is the method by which we can achieve that which we are required to do; that is, to carry out oversight responsibility against the executive department, including the Department of Justice.

Mr. CUMMINGS. I yield 2 minutes to the gentlelady from the District of Columbia (Ms. NORTON).

Ms. NORTON. I thank the gentleman for yielding.

I have come back from walking out of this proceeding to address the serious, baseless charge of a coverup. No one in the majority has been able to charge that the Attorney General or his top lieutenants knew about the gunwalking initiated in the Bush administration because there is no evidence of that after 16 months of investigation.

This contempt resolution stems from a letter from the Justice Department correcting the record resulting from a prior letter written in the Legislative Affairs section of the Justice Department that there was no gunwalking. That letter relied on statements of ATF officials and Justice Department officials who this Justice Department then fired and did its own investigation. So what you have is contempt for correcting the record.

What the Justice Department did was the opposite of a coverup. But it is alleged that if the Department has nothing to hide, it would simply turn over everything in its possession. The other side has gone so far as to say that when the President invoked executive privilege, he too was implicated in a coverup. But the Supreme Court itself has said that while the privilege is not absolute—and here I am quoting—human experience teaches us that those who expect public dissemination of their remarks may well temper candor with concerns for appearances. Thus, Presidents have repeatedly asserted executive privilege to protect confidential executive branch deliberative materials from congressional subpoena.

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

Mr. CUMMINGS. I yield the gentlelady 30 additional seconds.

Ms. NORTON. The last leg of today's weak reed of contempt is the claim that the President asserted executive privilege too late. Why not from the beginning?

The President, like every President before him, did not assert the privilege until negotiations broke down. But the committee proceeded without even examining the basis for the privilege, as prior Chairs of our committee have done. A coverup is the most irresponsible allegation of this debate because no evidence of a coverup has been submitted.

This subpoena is so partisan and political that I expect any court to do just what our committee should have done—compel the parties to sit down and negotiate.

Mr. ISSA. Mr. Speaker, it's amazing that people would say there's no evidence of a coverup when somebody says, No, we didn't do what we did, and then hides it for an additional 10 months. By any normal American standard, that would be a coverup.

With that, I yield 2 minutes to the gentleman from Texas (Mr. FARENTHOLD).

Mr. FARENTHOLD. I thank the chair for yielding.

I rise today in support of the motion for civil contempt so we can get an attorney to proceed.

Normally under contempt, what happens is, we vote, like we just did, to hold someone in contempt, and it's turned over to the Department of Justice—in fact, the U.S. attorney for the District of Columbia—to pursue in district court. Unfortunately, the U.S. attorney is an employee and reports to the Attorney General, who was just found in contempt. And I am concerned that past history of stonewalling delays that are associated with getting us information and cooperating with us on Fast and Furious will continue and, in fact, there will be no prosecution of the contempt resolution we just voted out. So it is absolutely critical that the committee be given the authority to pursue this on their own if the Justice Department is not responsive.

I, therefore, urge all of my colleagues to join me in support of this civil contempt resolution.

Mr. CUMMINGS. I yield 2 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. I thank the gentleman for yielding.

The contempt citation pending against Attorney General Holder is unfounded, unfair, and unwise. All of this involves questions about gunwalking. And we know that the Attorney General has handed over thousands of documents in response to multiple subpoenas. So we know that the gunwalking policy began under the Bush administration. We know that President Bush's Attorney General, Michael Mukasey, was briefed on the policy, and it continued. We know that when Attorney General Holder found out about it, he shut the program down and called for an investigation.

If we want to know why the policy started, we should ask officials who served when it started during the Bush administration. If we want to know what Attorney General Holder knew about Fast and Furious, we should call the former Acting Director of the ATF, Ken Melson, who is on the record as saying that he would have been the one to have informed the Attorney General, but even he didn't know about Fast and Furious. But unfortunately, requests from the Democratic members of the House Committee on Oversight and Government Reform to call these witnesses have been rejected.

At this point, there has been no articulation of any useful information about the origins of gunwalking in Fast and Furious or the death of Agent Brian Terry that can be learned from the narrow set of documents still at issue, nor has there been any articulation of any legitimate legislative purpose that can be achieved. And, in fact, Chairman ISSA has silenced whistleblowers who testified about legislation to strengthen law enforcement tools on our southwestern boarder.

If the Speaker now insists on holding Attorney General Holder in contempt for failing to respond to more subpoenas, the Speaker should articulate with clarity what general purpose will be served by the response. If nothing legitimately useful is to be learned nor any legislative purpose is to be achieved with continued responses to these subpoenas, then it is time for the Attorney General to get back to work, along with the Members of the House.

Mr. ISSA. Mr. Speaker, I'm not sure if I heard the gentleman right when he said that I ''silenced whistleblowers'' in order to keep them from talking about gun control.

Is the gentleman disparaging and falsely claiming that I did something that I know for a fact I did not?

Mr. CUMMINGS. Will the gentleman yield?

Mr. ISSA. Of course.

Mr. CUMMINGS. I will tell you what you did. When you called the whistleblowers in, and the whistleblowers, who are ATF agents, and you know this—

Mr. ISSA. Reclaiming my time, it's pretty clear you are disparaging me, and you are disparaging me by making a claim that's untrue.

The bottom line is, in committee, witnesses were told that they need not answer questions that were not the subject of the hearing and, in fact, those witnesses were allowed and did answer questions by the minority having to do with gun control, an issue they prefer to talk about rather than the cause of Brian Terry's death.

With that, I yield 2 minutes to the gentleman from Texas (Mr. MCCAUL).

□ 1700

Mr. MCCAUL. Mr. Speaker, as a former Federal prosecutor at the Department of Justice, I do not take these proceedings lightly. Above all, those at the Department cherish their integrity. Mr. Speaker, that integrity has now been impugned.

This is not about politics. It's about pursuit of the truth and justice. The definition of contempt is the willful disobedience to or open disrespect for the rules or orders of a court or legislative body. This definition falls squarely within the facts here.

When insiders revealed the government's role in Operation Fast and Furious, the Department of Justice falsely told Congress that whistleblowers weren't telling the truth. As Congress fulfilled its oversight obligations and tried to get to the bottom of how guns were put in the hands of Mexican drug cartels, ultimately killing Border Patrol Brian Terry, this administration refused to turn over crucial documents that would shed light on this. Instead, they asserted executive privilege at the eleventh hour, calling into question the validity of the privilege itself and at the same time demonstrating that communications were held at the highest levels in the government. In fact, the wiretaps, we all know, are approved at Main Justice.

Mr. Speaker, this Attorney General needs to be held accountable. The Terry family, the families of the Mexican people who have been slain, and the American people deserve no less.

Mr. CUMMINGS. I yield 2 minutes to the gentleman from Texas (Mr. REYES).

Mr. REYES. It is indeed a sad day today. As an officer that spent 26½ years wearing the United States Border Patrol uniform, it is regrettable for me today that we're here under these circumstances.

I want to acknowledge and thank the chairman and the ranking member for inviting me to go with them to Mexico City and visit at the U.S. Embassy about the circumstances around what led to the investigation of Fast and Furious. And to me, it's regrettable because we are here discussing the death of a Border Patrol agent. I went to the memorial service for Agent Brian Terry. I visited with his mom and his family that day. I went there because as a former Border Patrol agent I wanted to express sympathy and support, as I did so many times as a chief for agents that were killed in the line of duty.

So for me, it is particularly troubling that we're here politicizing the death of a United States Border Patrol agent. We ought to be about getting to the circumstances of the investigation led under a U.S. Attorney under OCDETF. Both the ranking member and the chairman know that that was the controlling entity in this case.

I don't know except to say that it's pure basic politics that we've now spun this up to the level of the Attorney General. Having had the experience to supervise my agents that were part of OCDETF investigations and having had a number of conversations with my friends on the other side of the aisle who were experienced prosecutors, everybody here that has that experience knows that those controls don't go up to the level of the Attorney General.

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

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

Mr. REYES. So we're here taking a lot of time when we should be discussing things that are a priority to the American people. We're here under the worst of circumstances for the Terry family, which all they want is closure on the death of a son, on the death of a patriotic American citizen, and spinning it in a political sense.

I really think that this is a sad day for this House of Representatives, and we ought to do better for the American people.

Mr. ISSA. I yield 1 minute to the gentleman from Idaho (Mr. LABRADOR).

Mr. LABRADOR. Mr. Speaker, once again I sit here and I'm amazed by the language that is being used. We've had numerous hearings. We've had numerous investigations. We've had a lot of people come before Congress and give us false information. And the reality is that I hear again and again from the other side that there is no evidence of coverup; there is no evidence of coverup.

But the reality is that we have only received 5 percent of the documents that we have requested. There is no way for us to know exactly what happened, who knew, and what did they know, unless we receive all of the documents. All we're asking the Attorney General to do is to provide the documents that we have requested. We wouldn't be standing here holding these contempt proceedings if he had given us the documents. And that's why I ask everybody in this body to actually vote for contempt.

Mr. CUMMINGS. May I inquire as to how much time is left.

The SPEAKER pro tempore. The gentleman from Maryland has 3 minutes remaining, and the gentleman from California has 1¾ minutes remaining.

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

Mr. ISSA. Reserving the right to close, I have no further requests for time.

Mr. CUMMINGS. Mr. Speaker, it's interesting here today, what we just did with regard to the criminal contempt. I do believe that it is very unfortunate, and let me tell you why. We have an Attorney General who is indeed an honorable man. We who practice law look up to the Attorney General and any U.S. Attorney. They are folks like us who are well educated and who love their country. And Eric Holder, Jr., is no exception.

Over and over again, he has tried to cooperate with this committee. And I'm sure that both sides—his side and our side—have become a little frustrated at times. But as he said in a meeting a couple of weeks ago, he said that he's willing to give the documents, but he was asking that at some point his attorneys have an opportunity to get back to work.

Now, Leader PELOSI said something a moment ago that we should not lose sight of, Mr. Speaker, when she spoke about the Constitution and that it requires Congress and the executive branch to avoid unnecessary conflicts and to seek accommodations that serve both of their interests. In the words of Attorney General William French Smith, under President Reagan:

> It is the obligation of each branch to make a principled effort to acknowledge and, if possible, to meet the legitimate needs of the other branch.

I believe that this Attorney General has bent over backwards trying to accommodate us, trying to provide the information, but at the same time, as he has said to us many times, to protect the institution of the Attorney General of the United States. And when I say protect the institution, I mean protect the institution, the same types of things that have assertions of executive privilege, making sure that wiretap applications are not made public, making sure that confidential informants are not disclosed, making sure that ongoing investigations are not interfered with.

And I'm not sure, but there may be something that happened—we're not sure; we're checking on it—happened in this House already today, something that may have interfered with the trial already.

So as I close, I would submit that he has done the very best that he could, and now we need to meet him halfway.

I yield back the balance of my time.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

The SPEAKER pro tempore. The gentleman from California is recognized for 1¾ minutes.

Mr. ISSA. Thank you, Mr. Speaker.

It's been a long day for America, but it's been a longer day for the Terry family. I'm going to urge everyone to vote for the ability to hire counsel, and that's what the last vote is, and I believe it will pass overwhelmingly.

But I'm going to use this time to pledge to the America people, to pledge to the Terry family, and to pledge to my colleagues: this investigation has in fact been brought to a halt in one area—and the area is the Attorney General's flat refusal to any longer cooperate with this committee.

□ 1710

But it doesn't change the fact that in the days and weeks to come, we will use what we can in the way of other tools, including some of the individuals that the minority has talked about today, to glean additional information, to find ways to prove accountability for the many people that had to be involved in this OCDETF operation in order for those guns to walk. We will continue to do that. We will try to find the truth.

Hopefully in the weeks to come, we also will begin getting cooperation from the administration again. But if we don't, I will tell the ranking member here today, it has always been my intention to look backwards to previous gunwalking programs that we believe were certainly poorly designed and resulted in weapons getting out of the hands of lawful people and into the hands of criminal elements. That's not going to change. It's not going to change because it's our obligation to investigate and because this one we cannot let loose until the Terry family has been kept a promise that the ranking member and I both made.

So I take the ranking member at his word today that, in fact, he will not rest until we get some answers, and I commit the same that I will not, and I urge the passage of this resolution.

I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 708, the previous question is ordered on the resolution.

The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CUMMINGS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 258, nays 95, answered ''present'' 5, not voting 74, as follows:

[Roll No. 442]

YEAS—258

Adams
Aderholt
Akin
Alexander
Altmire
Amash
Amodei
Austria
Bachmann
Bachus
Barber
Barletta
Barrow
Bartlett
Barton (TX)
Bass (NH)
Benishek
Berg
Biggert
Bilbray
Bilirakis
Bishop (UT)
Black
Blackburn
Bonner
Bono Mack
Boren
Boswell
Boustany
Brady (TX)
Brooks
Broun (GA)
Buchanan
Bucshon
Buerkle
Burgess
Burton (IN)
Calvert
Camp
Campbell
Canseco
Cantor
Capito
Carter
Cassidy
Chabot
Chaffetz
Chandler
Coble
Coffman (CO)
Cole
Conaway
Cravaack
Crawford
Crenshaw
Critz
Culberson
Davis (KY)
DeFazio
Denham
Dent
DesJarlais
Diaz-Balart
Dold
Donnelly (IN)
Dreier
Duffy
Duncan (SC)
Duncan (TN)
Ellmers
Emerson
Farenthold
Fincher
Fitzpatrick
Flake
Fleischmann
Fleming
Flores
Forbes
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Gardner
Garrett
Gerlach
Gibbs
Gibson
Gingrey (GA)
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (MO)
Griffin (AR)
Griffith (VA)
Grimm
Guinta
Guthrie
Hall
Hanna
Harper
Hastings (WA)
Hayworth
Heck
Hensarling
Herger
Herrera Beutler
Hochul
Huelskamp
Huizenga (MI)
Hultgren
Hunter
Hurt
Issa
Jenkins
Johnson (IL)
Johnson (OH)
Johnson, Sam
Jones
Jordan
Kelly
Kind
King (IA)
King (NY)
Kingston
Kinzinger (IL)
Kissell
Kline
Labrador
Lamborn
Lance
Landry
Lankford
Latham
LaTourette
Latta
LoBiondo
Long
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marino
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McIntyre
McKeon
McKinley
McMorris Rodgers
Meehan
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Mulvaney
Murphy (PA)
Myrick
Neugebauer
Noem
Nugent
Nunes
Nunnelee
Olson
Owens
Palazzo
Paul
Paulsen
Pearce
Pence
Peterson
Petri
Pitts
Platts
Poe (TX)
Pompeo
Posey
Price (GA)
Quayle
Rahall
Reed
Rehberg
Reichert
Renacci
Ribble
Rigell
Rivera
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rokita
Rooney
Ros-Lehtinen
Roskam
Ross (AR)
Ross (FL)
Royce
Runyan
Ryan (WI)
Scalise
Schilling
Schmidt
Schock
Schweikert
Scott (SC)
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Southerland
Stearns
Stivers
Stutzman
Sullivan
Terry
Thompson (PA)
Thornberry
Tiberi
Tipton
Turner (NY)
Turner (OH)
Upton
Walberg
Walden
Walsh (IL)
Walz (MN)
Webster
West
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Womack
Woodall
Yoder
Young (AK)
Young (FL)
Young (IN)

NAYS—95

Andrews
Baldwin
Berkley
Berman
Bishop (NY)
Blumenauer
Bonamici
Braley (IA)
Capps
Carnahan
Carney
Castor (FL)

Cohen
Connolly (VA)
Cooper
Costello
Courtney
Crowley
Cuellar
Davis (CA)
DeGette
DeLauro
Deutch
Dicks
Dingell
Doggett
Doyle
Eshoo
Farr
Filner
Garamendi
Green, Gene
Hanabusa
Heinrich
Higgins
Himes
Hinchey
Hirono
Holden
Holt
Hoyer
Keating
Kildee
Langevin
Larsen (WA)
Loebsack
Lofgren, Zoe
Luján
Lynch
Maloney
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McNerney
Miller, George
Moran
Murphy (CT)
Neal
Olver
Pallone
Pascrell
Pastor (AZ)
Perlmutter
Peters
Pingree (ME)
Polis
Price (NC)
Quigley
Reyes
Rothman (NJ)
Ruppersberger
Ryan (OH)
Sánchez, Linda T.
Sanchez, Loretta
Schiff
Schrader
Schwartz
Sherman
Shuler
Slaughter
Smith (WA)
Speier
Stark
Sutton
Thompson (CA)
Tierney
Tonko
Tsongas
Velázquez
Visclosky
Wasserman Schultz
Waxman
Welch

ANSWERED ''PRESENT''—5

Ackerman
Costa
Kaptur
Lipinski
Towns

NOT VOTING—74

Baca
Bass (CA)
Becerra
Bishop (GA)
Brady (PA)
Brown (FL)
Butterfield
Capuano
Cardoza
Carson (IN)
Chu
Cicilline
Clarke (MI)
Clarke (NY)
Clay
Cleaver
Clyburn
Conyers
Cummings
Davis (IL)
Edwards
Ellison
Engel
Fattah
Fortenberry
Frank (MA)
Fudge
Gonzalez
Green, Al
Grijalva
Gutierrez
Hahn
Harris
Hartzler
Hastings (FL)
Hinojosa
Honda
Israel
Jackson (IL)
Jackson Lee (TX)
Johnson (GA)
Johnson, E. B.
Kucinich
Larson (CT)
Lee (CA)
Levin
Lewis (CA)
Lewis (GA)
Lowey
Markey
Meeks
Moore
Nadler
Napolitano
Pelosi
Rangel
Richardson
Richmond
Roybal-Allard
Rush
Sarbanes
Schakowsky
Scott (VA)
Scott, David
Serrano
Sewell
Sires
Thompson (MS)
Van Hollen
Waters
Watt
Wilson (FL)
Woolsey
Yarmuth

□ 1734

Mr. SULLIVAN changed his vote from ''nay,'' to ''yea''

Mr. COSTA changed his vote from ''nay'' to ''present.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. FORTENBERRY. Mr. Speaker, I inadvertently missed the vote on rollcall No. 442. My vote would have been "yes."

NUCLEAR TERRORISM CONVENTIONS IMPLEMENTATION AND SAFETY OF MARITIME NAVIGATION ACT OF 2012

The SPEAKER pro tempore (Mr. CRAVAACK). The unfinished business is the question on suspending the rules and passing the bill (H.R. 5889) to amend title 18, United States Code, to provide for protection of maritime navigation and prevention of nuclear terrorism, and for other purposes, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SMITH) that the House suspend the rules and pass the bill.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

SERGEANT RICHARD FRANKLIN ABSHIRE POST OFFICE BUILDING

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill (H.R. 3412) to designate the facility of the United States Postal Service located at 1421 Veterans Memorial Drive in Abbeville, Louisiana, as the ''Sergeant Richard Franklin Abshire Post Office Building''.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. FARENTHOLD) that the House suspend the rules and pass the bill.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

SPC NICHOLAS SCOTT HARTGE POST OFFICE

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill (H.R. 3501) to designate the facility of the United States Postal Service located at 125 Kerr Avenue in Rome City, Indiana, as the ''SPC Nicholas Scott Hartge Post Office''.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. FARENTHOLD) that the House suspend the rules and pass the bill.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

□ 1740

FIRST SERGEANT LANDRES CHEEKS POST OFFICE BUILDING

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill (H.R. 3772) to designate the facility of the United States Postal Service located at 150 South Union Street in Canton, Mississippi, as the ''First Sergeant Landres Cheeks Post Office Building''.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. FARENTHOLD) that the House suspend the rules and pass the bill.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

REVEREND ABE BROWN POST OFFICE BUILDING

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill (H.R. 3276) to designate the facility of the United States Postal Service located at 2810 East Hillsborough Avenue in Tampa, Florida, as the ''Reverend Abe Brown Post Office Building''.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. FARENTHOLD) that the House suspend the rules and pass the bill.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

AVIATION SECURITY STAKEHOLDER PARTICIPATION ACT OF 2012

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill (H.R. 1447) to amend title 49, United States Code, to direct the Assistant Secretary of Homeland Security (Transportation Security Administration) to establish an Aviation Security Advisory Committee, and for other purposes, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. KING) that the House suspend the rules and pass the bill, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

USE OF GRANT FUNDS FOR PROJECTS CONDUCTED IN CONJUNCTION WITH A NATIONAL LABORATORY OR RESEARCH FACILITY

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill (H.R. 5843) to amend the Homeland Security Act of 2002 to permit use of certain grant funds for training conducted in conjunction with a national laboratory or research facility.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. KING) that the House suspend the rules and pass the bill.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TRANSPORTATION WORKER IDENTIFICATION PROCESS REFORM ACT

The SPEAKER pro tempore. The unfinished business is the question on suspending the rules and passing the bill (H.R. 3173) to direct the Secretary of Homeland Security to reform the process for the enrollment, activation, issuance, and renewal of a Transportation Worker Identification Credential (TWIC) to require, in total, not more than one in-person visit to a designated enrollment center, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DANIEL E. LUNGREN) that the House suspend the rules and pass the bill, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

THE AFFORDABLE CARE ACT IS THE LAW OF THE LAND

(Ms. JACKSON LEE of Texas asked and was given permission to address the House for 1 minute.)

Ms. JACKSON LEE of Texas. I rise today because this is a great country. In fact, I would call it the greatest country in the world.

Throughout my life's history, although we have traveled mountains and low valleys, I have been equal and unequal in this Nation. Yet today I feel as tall as the pine trees because our Supreme Court shed itself of diverse and sometimes divisive bickering and upheld the Constitution of the United States.

It granted to the American people affordable health care. It granted to the sickest of the sick the opportunity to be covered by insurance. It granted to seniors who fall into doughnut holes and who have to choose prescription drugs over food a relief line. It granted to hospitals that take in indigent patients who may otherwise die on sidewalks in America an opportunity to take care of those patients. It gave children with preexisting diseases an opportunity to live fully in this country.

So now the Affordable Care Act is the law of the land. We have been vindicated. Every single, single vote of those Members who have lost and of those who have won, we've been vindicated. Thank God for the United States Supreme Court.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain Special Order speeches without prejudice to the resumption of legislative business.

THE PROGRESSIVE MESSAGE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 5, 2011, the gentleman from Minnesota (Mr. ELLISON) is recognized for 60 minutes as the designee of the minority leader.

Mr. ELLISON. Mr. Speaker, my name is KEITH ELLISON, and I claim this Special Order time on behalf of the Progressive Caucus. I am very pleased to be joined by my dear friend from the great State of Ohio, Mr. DENNIS KUCINICH.

The Progressive Caucus has a Web site we refer people to, which is cpc.grijalva.house.gov. I urge everybody to check it out because it has a lot of excellent information.

This we call The Progressive Message. Today, we are going to focus on three topics, Mr. Speaker. They will be in the areas of: (1) historic health care; (2) the travesty of justice perpetuated on Eric Holder; (3) the voter ID issue that is proliferating across the country, that of trying to restrict and suppress the votes of Americans. So that's our Progressive Message for today.

I want to introduce the first subject by saying that today was a historic day. The historic health care bill was passed many, many months ago; but until the Supreme Court of the United States said that this bill was constitutional, that this act was constitutional, it was always in jeopardy of being overturned. In the Progressive Caucus, many of us were signatories and cosponsors of H.R. 676, which is the single-payer bill—or health care for all and Medicare for all.

Personally, I think today is a dramatic step forward in the quest to make sure that all Americans are covered and can go to a doctor. This is a very important step—it's an advance—so I'm happy to see it.

With that, I would like to just turn some time over to the gentleman from Ohio for any comments he may care to make about the health care bill or about the Supreme Court decision.

I yield to the gentleman from Ohio.

Mr. KUCINICH. I want to thank the gentleman from Minnesota, Congressman ELLISON, for his leadership in the Progressive Caucus and to thank him for yielding me some time to talk about this momentous decision by the Supreme Court. First of all, a little bit of context.

I represent Cleveland, Ohio. There are many people in Cleveland who are uninsured. There are many people in Cleveland who could not afford health care. There are many people who are working who can't get their families covered.

This issue of health care reform is one of the defining issues in our country, and it's one that we finally grappled with in 2010 to come up with a bill that not everyone agreed with. As a matter of fact, as Mr. ELLISON will remember, I didn't agree with this. I was not satisfied with health care reform within the context of a for-profit system because I wanted a not-for-profit system. Yet, while we had a for-profit system, one of the things we needed to do was to make sure children with preexisting conditions would be covered; to make sure all of these lifetime caps on the amount of money that people could claim for expenses were removed; and to make sure that people were given a fighting chance with the insurance companies.

□ 1750

What's happened is the Affordable Care Act finally took a step in the direction of reform. It's an important step, and the Supreme Court has said you can do that under Congress' taxing authority, but it's just a step.

All of us understand that there are still millions of Americans who are finding health care out of reach, even with the help that the Affordable Care Act offers. That's why at the State level there are still States, such as Vermont, that are looking at how they can go forward with a single-payer plan within their State.

Mr. ELLISON. Let me just ask the gentleman a question.

You had an amendment that we were trying to move onto the Affordable Care Act which would allow States, if they chose to, to pursue alternatives like a single-payer system.

Do you recall your amendment?

Mr. KUCINICH. Keep in mind that the Employee Retirement Income Security Act essentially would stop States from going forward, so we asked basically for a waiver of that. The amendment would have provided for a waiver so States would have no legal bar to pursue a single-payer system. That was essentially passed in committee and then stripped out.

The point is we can enable it. Congress can facilitate that. The passage of affordable care, plus the Supreme Court saying Congress can move on health care, Congress can take a step, finally puts us in a position where we can elevate health care to the highest level of public concern.

Every American who is out there tonight who's worried about whether they would be able to get access to affordable health care suddenly realizes that it is possible. For those poor people across America who are wondering whether they are going to be shut out by one aspect of the Supreme Court decision, now it's up to the States to reaffirm the position of the State in the life of their citizens by saying, if you're a poor person, we're not going to use the Supreme Court decision to block you from having access to the resources of the government with respect to health care.

I think that we need to recognize that we've taken a big step here. As someone who wasn't sure at first, as someone who, in a sense, reluctantly voted for the Affordable Care Act on the hope that by proving we could have reform within the context of a for-profit system, that it would open the door for further reforms, I'd say this is a great day. It shows that it's possible to reform that for-profit system.

I'm hopeful, as we're celebrating today, that we look down the road to what we're going to do in the future, which is to restart our efforts here, restart the effort for a single-payer system, knowing at least that we have the assurance that more people are covered, that you don't have to worry about your child 26 and under, whether they are going to be covered under the policy, that you don't have to worry about a child with a preexisting condition, that you don't have to worry about long-term caps, that you don't have to worry about if you're a senior where that doughnut hole is going to cause your budget to get crushed. What you have now is the government finally taking the side of the people and putting us in a position where we now are able, with integrity and with drive, to move towards the future where someday we're going to keep working for that single-payer system.

Mr. ELLISON. I don't know if this happened to you today, but it did happen to me. I started thinking about all the door knocking that I did and thinking about the health care horror stories that I heard.

I just want to ask you today, when you reflect on 57 percent of the people filing for bankruptcy being motivated by medical debt, when you hear about people getting a lifetime cap and not being able to get any additional health care, even when they've got cancer or if they've got cancer, then they get dropped.

Mr. KUCINICH. The gentleman is right. The gentleman is correct. When you think of how many people—most bankruptcies, they're connected to people not being able to pay hospital bills. Any single family has known the dread of having one individual get ill in the family, and everything people worked a lifetime for, they lose.

Mr. ELLISON. The gentleman might reflect on the fact that many of these people you're referring to have insurance, and I yield to the gentleman.

Mr. KUCINICH. Oh, that's right.

Think about this now. You can have insurance, and if you run up against lifetime caps on coverage, you're out of luck. So many Americans have gotten in trouble financially because, even though they have insurance, they can't pay the bills. The bills have sent Americans into poverty.

We need to realize that we've taken a step in the direction of a substantial support for the American people and their health care with the Affordable Care Act, but it's not the final step.

Again, I am here to share with you, Mr. Speaker, my willingness to continue the effort towards a universal single-payer, not-for-profit health care.

You know what? Now that we've proven that reform of health care is possible, now that we have proven that health care is no longer the third rail of American politics, now that we have proven that the Court will uphold an effort by the Congress to move towards health care reform, well, now that we've proven that, we can say it is possible to go to a place where we can have health care for all under a not-for-profit system.

I thank the gentleman for his leadership, and I look forward to working with you as we chart a new course in America for health care for all. Thank you.

Mr. ELLISON. Thank you.

And to the gentleman from Ohio, who I know has some things to do, I just want to say that when the final chapter is written on the improvement and the advance in health care in America, there will certainly be chapters on how DENNIS KUCINICH, through your leadership as a Member of the House of Representatives bill that you introduced through your Presidential run, where you really made health care a frontburner issue, you will have a chapter that will designate your great contributions to the American people to get quality, affordable, universal health care.

So I do thank you today, sir, because I can tell you that today is somewhat of a reflection. You should think about how your campaign for President and other work you have done really did move the ball down the track. So I thank you, and I honor you for it.

Mr. KUCINICH. I thank the gentleman. Thank you very much.

Mr. ELLISON. We're joined by my good friend, JOHN GARAMENDI from California.

Congressman GARAMENDI, on a day like this, you must be full of thoughts about health care reform, the big lift, and all of the things that occurred.

What are some of the thoughts that occur to you today, Congressman?

Mr. GARAMENDI. Thank you, Mr. ELLISON. Thank you so very much for your consistent and strong voice on what we really need to do here in America to take care of people.

At the beginning of the day and at the end of the day, our task is to fulfill that message of life, liberty, and the pursuit of happiness. This day really, in many ways, fulfills that.

Think about it. Can you have life without health care? Well, probably not for very long. Most everybody I know has had a sickness at one point or another. If you don't get health care, you may very well lose your life.

Happiness? We know that most of the bankruptcies—this is before the great crash—are a direct result of health care and not having sufficient insurance or not having insurance. With regard to happiness, wow.

Of course, liberty. You just think about the number of Americans that are literally chained or tied to their job because they have health care there. If they want to leave, if they want to pursue a different course, they want to improve, they can't, because they are tied to their job because of health care. They can't get it.

Today, the Supreme Court said that what this House did with the Affordable Health Care Act is constitutional. It is constitutional. It is possible for us. As we just heard from Mr. KUCINICH, it is possible for us to reform the health care system.

My thoughts are so happy for America, so happy for that man that I saw 5 years ago that was on his deathbed, and he said, If I can just live another 5 months, I'll be on Medicare and I can get the treatments that I need without bankrupting my family. Today he probably will be able to get that. It's a good day.

□ 1800

I was the insurance commissioner for 8 years in California. And if only I had this law, if only this law were in place, I could have hammered those insurance companies that were discriminating against people who had preexisting conditions. But I didn't have this law. So they were able to get away with discriminating against women because they are women. Because they are of child-bearing age, they may have a child; and it might cost the insurance companies money.

My chief of staff had a child who was born with an ailment. That kid, from the day of conception to the day after he was born, had insurance. As soon as the insurance company found out that that child had a serious problem, they stopped the insurance. The family almost went into bankruptcy; but for the friends and support around them, they would have done so. That is over.

Every child born in America will continue to have health care coverage, whether they are healthy or not. It's a good day. It's a good day for the children. It's a good day for the people of America.

Mr. ELLISON. Well, Congressman, I share your joy today. And I want to let you know that the fact is that there are a lot of really important parts of this bill, and not enough Americans understand what's in the bill.

I can remember back a couple of years ago when I was trying to have community forums in my district, and people who didn't understand the need for health care reform would get loud and boisterous in these meetings. And I would let them talk. I wouldn't let them disrupt the meeting, but I would let them talk. And some of them expressed themselves in very passionate ways.

One of the things they said to me was, Did you read the bill? And they wouldn't ask the question. They would basically make an accusation that I didn't read the bill. Of course I had read the bill.

And I think it's now a good idea to really help people understand what

good things are in this bill. For example, I think it's important for people to understand that already in the bill, if you have a child under the age of 26, that child can be on your health care insurance. No more worries that your college graduate kid, who has not yet got that job, is just out there with no insurance. If you are a woman, they can't discriminate against you anymore. If you have a preexisting condition and you are a child, even at this moment, they can't discriminate against you. And when the bill is fully in effect, they won't be able to discriminate against anyone.

If you are a senior, we're helping to make the cost of prescription drugs more affordable by filling the doughnut hole. Also, for Medicare, we have a provision in there that's helping to make sure that preventative screenings are free in order to have healthy, strong seniors to prevent them from getting sick. There's a medical loss ratio which says that the insurance company has to devote 85 percent of their receipts into health care, not all this other administrative stuff, including exorbitant pay.

So as we sit back and reflect on what is actually in there, I think it's important to make those points.

Is there anything you would like to add?

Mr. GARAMENDI. Let me just take up some of those numbers because they're very, very exciting.

Thirteen million Americans will receive $1.1 billion in rebates because the insurance companies have overcharged them. That didn't happen before this bill. I didn't have that power, as insurance commissioner, to do that; 54 million Americans that are in private health insurance plans will receive free preventative services as a result of this legislation.

Mr. ELLISON. Fifty-four million—wow.

Mr. GARAMENDI. And, of course, women—millions across this Nation—will receive free coverage for comprehensive women's preventative health services: Pap smears, breast x rays and the like. In 2011, 32.5 million seniors received one or more preventative services. In 2012, 14 million seniors have already received these services.

105 million Americans will no longer have a lifetime limit on their coverage. Before this bill was in effect, if you go up to $100,000 or $200,000—if you had a serious illness, you could go through that, bam—that's it. You don't get any more coverage. No longer. No more limits. Lifetime limits are gone.

Seventeen million children with preexisting conditions can no longer be denied coverage by insurance companies; 6.6 million young adults—what you were just talking about—you are talking about my daughter. She graduated at the age of 21, 22; lost her insurance. The day after this bill passed, she said, Dad, can I get back on your policy? The answer was yes. Actually, it took 6 months, but it did happen. 5.3 million seniors in the doughnut hole—this is the drug coverage portion—have saved $3.7 billion on prescription drugs already.

Now, our good friends, the Republicans, want to repeal all of this. So you go through this list: 13 million Americans will not receive a rebate if the Republicans succeed in repealing the bill; 54 million Americans will not receive preventative services; 6.6 million young Americans will not be on their parents' coverage between the age of 21 and 26. There are a lot of takeaways from what the Republicans want to do with their repeal.

Mr. ELLISON. If the gentleman would yield, I think that is a very important point to make. Sadly, as soon as the Affordable Care Act was upheld, our friends in the Republican Caucus immediately said, Well, we're going to have a repeal vote. Well, they've already had a repeal vote. What are we doing this over and over and over again for? Well, we're doing it for a very important reason: to make a political point.

As they were announcing another repeal vote—another repeal vote—we haven't done anything about student loans this week, which are expiring. We haven't done anything about jobs. And we haven't done anything about the transit bill, which is due to expire. I mean, it's just really amazing how much time we have for stuff that doesn't matter, just political gamesmanship.

But, you know, I must share this with you, Congressman. I'm saddened by the fact that our Republican friends won't join with us in this awesome good thing that happened to the American people today. I wish they would finally come around. It's like, look, you know, you fought the health care—

Well, first of all, between 2000 and 2006, you had the White House, the Senate, and the House of Representatives. You didn't do anything except give a bunch of money to Big Pharma. And we're trying to fix that right now.

But all this stuff they talk about. Oh, we want to sell insurance across State lines. We want to do tort reform. They could have done all of that. They didn't do it because they didn't want to do it. Now they say that's what they would have done, but that's not what they did do when they could have done it. So there you go with that.

So now we, the Democrats, went and took up health care. After many, many years of trying, we get it through. They fight it tooth and nail. To their credit, none of them supported the final vote on the Affordable Care Act. They were solid and unanimously against conferring the benefits that are contained in the Affordable Care Act.

Well, now they got around to saying the bill was unconstitutional. It's unconstitutional. And you heard this hue and cry day and night. And they even called themselves ''constitutional conservatives.''

Well, the constitutional Court has said, This bill is constitutional. So you would think they would say, Okay, okay. We just wanted to make sure it's constitutional. Now we're ready to join hands with you and celebrate this great thing to make sure all Americans can go to the doctor. But what do they do? They schedule a repeal vote.

Here's what I want people to know, Congressman: according to the Congressional Budget Office—which is a nonpartisan entity—if they repeal this bill, it will add to the deficit $230 billion. These are my friends who never tire of saying, Oh, we're conferring debt on our children and grandchildren. They always say that. I'm sure it's been tested by, you know, some high-paid individual who does that kind of stuff. They never tire of saying, Our children and grandchildren, we are piling debt on our children and grandchildren.

But if they strip the Affordable Care Act, as they plan on doing on July 11, they would drop a big debt and add to the deficit.

Mr. GARAMENDI. Thank you so very much, Mr. ELLISON. And thank you for your leadership on this and so many other issues.

I'm looking at that sign next to you: ''Republicans' No-Jobs Agenda.'' A repeal of the Affordable Health Care Act and the Patients' Bill of Rights is not going to create jobs. In fact, it is going to make it very, very difficult for small businesses because the Affordable Health Care Act actually helps small businesses.

Mr. ELLISON. Right.

□ 1810

Mr. GARAMENDI. They don't have the mandate. Small businesses don't have the mandate. But what they do have is an opportunity. They have an opportunity to get health insurance at an affordable cost, which they've never had before. Small business, one-person, or husband and wife, perhaps, and two or three employees, it literally was impossible for them to get affordable health insurance for themselves and for their three employees.

Under this bill, they can get it. It's subsidized, to be sure. But they can finally get insurance. And across the State of California and across this Nation we're finding thousands upon thousands of businesses for the first time going into the insurance market, able to buy insurance, getting coverage for themselves and their employees while providing what insurance must do, which is the knowledge and the stability that is necessary for the finances of that business to succeed.

The other thing—and I'm just going to pick up one more that's very, very close to me—in California, the Affordable Care Act provided funding for 1,154 clinics. Way back in 1978, when I was in the California legislature, and in 1976 as a member of the Assembly, I authored legislation to establish the Rural Health Act. And that built clinics in the rural part of California. And today, as a result of that, there are

clinics all across the State of California, and the Affordable Care Act keeps those clinics in business.

This is where many Californians and across this Nation Americans access the health care system. It's there in their community. These are the community clinics that are so critically important in providing the health care that Americans need. The call for repeal kills these clinics. These clinics will die if this bill is repealed.

So out across the State, even in the most conservative part of my new district, Colusa County, there are clinics that are dependent upon this legislation and will be able to continue as a result of the Affordable Care Act, found by the Supreme Court, including Chief Justice Roberts, to be constitutional. This is constitutional. The legislature, Congress, and the Senate and the President have the power to solve one of the great America dilemmas: The health care system.

Over time, we'll change this. We'll make modifications. Among those modifications ought to be an expansion of Medicare, which is efficient, effective, and universally available to every American over the age of 65. How good it is. How hard and how determined people are—if I can just live to 65, I'll have Medicare. It's a great program. We ought to expand it. We ought to make it universal.

Mr. ELLISON, I don't know how much time you have.

Mr. ELLISON. We've got about 30 minutes or so.

Mr. GARAMENDI. Well, there are things we can talk about.

Mr. ELLISON. I would actually like to take up what happened with Eric Holder today.

Mr. GARAMENDI. Let's talk about that.

Mr. ELLISON. The Holder case, Eric Holder, when he came in office, this program, the Fast and Furious, was ongoing. It was a gunwalking program. The original theory was that if you put some guns into the stream of commerce, then you can find out who's buying them, who's selling them, and try to get to the bottom of some of these cartels that trade in illegal guns, straw purchasers and so forth. Well, it was a poorly conceived plan, and tragedy occurred. A border enforcement officer, Officer Terry, was killed as a result with one of these guns. We all pause in his honor and offer our sincere condolences to his family.

When Attorney General Holder found out about this program, he shut the program down. But then, of course, as facts came to light, it is a legitimate source of investigation. And he submitted to nine hearings, 8,000 pages of documentation. But when it finally got down to it, when there was information that was of a deliberative nature—not on the facts of what happened to Officer Terry, but just exchange of information—and pending criminal information, which everyone in this room should know is not for public consumption, when that information was sought, the administration, the White House said, No, we're going to exercise executive privilege. Obviously, if the President exercises executive privilege, the Attorney General has to abide by that decision.

And despite all those facts, today on the House floor the Republican majority, instead of dealing with jobs, instead of dealing with health care, instead of dealing with renewing the student loan interest rates, which are about to double; instead of dealing with the transportation bill, which is about to expire, we go do a witch hunt on Eric Holder. It's really too bad.

Any thoughts on this issue you care to share?

Mr. GARAMENDI. Well, I do. And like most of my Democratic colleagues, we just walked out of this Chamber and said this is not worthy of the dignity of the House of Representatives. And we weren't going to honor this process with our presence.

Let's go back here. The Fast and Furious programs actually began in the George W. Bush administration, I think, around 2005, 2006. And there were two iterations of it, two different projects that were underway out of the Phoenix office of the ATF. And they were trying to find out who the gunrunners were. We've all watched the Western movies and the gunrunners. Well, there are American gunrunners that were running guns to the narco folks in Mexico. We wanted to find out what is going on here, where are these guns coming from. And that was, once again, during the George W. Bush administration and had gone on for 2, 3 years.

The Obama administration comes in. Eric Holder is chosen as Attorney General. And the program continued. The tragedy occurred. An agent was killed. And from there, Fast and Furious—this is now what we call the walking of the guns—became known. Eric Holder shut it down. In that process, a letter was written to the Senate committee saying that it didn't exist. Clearly, an error, I am told. But this House doesn't know today. Never investigated by the committee. But I am told that there was information that the office in Phoenix, Arizona, misled the office in Washington, D.C., and a letter was sent forth that was incorrect. That should be the subject of the investigation: What happened here; what actually went on in Arizona.

Not one witness from the actual operation was called to testify. Not one. So this is really a very strange and botched investigation. If you want to get to the bottom of it, you've got to talk to the people that actually did it. It didn't happen. The Democrats on the committee demanded several times: Bring forth the people who did the Fast and Furious from the Bush administration into the Obama administration. Bring them forward. Get their testimony. Find out what happened. Find out about the communications between the Phoenix office and the Washington, D.C., office. It didn't happen.

So in terms of an investigation, you have a partial investigation focusing on the end of the story rather than on the full story. And today, the first time ever in the history of this Nation, this body voted to hold in contempt a Cabinet official on a half-baked, insufficient investigation that purposefully ignored calling witnesses that were actually engaged in the Fast and Furious operation and who were responsible in the Phoenix office for that operation.

□ 1820

It was a farce. It was a political event, and we walked out. Not a good day.

And as you said a moment ago, there are things we must do. Men and women and families across this country are hurting. They're unemployed. They want jobs. They want to go to work. Transportation, where's the transportation bill? We never did get one out of this House that was meaningful. We just passed a little thing so we can get to conference. It had nothing in it, but it allowed us to go to conference. Where's that bill? How about student interest rates, where's that bill? And what about the jobs program?

What if the September 2011 proposal that President Obama put forward, the American Jobs Act, what if we had taken that up? Three million, 4 million Americans would be working today. What if we had done that? But it didn't happen. Our colleagues on the Republican side refused to bring it up in this House and refused to allow it to be brought up in the Senate. That's sad. That's a very sad thing for America. It is one of the great ''we should haves,'' but we were prevented from doing so.

Mr. ELLISON. Well, Congressman, I have some obligations that require me to curtail our hour a little early. You can carry on if you like.

Mr. GARAMENDI. Well, I, too, must go. But I thank you very much for allowing me to talk about three very important things. I appreciate that, Mr. ELLISON.

Mr. ELLISON. You are famous for nailing the need for a greater investment in manufacturing and supporting American jobs, and I thank you for all of the great work you're doing.

Mr. GARAMENDI. You must mean Make It in America. Spend our tax money on American-made equipment and jobs, not on Chinese or Japanese or anybody else, but on American jobs. We can do that.

Mr. ELLISON. We can do it.

Let me wrap up by saying it has been a great evening, a great day for the American people. The Affordable Care Act has been vindicated in the Supreme Court. Unfortunately, the day is somewhat marred by the unfortunate behavior of the majority in trying to go after Eric Holder. Nonetheless, it's another day in Washington.

The Progressive Caucus will be back next week. Thank you very much.

I yield back the balance of my time.

APPOINTMENT AS MEMBER TO UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

The SPEAKER pro tempore. The Chair announces the Speaker's appointment, pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (22 U.S.C. 7002), as amended, and the order of the House of January 5, 2011, of the following member on the part of the House to the United States-China Economic and Security Review Commission for a term to expire December 31, 2014:

Mr. Peter Brookes, Springfield, Virginia

SUPREME COURT HEALTH CARE DECISION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 5, 2011, the gentleman from Georgia (Mr. GRAVES) is recognized for 60 minutes as the designee of the majority leader.

Mr. GRAVES of Georgia. Mr. Speaker, I rise today with a group of colleagues of mine to speak in contrast to what we just heard. It is shocking to me, not only the news of today and the continuation of the overreach of the Federal Government, but to hear colleagues on the other side of the aisle who are advocating for the Progressive Caucus, the progressive movement in this Nation celebrating, truly celebrating the Supreme Court ruling of today which allows the Federal Government to continue reaching into the homes of American families all across this country in a way that has never been done before, and granted so much more taxing power that has never been granted before, and yet they celebrate.

And they used a lot of different terms, like ''charting the new course.'' That was a phrase that was used by the Progressive Caucus here just a moment ago—charting the new course. One has to wonder: What is this new course? It has been a course that the progressive movement has been on now for nearly a century; and today they are celebrating that course continuing to be charted, and that is a course of more government and less liberty. And that is what this decision was all about today. It was about empowering government and not empowering the American people. It is about creating more government and less liberty. That's what the decision reflected today.

I am joined today by many good friends here in the House of Representatives who are on the side of liberty. They're on the side of the American taxpayers, and they're on the side of the private sector. They believe in free markets and capitalism and profits and success and dreaming, and they don't think that the Federal Government has to get in the way of any of that.

Mr. Speaker, I would like to first yield to the gentleman from New Jersey (Mr. GARRETT) to get his insights on today's decisions.

Mr. GARRETT. Mr. Speaker, I thank Mr. GRAVES for leading the floor tonight on this very important matter. He joins me, I'm sure, in saying that we're all extremely disappointed that we have to come to the floor tonight and that the Supreme Court ruled today that the Commerce Clause does not support the individual mandate, but it may be upheld within Congress's power to lay and collect taxes.

So what we have found today is that Congress cannot use the Commerce Clause to compel you to do something. But, instead, Congress can tax you into submission. It should have been crystal clear that the Commerce Clause, which grants power to Congress to enforce free trade pacts amongst the States, could not use that clause to regulate it.

If Congress can force you to purchase a product, then there is nothing government cannot force you to do. This would have been a violation of your individual liberties as well as the constitutional doctrine of enumerated powers in which Congress is only given few and specific powers.

As the Supreme Court's syllabus of this case states:

> The Framers knew the difference between doing something and doing nothing. They gave Congress the power to regulate commerce, not to compel it. Ignoring that distinction would undermine the principle that the Federal Government is a government of limited and enumerated powers.

But the Supreme Court instead told us that Congress has the power to tax and tax and tax until you submit to it.

Is this at all consistent with the founding principles of this country? Did those brave patriots who fought in the Revolutionary War and faced estrangement from their families, who endured British cannon fire and musket fire, weathered freezing winters and blazing summers, marched without shoes, slept without blankets, and suffered perpetual starvation all so that Congress could tax the people to form their behavior in Congress's image?

Did the Founders, who objected to the Stamp Act, the Sugar Act, and the Declaratory Act, which led our great Nation to revolt, risk the charge of treason and put their lives, fortunes, and sacred honor at risk, all so that they could replace one King who demanded more taxation, and now replace it with a President who demands more taxation? No.

We are Americans, citizens of a constitutional Republic where individual liberty is our birthright, won by our Founding generation's sacrifices. We are not and shall never be mere subjects of a government that can tax its way to tyranny. And disturbing as it is, there are many problems with this majority Court's rationale.

You see, the Obama administration has been confused as to whether or not the monetary penalty for failure to pay is in fact a tax or not. But even if we accept the penalty as a tax, as the Court has rewritten the law to be, such a tax is still unconstitutional for many reasons.

First, the Constitution lays out three types of permissible taxes. This tax is not accessed on income, so it is unconstitutional in that regard. This tax is not assessed uniformly and is triggered by economic inactivity so it is unconstitutional in that regard. And the tax is not apportioned among the States by population, so it is unconstitutional in that regard.

Even more importantly, the Constitution does not grant Congress an independent power to tax for any purpose that it wants. Taxing to provide for the general welfare does not mean there is limitless power of Congress to tax. Rather, it means that a tax must be for a national purpose to achieve the ends that are outlined within the enumerated powers.

Now, this is not only my view; this was the view of James Madison, who ought to know a little bit about the Constitution since he is the man most responsible for it.

There is nothing about the individual mandate defined as a tax that is sanctioned by the Constitution.

But we have strayed far from the Constitution of the Founders. No longer is the ability to tax constrained by the limits imposed by that great document. The growth and power of this government would render it not only unrecognizable, but also repulsive to the Founders.

Madison and his fellow revolutionaries worried about the growth of government and the yielding of liberty. The writings they left for posterity are full of warnings about the fragility of limited government. Madison believed Republican governments would perpetually be on the defensive against the encroachments of aspiring tyrants. John Adams agreed when he said, ''Democracy never lasts long.''

And perhaps the most famous quote of all was Ben Franklin at the Constitutional Convention when he said we have produced ''a republic, if you can keep it.''

And now, 225 years later, we have arrived at this moment.

We should strive to restore the free society of our Founding Fathers that they fought for. If liberty is our goal, the Supreme Court has failed the American people. And so although we come here tonight extremely disappointed that the Supreme Court did not rise to the defense of the Constitution, I can take solace with the knowledge that the people of this country will.

□ 1830

See, the Americans of this country revere the Constitution, and they will not let it be trampled upon. They long cherish their liberties. They will not surrender them without a fight.

Since the enactment of ObamaCare, I have seen the tireless efforts of patriots, both in my district, in the State, and across the country, trying to repeal ObamaCare. I am inspired by their passion, by their determination to defend the Constitution. This generation of Americans will not allow history to say that we presided over the demise of the American experiment in limited government.

Now, it is true that the struggle against ObamaCare has been long and difficult and sometimes met, as today, with disappointing results. But for those of us who still believe in our founding principles, I offer some advice from Thomas Jefferson, who said, ''The ground of liberty is to be gained by inches.''

So we stand here tonight all together, pledging to work alongside the people of this great Nation who will fight inch by inch in defense of the Constitution, and we will repeal ObamaCare. Mr. Speaker, ObamaCare must be repealed entirely, because if it is not, the constitutional Republic and the safeguards of our natural rights through limited government will be lost.

Mr. GRAVES of Georgia. I thank the gentleman from New Jersey for your inspirational remarks reflecting back on the history of this country and the great leaders and the Founders and the principles which this Nation was based upon. While the erosion continues—and we've seen more of it even today with the ruling—the resolve is even stronger.

So to those that may be listening or watching, you can know that there is a group of Members in the House of Representatives that are not going to let up, that are going to be fully resolved to repealing ObamaCare in its entirety, pulling it out, each and every root of this legislation, and empowering the people and not empowering government. Because, why? Because this is not a government of the Court, by the Court, or for the Court. This is a government of the people, by the people, and for the people, and I am convinced that the people will have their voice heard in the next few months.

So as we heard from the progressives earlier in their continued march down this new chartered course of more government and less liberty, we are thankfully joined tonight by a great friend of liberty and a great advocate of liberty, and that is Louis Gohmert from Texas.

I'd like to yield to the gentleman from Texas.

Mr. GOHMERT. I sure do appreciate my friend from Georgia. He is an absolute patriot, standing for truth, justice, and what used to be the American way. It is, according to the Supreme Court, not so much anymore. And I appreciate the gentleman for yielding.

I've been going through this decision, and having been an attorney—and I've been a prosecutor and a judge and a chief justice. It was a small, three-judge court, but you learn things—you go to judicial conferences—about how to write opinions and things, never to the level of the United States Supreme Court. But as a certified member of the United States Supreme Court Bar, you follow the holdings of the courts.

So it's been with great interest, after I got my wind back from having found that Chief Justice Roberts wrote the opinion for the five-person majority, okay, so we start going through the opinion. Let's see how in the world he came to this conclusion.

Well, I'll be very brief in jumping through, even though it's a very long opinion, including the dissents. But the first thing that the Court had to consider is the Anti-Injunction Act that was passed by Congress years ago that makes very clear that the Supreme Court cannot take up any issue regarding a tax unless the tax has actually been levied and someone required to pay the tax, and then someone against whom the tax has been levied—required to pay that tax—files suit, that person then has standing. Well, under ObamaCare, if the mandate is a tax, the penalty is a tax, then the Anti-Injunction Act would kick in and no one would be allowed to have standing before the Federal district court, court of appeals, and certainly not the U.S. Supreme Court.

So the first thing the Supreme Court had to get past was the issue of: Is this penalty a tax? Because if it's a tax, then the Supreme Court must throw this case out, announce that the plaintiffs in these cases have no standing—and will not until around 2014—until such time as the tax is levied.

So the Court goes through, and if anybody prints out the decision, you can look at pages 11 through 15 specifically where they discuss the Anti-Injunction Act. They point out just, in essence, what I have hopefully clarified: If it's a penalty, then the Court can take it up. If the penalty that you must pay for not buying the insurance is a tax, then this case goes out, no Supreme Court decision for at least 2 to 4 years.

So Chief Justice Roberts—brilliant man, there's no question he's a very brilliant intellectual—he indicates this and says:

Congress's decision to label this exaction a penalty rather than a tax is significant because the Affordable Care Act describes many other exactions it creates that are taxes.

And he says this:

Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally.

So he goes on and he says:

The Anti-Injunction Act and the Affordable Care Act are creatures of Congress' own creation. How they relate to each other is up to Congress, and the best evidence—the Supreme Court's words, Justice Roberts' words—the best evidence of Congress' intent is the statutory language, the statutory text.

So he goes on to conclude that since Congress says in ObamaCare, the Affordable Care Act—boy, is that a misnomer, the Affordable Care Act—since Congress calls it a penalty, then Justice Roberts and the majority say it's not a tax; it is a penalty.

So around page 15 or so, 15, 16, they come around and say—I guess, 15, okay:

Congress made clear that the penalty is what it is—not a tax. Therefore, the Anti-Injunction Act does not apply, so our Court has jurisdiction. As he says, the Anti-Injunction Act, therefore, does not apply to this suit since it's a penalty and not a tax. Therefore, as he says, we may proceed to the merits.

Okay. So he clears it's a penalty; it's not a tax. Because if it's a tax, they can't do anything; they've got to throw it out. Okay. So it's a penalty, not a tax.

So then he goes on, after page 16, he goes on in the majority opinion to discuss this issue of whether or not it violates the Commerce Clause, this penalty. He comes to the proper conclusion that if Congress can mandate a penalty for not buying a product, there's nothing to stop Congress from intruding in every area of individual Americans' lives.

It's mentioned in this opinion that the main purpose—one of the two main purposes is to bring down the cost of health care. The Supreme Court thinks that's a legitimate reason to pass an act, bring down the cost of health care. But Justice Roberts and the majority decide it would violate the Commerce Clause, because if you can force individual Americans to buy a particular product in order to bring down the cost of health care, you can order anything. You and I can be ordered to join a gym and to start exercising X number of hours a week.

We're told that the Federal Government does not monitor debit card and credit card purchases—although, supposedly it could. Well, if it has a duty to bring down health care costs and it has the ability to watch your purchases, and, under ObamaCare, the Federal Government, through their relationship with General Electric—sweetheart deal they did with GE—they're going to hold everybody's medical records. So if they're holding everybody's medical records, then I don't know why they wouldn't go ahead and monitor everybody's cholesterol rate, blood pressure, things like that.

□ 1840

And so it could conceivably get to the point where, gee, you get a letter from the government that says, we notice your cholesterol rate's up to 250 or so and we notice you bought bacon this weekend. What were you thinking? You know, you've got to take that back. You can't keep bacon.

Anyway, there's no limit to what Congress can do to intrude in people's lives. And I'd point out to my friend from Georgia, liberals are constantly

on the protection of bedroom privacy rights. I really thought that once they fully examined the potential effect of ObamaCare, they would be standing down here with you and me and my other friends hear, Louisiana, Georgia, they'd be out here saying, wait a minute. If the government has the right to order us to do or not do acts or buy or not buy products for the sole purpose of bringing down the costs of health care, there are studies that say some certain relational activities create more risk for health care problems than others, so if this is true, the Federal Government would have the right not only to invade the kitchen and the bathroom, but head straight to the bedroom and dictate people's rights.

I didn't want to go there, and I felt like once we found out that Chief Justice Roberts makes clear, this is a penalty, not a tax, it violates the Commerce Clause to force people to buy a product like this, you would think that would be the end of it.

But then Chief Justice Roberts goes on, and it doesn't make sense because then he begins to say, well, it violates the Commerce Clause, but does it violate the Tax-and-Spend Clause?

And then he goes through and makes a case for saying, it's not a penalty, it's a tax. And he's already told us that the best way to tell what it is is to look what Congress called it. And I think, in this case, not only look what Congress called it, look at what the President called it.

I just happen to have a partial excerpt or an excerpt from the transcript of a show the President did with his friend, George Stephanopolous. And Stephanopolous is asking him about it and said, you know, under this mandate, the government's forcing people to spend money, fining you if you don't. How is that not a tax?

Well, President Obama goes on and he lays out all this weak gibberish, and eventually gets—Stephanopolous interrupts him and says, okay, that may be, but it's still a tax increase. And the President said, that's not true, George. For us to say that you've got to take responsibility to get health insurance is absolutely not a tax increase.

The President also says, nobody considers that a tax increase.

He's not done making clear the will of the Congress and of the President, who pushed this bill to make it his shining bill that he had passed through Congress. Stephanopolous goes on and says, I want to check for myself, but your critics say it's a tax increase. President Obama says, my critics say everything is a tax increase.

Stephanopolous: But you reject that it's a tax increase.

President Obama says, I absolutely reject that notion. Not a tax increase.

So you would think that if Chief Justice Roberts and the majority, the other four, are going to uphold the President's prize bill, he might accept what the President said he's done in this bill. But oh, no.

After finding that it's not a tax, it's a penalty, then Chief Justice Roberts comes over to page 39 and he says, the joint dissenters argue that we cannot uphold section 5000(a) as a tax because Congress did not ''frame it'' as such.

And then he goes on and he says, labels should not control here.

What? He just said before, Congress' own expressed written intent is the best evidence of what their intent is. And yet, now he comes over here, page 39 and says, wait, wait, wait. We have to look at what the intent is, but labels should not control.

So then he goes through and makes this ridiculous argument that it is a tax. And he says over here, page 44, the Affordable Care Act's requirement that certain individuals pay a financial penalty for not obtaining health insurance may be reasonably considered as a tax because the Constitution permits such tax. It's not our role to forbid it or to pass upon its wisdom or fairness.

But then, one of the big mysteries in this brilliant man's opinion for the majority uses the first person pronoun, I. Now, you know, anybody that's been a judge, normally you go to judicial conferences, you have seminars, you have training in writing style. If it's an individual judge, sole court opinion, then you'll write it one way. If it's a multiple justice opinion you write it another way.

You see first person pronoun I in dissents, even though it's really not the best grammar to use pronouns in dissents. But you don't see them in well-written majority opinions. And Chief Justice Roberts is one of the best linguists we've had on the Court.

And he takes Justice Ginsberg to task a few different places in the majority opinion, and yet, she is one of his voting justices to support the majority. That doesn't make sense.

You don't normally see one justice writing the majority opinion take off and criticize someone who's voting with him. That doesn't make sense. But here at page 44 he says, Justice Ginsberg questions the necessity of rejecting the government's commerce power argument, given that section 5000(a) can be upheld under the taxing power.

He says, Chief Justice Roberts, majority opinion, but the statute reads more naturally as a command to buy insurance than as a tax. So now he's back to what he originally said before he says it is a tax.

And then he says this: And I, Chief Justice Roberts, would uphold it, talking basically of future perfect tense. I would uphold it as a command if the Constitution allowed it. I would uphold it.

He's writing for the majority. There's no reason for him to have the first person pronoun ''I'' there. It doesn't make sense. I don't know. Maybe this part he was writing as a dissent, and all of a sudden found himself in the majority, and amazingly, nobody caught this problem of style in writing the opinion.

It doesn't make sense that a man that smart would have a product this poor, using first person, criticizing another justice in the majority with him, then saying what he would do. Well, he is doing, he's writing the majority opinion. He has no business saying that.

And then he goes through, it says the States also can end Medicaid, expansion exceeds authority under the spending clause. But basically he comes back and upholds it, and then strikes down that you can't force the States to do these things.

But, I remind my friends, the President says it's absolutely not a tax. The only way this bill gets upheld is if the Supreme Court finds it is a tax after they find jurisdiction by saying it's not a tax.

But this is the same President who said, if you like your health insurance, you're going to keep it. He said, if you like your doctor, you can keep your doctor. We found those were lies.

He said, it's going to bring down the cost of health care. In every indication we've seen, insurance has dramatically gone up. And I get tired of hearing people say, because their memories are poor in here across the aisle, well, look at the good things in here. Twenty-six year olds can be on their own parents' insurance. Gee, you can buy insurance across State lines because of us. We've taken care of the unfairness that some insurance used with preexisting conditions as an exclusion.

But I would encourage my friends, I know my colleagues here remember, back when they had the House, they had the Senate majority, they had the White House, Republicans, many of us begged them, let us do some bipartisan bills together because we can agree. It's not a problem to let 26-year olds stay on your parents' insurance. Heck, the insurance companies love that because they are usually healthy. It's not a big cost. So we were going to be able to agree on that.

It was a Republican, heck, John Shadegg is the first one I ever heard saying you've got to sell insurance across State lines. That was a Republican idea, so of course most of us supported that.

□ 1850

As for the preexisting conditions, most of us are aware of circumstances in which insurance companies have been grossly unfair in using that exclusion. We were prepared to reach some agreements and have bipartisan, standalone bills. I know that my friend Dr. PRICE out here had some concern about health care, his having devoted his life to it before government, trying to fix what government had done to health care. People have been concerned about it. We were willing to agree on these things, but they would not have it.

So to say without ObamaCare we don't have these other things is simply not true, and it forgets current history. We were ready to agree on standalone

bills. They didn't want a bipartisan agreement. They wanted the whole brass ring and to shove it around our heads, around our necks, and eventually down our throats, and that is what has happened. I've been amazed at how many people have picked up laws and started reading them, and I would encourage them to read this opinion. It's a very, very strange opinion. It contradicts itself on so many levels.

ObamaCare takes away religious freedom. I'm Baptist. I see what they're doing to the Catholics, and I don't want to someday say, ''I saw what they did to the Catholics, and I remained silent,'' and eventually there was nobody to object when they did it to me. We all have to stand together, and I'm grateful to stand with my friends.

One other comment. I heard my Democrat friends before we spoke say, without this ObamaCare bill, these clinics will die.

There have been clinics before the ObamaCare bill that helped. We have some in my district, and they're doing wonderful work. They need more help. The best are, really, charitable institutions. The clinics are not going to die.

What came from the President's mouth and was also in his town hall was when a woman in the White House, as part of the town hall, said, Mr. President, at an advanced age, my mother got a pacemaker. If the doctor had not met her, the cardiologist was not going to let her have a pacemaker. After he met her, he said, absolutely, and she has lived years beyond that since she has had a pacemaker. So would you consider someone's quality of life under your panels—we know they don't want to call them ''death panels,'' but whatever you want to call them—will they be able to consider the quality of life that people have before they agree or disagree to let them have a procedure?

The President beat around the bush as he did with Stephanopoulos—and you can find the transcript. It's available on the Net—and ultimately said, You know, maybe we're just better off telling your mother to take a pain pill. You don't get a pacemaker. You don't get these additional years of life. You get a pain pill.

So, when our friends across the aisle tonight say that the clinics will die, I would humbly submit that, based on the President's own words, it's not the clinics that will die under this bill.

I thank you so much for your generous yielding of so much time. It's a bad opinion, and I appreciate having the time to walk through some of it.

Mr. GRAVES of Georgia. I thank the gentleman from Texas for walking us through the opinion.

I hope all those who are viewing this understand that this is about a tax now. This is a new taxing authority, in essence, a broadening of the taxing authority. As Mr. GOHMERT brought up, this is unheard of. We will now have a Federal Government that can do whatever it wants to do through taxation.

In just thinking about the difference between ''tax'' and ''penalty,'' I guess one way to find out is, who do you send the check to, right? I mean, where is the bill coming from? I imagine it's going to be from the Internal Revenue Service. I remember being on the Appropriations Committee and having the IRS before us. It was wanting hundreds of millions of more dollars to hire more people for the implementation of ObamaCare, and now we all know why, and we know what that agency or that department collects.

So here is the crux of the decision today:

While the Court might have said, well, the Federal Government can't tell you what to do, they can sure as heck punish you through taxes if you don't do what they want you to do, which is to be followed up here by my friend from Kansas (Mr. HUELSKAMP) who has got some great insight.

Thank you for joining us.

Mr. HUELSKAMP. Thank you, Congressman GRAVES. I appreciate your leadership. Sometimes we wish there had been someone like you on the Court today.

Actually, before we forget, as for one of the five votes that upheld ObamaCare, in any other court of law, that Justice would have recused herself. The decision might have only been 4–4. Justice Kagan should not have been in on this decision. In any other court, she would have been recused. If a lawyer had refused to recuse himself as a judge, he would have been violating ethical rules. Every attorney in this country knows that, including the Chief Justice, and they said nothing.

Do you know what? I'm not here to talk specifically about that. You talked about taxes. Our other Congressman friend did as well.

In this bill, there are 21 tax increases by the definition of the Court, but I want to talk about two in particular because I believe, when we look back on the American system of a once limited government, this day, June 28, 2012, will stand as the definitive date in the advance of government tyranny. In today's ruling, a slim majority of the Court turned the Constitution on its head and ruled that the Federal Government, in effect, can force upon the American people anything it darned well pleases so long as it's called a ''tax.''

Let's not forget that, when our Founding Fathers put everything on the line, risking life, limb, and property to make us an independent Nation, they did so in order to ensure that no man was taxed without representation. They also asserted that every man and woman has inalienable rights that are not to be violated by the government. They enshrined these concepts in the Declaration of Independence and, ultimately, in our Constitution.

Today, in my opinion, the Supreme Court offered a perverse interpretation of the Bill of Rights. Just across the street from here, they said that, even though you have a right to do something, the decision to exercise that right will incur a tax. The decision to exercise that right, said the Chief Justice of the U.S. Supreme Court, will incur a tax.

Can you imagine the limitless possibilities for Washington? Why not extend this interpretation to other parts of the Constitution? For example, why not tax the exercise of your First Amendment rights?

Sure, you've got First Amendment rights. Send your Member of Congress a letter, but pay a fine to the government. That makes sense under this ruling. Sell a newspaper or publish a blog. Don't forget to tell the IRS and the new 16,500 agents they want to hire to enforce it. What about a right to a fair and speedy trial? That's guaranteed, but you know, that's yours to have but for a fee.

That's the lack of logic. For average Americans who love their Constitution, these are guaranteed. They're not allowed to be imposed if you pay the fine or the fee.

One thing in particular I want to talk about, Congressman GRAVES, is that, in addition to this health insurance mandate tax, the President's health care law creates what is clearly a religion tax. A religion tax? Yes, you heard me right, and it's even if you morally or ethically disagree with something being promoted.

Right now, HHS Secretary Kathleen Sebelius and former Governor of Kansas, look at her record. Most Americans would completely disagree with her moral views, but if you disagree with her mandates of the President's health care plan, it doesn't matter. You will still have to pay for it. If you dare to follow your conscience and, maybe, actually practice your faith or no faith whatsoever and refuse to participate, you will be fined. Why? You will be taxed because of what you believe and your desire to live it out. You will be forced to give your hard-earned money to the IRS in Washington, D.C., because of what you believe. That, my friends, is a religion tax. It's a faith tax. It's a direct attack on our freedom of religion.

Now, today the Court didn't rule on that. There are dozens and dozens and dozens of lawsuits coming on about the HHS mandate coming out of ObamaCare. This is the start: a tax on religion.

I have an employer who sent me an email. He said, Well, Tim, everybody is talking about the individual mandate. What about the employer mandate? I don't want to cover abortions for my employees. I refuse to participate.

He will be fined $3,000 at a minimum for every single employee. Why? Because of what he believes.

That's why we started this country—for freedom to believe as we ought, not as the government or as the king or as

the Chief Justice would have us believe. But they didn't address this directly in this decision; they'll be coming. This is a shocking attack, I believe, on the first supreme right in the First Amendment, which is the right to believe in and follow the God one chooses.

□ 1900

The Supreme Court may not have dealt ObamaCare the death it deserved, but it's incumbent upon each and every one of us here in Congress and each and every American. I would have loved to have witnessed a home run, knock it out of the park and say it's clearly unconstitutional. Again, if Justice Kagan had been ethical, it would have been a 4–4 decision. They didn't worry about that. Ethics doesn't matter. It's just the end. It's kind of the Progressive Caucus approach. The end justifies the means, but not in America.

I ask all Americans to realize this decision is not about health care. It's about liberty. When we have created and designed a method by which future Congresses, future Presidents, can get around any limit in the Constitution—the Constitution is a limit on my power, on every power of every Member in this Chamber and every Member across the way and every President of the United States. That's what the Constitution does. It doesn't empower us. It takes away our power.

This Court today has said, if you call it a tax, if you use those three words—even though the Chief Justice says ''labels don't matter.'' He said labels don't matter, and then he turns around and says the word ''tax'' does matter. If you do that, it makes it suddenly constitutional—anything you do, including attacking the very faith that is held by the Chief Justice himself. It says, You cannot hold that faith, Mr. Chief Justice, unless you're willing to be fined by your own government.

That is a travesty of justice in this country.

What this means is we cannot overturn this with this President in the White House. This has taken an issue, and people are ready to work on it and say, You know what? This is going to be the issue for November 6. This is the choice. Do you want the government to mandate and control everything in your lives, as long as they use that magic word? They love to use the ''tax'' word. If you allow them to do that, you allow them to be in every part of your life, which is an absolute contradiction to what this country was founded upon.

I appreciate the leadership of many in this room. I am just a freshman. I was not here when this debate started last time, as some of these colleagues who have been fighting all along. But I tell you, if the folks in the First District of Kansas are any indication of what Americans are saying all over, this is the time. They're going to dust off that Constitution. They're going to read it and say, My goodness. I don't want to lose this. It's too precious.

We're leading the world, and now is the time to take back our government, take back our Constitution, and take back power out of Washington, D.C.

I appreciate the leadership of the gentleman from Georgia.

Mr. GRAVES of Georgia. I thank the gentleman from Kansas for your words.

Regarding unintended consequences, I can tell you there are going to be an amazing amount of unintended consequences with the Affordable Care Act, which I'm not sure that we can call it that anymore. I think it's more like the Limited Care Act. It's the Very Expensive Care Act.

For the Progressives that were here earlier—and I know many folks listened to them—they were celebrating. They were excited. They were happy, gleeful; whereas, we're lamenting but resolved to do away with this once and for all.

Why would they be gleeful? Because it's their movement. That's what they've been trying to do now for almost 100 years, and that is increase the size of government, get it into the lives of the American people, dictate their behavior, and limit freedom.

I read recently that part of their agenda is to divorce the Declaration of Independence and the Constitution. But to use one and to prop up on that one so they can almost sort of claim that they are for the founding of this Nation—and we heard earlier when they used the Declaration of Independence: life, liberty, and the pursuit of happiness. They were celebrating that this was the right bill to be in law because of life, liberty, and the pursuit of happiness. If you can claim that with this legislation, there are no bounds in which you can go with this Federal Government, there are no limits.

As the gentleman from Kansas just raised, this is clearly not about health care. This is about freedom, and this is about liberty and preserving it for future generations.

I would like to yield to the gentleman from Louisiana (Mr. LANDRY).

Mr. LANDRY. Thank you, Mr. GRAVES.

Mr. HUELSKAMP was just on the mark. I will venture to say that today's ruling actually extinguishes the fire of life, liberty, and the pursuit of happiness. It destroys life, liberty, and that pursuit.

The question today for this country can best be summed up by President Ronald Reagan when he said, back in the 1960s, in a speech:

Will history write that those who had the most to lose did the least to prevent it from happening?

This is a sad and tragic day for the Constitution. Where are the limits of our government? While the Court has answered that the Commerce Clause does have its limits and gives us that ruling, it takes away by saying that Congress has unlimited taxing power. Its limits are unlimited. I guess that Congress now, when it sees fit to regulate an issue, an industry, need only now to turn to its taxing power, as Mr. HUELSKAMP said.

This law was sold to us as a mandate and not a tax. It was reaffirmed by the President that this is not a tax. Yet, when the arguments were made to its constitutionality, this administration took the position that it was a tax, and the Court agreed.

Let's see the taxes. In 2010, an excise tax on charitable hospitals was enacted; the codification of the economic substance doctrine; a tax hike of $4.5 billion was implemented; a black liquor tax hike, a tax that increases on the type of biofuel; a tax on innovator drug companies was enacted; a BlueCross/BlueShield tax hike was enacted; a tax on indoor canning services was enacted; a medicine cabinet tax, so that Americans are no longer able to use their FSAs, flexible spending accounts, or HRAs, their health reimbursement pretax dollars to purchase nonprescription over-the-counter medicine was implemented; the HSA withdraw tax hike was implemented; a tax that will take effect this year, the employer reporting of insurance on W–4s.

Where are they going with that, Mr. GRAVES? Where are they going with that?

Remember, not long ago we had a big debate about that, that now we're going to report to the IRS the amount of your insurance policy that your employer gives you on your W–4, because they want to tax that as income.

And then taxes that will take effect in 2013: a surtax on investment income; a hike in the medical payroll tax.

Wait, the medical payroll tax? I thought we had a payroll tax holiday. Not in 2013. We're going to get an increase.

A tax on medical device manufacturers; a flexible spending account cap that is going to affect those parents who have special needs kids.

So those parents who have special needs kids that the other side of this aisle claims to always want to represent, this health care law is now going to tax.

An elimination of the tax deduction for employers that cover prescription drugs; a $500,000 annual executive compensation limit; an individual mandate excise tax; an employer mandate excise tax; a tax on health insurers.

And last but not least, in 2018, an excise tax on comprehensive health insurance plans, which will affect union employees.

This ladder of success that we had in this country has now had three rings of it removed, because now the government tells the individual, if you live below a certain poverty line, you will be given food, shelter, and now health care tax free, no requirement by you who is receiving these, to pay anything back to the government, zero.

□ 1910

What is the incentive to climb? Because the moment you start to climb, you lose these amenities and the government starts to take from you. So

the decision becomes, can I jump high enough to grab a rung so that I can then start paying back and get more of the amenities that the government was giving us and I was provided?

Let me conclude as I began, by asking: Will those who have the most to lose do the least to prevent it from happening? And as I spend time in this city, I have come to realize that the giants of America who have been memorialized for their great contributions to our society did not contribute with the goal of being memorialized but did what was right and just in the eyes of the Lord, with no ego and no agenda other than for the greater good. And that is what this country so desperately needs. We need those giants.

Mr. GRAVES of Georgia. I thank the gentleman from Louisiana.

You brought up one major component of all this legislation. I remember in one of the State of the Unions, the President said, We need tax reform. Tax reform.

I think he got tax reform in this law. What did you say? Twenty-one new taxes are being implemented because of ObamaCare? There are 21 new taxes, and yet the Progressives earlier said, No, this is great for America. Free health care. Affordable health care. No one has to pay. They'll actually get credits back.

Somebody's got to pay. That's the way this place works. Whenever they're promising you something, they're taking from someone else. And you just laid out 21 different areas that impact every American that the President promised he wouldn't raise taxes on. So I appreciate you doing that.

And next, the other component of it is, what's left? What really was in this health care law, this Big Government expansion, this overreach into the homes of American families? A tremendous amount is left.

I know Dr. PRICE from Georgia has been leading the fight not only against this measure, but for positive patient-centered and patient-driven measures as well. And I want to thank you for joining us and sharing with us.

Mr. PRICE of Georgia. Thank you, Mr. GRAVES, so very much. I want to commend you for your work on this issue and your leadership for principled solutions, principled solutions in the area of health care and everywhere else.

I know that Republicans think every day is the Fourth of July and Democrats think that every day is April 15. Why would I say that? Today we've been highlighting it in this conversation we're having here, because our friends on the other side of the aisle believe that every day is another day to raise taxes.

Today the Supreme Court of the United States said, If you want to raise taxes, have at it. Raise them as high as you want. In fact, the Democrats are so incredibly happy this day because it's not just that they can now raise taxes or fight to raise taxes on what we do, but goodness gracious, they can fight to raise taxes on what we don't do. In fact, if you don't do something, then the Federal Government can say, Oh, you'd better do that or we're going to raise your taxes. And that is exactly what the Court said today, which confounds and astounds everybody.

I was privileged to sit in the Court today, though, and hear the reading of the ruling, and Chief Justice Roberts said one thing that I found very, very interesting. He said, ''It's not our job to protect citizens from their political decisions.''

''It's not our job to protect citizens from their political decisions.'' And that's exactly what this was. This decision was fixed on Election Day in 2008. This decision came down on Election Day 2008.

As a physician, I want to talk for a very brief moment here about the incredible importance of Election Day 2012 because, as you said, Mr. GRAVES, there are a lot of things in this bill that we're not just talking about money. As a physician, I know what we're talking about is people's lives, the health care of the American people. And nothing could be so important, nothing could be so personal.

And what the Court said today is, Let the things in there stand. The $500 billion reduction, the $500 billion decrease from the Medicare program—taking the Medicare program and saying, You don't need that money, seniors in this country. You don't need that money. We're going to use it over here.

What does that mean? What that means is that those seniors—your parents, your grandparents, the parents and grandparents of this great country, the people of the Greatest Generation cited by this country, are now going to have diminished health care.

And how are they going to do it? They're not going to do it through the front door. They're not going to say, We're going to decrease this care for you transparently, openly. Oh, no. They're going to do it through the backdoor, something called the Independent Payment Advisory Board that we've talked about before, the 15-member bureaucratic panel. Nonelected individuals are going to have the power, under this law, to say, Dr. Smith, you can't do that for Mrs. Jones. If you do it, we're not going to pay you. That's the coercive power of this government. That's the coercive power that this Court today said is okay.

Well, Mr. GRAVES, you and I both know that it's not okay for us, and it's not okay for the American people. And that's why we stand here tonight, and we say with every ounce of our being that the election that occurred in 2008 may have written this in stone, but there are some sandblasters out there. And what we're going to do between now and the first Tuesday in November is to make certain that the American people understand and appreciate that there are folks in this town who are fighting as hard as we can to uphold the rule of law, to uphold the Constitution, and to adhere to those fundamental principles, especially in health care—the principles of affordability and accessibility and quality and choices for the American people.

The bad news was written today. The good news is that you can solve all of these challenges in health care without putting the Federal Government in charge of the thing. We've got the solutions. We've talked about them before. We'll be going on the road now talking about them from now until November, because the American people want to know that there is somebody fighting for them in this town on their behalf. And we are.

What we need from the American people is for them to stand up and say, No more. We will not tolerate a government that will reach into our lives and destroy quality health care in this country to the degree that the Court said it was okay to do today.

I thank my friend for the wonderful work you are doing and for yielding me this time.

Mr. GRAVES of Georgia. I thank the gentleman from Georgia.

Not only are you a physician—you are not here speaking on behalf of physicians. You are here speaking on behalf of patients all across this country and defending them. And I appreciate the great fight that you are putting on and the resolve that you have for each of us, as you are leading us here as Republicans here in the House.

As we go into the last 5 minutes here with the gentleman from Utah (Mr. BISHOP), he brought up the government right now taxes us on what we do or consume, but this is a first in which the government can now tax you on what you don't do. That's an amazing concept. I hadn't really thought of it that way until Mr. PRICE brought it up.

So now the Federal Government has moved into a realm which has never been here before, saying, Hey, because you're not doing something, I'm going to tax you. So I'm going to determine what it is that you should be doing that you are not doing so, therefore, I can collect a little revenue. And here we are today with something such as this.

As we are just wrapping up this spirited discussion here, earlier, Mr. BISHOP, you heard the Progressives celebrating this decision today.

What were they celebrating? The Federal Government can tax you if you do something. But today's celebration was the fact that the Federal Government can tax you when you don't do something.

I appreciate you joining us tonight and giving your thoughts from the great State of Utah.

Mr. BISHOP of Utah. I appreciate the gentleman for yielding me a few moments here. Truly, this is a unique day. And I'm happy to join my colleagues in talking about this particular issue.

You know, the old cliche is simply, a Supreme Court decision should not be

confused with constitutional principles. Today we had one case brought by States to the Supreme Court. And the administration has always said, This ObamaCare is not a tax. It is not a tax.

Well, the Court said, on five of the nine decisions, Yes, it is a tax. And I guess it's legal if you call it a tax. Four of the nine said not even that's good enough; but, nonetheless, it's a tax.

□ 1920

It's appropriate that we talk about that power of taxing because the most famous of all cases, McCulloch v. Maryland, which was one the major decisions actually made in this particular building, simply said the power to tax is the power to destroy. And we have that in front of us right now.

I don't think we should've expected judges to do what the legislative branch—in this case, Congress—ought do. And I think it's positive that we move forward in this effort to make sure that this program does not go into effect and we take concerns for our constituents and maybe even learn something from it.

The idea of judicial review didn't exist for the first decade and a half of this country. Marbury v. Madison didn't happen until almost 15 years into the country. Washington, in the Constitutional Convention, also thought the veto should be what determined constitutionality, kind of executive review, and Jefferson always said there should be legislative review.

So I think perhaps our Founding Fathers thought all branches should be involved in that kind of concept. And I think there should be a fourth one added to it, which is the States at the same time, who started this process of going to the courts. But we don't come on this floor often and quote anti-Federalists because they lost. However, I want to today, because even though they were wrong on the Constitution, every once in a while they were right on some of the concepts.

So in the ''17th Letter from a Federalist Farmer,'' written either by Melancthon Smith or one of the Lees of Virginia—no one really knows who actually did it—he talked about this idea that the States, if we have the concept of federalism, should have some power to do some real things. He simply said:

> I have often heard it observed that our people are well informed and will not submit to oppressive governments, that the State governments will be ready advocates. But of what avail will these circumstances be if the State governments, thus allowed to be guardians of the people, possess no kind of power to stop the laws of Congress injurious to the people?

One of the things they quickly said is States really don't have the concept or the power to actually involve themselves in this particular issue. There are some concepts that are out there. The repeal amendment, which is proposed by some legal scholars and has been proposed by some State organizations, would actually give a tool for States to be involved in this discussion because it impacts those States. Right now, they simply have to accept what takes place here in the rarified air by the Potomac River.

But, indeed, if we gave the States a tool so if enough States were to ban together to say, No, we disagree with this rule, we disagree with this regulation, we disagree with this law, we even disagree with this Supreme Court decision, the States would have the ability to add a new check and a new balance to make sure that the common people of this country have some kind of voice in these decisions.

I think one of the things we should learn from today's decision is that we desperately need another check and balance in our process to make federalism a realistic and real term, and that means to involve the States in giving them some powers to have real decisions, not so they have to come to us as they have so far, begging, but so they can actually have a say. I think we would be better off as a Nation if we did it.

This decision today, if nothing more, should add a resolve for us to solve a political problem politically, to do it here in the Halls of Congress, but maybe add another player in this process—the States—so they also have a say in this power to tax, which is the power to destroy.

I realize we're coming close to time. I want to give my good friend from Georgia the chance of giving the final word on this particular issue, and I appreciate his efforts to organize this opportunity to talk about what has happened today.

Mr. GRAVES of Georgia. Thank you for your comments tonight and your great insight and reflecting back on early documents and early words that have been shared.

Mr. Speaker, as we conclude tonight, I want the American people to know that we are resolved to restore the liberty that was lost today through the full repeal of ObamaCare. That will be our focus as Republicans in the House.

I yield back the balance of my time.

CONFERENCE REPORT ON H.R. 4348, MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT

Mr. MICA (during the Special Order of Mr. GRAVES of Georgia) submitted the following conference report and statement on the bill (H.R. 4348) to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes:

CONFERENCE REPORT (H. REPT. 112–557)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4348), to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

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

SECTION 1. SHORT TITLE; ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Moving Ahead for Progress in the 21st Century Act'' or the ''MAP–21''.

(b) DIVISIONS.—This Act is organized into 8 divisions as follows:

(1) Division A–Federal-aid Highways and Highway Safety Construction Programs.

(2) Division B–Public Transportation.

(3) Division C–Transportation Safety and Surface Transportation Policy.

(4) Division D–Finance.

(5) Division E–Research and Education.

(6) Division F–Miscellaneous.

(7) Division G–Surface Transportation Extension.

(8) Division H–Budgetary Effects.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; organization of Act into divisions; table of contents.
Sec. 2. Definitions.
Sec. 3. Effective date.

DIVISION A—FEDERAL-AID HIGHWAYS AND HIGHWAY SAFETY CONSTRUCTION PROGRAMS

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Authorizations and Programs

Sec. 1101. Authorization of appropriations.
Sec. 1102. Obligation ceiling.
Sec. 1103. Definitions.
Sec. 1104. National Highway System.
Sec. 1105. Apportionment.
Sec. 1106. National highway performance program.
Sec. 1107. Emergency relief.
Sec. 1108. Surface transportation program.
Sec. 1109. Workforce development.
Sec. 1110. Highway use tax evasion projects.
Sec. 1111. National bridge and tunnel inventory and inspection standards.
Sec. 1112. Highway safety improvement program.
Sec. 1113. Congestion mitigation and air quality improvement program.
Sec. 1114. Territorial and Puerto Rico highway program.
Sec. 1115. National freight policy.
Sec. 1116. Prioritization of projects to improve freight movement.
Sec. 1117. State freight advisory committees.
Sec. 1118. State freight plans.
Sec. 1119. Federal lands and tribal transportation programs.
Sec. 1120. Projects of national and regional significance.
Sec. 1121. Construction of ferry boats and ferry terminal facilities.
Sec. 1122. Transportation alternatives.
Sec. 1123. Tribal high priority projects program.

Subtitle B—Performance Management

Sec. 1201. Metropolitan transportation planning.
Sec. 1202. Statewide and nonmetropolitan transportation planning.
Sec. 1203. National goals and performance management measures.

Subtitle C—Acceleration of Project Delivery

Sec. 1301. Declaration of policy and project delivery initiative.

Sec. 1302. Advance acquisition of real property interests.
Sec. 1303. Letting of contracts.
Sec. 1304. Innovative project delivery methods.
Sec. 1305. Efficient environmental reviews for project decisionmaking.
Sec. 1306. Accelerated decisionmaking.
Sec. 1307. Assistance to affected Federal and State agencies.
Sec. 1308. Limitations on claims.
Sec. 1309. Accelerating completion of complex projects within 4 years.
Sec. 1310. Integration of planning and environmental review.
Sec. 1311. Development of programmatic mitigation plans.
Sec. 1312. State assumption of responsibility for categorical exclusions.
Sec. 1313. Surface transportation project delivery program.
Sec. 1314. Application of categorical exclusions for multimodal projects.
Sec. 1315. Categorical exclusions in emergencies.
Sec. 1316. Categorical exclusions for projects within the right-of-way.
Sec. 1317. Categorical exclusion for projects of limited Federal assistance.
Sec. 1318. Programmatic agreements and additional categorical exclusions.
Sec. 1319. Accelerated decisionmaking in environmental reviews.
Sec. 1320. Memoranda of agency agreements for early coordination.
Sec. 1321. Environmental procedures initiative.
Sec. 1322. Review of State environmental reviews and approvals for the purpose of eliminating duplication of environmental reviews.
Sec. 1323. Review of Federal project and program delivery.

Subtitle D—Highway Safety

Sec. 1401. Jason's law.
Sec. 1402. Open container requirements.
Sec. 1403. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence.
Sec. 1404. Adjustments to penalty provisions.
Sec. 1405. Highway worker safety.

Subtitle E—Miscellaneous

Sec. 1501. Real-time ridesharing.
Sec. 1502. Program efficiencies.
Sec. 1503. Project approval and oversight.
Sec. 1504. Standards.
Sec. 1505. Justification reports for access points on the Interstate System.
Sec. 1506. Construction.
Sec. 1507. Maintenance.
Sec. 1508. Federal share payable.
Sec. 1509. Transferability of Federal-aid highway funds.
Sec. 1510. Idle reduction technology.
Sec. 1511. Special permits during periods of national emergency.
Sec. 1512. Tolling.
Sec. 1513. Miscellaneous parking amendments.
Sec. 1514. HOV facilities.
Sec. 1515. Funding flexibility for transportation emergencies.
Sec. 1516. Defense access road program enhancements to address transportation infrastructure in the vicinity of military installations.
Sec. 1517. Mapping.
Sec. 1518. Buy America provisions.
Sec. 1519. Consolidation of programs; repeal of obsolete provisions.
Sec. 1520. Denali Commission.
Sec. 1521. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 amendments.
Sec. 1522. Extension of public transit vehicle exemption from axle weight restrictions.
Sec. 1523. Use of debris from demolished bridges and overpasses.
Sec. 1524. Use of youth service and conservation corps.
Sec. 1525. State autonomy for culvert pipe selection.
Sec. 1526. Evacuation routes.
Sec. 1527. Consolidation of grants.
Sec. 1528. Appalachian development highway system.
Sec. 1529. Engineering judgment.
Sec. 1530. Transportation training and employment programs.
Sec. 1531. Notice of certain grant awards.
Sec. 1532. Budget justification.
Sec. 1533. Prohibition on use of funds for automated traffic enforcement.
Sec. 1534. Public-private partnerships.
Sec. 1535. Report on Highway Trust Fund expenditures.
Sec. 1536. Sense of Congress on harbor maintenance.
Sec. 1537. Estimate of harbor maintenance needs.
Sec. 1538. Asian carp.
Sec. 1539. Rest areas.

Subtitle F—Gulf Coast Restoration

Sec. 1601. Short title.
Sec. 1602. Gulf Coast Restoration Trust Fund.
Sec. 1603. Gulf Coast natural resources restoration and economic recovery.
Sec. 1604. Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program.
Sec. 1605. Centers of excellence research grants.
Sec. 1606. Effect.
Sec. 1607. Restoration and protection activity limitations.
Sec. 1608. Inspector General.

TITLE II—AMERICA FAST FORWARD FINANCING INNOVATION

Sec. 2001. Short title.
Sec. 2002. Transportation Infrastructure Finance and Innovation Act of 1998 amendments.

DIVISION B—PUBLIC TRANSPORTATION

Sec. 20001. Short title.
Sec. 20002. Repeals.
Sec. 20003. Policies and purposes.
Sec. 20004. Definitions.
Sec. 20005. Metropolitan transportation planning.
Sec. 20006. Statewide and nonmetropolitan transportation planning.
Sec. 20007. Urbanized area formula grants.
Sec. 20008. Fixed guideway capital investment grants.
Sec. 20009. Mobility of seniors and individuals with disabilities.
Sec. 20010. Formula grants for rural areas.
Sec. 20011. Research, development, demonstration, and deployment projects.
Sec. 20012. Technical assistance and standards development.
Sec. 20013. Private sector participation.
Sec. 20014. Bus testing facilities.
Sec. 20015. Human resources and training.
Sec. 20016. General provisions.
Sec. 20017. Public Transportation Emergency Relief Program.
Sec. 20018. Contract requirements.
Sec. 20019. Transit asset management.
Sec. 20020. Project management oversight.
Sec. 20021. Public transportation safety.
Sec. 20022. Alcohol and controlled substances testing.
Sec. 20023. Nondiscrimination.
Sec. 20024. Administrative provisions.
Sec. 20025. National transit database.
Sec. 20026. Apportionment of appropriations for formula grants.
Sec. 20027. State of good repair grants.
Sec. 20028. Authorizations.
Sec. 20029. Bus and bus facilities formula grants.
Sec. 20030. Technical and conforming amendments.

DIVISION C—TRANSPORTATION SAFETY AND SURFACE TRANSPORTATION POLICY

TITLE I—MOTOR VEHICLE AND HIGHWAY SAFETY IMPROVEMENT ACT OF 2012

Sec. 31001. Short title.
Sec. 31002. Definition.

Subtitle A—Highway Safety

Sec. 31101. Authorization of appropriations.
Sec. 31102. Highway safety programs.
Sec. 31103. Highway safety research and development.
Sec. 31104. National driver register.
Sec. 31105. National priority safety programs.
Sec. 31106. High visibility enforcement program.
Sec. 31107. Agency accountability.
Sec. 31108. Emergency medical services.
Sec. 31109. Repeal of programs.

Subtitle B—Enhanced Safety Authorities

Sec. 31201. Definition of motor vehicle equipment.
Sec. 31202. Permit reminder system for non-use of safety belts.
Sec. 31203. Civil penalties.
Sec. 31204. Motor vehicle safety research and development.
Sec. 31205. Odometer requirements.
Sec. 31206. Increased penalties and damages for odometer fraud.
Sec. 31207. Extend prohibitions on importing noncompliant vehicles and equipment to defective vehicles and equipment.
Sec. 31208. Conditions on importation of vehicles and equipment.
Sec. 31209. Port inspections; samples for examination or testing.

Subtitle C—Transparency and Accountability

Sec. 31301. Public availability of recall information.
Sec. 31302. National Highway Traffic Safety Administration outreach to manufacturer, dealer, and mechanic personnel.
Sec. 31303. Public availability of communications to dealers.
Sec. 31304. Corporate responsibility for National Highway Traffic Safety Administration reports.
Sec. 31305. Passenger motor vehicle information program.
Sec. 31306. Promotion of vehicle defect reporting.
Sec. 31307. Whistleblower protections for motor vehicle manufacturers, part suppliers, and dealership employees.
Sec. 31308. Anti-revolving door.
Sec. 31309. Study of crash data collection.
Sec. 31310. Update means of providing notification; improving efficacy of recalls.
Sec. 31311. Expanding choices of remedy available to manufacturers of replacement equipment.
Sec. 31312. Recall obligations and bankruptcy of manufacturer.
Sec. 31313. Repeal of insurance reports and information provision.
Sec. 31314. Monroney sticker to permit additional safety rating categories.

Subtitle D—Vehicle Electronics and Safety Standards

Sec. 31401. National Highway Traffic Safety Administration electronics, software, and engineering expertise.
Sec. 31402. Electronic systems performance.

Subtitle E—Child Safety Standards

Sec. 31501. Child safety seats.
Sec. 31502. Child restraint anchorage systems.
Sec. 31503. Rear seat belt reminders.
Sec. 31504. Unattended passenger reminders.
Sec. 31505. New deadline.

Subtitle F—Improved Daytime and Nighttime Visibility of Agricultural Equipment

Sec. 31601. Rulemaking on visibility of agricultural equipment.

TITLE II—COMMERCIAL MOTOR VEHICLE SAFETY ENHANCEMENT ACT OF 2012

Sec. 32001. Short title.
Sec. 32002. References to title 49, United States Code.

Subtitle A—Commercial Motor Vehicle Registration

Sec. 32101. Registration of motor carriers.

Sec. 32102. Safety fitness of new operators.
Sec. 32103. Reincarnated carriers.
Sec. 32104. Financial responsibility requirements.
Sec. 32105. USDOT number registration requirement.
Sec. 32106. Registration fee system.
Sec. 32107. Registration update.
Sec. 32108. Increased penalties for operating without registration.
Sec. 32109. Revocation of registration for imminent hazard.
Sec. 32110. Revocation of registration and other penalties for failure to respond to subpoena.
Sec. 32111. Fleetwide out of service order for operating without required registration.
Sec. 32112. Motor carrier and officer patterns of safety violations.

Subtitle B—Commercial Motor Vehicle Safety

Sec. 32201. Crashworthiness standards.
Sec. 32202. Canadian safety rating reciprocity.
Sec. 32203. State reporting of foreign commercial driver convictions.
Sec. 32204. Authority to disqualify foreign commercial drivers.
Sec. 32205. Revocation of foreign motor carrier operating authority for failure to pay civil penalties.
Sec. 32206. Rental truck accident study.

Subtitle C—Driver Safety

Sec. 32301. Hours of service study and electronic logging devices.
Sec. 32302. Driver medical qualifications.
Sec. 32303. Commercial driver's license notification system.
Sec. 32304. Commercial motor vehicle operator training.
Sec. 32305. Commercial driver's license program.
Sec. 32306. Commercial motor vehicle driver information systems.
Sec. 32307. Employer responsibilities.
Sec. 32308. Program to assist Veterans to acquire commercial driver's licenses.

Subtitle D—Safe Roads Act of 2012

Sec. 32401. Short title.
Sec. 32402. National clearinghouse for controlled substance and alcohol test results of commercial motor vehicle operators.

Subtitle E—Enforcement

Sec. 32501. Inspection demand and display of credentials.
Sec. 32502. Out of service penalty for denial of access to records.
Sec. 32503. Penalties for violation of operation out of service orders.
Sec. 32504. Impoundment and immobilization of commercial motor vehicles for imminent hazard.
Sec. 32505. Increased penalties for evasion of regulations.
Sec. 32506. Violations relating to commercial motor vehicle safety regulation and operators.
Sec. 32507. Emergency disqualification for imminent hazard.
Sec. 32508. Disclosure to State and local law enforcement agencies.
Sec. 32509. Grade crossing safety regulations.

Subtitle F—Compliance, Safety, Accountability

Sec. 32601. Motor carrier safety assistance program.
Sec. 32602. Performance and registration information systems management program.
Sec. 32603. Authorization of appropriations.
Sec. 32604. Grants for commercial driver's license program implementation.
Sec. 32605. Commercial vehicle information systems and networks.

Subtitle G—Motorcoach Enhanced Safety Act of 2012

Sec. 32701. Short title.
Sec. 32702. Definitions.
Sec. 32703. Regulations for improved occupant protection, passenger evacuation, and crash avoidance.
Sec. 32704. Fire prevention and mitigation.
Sec. 32705. Occupant protection, collision avoidance, fire causation, and fire extinguisher research and testing.
Sec. 32706. Concurrence of research and rulemaking.
Sec. 32707. Improved oversight of motorcoach service providers.
Sec. 32708. Report on feasibility, benefits, and costs of establishing a system of certification of training programs.
Sec. 32709. Commercial driver's license passenger endorsement requirements.
Sec. 32710. Safety inspection program for commercial motor vehicles of passengers.
Sec. 32711. Regulations.

Subtitle H—Safe Highways and Infrastructure Preservation

Sec. 32801. Comprehensive truck size and weight limits study.
Sec. 32802. Compilation of existing State truck size and weight limit laws.

Subtitle I—Miscellaneous

PART I—MISCELLANEOUS

Sec. 32911. Prohibition of coercion.
Sec. 32912. Motor carrier safety advisory committee.
Sec. 32913. Waivers, exemptions, and pilot programs.
Sec. 32914. Registration requirements.
Sec. 32915. Additional motor carrier registration requirements.
Sec. 32916. Registration of freight forwarders and brokers.
Sec. 32917. Effective periods of registration.
Sec. 32918. Financial security of brokers and freight forwarders.
Sec. 32919. Unlawful brokerage activities.

PART II—HOUSEHOLD GOODS TRANSPORTATION

Sec. 32921. Additional registration requirements for household goods motor carriers.
Sec. 32922. Failure to give up possession of household goods.
Sec. 32923. Settlement authority.

PART III—TECHNICAL AMENDMENTS

Sec. 32931. Update of obsolete text.
Sec. 32932. Correction of interstate commerce commission references.
Sec. 32933. Technical and conforming amendments.
Sec. 32934. Exemptions from requirements for covered farm vehicles.

TITLE III—HAZARDOUS MATERIALS TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2012

Sec. 33001. Short title.
Sec. 33002. Definition.
Sec. 33003. References to title 49, United States Code.
Sec. 33004. Training for emergency responders.
Sec. 33005. Paperless Hazard Communications Pilot Program.
Sec. 33006. Improving data collection, analysis, and reporting.
Sec. 33007. Hazardous material technical assessment, research and development, and analysis program.
Sec. 33008. Hazardous Material Enforcement Training.
Sec. 33009. Inspections.
Sec. 33010. Civil penalties.
Sec. 33011. Reporting of fees.
Sec. 33012. Special permits, approvals, and exclusions.
Sec. 33013. Highway routing disclosures.
Sec. 33014. Motor carrier safety permits.
Sec. 33015. Wetlines.
Sec. 33016. Hazmat employee training requirements and grants.
Sec. 33017. Authorization of appropriations.

TITLE IV—SPORT FISH RESTORATION AND RECREATIONAL BOATING SAFETY ACT OF 2012

Sec. 34001. Short title.
Sec. 34002. Amendment of Federal Aid in Sport Fish Restoration Act.

TITLE V—MISCELLANEOUS

Sec. 35001. Overflights in Grand Canyon National Park.
Sec. 35002. Commercial air tour operations.
Sec. 35003. Qualifications for public aircraft status.

DIVISION D—FINANCE

Sec. 40001. Short title.

TITLE I—EXTENSION OF HIGHWAY TRUST FUND EXPENDITURE AUTHORITY AND RELATED TAXES

Sec. 40101. Extension of trust fund expenditure authority.
Sec. 40102. Extension of highway-related taxes.

TITLE II—REVENUE PROVISIONS

Subtitle A—Leaking Underground Storage Tank Trust Fund

Sec. 40201. Transfer from Leaking Underground Storage Tank Trust Fund to Highway Trust Fund.

Subtitle B—Pension Provisions

PART I—PENSION FUNDING STABILIZATION

Sec. 40211. Pension funding stabilization.

PART II—PBGC PREMIUMS

Sec. 40221. Single employer plan annual premium rates.
Sec. 40222. Multiemployer annual premium rates.

PART III—IMPROVEMENTS OF PBGC

Sec. 40231. Pension Benefit Guaranty Corporation Governance Improvement.
Sec. 40232. Participant and plan sponsor advocate.
Sec. 40233. Quality control procedures for the Pension Benefit Guaranty Corporation.
Sec. 40234. Line of credit repeal.

PART IV—TRANSFERS OF EXCESS PENSION ASSETS

Sec. 40241. Extension for transfers of excess pension assets to retiree health accounts.
Sec. 40242. Transfer of excess pension assets to retiree group term life insurance accounts.

Subtitle C—Additional Transfers to Highway Trust Fund

Sec. 40251. Additional transfers to Highway Trust Fund.

DIVISION E—RESEARCH AND EDUCATION

Sec. 50001. Short title.

TITLE I—FUNDING

Sec. 51001. Authorization of appropriations.

TITLE II—RESEARCH, TECHNOLOGY, AND EDUCATION

Sec. 52001. Research, technology, and education.
Sec. 52002. Surface transportation research, development, and technology.
Sec. 52003. Research and technology development and deployment.
Sec. 52004. Training and education.
Sec. 52005. State planning and research.
Sec. 52006. International highway transportation program.
Sec. 52007. Surface transportation environmental cooperative research program.
Sec. 52008. National cooperative freight research.
Sec. 52009. University transportation centers program.
Sec. 52010. University transportation research.
Sec. 52011. Bureau of Transportation Statistics.
Sec. 52012. Administrative authority.

Sec. 52013. Transportation research and development strategic planning.

TITLE III—INTELLIGENT TRANSPORTATION SYSTEMS RESEARCH

Sec. 53001. Use of funds for ITS activities.
Sec. 53002. Goals and purposes.
Sec. 53003. General authorities and requirements.
Sec. 53004. Research and development.
Sec. 53005. National architecture and standards.
Sec. 53006. Vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment.

DIVISION F—MISCELLANEOUS

TITLE I—REAUTHORIZATION OF CERTAIN PROGRAMS

Subtitle A—Secure Rural Schools and Community Self-determination Program

Sec. 100101. Secure Rural Schools and Community Self-Determination Program.

Subtitle B—Payment in Lieu of Taxes Program

Sec. 100111. Payments in lieu of taxes.

Subtitle C—Offsets

Sec. 100121. Phased retirement authority.
Sec. 100122. Roll-your-own cigarette machines.
Sec. 100123. Change in FMAP increase for disaster recovery states.
Sec. 100124. Repeals.
Sec. 100125. Limitation on payments from the Abandoned Mine Reclamation Fund.

TITLE II—FLOOD INSURANCE

Subtitle A—Flood Insurance Reform and Modernization

Sec. 100201. Short title.
Sec. 100202. Definitions.
Sec. 100203. Extension of National Flood Insurance Program.
Sec. 100204. Availability of insurance for multifamily properties.
Sec. 100205. Reform of premium rate structure.
Sec. 100207. Premium adjustment.
Sec. 100208. Enforcement.
Sec. 100209. Escrow of flood insurance payments.
Sec. 100210. Minimum deductibles for claims under the National Flood Insurance Program.
Sec. 100211. Considerations in determining chargeable premium rates.
Sec. 100212. Reserve fund.
Sec. 100213. Repayment plan for borrowing authority.
Sec. 100214. Payment of condominium claims.
Sec. 100215. Technical mapping advisory council.
Sec. 100216. National flood mapping program.
Sec. 100217. Scope of appeals.
Sec. 100218. Scientific Resolution Panel.
Sec. 100219. Removal of limitation on State contributions for updating flood maps.
Sec. 100220. Coordination.
Sec. 100221. Interagency coordination study.
Sec. 100222. Notice of flood insurance availability under RESPA.
Sec. 100223. Participation in State disaster claims mediation programs.
Sec. 100224. Oversight and expense reimbursements of insurance companies.
Sec. 100225. Mitigation.
Sec. 100226. Flood Protection Structure Accreditation Task Force.
Sec. 100227. Flood in progress determinations.
Sec. 100228. Clarification of residential and commercial coverage limits.
Sec. 100229. Local data requirement.
Sec. 100230. Eligibility for flood insurance for persons residing in communities that have made adequate progress on the reconstruction or improvement of a flood protection system.
Sec. 100231. Studies and reports.
Sec. 100232. Reinsurance.
Sec. 100233. GAO study on business interruption and additional living expenses coverages.
Sec. 100234. Policy disclosures.
Sec. 100235. Report on inclusion of building codes in floodplain management criteria.
Sec. 100236. Study of participation and affordability for certain policyholders.
Sec. 100237. Study and report concerning the participation of Indian tribes and members of Indian tribes in the National Flood Insurance Program.
Sec. 100238. Technical corrections.
Sec. 100239. Use of private insurance to satisfy mandatory purchase requirement.
Sec. 100240. Levees constructed on certain properties.
Sec. 100241. Insurance coverage for private properties affected by flooding from Federal lands.
Sec. 100242. Permissible land use under Federal flood insurance plan.
Sec. 100243. CDBG eligibility for flood insurance outreach activities and community building code administration grants.
Sec. 100244. Termination of force-placed insurance.
Sec. 100245. FEMA authority on transfer of policies.
Sec. 100246. Reimbursement of certain expenses.
Sec. 100247. FIO study on risks, hazards, and insurance.
Sec. 100248. Flood protection improvements constructed on certain properties.
Sec. 100249. No cause of action.

Subtitle B—Alternative Loss Allocation

Sec. 100251. Short title.
Sec. 100252. Assessing and modeling named storms over coastal States.
Sec. 100253. Alternative loss allocation system for indeterminate claims.

Subtitle C—HEARTH Act Amendment

Sec. 100261. HEARTH Act technical corrections.

TITLE III—STUDENT LOAN INTEREST RATE EXTENSION

Sec. 100301. Federal Direct Stafford Loan interest rate extension.
Sec. 100302. Eligibility for, and interest charges on, Federal Direct Stafford Loans for new borrowers on or after July 1, 2013.

DIVISION G—SURFACE TRANSPORTATION EXTENSION

Sec. 110001. Short title.

TITLE I—FEDERAL-AID HIGHWAYS

Sec. 111001. Extension of Federal-aid highway programs.

TITLE II—EXTENSION OF HIGHWAY SAFETY PROGRAMS

Sec. 112001. Extension of National Highway Traffic Safety Administration highway safety programs.
Sec. 112002. Extension of Federal Motor Carrier Safety Administration programs.
Sec. 112003. Additional programs.

TITLE III—PUBLIC TRANSPORTATION PROGRAMS

Sec. 113001. Allocation of funds for planning programs.
Sec. 113002. Special rule for urbanized area formula grants.
Sec. 113003. Allocating amounts for capital investment grants.
Sec. 113004. Apportionment of formula grants for other than urbanized areas.
Sec. 113005. Apportionment based on fixed guideway factors.
Sec. 113006. Authorizations for public transportation.
Sec. 113007. Amendments to SAFETEA–LU.

TITLE IV—EFFECTIVE DATE

Sec. 114001. Effective date.

DIVISION H—BUDGETARY EFFECTS

Sec. 120001. Budgetary effects.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) DEPARTMENT.—The term ''Department'' means the Department of Transportation.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided, divisions A, B, C (other than sections 32603(d), 32603(g), 32912, and 34002 of that division) and E, including the amendments made by those divisions, take effect on October 1, 2012.

(b) REFERENCES.—Except as otherwise provided, any reference to the date of enactment of the MAP–21 or to the date of enactment of the Federal Public Transportation Act of 2012 in the divisions described in subsection (a) or in an amendment made by those divisions shall be deemed to be a reference to the effective date of those divisions.

DIVISION A—FEDERAL-AID HIGHWAYS AND HIGHWAY SAFETY CONSTRUCTION PROGRAMS

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Authorizations and Programs

SEC. 1101. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) FEDERAL-AID HIGHWAY PROGRAM.—For the national highway performance program under section 119 of title 23, United States Code, the surface transportation program under section 133 of that title, the highway safety improvement program under section 148 of that title, the congestion mitigation and air quality improvement program under section 149 of that title, and to carry out section 134 of that title—

(A) $37,476,819,674 for fiscal year 2013; and

(B) $37,798,000,000 for fiscal year 2014.

(2) TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION PROGRAM.—For credit assistance under the transportation infrastructure finance and innovation program under chapter 6 of title 23, United States Code—

(A) $750,000,000 for fiscal year 2013; and

(B) $1,000,000,000 for fiscal year 2014.

(3) FEDERAL LANDS AND TRIBAL TRANSPORTATION PROGRAMS.—

(A) TRIBAL TRANSPORTATION PROGRAM.—For the tribal transportation program under section 202 of title 23, United States Code, $450,000,000 for each of fiscal years 2013 and 2014.

(B) FEDERAL LANDS TRANSPORTATION PROGRAM.—For the Federal lands transportation program under section 203 of title 23, United States Code, $300,000,000 for each of fiscal years 2013 and 2014, of which $240,000,000 of the amount made available for each fiscal year shall be the amount for the National Park Service and $30,000,000 of the amount made available for each fiscal year shall be the amount for the United States Fish and Wildlife Service.

(C) FEDERAL LANDS ACCESS PROGRAM.—For the Federal lands access program under section 204 of title 23, United States Code, $250,000,000 for each of fiscal years 2013 and 2014.

(4) TERRITORIAL AND PUERTO RICO HIGHWAY PROGRAM.—For the territorial and Puerto Rico highway program under section 165 of title 23, United States Code, $190,000,000 for each of fiscal years 2013 and 2014.

(b) DISADVANTAGED BUSINESS ENTERPRISES.—

(1) FINDINGS.—Congress finds that—

(A) while significant progress has occurred due to the establishment of the disadvantaged business enterprise program, discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in federally-assisted surface transportation markets across the United States;

(B) the continuing barriers described in subparagraph (A) merit the continuation of the disadvantaged business enterprise program;

(C) Congress has received and reviewed testimony and documentation of race and gender discrimination from numerous sources, including congressional hearings and roundtables, scientific reports, reports issued by public and private agencies, news stories, reports of discrimination by organizations and individuals, and discrimination lawsuits, which show that race- and gender-neutral efforts alone are insufficient to address the problem;

(D) the testimony and documentation described in subparagraph (C) demonstrate that discrimination across the United States poses a barrier to full and fair participation in surface transportation-related businesses of women business owners and minority business owners and has impacted firm development and many aspects of surface transportation-related business in the public and private markets; and

(E) the testimony and documentation described in subparagraph (C) provide a strong basis that there is a compelling need for the continuation of the disadvantaged business enterprise program to address race and gender discrimination in surface transportation-related business.

(2) DEFINITIONS.—In this subsection, the following definitions apply:

(A) SMALL BUSINESS CONCERN.—

(i) IN GENERAL.—The term ''small business concern'' means a small business concern (as the term is used in section 3 of the Small Business Act (15 U.S.C. 632)).

(ii) EXCLUSIONS.—The term ''small business concern'' does not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals that have average annual gross receipts during the preceding 3 fiscal years in excess of $22,410,000, as adjusted annually by the Secretary for inflation.

(B) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ''socially and economically disadvantaged individuals'' has the meaning given the term in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations issued pursuant to that Act, except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection.

(3) AMOUNTS FOR SMALL BUSINESS CONCERNS.—Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under divisions A and B of this Act and section 403 of title 23, United States Code, shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.

(4) ANNUAL LISTING OF DISADVANTAGED BUSINESS ENTERPRISES.—Each State shall annually—

(A) survey and compile a list of the small business concerns referred to in paragraph (2) in the State, including the location of the small business concerns in the State; and

(B) notify the Secretary, in writing, of the percentage of the small business concerns that are controlled by—

(i) women;

(ii) socially and economically disadvantaged individuals (other than women); and

(iii) individuals who are women and are otherwise socially and economically disadvantaged individuals.

(5) UNIFORM CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall establish minimum uniform criteria for use by State governments in certifying whether a concern qualifies as a small business concern for the purpose of this subsection.

(B) INCLUSIONS.—The minimum uniform criteria established under subparagraph (A) shall include, with respect to a potential small business concern—

(i) on-site visits;

(ii) personal interviews with personnel;

(iii) issuance or inspection of licenses;

(iv) analyses of stock ownership;

(v) listings of equipment;

(vi) analyses of bonding capacity;

(vii) listings of work completed;

(viii) examination of the resumes of principal owners;

(ix) analyses of financial capacity; and

(x) analyses of the type of work preferred.

(6) REPORTING.—The Secretary shall establish minimum requirements for use by State governments in reporting to the Secretary—

(A) information concerning disadvantaged business enterprise awards, commitments, and achievements; and

(B) such other information as the Secretary determines to be appropriate for the proper monitoring of the disadvantaged business enterprise program.

(7) COMPLIANCE WITH COURT ORDERS.—Nothing in this subsection limits the eligibility of an individual or entity to receive funds made available under divisions A and B of this Act and section 403 of title 23, United States Code, if the entity or person is prevented, in whole or in part, from complying with paragraph (2) because a Federal court issues a final order in which the court finds that a requirement or the implementation of paragraph (2) is unconstitutional.

SEC. 1102. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Subject to subsection (e), and notwithstanding any other provision of law, the obligations for Federal-aid highway and highway safety construction programs shall not exceed—

(1) $39,699,000,000 for fiscal year 2013; and

(2) $40,256,000,000 for fiscal year 2014.

(b) EXCEPTIONS.—The limitations under subsection (a) shall not apply to obligations under or for—

(1) section 125 of title 23, United States Code;

(2) section 147 of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 144 note; 92 Stat. 2714);

(3) section 9 of the Federal-Aid Highway Act of 1981 (95 Stat. 1701);

(4) subsections (b) and (j) of section 131 of the Surface Transportation Assistance Act of 1982 (96 Stat. 2119);

(5) subsections (b) and (c) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 198);

(6) sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027);

(7) section 157 of title 23, United States Code (as in effect on June 8, 1998);

(8) section 105 of title 23, United States Code (as in effect for fiscal years 1998 through 2004, but only in an amount equal to $639,000,000 for each of those fiscal years);

(9) Federal-aid highway programs for which obligation authority was made available under the Transportation Equity Act for the 21st Century (112 Stat. 107) or subsequent Acts for multiple years or to remain available until expended, but only to the extent that the obligation authority has not lapsed or been used;

(10) section 105 of title 23, United States Code (but, for each of fiscal years 2005 through 2011, only in an amount equal to $639,000,000 for each of those fiscal years);

(11) section 1603 of SAFETEA–LU (23 U.S.C. 118 note; 119 Stat. 1248), to the extent that funds obligated in accordance with that section were not subject to a limitation on obligations at the time at which the funds were initially made available for obligation; and

(12) section 119 of title 23, United States Code (but, for each of fiscal years 2013 through 2014, only in an amount equal to $639,000,000 for each of those fiscal years).

(c) DISTRIBUTION OF OBLIGATION AUTHORITY.—For each of fiscal years 2013 through 2014, the Secretary—

(1) shall not distribute obligation authority provided by subsection (a) for the fiscal year for—

(A) amounts authorized for administrative expenses and programs by section 104(a) of title 23, United States Code; and

(B) amounts authorized for the Bureau of Transportation Statistics;

(2) shall not distribute an amount of obligation authority provided by subsection (a) that is equal to the unobligated balance of amounts—

(A) made available from the Highway Trust Fund (other than the Mass Transit Account) for Federal-aid highway and highway safety construction programs for previous fiscal years the funds for which are allocated by the Secretary (or apportioned by the Secretary under sections 202 or 204 of title 23, United States Code); and

(B) for which obligation authority was provided in a previous fiscal year;

(3) shall determine the proportion that—

(A) the obligation authority provided by subsection (a) for the fiscal year, less the aggregate of amounts not distributed under paragraphs (1) and (2) of this subsection; bears to

(B) the total of the sums authorized to be appropriated for the Federal-aid highway and highway safety construction programs (other than sums authorized to be appropriated for provisions of law described in paragraphs (1) through (11) of subsection (b) and sums authorized to be appropriated for section 119 of title 23, United States Code, equal to the amount referred to in subsection (b)(12) for the fiscal year), less the aggregate of the amounts not distributed under paragraphs (1) and (2) of this subsection;

(4) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2), for each of the programs (other than programs to which paragraph (1) applies) that are allocated by the Secretary under this Act and title 23, United States Code, or apportioned by the Secretary under sections 202 or 204 of that title, by multiplying—

(A) the proportion determined under paragraph (3); by

(B) the amounts authorized to be appropriated for each such program for the fiscal year; and

(5) shall distribute the obligation authority provided by subsection (a), less the aggregate amounts not distributed under paragraphs (1) and (2) and the amounts distributed under paragraph (4), for Federal-aid highway and highway safety construction programs that are apportioned by the Secretary under title 23, United States Code (other than the amounts apportioned for the national highway performance program in section 119 of title 23, United States Code, that are exempt from the limitation under subsection (b)(12) and the amounts apportioned under section 204 of that title) in the proportion that—

(A) amounts authorized to be appropriated for the programs that are apportioned under title 23, United States Code, to each State for the fiscal year; bears to

(B) the total of the amounts authorized to be appropriated for the programs that are apportioned under title 23, United States Code, to all States for the fiscal year.

(d) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Notwithstanding subsection (c), the Secretary shall, after August 1 of each of fiscal years 2013 through 2014—

(1) revise a distribution of the obligation authority made available under subsection (c) if an amount distributed cannot be obligated during that fiscal year; and

(2) redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year, giving priority to those States having large unobligated balances of funds apportioned under sections 144 (as in effect on the day before the date of enactment of this Act) and 104 of title 23, United States Code.

(e) APPLICABILITY OF OBLIGATION LIMITATIONS TO TRANSPORTATION RESEARCH PROGRAMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), obligation limitations imposed by subsection (a) shall apply to contract authority for transportation research programs carried out under—

(A) chapter 5 of title 23, United States Code; and

(B) division E of this Act.

(2) EXCEPTION.—Obligation authority made available under paragraph (1) shall—

(A) remain available for a period of 4 fiscal years; and

(B) be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

(f) REDISTRIBUTION OF CERTAIN AUTHORIZED FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date of distribution of obligation authority under subsection (c) for each of fiscal years 2013 through 2014, the Secretary shall distribute to the States any funds (excluding funds authorized for the program under section 202 of title 23, United States Code) that—

(A) are authorized to be appropriated for the fiscal year for Federal-aid highway programs; and

(B) the Secretary determines will not be allocated to the States (or will not be apportioned to the States under section 204 of title 23, United States Code), and will not be available for obligation, for the fiscal year because of the imposition of any obligation limitation for the fiscal year.

(2) RATIO.—Funds shall be distributed under paragraph (1) in the same proportion as the distribution of obligation authority under subsection (c)(5).

(3) AVAILABILITY.—Funds distributed to each State under paragraph (1) shall be available for any purpose described in section 133(c) of title 23, United States Code.

SEC. 1103. DEFINITIONS.

(a) DEFINITIONS.—Section 101(a) of title 23, United States Code, is amended—

(1) by striking paragraphs (6), (7), (9), (12), (19), (20), (24), (25), (26), (28), (38), and (39);

(2) by redesignating paragraphs (2), (3), (4), (5), (8), (13), (14), (15), (16), (17), (18), (21), (22), (23), (27), (29), (30), (31), (32), (33), (34), (35), (36), and (37) as paragraphs (3), (4), (5), (6), (9), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (28), (29), (33), and (34), respectively;

(3) by inserting after paragraph (1) the following:

''(2) ASSET MANAGEMENT.—The term 'asset management' means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost.'';

(4) in paragraph (4) (as redesignated by paragraph (2))—

(A) in the matter preceding subparagraph (A), by inserting ''or any project eligible for assistance under this title'' after ''of a highway'';

(B) by striking subparagraph (A) and inserting the following:

''(A) preliminary engineering, engineering, and design-related services directly relating to the construction of a highway project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;'';

(C) in subparagraph (B)—

(i) by inserting ''reconstruction,'' before ''resurfacing''; and

(ii) by striking ''and rehabilitation'' and inserting ''rehabilitation, and preservation'';

(D) in subparagraph (E) by striking ''railway'' and inserting ''railway-highway''; and

(E) in subparagraph (F) by striking ''obstacles'' and inserting ''hazards'';

(5) in paragraph (6) (as so redesignated)—

(A) by inserting ''public'' before ''highway eligible''; and

(B) by inserting ''functionally'' before ''classified'';

(6) by inserting after paragraph (6) (as so redesignated) the following:

''(7) FEDERAL LANDS ACCESS TRANSPORTATION FACILITY.—The term 'Federal Lands access transportation facility' means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title or maintenance responsibility is vested in a State, county, town, township, tribal, municipal, or local government.

''(8) FEDERAL LANDS TRANSPORTATION FACILITY.—The term 'Federal lands transportation facility' means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national Federal lands transportation facility inventory described in section 203(c).'';

(7) in paragraph (11)(B) by inserting ''including public roads on dams'' after ''drainage structure'';

(8) in paragraph (14) (as so redesignated)—

(A) by striking ''as a'' and inserting ''as an air quality''; and

(B) by inserting ''air quality'' before ''attainment area'';

(9) in paragraph (18) (as so redesignated) by striking ''an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking'' and inserting ''any undertaking'';

(10) in paragraph (19) (as so redesignated)—

(A) by striking ''the State transportation department and''; and

(B) by inserting ''and the recipient'' after ''Secretary'';

(11) by striking paragraph (23) (as so redesignated) and inserting the following:

''(23) SAFETY IMPROVEMENT PROJECT.—The term 'safety improvement project' means a strategy, activity, or project on a public road that is consistent with the State strategic highway safety plan and corrects or improves a roadway feature that constitutes a hazard to road users or addresses a highway safety problem.'';

(12) by inserting after paragraph (26) (as so redesignated) the following:

''(27) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' has the same meaning given such term in section 148(a).'';

(13) by striking paragraph (29) (as so redesignated) and inserting the following:

''(29) TRANSPORTATION ALTERNATIVES.—The term 'transportation alternatives' means any of the following activities when carried out as part of any program or project authorized or funded under this title, or as an independent program or project related to surface transportation:

''(A) Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other nonmotorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

''(B) Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.

''(C) Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other nonmotorized transportation users.

''(D) Construction of turnouts, overlooks, and viewing areas.

''(E) Community improvement activities, including—

''(i) inventory, control, or removal of outdoor advertising;

''(ii) historic preservation and rehabilitation of historic transportation facilities;

''(iii) vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and

''(iv) archaeological activities relating to impacts from implementation of a transportation project eligible under this title.

''(F) Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to—

''(i) address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329; or

''(ii) reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.''; and

(14) by inserting after paragraph (29) (as so redesignated) the following:

''(30) TRANSPORTATION SYSTEMS MANAGEMENT AND OPERATIONS.—

''(A) IN GENERAL.—The term 'transportation systems management and operations' means integrated strategies to optimize the performance of existing infrastructure through the implementation of multimodal and intermodal, cross-jurisdictional systems, services, and projects designed to preserve capacity and improve security, safety, and reliability of the transportation system.

''(B) INCLUSIONS.—The term 'transportation systems management and operations' includes—

''(i) actions such as traffic detection and surveillance, corridor management, freeway management, arterial management, active transportation and demand management, work zone management, emergency management, traveler information services, congestion pricing, parking management, automated enforcement, traffic control, commercial vehicle operations, freight management, and coordination of highway, rail, transit, bicycle, and pedestrian operations; and

''(ii) coordination of the implementation of regional transportation system management and operations investments (such as traffic incident management, traveler information services, emergency management, roadway weather management, intelligent transportation systems, communication networks, and information sharing systems) requiring agreements, integration, and interoperability to achieve targeted system performance, reliability, safety, and customer service levels.

''(31) TRIBAL TRANSPORTATION FACILITY.—The term 'tribal transportation facility' means a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the national tribal transportation facility inventory described in section 202(b)(1).

''(32) TRUCK STOP ELECTRIFICATION SYSTEM.—The term 'truck stop electrification system' means a system that delivers heat, air conditioning, electricity, or communications to a heavy-duty vehicle.''.

(b) SENSE OF CONGRESS.—Section 101(c) of title 23, United States Code, is amended by striking ''system'' and inserting ''highway''.

SEC. 1104. NATIONAL HIGHWAY SYSTEM.

(a) IN GENERAL.—Section 103 of title 23, United States Code, is amended to read as follows:

"§ 103. National Highway System

''(a) IN GENERAL.—For the purposes of this title, the Federal-aid system is the National Highway System, which includes the Interstate System.

''(b) NATIONAL HIGHWAY SYSTEM.—

''(1) DESCRIPTION.—The National Highway System consists of the highway routes and connections to transportation facilities that shall—

''(A) serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations;

''(B) meet national defense requirements; and

''(C) serve interstate and interregional travel and commerce.

''(2) COMPONENTS.—The National Highway System described in paragraph (1) consists of the following:

''(A) The National Highway System depicted on the map submitted by the Secretary of Transportation to Congress with the report entitled 'Pulling Together: The National Highway System and its Connections to Major Intermodal Terminals' and dated May 24, 1996, and modifications approved by the Secretary before the date of enactment of the MAP–21.

''(B) Other urban and rural principal arterial routes, and border crossings on those routes, that were not included on the National Highway System before the date of enactment of the MAP–21.

''(C) Other connector highways (including toll facilities) that were not included in the National Highway System before the date of enactment of the MAP–21 but that provide motor vehicle access between arterial routes on the National Highway System and a major intermodal transportation facility.

''(D) A strategic highway network that—

''(i) consists of a network of highways that are important to the United States strategic defense policy, that provide defense access, continuity, and emergency capabilities for the movement of personnel, materials, and equipment in both peacetime and wartime, and that were not included on the National Highway System before the date of enactment of the MAP–21;

''(ii) may include highways on or off the Interstate System; and

''(iii) shall be designated by the Secretary, in consultation with appropriate Federal agencies and the States.

''(E) Major strategic highway network connectors that—

''(i) consist of highways that provide motor vehicle access between major military installations and highways that are part of the strategic highway network but were not included on the National Highway System before the date of enactment of the MAP–21; and

''(ii) shall be designated by the Secretary, in consultation with appropriate Federal agencies and the States.

''(3) MODIFICATIONS TO NHS.—

''(A) IN GENERAL.—The Secretary may make any modification, including any modification consisting of a connector to a major intermodal terminal, to the National Highway System that is proposed by a State if the Secretary determines that the modification—

''(i) meets the criteria established for the National Highway System under this title after the date of enactment of the MAP–21; and

''(ii) enhances the national transportation characteristics of the National Highway System.

''(B) COOPERATION.—

''(i) IN GENERAL.—In proposing a modification under this paragraph, a State shall cooperate with local and regional officials.

''(ii) URBANIZED AREAS.—In an urbanized area, the local officials shall act through the metropolitan planning organization designated for the area under section 134.

''(c) INTERSTATE SYSTEM.—

''(1) DESCRIPTION.—

''(A) IN GENERAL.—The Dwight D. Eisenhower National System of Interstate and Defense Highways within the United States (including the District of Columbia and Puerto Rico) consists of highways designed, located, and selected in accordance with this paragraph.

''(B) DESIGN.—

''(i) IN GENERAL.—Except as provided in clause (ii), highways on the Interstate System shall be designed in accordance with the standards of section 109(b).

''(ii) EXCEPTION.—Highways on the Interstate System in Alaska and Puerto Rico shall be designed in accordance with such geometric and construction standards as are adequate for current and probable future traffic demands and the needs of the locality of the highway.

''(C) LOCATION.—Highways on the Interstate System shall be located so as—

''(i) to connect by routes, as direct as practicable, the principal metropolitan areas, cities, and industrial centers;

''(ii) to serve the national defense; and

''(iii) to the maximum extent practicable, to connect at suitable border points with routes of continental importance in Canada and Mexico.

''(D) SELECTION OF ROUTES.—To the maximum extent practicable, each route of the Interstate System shall be selected by joint action of the State transportation departments of the State in which the route is located and the adjoining States, in cooperation with local and regional officials, and subject to the approval of the Secretary.

''(2) MAXIMUM MILEAGE.—The mileage of highways on the Interstate System shall not exceed 43,000 miles, exclusive of designations under paragraph (4).

''(3) MODIFICATIONS.—The Secretary may approve or require modifications to the Interstate System in a manner consistent with the policies and procedures established under this subsection.

''(4) INTERSTATE SYSTEM DESIGNATIONS.—

''(A) ADDITIONS.—If the Secretary determines that a highway on the National Highway System meets all standards of a highway on the Interstate System and that the highway is a logical addition or connection to the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a route on the Interstate System.

''(B) DESIGNATIONS AS FUTURE INTERSTATE SYSTEM ROUTES.—

''(i) IN GENERAL.—Subject to clauses (ii) through (vi), if the Secretary determines that a highway on the National Highway System would be a logical addition or connection to the Interstate System and would qualify for designation as a route on the Interstate System under subparagraph (A) if the highway met all standards of a highway on the Interstate System, the Secretary may, upon the affirmative recommendation of the State or States in which the highway is located, designate the highway as a future Interstate System route.

''(ii) WRITTEN AGREEMENT.—A designation under clause (i) shall be made only upon the written agreement of each State described in that clause that the highway will be constructed to meet all standards of a highway on the Interstate System by not later than the date that is 25 years after the date of the agreement.

''(iii) FAILURE TO COMPLETE CONSTRUCTION.—If a State described in clause (i) has not substantially completed the construction of a highway designated under this subparagraph by the date specified in clause (ii), the Secretary shall remove the designation of the highway as a future Interstate System route.

''(iv) EFFECT OF REMOVAL.—Removal of the designation of a highway under clause (iii) shall not preclude the Secretary from designating the highway as a route on the Interstate System under subparagraph (A) or under any other provision of law providing for addition to the Interstate System.

''(v) RETROACTIVE EFFECT.—An agreement described in clause (ii) that is entered into before August 10, 2005, shall be deemed to include the 25-year time limitation described in that clause, regardless of any earlier construction completion date in the agreement.

''(vi) REFERENCES.—No law, rule, regulation, map, document, or other record of the United States, or of any State or political subdivision of a State, shall refer to any highway designated as a future Interstate System route under this subparagraph, and no such highway shall be signed or marked, as a highway on the Interstate System, until such time as the highway—

''(I) is constructed to the geometric and construction standards for the Interstate System; and

''(II) has been designated as a route on the Interstate System.

''(C) FINANCIAL RESPONSIBILITY.—Except as provided in this title, the designation of a highway under this paragraph shall create no additional Federal financial responsibility with respect to the highway.

''(5) EXEMPTION OF INTERSTATE SYSTEM.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Interstate System shall not be considered to be a historic site under section 303 of title 49 or section 138 of this title, regardless of whether the Interstate System or portions or elements of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places.

''(B) INDIVIDUAL ELEMENTS.—Subject to subparagraph (C)—

''(i) the Secretary shall determine, through the administrative process established for exempting the Interstate System from section 106 of the National Historic Preservation Act (16 U.S.C. 470f), those individual elements of the Interstate System that possess national or exceptional historic significance (such as a historic bridge or a highly significant engineering feature); and

''(ii) those elements shall be considered to be historic sites under section 303 of title 49 or section 138 of this title, as applicable.

''(C) CONSTRUCTION, MAINTENANCE, RESTORATION, AND REHABILITATION ACTIVITIES.—Subparagraph (B) does not prohibit a State from carrying out construction, maintenance, preservation, restoration, or rehabilitation activities for a portion of the Interstate System referred to in subparagraph (B) upon compliance with section 303 of title 49 or section 138 of this title, as applicable, and section 106 of the National Historic Preservation Act (16 U.S.C. 470f).''.

(b) INCLUSION OF CERTAIN ROUTE SEGMENTS ON INTERSTATE SYSTEM.—

(1) IN GENERAL.—Section 1105(e)(5)(A) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031; 109 Stat. 597; 115 Stat. 872) is amended—

(A) in the first sentence, by striking ''and in subsections (c)(18) and (c)(20)'' and inserting '', in subsections (c)(18) and (c)(20), and in subparagraphs (A)(iii) and (B) of subsection (c)(26)''; and

(B) in the second sentence, by striking ''that the segment'' and all that follows through the period and inserting ''that the segment meets the Interstate System design standards approved by the Secretary under section 109(b) of title 23, United States Code, and is planned to connect to an existing Interstate System segment by the date that is 25 years after the date of enactment of the MAP–21.''.

(2) ROUTE DESIGNATION.—Section 1105(e)(5)(C)(i) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032; 109 Stat. 598) is amended by adding at the end the following: ''The routes referred to subparagraphs (A)(iii) and (B)(i) of subsection (c)(26) are designated as Interstate Route I-11.''.

(c) CONFORMING AMENDMENTS.—

(1) ANALYSIS.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 103 and inserting the following:

''103. National Highway System.''.

(2) SECTION 113.—Section 113 of title 23, United States Code, is amended—

(A) in subsection (a) by striking ''the Federal-aid systems'' and inserting ''Federal-aid highways''; and

(B) in subsection (b), in the first sentence, by striking ''of the Federal-aid systems'' and inserting ''Federal-aid highway''.

(3) SECTION 123.—Section 123(a) of title 23, United States Code, is amended in the first sentence by striking ''Federal-aid system'' and inserting ''Federal-aid highway''.

(4) SECTION 217.—Section 217(b) of title 23, United States Code, is amended in the subsection heading by striking ''NATIONAL HIGHWAY SYSTEM'' and inserting ''NATIONAL HIGHWAY PERFORMANCE PROGRAM''.

(5) SECTION 304.—Section 304 of title 23, United States Code, is amended in the first sentence by striking ''the Federal-aid highway systems'' and inserting ''Federal-aid highways''.

(6) SECTION 317.—Section 317(d) of title 23, United States Code, is amended by striking ''system'' and inserting ''highway''.

SEC. 1105. APPORTIONMENT.

(a) IN GENERAL.—Section 104 of title 23, United States Code, is amended to read as follows:

''§ 104. Apportionment

''(a) ADMINISTRATIVE EXPENSES.—

''(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to be made available to the Secretary for administrative expenses of the Federal Highway Administration—

''(A) $454,180,326 for fiscal year 2013; and

''(B) $440,000,000 for fiscal year 2014.

''(2) PURPOSES.—The amounts authorized to be appropriated by this subsection shall be used—

''(A) to administer the provisions of law to be funded from appropriations for the Federal-aid highway program and programs authorized under chapter 2;

''(B) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system; and

''(C) to reimburse, as appropriate, the Office of Inspector General of the Department of Transportation for the conduct of annual audits of financial statements in accordance with section 3521 of title 31.

''(3) AVAILABILITY.—The amounts made available under paragraph (1) shall remain available until expended.

''(b) DIVISION OF STATE APPORTIONMENTS AMONG PROGRAMS.—The Secretary shall distribute the amount apportioned to a State for a fiscal year under subsection (c) among the national highway performance program, the surface transportation program, the highway safety improvement program, and the congestion mitigation and air quality improvement program, and to carry out section 134 as follows:

''(1) NATIONAL HIGHWAY PERFORMANCE PROGRAM.—For the national highway performance program, 63.7 percent of the amount remaining after distributing amounts under paragraphs (4) and (5).

''(2) SURFACE TRANSPORTATION PROGRAM.—For the surface transportation program, 29.3 percent of the amount remaining after distributing amounts under paragraphs (4) and (5).

''(3) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—For the highway safety improvement program, 7 percent of the amount remaining after distributing amounts under paragraphs (4) and (5).

''(4) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—For the congestion mitigation and air quality improvement program, an amount determined by multiplying the amount determined for the State under subsection (c) by the proportion that—

''(A) the amount apportioned to the State for the congestion mitigation and air quality improvement program for fiscal year 2009; bears to

''(B) the total amount of funds apportioned to the State for that fiscal year for the programs referred to in section 105(a)(2) (except for the high priority projects program referred to in section 105(a)(2)(H)), as in effect on the day before the date of enactment of the MAP–21.

''(5) METROPOLITAN PLANNING.—To carry out section 134, an amount determined by multiplying the amount determined for the State under subsection (c) by the proportion that—

''(A) the amount apportioned to the State to carry out section 134 for fiscal year 2009; bears to

''(B) the total amount of funds apportioned to the State for that fiscal year for the programs referred to in section 105(a)(2) (except for the high priority projects program referred to in section 105(a)(2)(H)), as in effect on the day before the date of enactment of the MAP–21.

''(c) CALCULATION OF STATE AMOUNTS.—

''(1) FOR FISCAL YEAR 2013.—

''(A) CALCULATION OF AMOUNT.—For fiscal year 2013, the amount for each State of combined apportionments for the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, and to carry out section 134 shall be equal to the combined amount of apportionments that the State received for fiscal year 2012.

''(B) STATE APPORTIONMENT.—On October 1 of such fiscal year, the Secretary shall apportion the sum authorized to be appropriated for expenditure on the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, and to carry out section 134 in accordance with subparagraph (A).

''(2) FOR FISCAL YEAR 2014.—

''(A) STATE SHARE.—For fiscal year 2014, the amount for each State of combined apportionments for the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, and to carry out section 134 shall be determined as follows:

''(i) INITIAL AMOUNT.—The initial amount for each State shall be determined by multiplying the total amount available for apportionment by the share for each State which shall be equal to the proportion that—

''(I) the amount of apportionments that the State received for fiscal year 2012; bears to

''(II) the amount of those apportionments received by all States for that fiscal year.

''(ii) ADJUSTMENTS TO AMOUNTS.—The initial amounts resulting from the calculation under clause (i) shall be adjusted to ensure that, for each State, the amount of combined apportionments for the programs shall not be less than 95 percent of the estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available.

''(B) STATE APPORTIONMENT.—On October 1 of such fiscal year, the Secretary shall apportion the sum authorized to be appropriated for expenditure on the national highway performance program under section 119, the surface transportation program under section 133, the highway safety improvement program under section 148, the congestion mitigation and air quality improvement program under section 149, and to carry out section 134 in accordance with subparagraph (A).

''(d) METROPOLITAN PLANNING.—

''(1) USE OF AMOUNTS.—

''(A) USE.—

''(i) IN GENERAL.—Except as provided in clause (ii), the amounts apportioned to a State under subsection (b)(5) shall be made available by the State to the metropolitan planning organizations responsible for carrying out section 134 in the State.

''(ii) STATES RECEIVING MINIMUM APPORTIONMENT.—A State that received the minimum apportionment for use in carrying out section 134 for fiscal year 2009 may, subject to the approval of the Secretary, use the funds apportioned under subsection (b)(5) to fund transportation planning outside of urbanized areas.

''(B) UNUSED FUNDS.—Any funds that are not used to carry out section 134 may be made available by a metropolitan planning organization to the State to fund activities under section 135.

''(2) DISTRIBUTION OF AMOUNTS WITHIN STATES.—

''(A) IN GENERAL.—The distribution within any State of the planning funds made available to organizations under paragraph (1) shall be in accordance with a formula that—

''(i) is developed by each State and approved by the Secretary; and

''(ii) takes into consideration, at a minimum, population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out section 134 and other applicable requirements of Federal law.

''(B) REIMBURSEMENT.—Not later than 15 business days after the date of receipt by a State of a request for reimbursement of expenditures made by a metropolitan planning organization for carrying out section 134, the State shall reimburse, from amounts distributed under this paragraph to the metropolitan planning organization by the State, the metropolitan planning organization for those expenditures.

''(3) DETERMINATION OF POPULATION FIGURES.—For the purpose of determining population figures under this subsection, the Secretary shall use the latest available data from the decennial census conducted under section 141(a) of title 13, United States Code.

''(e) CERTIFICATION OF APPORTIONMENTS.—

''(1) IN GENERAL.—The Secretary shall—

''(A) on October 1 of each fiscal year, certify to each of the State transportation departments the amount that has been apportioned to the State under this section for the fiscal year; and

''(B) to permit the States to develop adequate plans for the use of amounts apportioned under this section, advise each State of the amount that will be apportioned to the State under this section for a fiscal year not later than 90 days before the beginning of the fiscal year for which the sums to be apportioned are authorized.

''(2) NOTICE TO STATES.—If the Secretary has not made an apportionment under this section for a fiscal year beginning after September 30, 1998, by not later than the date that is the twenty-first day of that fiscal year, the Secretary shall submit, by not later than that date, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, a written statement of the reason for not making the apportionment in a timely manner.

''(3) APPORTIONMENT CALCULATIONS.—

''(A) IN GENERAL.—The calculation of official apportionments of funds to the States under this title is a primary responsibility of the Department and shall be carried out only by employees (and not contractors) of the Department.

''(B) PROHIBITION ON USE OF FUNDS TO HIRE CONTRACTORS.—None of the funds made available under this title shall be used to hire contractors to calculate the apportionments of funds to States.

''(f) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.—

''(1) TRANSFER OF HIGHWAY FUNDS FOR TRANSIT PROJECTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), amounts made available for transit projects or transportation planning under this title may be transferred to and administered by the Secretary in accordance with chapter 53 of title 49.

''(B) NON-FEDERAL SHARE.—The provisions of this title relating to the non-Federal share shall apply to the amounts transferred under subparagraph (A).

''(2) TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), amounts made available for highway projects or transportation planning under chapter 53 of title 49 may be transferred to and administered by the Secretary in accordance with this title.

''(B) NON-FEDERAL SHARE.—The provisions of chapter 53 of title 49 relating to the non-Federal share shall apply to amounts transferred under subparagraph (A).

''(3) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may, at the request of a State, transfer amounts apportioned or allocated under this title to the State to another State, or to the Federal Highway Administration, for the purpose of funding 1 or more projects that are eligible for assistance with amounts so apportioned or allocated.

''(B) APPORTIONMENT.—The transfer shall have no effect on any apportionment of amounts to a State under this section.

''(C) FUNDS SUBALLOCATED TO URBANIZED AREAS.—Amounts that are apportioned or allocated to a State under subsection (b)(3) (as in effect on the day before the date of enactment of the MAP–21) or subsection (b)(2) and attributed to an urbanized area of a State with a population of more than 200,000 individuals under section 133(d) may be transferred under this paragraph only if the metropolitan planning organization designated for the area concurs, in writing, with the transfer request.

''(4) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority for amounts transferred under this subsection shall be transferred in the same manner and amount as the amounts for the projects that are transferred under this section.

''(g) REPORT TO CONGRESS.—For each fiscal year, the Secretary shall make available to the public, in a user-friendly format via the Internet, a report that describes—

''(1) the amount obligated, by each State, for Federal-aid highways and highway safety construction programs during the preceding fiscal year;

''(2) the balance, as of the last day of the preceding fiscal year, of the unobligated apportionment of each State by fiscal year under this section;

''(3) the balance of unobligated sums available for expenditure at the discretion of the Secretary for such highways and programs for the fiscal year; and

''(4) the rates of obligation of funds apportioned or set aside under this section, according to—

''(A) program;

''(B) funding category of subcategory;

''(C) type of improvement;

''(D) State; and

''(E) sub-State geographical area, including urbanized and rural areas, on the basis of the population of each such area.''.

(b) CONFORMING AMENDMENT.—Section 146(a) of title 23, United States Code, is amended by striking ''sections 104(b)(l) and 104(b)(3)'' and inserting ''section 104(b)(2)''.

SEC. 1106. NATIONAL HIGHWAY PERFORMANCE PROGRAM.

(a) IN GENERAL.—Section 119 of title 23, United States Code, is amended to read as follows:

''§ 119. National highway performance program

''(a) ESTABLISHMENT.—The Secretary shall establish and implement a national highway performance program under this section.

''(b) PURPOSES.—The purposes of the national highway performance program shall be—

''(1) to provide support for the condition and performance of the National Highway System;

''(2) to provide support for the construction of new facilities on the National Highway System; and

''(3) to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in an asset management plan of a State for the National Highway System.

''(c) ELIGIBLE FACILITIES.—Except as provided in subsection (d), to be eligible for funding apportioned under section 104(b)(1) to carry out this section, a facility shall be located on the National Highway System, as defined in section 103.

''(d) ELIGIBLE PROJECTS.—Funds apportioned to a State to carry out the national highway performance program may be obligated only for a project on an eligible facility that is—

''(1)(A) a project or part of a program of projects supporting progress toward the achievement of national performance goals for improving infrastructure condition, safety, mobility, or freight movement on the National Highway System; and

''(B) consistent with sections 134 and 135; and

''(2) for 1 or more of the following purposes:

''(A) Construction, reconstruction, resurfacing, restoration, rehabilitation, preservation, or operational improvement of segments of the National Highway System.

''(B) Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of bridges on the National Highway System.

''(C) Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including impact protection measures, security countermeasures, and protection against extreme events) of tunnels on the National Highway System.

''(D) Inspection and evaluation, as described in section 144, of bridges and tunnels on the National Highway System, and inspection and evaluation of other highway infrastructure assets on the National Highway System, including signs and sign structures, earth retaining walls, and drainage structures.

''(E) Training of bridge and tunnel inspectors, as described in section 144.

''(F) Construction, rehabilitation, or replacement of existing ferry boats and ferry boat facilities, including approaches, that connect road segments of the National Highway System.

''(G) Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the National Highway System, and construction of a transit project eligible for assistance under chapter 53 of title 49, if—

''(i) the highway project or transit project is in the same corridor as, and in proximity to, a fully access-controlled highway designated as a part of the National Highway System;

''(ii) the construction or improvements will reduce delays or produce travel time savings on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and

''(iii) the construction or improvements are more cost-effective, as determined by benefit-cost analysis, than an improvement to the fully access-controlled highway described in clause (i).

''(H) Bicycle transportation and pedestrian walkways in accordance with section 217.

''(I) Highway safety improvements for segments of the National Highway System.

''(J) Capital and operating costs for traffic and traveler information monitoring, management, and control facilities and programs.

''(K) Development and implementation of a State asset management plan for the National Highway System in accordance with this section, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.

''(L) Infrastructure-based intelligent transportation systems capital improvements.

''(M) Environmental restoration and pollution abatement in accordance with section 328.

''(N) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.

''(O) Environmental mitigation efforts related to projects funded under this section, as described in subsection (g).

''(P) Construction of publicly owned intracity or intercity bus terminals servicing the National Highway System.

''(e) STATE PERFORMANCE MANAGEMENT.—

''(1) IN GENERAL.—A State shall develop a risk-based asset management plan for the National Highway System to improve or preserve the condition of the assets and the performance of the system.

''(2) PERFORMANCE DRIVEN PLAN.—A State asset management plan shall include strategies leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the National Highway System in accordance with section 150(d) and supporting the progress toward the achievement of the national goals identified in section 150(b).

''(3) SCOPE.—In developing a risk-based asset management plan, the Secretary shall encourage States to include all infrastructure assets within the right-of-way corridor in such plan.

''(4) PLAN CONTENTS.—A State asset management plan shall, at a minimum, be in a form that the Secretary determines to be appropriate and include—

''(A) a summary listing of the pavement and bridge assets on the National Highway System in the State, including a description of the condition of those assets;

''(B) asset management objectives and measures;

''(C) performance gap identification;

''(D) lifecycle cost and risk management analysis;

''(E) a financial plan; and

''(F) investment strategies.

''(5) REQUIREMENT FOR PLAN.—Notwithstanding section 120, with respect to the second fiscal year beginning after the date of establishment of the process established in paragraph (8) or any subsequent fiscal year, if the Secretary determines that a State has not developed and implemented a State asset management plan consistent with this section, the Federal share payable on account of any project or activity carried out by the State in that fiscal year under this section shall be 65 percent.

''(6) CERTIFICATION OF PLAN DEVELOPMENT PROCESS.—

''(A) IN GENERAL.—Not later than 90 days after the date on which a State submits a request for approval of the process used by the State to develop the State asset management plan for the National Highway System, the Secretary shall—

''(i) review the process; and

''(ii)(I) certify that the process meets the requirements established by the Secretary; or

''(II) deny certification and specify actions necessary for the State to take to correct deficiencies in the State process.

''(B) RECERTIFICATION.—Not less frequently than once every 4 years, the Secretary shall review and recertify that the process used by a State to develop and maintain the State asset management plan for the National Highway System meets the requirements for the process, as established by the Secretary.

''(C) OPPORTUNITY TO CURE.—If the Secretary denies certification under subparagraph (A), the Secretary shall provide the State with—

''(i) not less than 90 days to cure the deficiencies of the plan, during which time period all penalties and other legal impacts of a denial of certification shall be stayed; and

''(ii) a written statement of the specific actions the Secretary determines to be necessary for the State to cure the plan.

''(7) PERFORMANCE ACHIEVEMENT.—A State that does not achieve or make significant progress toward achieving the targets of the State for performance measures described in section 150(d) for the National Highway System for 2 consecutive reports submitted under this paragraph shall include in the next report submitted a description of the actions the State will undertake to achieve the targets.

''(8) PROCESS.—Not later than 18 months after the date of enactment of the MAP–21, the Secretary shall, by regulation and in consultation with State departments of transportation, establish the process to develop the State asset management plan described in paragraph (1).

''(f) INTERSTATE SYSTEM AND NHS BRIDGE CONDITIONS.—

''(1) CONDITION OF INTERSTATE SYSTEM.—

''(A) PENALTY.—If, during 2 consecutive reporting periods, the condition of the Interstate System, excluding bridges on the Interstate System, in a State falls below the minimum condition level established by the Secretary under section 150(c)(3), the State shall be required, during the following fiscal year—

''(i) to obligate, from the amounts apportioned to the State under section 104(b)(1), an amount that is not less than the amount of funds apportioned to the State for fiscal year 2009 under the Interstate maintenance program for the purposes described in this section (as in effect on the day before the date of enactment of the MAP–21), except that for each year after fiscal year 2013, the amount required to be obligated under this clause shall be increased by 2 percent over the amount required to be obligated in the previous fiscal year; and

''(ii) to transfer, from the amounts apportioned to the State under section 104(b)(2) (other than amounts suballocated to metropolitan areas and other areas of the State under section 133(d)) to the apportionment of the State under section 104(b)(1), an amount equal to 10 percent of the amount of funds apportioned to the State for fiscal year 2009 under the Interstate maintenance program for the purposes described in this section (as in effect on the day before the date of enactment of the MAP–21).

''(B) RESTORATION.—The obligation requirement for the Interstate System in a State required by subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as the condition of the Interstate System in the State exceeds the minimum condition level established by the Secretary.

''(2) CONDITION OF NHS BRIDGES.—

''(A) PENALTY.—If the Secretary determines that, for the 3-year-period preceding the date of the determination, more than 10 percent of the total deck area of bridges in the State on the National Highway System is located on bridges that have been classified as structurally deficient, an amount equal to 50 percent of funds apportioned to such State for fiscal year 2009 to carry out section 144 (as in effect the day before enactment of MAP–21) shall be set aside from amounts apportioned to a State for a fiscal year under section 104(b)(1) only for eligible projects on bridges on the National Highway System.

''(B) RESTORATION.—The set-aside requirement for bridges on the National Highway System in a State under subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as less than 10 percent of the total deck area of bridges in the State on the National Highway System is located on bridges that have been classified as structurally deficient, as determined by the Secretary.

''(g) ENVIRONMENTAL MITIGATION.—

''(1) ELIGIBLE ACTIVITIES.—In accordance with all applicable Federal law (including regulations), environmental mitigation efforts referred to in subsection (d)(2)(O) include participation in natural habitat and wetlands mitigation efforts relating to projects funded under this title, which may include—

''(A) participation in mitigation banking or other third-party mitigation arrangements, such as—

''(i) the purchase of credits from commercial mitigation banks;

''(ii) the establishment and management of agency-sponsored mitigation banks; and

''(iii) the purchase of credits or establishment of in-lieu fee mitigation programs;

''(B) contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands; and

''(C) the development of statewide and regional environmental protection plans, including natural habitat and wetland conservation and restoration plans.

''(2) INCLUSION OF OTHER ACTIVITIES.—The banks, efforts, and plans described in paragraph (1) include any such banks, efforts, and plans developed in accordance with applicable law (including regulations).

''(3) TERMS AND CONDITIONS.—The following terms and conditions apply to natural habitat and wetlands mitigation efforts under this subsection:

''(A) Contributions to the mitigation effort may—

''(i) take place concurrent with, or in advance of, commitment of funding under this title to a project or projects; and

''(ii) occur in advance of project construction only if the efforts are consistent with all applicable requirements of Federal law (including regulations) and State transportation planning processes.

''(B) Credits from any agency-sponsored mitigation bank that are attributable to funding under this section may be used only for projects funded under this title, unless the agency pays to the Secretary an amount equal to the Federal funds attributable to the mitigation bank credits the agency uses for purposes other than mitigation of a project funded under this title.

''(4) PREFERENCE.—At the discretion of the project sponsor, preference shall be given, to the maximum extent practicable, to mitigating an environmental impact through the use of a mitigation bank, in-lieu fee, or other third-party mitigation arrangement, if the use of credits from the mitigation bank or in-lieu fee, or the other third-party mitigation arrangement for the project, is approved by the applicable Federal agency.''.

(b) TRANSITION PERIOD.—

(1) IN GENERAL.—Except as provided in paragraph (2), until such date as a State has in effect an approved asset management plan and has established performance targets as described in sections 119 and 150 of title 23, United States Code, that will contribute to achieving the national goals for the condition and performance of the National Highway System, but not later than 18 months after the date on which the Secretary promulgates the final regulation required under section 150(c) of that title, the Secretary shall approve obligations of funds apportioned to a State to carry out the national highway performance program under section 119 of that title, for projects that otherwise meet the requirements of that section.

(2) EXTENSION.—The Secretary may extend the transition period for a State under paragraph (1) if the Secretary determines that the State has made a good faith effort to establish an asset management plan and performance targets referred to in that paragraph.

(c) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 119 and inserting the following:

''119. National highway performance program.''.

SEC. 1107. EMERGENCY RELIEF.

Section 125 of title 23, United States Code, is amended to read as follows:

''§ 125. Emergency relief

''(a) IN GENERAL.—Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any area of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of—

''(1) a natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or

''(2) catastrophic failure from any external cause.

''(b) RESTRICTION ON ELIGIBILITY.—

''(1) DEFINITION OF CONSTRUCTION PHASE.—In this subsection, the term 'construction phase' means the phase of physical construction of a highway or bridge facility that is separate from any other identified phases, such as planning, design, or right-of-way phases, in the State transportation improvement program.

''(2) RESTRICTION.—In no case shall funds be used under this section for the repair or reconstruction of a bridge—

''(A) that has been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration; or

''(B) if a construction phase of a replacement structure is included in the approved Statewide transportation improvement program at the time of an event described in subsection (a).

''(c) FUNDING.—

''(1) IN GENERAL.—Subject to the limitations described in paragraph (2), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to establish the fund authorized by this section and to replenish that fund on an annual basis.

''(2) LIMITATIONS.—The limitations referred to in paragraph (1) are that—

''(A) not more than $100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out this section, except that, if for any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated for the fiscal year, the unobligated balance of that amount shall—

''(i) remain available until expended; and

''(ii) be in addition to amounts otherwise available to carry out this section for each year; and

''(B)(i) pending such appropriation or replenishment, the Secretary may obligate from any funds appropriated at any time for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as are necessary for the immediate prosecution of the work herein authorized; and

''(ii) funds obligated under this subparagraph shall be reimbursed from the appropriation or replenishment.

''(d) ELIGIBILITY.—

''(1) IN GENERAL.—The Secretary may expend funds from the emergency fund authorized by this section only for the repair or reconstruction of highways on Federal-aid highways in accordance with this chapter, except that—

''(A) no funds shall be so expended unless an emergency has been declared by the Governor of the State with concurrence by the Secretary, unless the President has declared the emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for which concurrence of the Secretary is not required; and

''(B) the Secretary has received an application from the State transportation department that includes a comprehensive list of all eligible project sites and repair costs by not later than 2 years after the natural disaster or catastrophic failure.

''(2) COST LIMITATION.—

''(A) DEFINITION OF COMPARABLE FACILITY.—In this paragraph, the term 'comparable facility' means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.

''(B) LIMITATION.—The total cost of a project funded under this section may not exceed the cost of repair or reconstruction of a comparable facility.

''(3) DEBRIS REMOVAL.—The costs of debris removal shall be an eligible expense under this section only for—

''(A) an event not declared a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

''(B) an event declared a major disaster or emergency by the President under that Act if the debris removal is not eligible for assistance under section 403, 407, or 502 of that Act (42 U.S.C. 5170b, 5173, 5192).

''(4) TERRITORIES.—The total obligations for projects under this section for any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed $20,000,000.

''(5) SUBSTITUTE TRAFFIC.—Notwithstanding any other provision of this section, actual and necessary costs of maintenance and operation of ferryboats or additional transit service providing temporary substitute highway traffic service, less the amount of fares charged for comparable service, may be expended from the emergency fund authorized by this section for Federal-aid highways.

''(e) TRIBAL TRANSPORTATION FACILITIES, FEDERAL LANDS TRANSPORTATION FACILITIES, AND PUBLIC ROADS ON FEDERAL LANDS.—

''(1) DEFINITION OF OPEN TO PUBLIC TRAVEL.—In this subsection, the term 'open to public travel' means, with respect to a road, that, except during scheduled periods, extreme weather conditions, or emergencies, the road is open to the general public for use with a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

''(2) EXPENDITURE OF FUNDS.—Notwithstanding subsection (d)(1), the Secretary may expend funds from the emergency fund authorized by this section, independently or in cooperation with any other branch of the Federal Government, a State agency, a tribal government, an organization, or a person, for the repair or reconstruction of tribal transportation facilities, Federal lands transportation facilities, and other federally owned roads that are open to public travel, whether or not those facilities are Federal-aid highways.

''(3) REIMBURSEMENT.—

''(A) IN GENERAL.—The Secretary may reimburse Federal and State agencies (including political subdivisions) for expenditures made for projects determined eligible under this section, including expenditures for emergency repairs made before a determination of eligibility.

''(B) TRANSFERS.—With respect to reimbursements described in subparagraph (A)—

''(i) those reimbursements to Federal agencies and Indian tribal governments shall be transferred to the account from which the expenditure was made, or to a similar account that remains available for obligation; and

''(ii) the budget authority associated with the expenditure shall be restored to the agency from which the authority was derived and shall be available for obligation until the end of the fiscal year following the year in which the transfer occurs.

''(f) TREATMENT OF TERRITORIES.—For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State.

''(g) PROTECTING PUBLIC SAFETY AND MAINTAINING ROADWAYS.—The Secretary may use not more than 5 percent of amounts from the emergency fund authorized by this section to carry out projects that the Secretary determines are necessary to protect the public safety or to maintain or protect roadways that are included within the scope of an emergency declaration by the Governor of the State or by the President, in accordance with this section, and the Governor deems to be an ongoing concern in order to maintain vehicular traffic on the roadway.''.

SEC. 1108. SURFACE TRANSPORTATION PROGRAM.

(a) ELIGIBLE PROJECTS.—Section 133(b) of title 23, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking ''section 104(b)(3)'' and inserting ''section 104(b)(2)'';

(2) by striking paragraph (1);

(3) by redesignating paragraphs (2) through (15) as paragraphs (5) through (18), respectively;

(4) by inserting before paragraph (5) (as so redesignated) the following:

''(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, preservation, or operational improvements for highways, including construction of designated routes of the Appalachian development highway system and local access roads under section 14501 of title 40.

''(2) Replacement (including replacement with fill material), rehabilitation, preservation, protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) and application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions for bridges (and approaches to bridges and other elevated structures) and tunnels on public roads of all functional classifications, including any such construction or reconstruction necessary to accommodate other transportation modes.

''(3) Construction of a new bridge or tunnel at a new location on a Federal-aid highway.

''(4) Inspection and evaluation of bridges and tunnels and training of bridge and tunnel inspectors (as defined in section 144), and inspection and evaluation of other highway assets (including signs, retaining walls, and drainage structures).'';

(5) by striking paragraph (6) (as so redesignated) and inserting the following:

''(6) Carpool projects, fringe and corridor parking facilities and programs, including electric vehicle and natural gas vehicle infrastructure in accordance with section 137, bicycle transportation and pedestrian walkways in accordance with section 217, and the modifications of public sidewalks to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).'';

(6) by striking paragraph (7) (as so redesignated) and inserting the following:

''(7) Highway and transit safety infrastructure improvements and programs, installation of safety barriers and nets on bridges, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.'';

(7) in paragraph (11) (as so redesignated) by striking ''enhancement activities'' and inserting ''alternatives'';

(8) by striking paragraph (14) (as so redesignated) and inserting the following:

''(14) Environmental mitigation efforts relating to projects funded under this title in the same manner and to the same extent as such activities are eligible under section 119(g).''; and

(9) by inserting after paragraph (18) (as so redesignated) the following:

''(19) Projects and strategies designed to support congestion pricing, including electric toll collection and travel demand management strategies and programs.

''(20) Recreational trails projects eligible for funding under section 206.

''(21) Construction of ferry boats and ferry terminal facilities eligible for funding under section 129(c).

''(22) Border infrastructure projects eligible for funding under section 1303 of the SAFETEA–LU (23 U.S.C. 101 note; Public Law 109–59).

''(23) Truck parking facilities eligible for funding under section 1401 of the MAP–21.

''(24) Development and implementation of a State asset management plan for the National Highway System in accordance with section 119, including data collection, maintenance, and integration and the costs associated with obtaining, updating, and licensing software and equipment required for risk based asset management and performance based management, and for similar activities related to the development and implementation of a performance based management program for other public roads.

''(25) A project that, if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.

''(26) Construction and operational improvements for any minor collector if—

''(A) the minor collector, and the project to be carried out with respect to the minor collector, are in the same corridor as, and in proximity to, a Federal-aid highway designated as part of the National Highway System;

''(B) the construction or improvements will enhance the level of service on the Federal-aid highway described in subparagraph (A) and improve regional traffic flow; and

''(C) the construction or improvements are more cost-effective, as determined by a benefit-cost analysis, than an improvement to the Federal-aid highway described in subparagraph (A).''.

(b) LOCATION OF PROJECTS.—Section 133 of title 23, United States Code, is amended by striking subsection (c) and inserting the following:

''(c) LOCATION OF PROJECTS.—Surface transportation program projects may not be undertaken on roads functionally classified as local or rural minor collectors unless the roads were on a Federal-aid highway system on January 1, 1991, except—

''(1) as provided in subsection (g);

''(2) for projects described in paragraphs (2), (4), (6), (7), (11), (20), (25), and (26) of subsection (b); and

''(3) as approved by the Secretary.''.

(c) ALLOCATION OF APPORTIONED FUNDS.—Section 133 of the title 23, United States Code, is amended by striking subsection (d) and inserting the following:

''(d) ALLOCATIONS OF APPORTIONED FUNDS TO AREAS BASED ON POPULATION.—

''(1) CALCULATION.—Of the funds apportioned to a State under section 104(b)(2)—

''(A) 50 percent for a fiscal year shall be obligated under this section, in proportion to their relative shares of the population of the State—

''(i) in urbanized areas of the State with an urbanized area population of over 200,000;

''(ii) in areas of the State other than urban areas with a population greater than 5,000; and

''(iii) in other areas of the State; and

''(B) 50 percent may be obligated in any area of the State.

''(2) METROPOLITAN AREAS.—Funds attributed to an urbanized area under paragraph (1)(A)(i) may be obligated in the metropolitan area established under section 134 that encompasses the urbanized area.

''(3) CONSULTATION WITH REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—For purposes of paragraph (1)(A)(ii), before obligating funding attributed to an area with a population greater than 5,000 and less than 200,000, a State shall consult with the regional transportation planning organizations that represent the area, if any.

''(4) DISTRIBUTION AMONG URBANIZED AREAS OF OVER 200,000 POPULATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of funds that a State is required to obligate under paragraph (1)(A)(i) shall be obligated in urbanized areas described in paragraph (1)(A)(i) based on the relative population of the areas.

''(B) OTHER FACTORS.—The State may obligate the funds described in subparagraph (A) based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to base the obligation on other factors and the Secretary grants the request.

''(5) APPLICABILITY OF PLANNING REQUIREMENTS.—Programming and expenditure of funds for projects under this section shall be consistent with sections 134 and 135.''.

(d) ADMINISTRATION.—Section 133 of title 23, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) ADMINISTRATION.—

''(1) SUBMISSION OF PROJECT AGREEMENT.—For each fiscal year, each State shall submit a project agreement that—

''(A) certifies that the State will meet all the requirements of this section; and

''(B) notifies the Secretary of the amount of obligations needed to carry out the program under this section.

''(2) REQUEST FOR ADJUSTMENTS OF AMOUNTS.—Each State shall request from the Secretary such adjustments to the amount of obligations referred to in paragraph (1)(B) as the State determines to be necessary.

''(3) EFFECT OF APPROVAL BY THE SECRETARY.—Approval by the Secretary of a project agreement under paragraph (1) shall be deemed a contractual obligation of the United States to pay surface transportation program funds made available under this title.''.

(e) OBLIGATION AUTHORITY.—Section 133(f)(1) of title 23, United States Code, is amended by striking ''2004 through 2006 and the period of fiscal years 2007 through 2009'' and inserting ''2011 through 2014''.

(f) BRIDGES NOT ON FEDERAL-AID HIGHWAYS.—Section 133 of the title 23, United States Code, is amended by adding at the end the following:

''(g) BRIDGES NOT ON FEDERAL-AID HIGHWAYS.—

''(1) DEFINITION OF OFF-SYSTEM BRIDGE.—In this subsection, the term 'off-system bridge' means a highway bridge located on a public road, other than a bridge on a Federal-aid highway.

''(2) SPECIAL RULE.—

''(A) SET-ASIDE.—Of the amounts apportioned to a State for fiscal year 2013 and each fiscal year thereafter under this section, the State shall obligate for activities described in subsection (b)(2) for off-system bridges an amount that is not less than 15 percent of the amount of funds apportioned to the State for the highway bridge program for fiscal year 2009, except that amounts allocated under subsection (d) shall not be obligated to carry out this subsection.

''(B) REDUCTION OF EXPENDITURES.—The Secretary, after consultation with State and local officials, may reduce the requirement for expenditures for off-system bridges under subparagraph (A) with respect to the State if the Secretary determines that the State has inadequate needs to justify the expenditure.

''(3) CREDIT FOR BRIDGES NOT ON FEDERAL-AID HIGHWAYS.—Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway for the replacement of a bridge or rehabilitation of a bridge that is wholly funded from State and local sources, is eligible for Federal funds under this section, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under this section, and is determined by the Secretary upon completion to be no longer a deficient bridge—

''(A) any amount expended after the date of enactment of this subsection from State and local sources for the project in excess of 20 percent of the cost of construction of the project may be credited to the non-Federal share of the cost of other bridge projects in the State that are eligible for Federal funds under this section; and

''(B) that crediting shall be conducted in accordance with procedures established by the Secretary.

''(h) SPECIAL RULE FOR AREAS OF LESS THAN 5,000 POPULATION.—

''(1) SPECIAL RULE.—Notwithstanding subsection (c), and except as provided in paragraph (2), up to 15 percent of the amounts required to be obligated by a State under subsection (d)(1)(A)(iii) for each of fiscal years 2013 through 2014 may be obligated on roads functionally classified as minor collectors.

''(2) SUSPENSION.—The Secretary may suspend the application of paragraph (1) with respect to a State if the Secretary determines that the authority provided under paragraph (1) is being used excessively by the State.''.

SEC. 1109. WORKFORCE DEVELOPMENT.

(a) ON-THE-JOB TRAINING.—Section 140(b) of title 23, United States Code, is amended—

(1) in the second sentence, by striking ''Whenever apportionments are made under section 104(b)(3) of this title,'' and inserting ''From administrative funds made available under section 104(a),''; and

(2) in the fourth sentence, by striking ''and the bridge program under section 144''.

(b) DISADVANTAGED BUSINESS ENTERPRISE.—Section 140(c) of title 23, United States Code, is amended in the second sentence by striking ''Whenever apportionments are made under section 104(b)(3),'' and inserting ''From administrative funds made available under section 104(a),''.

SEC. 1110. HIGHWAY USE TAX EVASION PROJECTS.

Section 143 of title 23, United States Code, is amended—

(1) in subsection (b)—

(A) by striking paragraph (2) and inserting the following:

''(2) FUNDING.—

''(A) IN GENERAL.—From administrative funds made available under section 104(a), the Secretary shall deduct such sums as are necessary, not to exceed $10,000,000 for each of fiscal years 2013 and 2014, to carry out this section.

''(B) ALLOCATION OF FUNDS.—Funds made available to carry out this section may be allocated to the Internal Revenue Service and the States at the discretion of the Secretary, except that of funds so made available for each fiscal year, $2,000,000 shall be available only to carry out intergovernmental enforcement efforts, including research and training.''; and

(B) in paragraph (8) by striking ''section 104(b)(3)'' and inserting ''section 104(b)(2)''; and

(2) in subsection (c)(3) by striking ''for each of fiscal years 2005 through 2009,'' and inserting ''for each fiscal year,''.

SEC. 1111. NATIONAL BRIDGE AND TUNNEL INVENTORY AND INSPECTION STANDARDS.

(a) IN GENERAL.—Section 144 of title 23, United States Code, is amended to read as follows:

''§ 144. National bridge and tunnel inventory and inspection standards

''(a) FINDINGS AND DECLARATIONS.—

''(1) FINDINGS.—Congress finds that—

''(A) the condition of the bridges of the United States has improved since the date of enactment of the Transportation Equity Act for the 21st Century (Public Law 105–178; 112 Stat. 107), yet continued improvement to bridge conditions is essential to protect the safety of the traveling public and allow for the efficient movement of people and goods on which the economy of the United States relies; and

''(B) the systematic preventative maintenance of bridges, and replacement and rehabilitation of deficient bridges, should be undertaken through an overall asset management approach to transportation investment.

''(2) DECLARATIONS.—Congress declares that it is in the vital interest of the United States—

''(A) to inventory, inspect, and improve the condition of the highway bridges and tunnels of the United States;

''(B) to use a data-driven, risk-based approach and cost-effective strategy for systematic preventative maintenance, replacement, and rehabilitation of highway bridges and tunnels to ensure safety and extended service life;

''(C) to use performance-based bridge management systems to assist States in making timely investments;

''(D) to ensure accountability and link performance outcomes to investment decisions; and

''(E) to ensure connectivity and access for residents of rural areas of the United States through strategic investments in National Highway System bridges and bridges on all public roads.

''(b) NATIONAL BRIDGE AND TUNNEL INVENTORIES.—The Secretary, in consultation with the States and Federal agencies with jurisdiction over highway bridges and tunnels, shall—

''(1) inventory all highway bridges on public roads, on and off Federal-aid highways, including tribally owned and Federally owned bridges, that are bridges over waterways, other topographical barriers, other highways, and railroads;

''(2) inventory all tunnels on public roads, on and off Federal-aid highways, including tribally owned and Federally owned tunnels;

''(3) classify the bridges according to serviceability, safety, and essentiality for public use, including the potential impacts to emergency evacuation routes and to regional and national freight and passenger mobility if the serviceability of the bridge is restricted or diminished;

''(4) based on that classification, assign each a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation; and

''(5) determine the cost of replacing each structurally deficient bridge identified under this subsection with a comparable facility or the cost of rehabilitating the bridge.

''(c) GENERAL BRIDGE AUTHORITY.—

''(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C. 525 et seq.) shall apply to bridges authorized to be replaced, in whole or in part, by this title.

''(2) EXCEPTION.—Section 502(b) of the General Bridge Act of 1946 (33 U.S.C. 525(b)) and section 9 of the Act of March 3, 1899 (33 U.S.C. 401), shall not apply to any bridge constructed, reconstructed, rehabilitated, or replaced with assistance under this title, if the bridge is over waters that—

''(A) are not used and are not susceptible to use in the natural condition of the bridge or by

reasonable improvement as a means to transport interstate or foreign commerce; and

''(B) are—

''(i) not tidal; or

''(ii) if tidal, used only by recreational boating, fishing, and other small vessels that are less than 21 feet in length.

''(d) INVENTORY UPDATES AND REPORTS.—

''(1) IN GENERAL.—The Secretary shall—

''(A) annually revise the inventories authorized by subsection (b); and

''(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the inventories.

''(2) INSPECTION REPORT.—Not later than 2 years after the date of enactment of the MAP–21, each State and appropriate Federal agency shall report element level data to the Secretary, as each bridge is inspected pursuant to this section, for all highway bridges on the National Highway System.

''(3) GUIDANCE.—The Secretary shall provide guidance to States and Federal agencies for implementation of this subsection, while respecting the existing inspection schedule of each State.

''(4) BRIDGES NOT ON NATIONAL HIGHWAY SYSTEM.—The Secretary shall—

''(A) conduct a study on the benefits, cost-effectiveness, and feasibility of requiring element-level data collection for bridges not on the National Highway System; and

''(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study.

''(e) BRIDGES WITHOUT TAXING POWERS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, any bridge that is owned and operated by an agency that does not have taxing powers and whose functions include operating a federally assisted public transit system subsidized by toll revenues shall be eligible for assistance under this title, but the amount of such assistance shall in no event exceed the cumulative amount which such agency has expended for capital and operating costs to subsidize such transit system.

''(2) INSUFFICIENT ASSETS.—Before authorizing an expenditure of funds under this subsection, the Secretary shall determine that the applicant agency has insufficient reserves, surpluses, and projected revenues (over and above those required for bridge and transit capital and operating costs) to fund the bridge project or activity eligible for assistance under this title.

''(3) CREDITING OF NON-FEDERAL FUNDS.—Any non-Federal funds expended for the seismic retrofit of the bridge may be credited toward the non-Federal share required as a condition of receipt of any Federal funds for seismic retrofit of the bridge made available after the date of the expenditure.

''(f) REPLACEMENT OF DESTROYED BRIDGES AND FERRY BOAT SERVICE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a State may use the funds apportioned under section 104(b)(2) to construct any bridge that replaces—

''(A) any low water crossing (regardless of the length of the low water crossing);

''(B) any bridge that was destroyed prior to January 1, 1965;

''(C) any ferry that was in existence on January 1, 1984; or

''(D) any road bridge that is rendered obsolete as a result of a Corps of Engineers flood control or channelization project and is not rebuilt with funds from the Corps of Engineers.

''(2) FEDERAL SHARE.—The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of the construction.

''(g) HISTORIC BRIDGES.—

''(1) DEFINITION OF HISTORIC BRIDGE.—In this subsection, the term 'historic bridge' means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

''(2) COORDINATION.—The Secretary shall, in cooperation with the States, encourage the retention, rehabilitation, adaptive reuse, and future study of historic bridges.

''(3) STATE INVENTORY.—The Secretary shall require each State to complete an inventory of all bridges on and off Federal-aid highways to determine the historic significance of the bridges.

''(4) ELIGIBILITY.—

''(A) IN GENERAL.—Subject to subparagraph (B), reasonable costs associated with actions to preserve, or reduce the impact of a project under this chapter on, the historic integrity of a historic bridge shall be eligible as reimbursable project costs under section 133 if the load capacity and safety features of the historic bridge are adequate to serve the intended use for the life of the historic bridge.

''(B) BRIDGES NOT USED FOR VEHICLE TRAFFIC.—In the case of a historic bridge that is no longer used for motorized vehicular traffic, the costs eligible as reimbursable project costs pursuant to this chapter shall not exceed the estimated cost of demolition of the historic bridge.

''(5) PRESERVATION.—Any State that proposes to demolish a historic bridge for a replacement project with funds made available to carry out this section shall first make the historic bridge available for donation to a State, locality, or responsible private entity if the State, locality, or responsible entity enters into an agreement—

''(A) to maintain the bridge and the features that give the historic bridge its historic significance; and

''(B) to assume all future legal and financial responsibility for the historic bridge, which may include an agreement to hold the State transportation department harmless in any liability action.

''(6) COSTS INCURRED.—

''(A) IN GENERAL.—Costs incurred by the State to preserve a historic bridge (including funds made available to the State, locality, or private entity to enable it to accept the bridge) shall be eligible as reimbursable project costs under this chapter in an amount not to exceed the cost of demolition.

''(B) ADDITIONAL FUNDING.—Any bridge preserved pursuant to this paragraph shall not be eligible for any other funds authorized pursuant to this title.

''(h) NATIONAL BRIDGE AND TUNNEL INSPECTION STANDARDS.—

''(1) REQUIREMENT.—

''(A) IN GENERAL.—The Secretary shall establish and maintain inspection standards for the proper inspection and evaluation of all highway bridges and tunnels for safety and serviceability.

''(B) UNIFORMITY.—The standards under this subsection shall be designed to ensure uniformity of the inspections and evaluations.

''(2) MINIMUM REQUIREMENTS OF INSPECTION STANDARDS.—The standards established under paragraph (1) shall, at a minimum—

''(A) specify, in detail, the method by which the inspections shall be carried out by the States, Federal agencies, and tribal governments;

''(B) establish the maximum time period between inspections;

''(C) establish the qualifications for those charged with carrying out the inspections;

''(D) require each State, Federal agency, and tribal government to maintain and make available to the Secretary on request—

''(i) written reports on the results of highway bridge and tunnel inspections and notations of any action taken pursuant to the findings of the inspections; and

''(ii) current inventory data for all highway bridges and tunnels reflecting the findings of the most recent highway bridge and tunnel inspections conducted; and

''(E) establish a procedure for national certification of highway bridge inspectors and tunnel inspectors.

''(3) STATE COMPLIANCE WITH INSPECTION STANDARDS.—The Secretary shall, at a minimum—

''(A) establish, in consultation with the States, Federal agencies, and interested and knowledgeable private organizations and individuals, procedures to conduct reviews of State compliance with—

''(i) the standards established under this subsection; and

''(ii) the calculation or reevaluation of bridge load ratings; and

''(B) establish, in consultation with the States, Federal agencies, and interested and knowledgeable private organizations and individuals, procedures for States to follow in reporting to the Secretary—

''(i) critical findings relating to structural or safety-related deficiencies of highway bridges and tunnels; and

''(ii) monitoring activities and corrective actions taken in response to a critical finding described in clause (i).

''(4) REVIEWS OF STATE COMPLIANCE.—

''(A) IN GENERAL.—The Secretary shall annually review State compliance with the standards established under this section.

''(B) NONCOMPLIANCE.—If an annual review in accordance with subparagraph (A) identifies noncompliance by a State, the Secretary shall—

''(i) issue a report detailing the issues of the noncompliance by December 31 of the calendar year in which the review was made; and

''(ii) provide the State an opportunity to address the noncompliance by—

''(I) developing a corrective action plan to remedy the noncompliance; or

''(II) resolving the issues of noncompliance not later than 45 days after the date of notification.

''(5) PENALTY FOR NONCOMPLIANCE.—

''(A) IN GENERAL.—If a State fails to satisfy the requirements of paragraph (4)(B) by August 1 of the calendar year following the year of a finding of noncompliance, the Secretary shall, on October 1 of that year, and each year thereafter as may be necessary, require the State to dedicate funds apportioned to the State under sections 119 and 133 after the date of enactment of the MAP–21 to correct the noncompliance with the minimum inspection standards established under this subsection.

''(B) AMOUNT.—The amount of the funds to be directed to correcting noncompliance in accordance with subparagraph (A) shall—

''(i) be determined by the State based on an analysis of the actions needed to address the noncompliance; and

''(ii) require approval by the Secretary.

''(6) UPDATE OF STANDARDS.—Not later than 3 years after the date of enactment of the MAP–21, the Secretary shall update inspection standards to cover—

''(A) the methodology, training, and qualifications for inspectors; and

''(B) the frequency of inspection.

''(7) RISK-BASED APPROACH.—In carrying out the revisions required by paragraph (6), the Secretary shall consider a risk-based approach to determining the frequency of bridge inspections.

''(i) TRAINING PROGRAM FOR BRIDGE AND TUNNEL INSPECTORS.—

''(1) IN GENERAL.—The Secretary, in cooperation with the State transportation departments, shall maintain a program designed to train appropriate personnel to carry out highway bridge and tunnel inspections.

''(2) REVISIONS.—The training program shall be revised from time to time to take into account new and improved techniques.

''(j) AVAILABILITY OF FUNDS.—In carrying out this section—

''(1) the Secretary may use funds made available to the Secretary under sections 104(a) and 503;

''(2) a State may use amounts apportioned to the State under section 104(b)(1) and 104(b)(3);

''(3) an Indian tribe may use funds made available to the Indian tribe under section 202; and

''(4) a Federal agency may use funds made available to the agency under section 503.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 144 and inserting the following:

''144. National bridge and tunnel inventory and inspection standards.''.

SEC. 1112. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

(a) IN GENERAL.—Section 148 of title 23, United States Code, is amended to read as follows:

''§ 148. Highway safety improvement program

''(a) DEFINITIONS.—In this section, the following definitions apply:

''(1) HIGH RISK RURAL ROAD.—The term 'high risk rural road' means any roadway functionally classified as a rural major or minor collector or a rural local road with significant safety risks, as defined by a State in accordance with an updated State strategic highway safety plan.

''(2) HIGHWAY BASEMAP.—The term 'highway basemap' means a representation of all public roads that can be used to geolocate attribute data on a roadway.

''(3) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'highway safety improvement program' means projects, activities, plans, and reports carried out under this section.

''(4) HIGHWAY SAFETY IMPROVEMENT PROJECT.—

''(A) IN GENERAL.—The term 'highway safety improvement project' means strategies, activities, and projects on a public road that are consistent with a State strategic highway safety plan and—

''(i) correct or improve a hazardous road location or feature; or

''(ii) address a highway safety problem.

''(B) INCLUSIONS.—The term 'highway safety improvement project' includes, but is not limited to, a project for 1 or more of the following:

''(i) An intersection safety improvement.

''(ii) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).

''(iii) Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians, including persons with disabilities.

''(iv) Installation of a skid-resistant surface at an intersection or other location with a high frequency of crashes.

''(v) An improvement for pedestrian or bicyclist safety or safety of persons with disabilities.

''(vi) Construction and improvement of a railway-highway grade crossing safety feature, including installation of protective devices.

''(vii) The conduct of a model traffic enforcement activity at a railway-highway crossing.

''(viii) Construction of a traffic calming feature.

''(ix) Elimination of a roadside hazard.

''(x) Installation, replacement, and other improvement of highway signage and pavement markings, or a project to maintain minimum levels of retroreflectivity, that addresses a highway safety problem consistent with a State strategic highway safety plan.

''(xi) Installation of a priority control system for emergency vehicles at signalized intersections.

''(xii) Installation of a traffic control or other warning device at a location with high crash potential.

''(xiii) Transportation safety planning.

''(xiv) Collection, analysis, and improvement of safety data.

''(xv) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to work zone safety.

''(xvi) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of road users and workers), and crash attenuators.

''(xvii) The addition or retrofitting of structures or other measures to eliminate or reduce crashes involving vehicles and wildlife.

''(xviii) Installation of yellow-green signs and signals at pedestrian and bicycle crossings and in school zones.

''(xix) Construction and operational improvements on high risk rural roads.

''(xx) Geometric improvements to a road for safety purposes that improve safety.

''(xxi) A road safety audit.

''(xxii) Roadway safety infrastructure improvements consistent with the recommendations included in the publication of the Federal Highway Administration entitled 'Highway Design Handbook for Older Drivers and Pedestrians' (FHWA–RD–01–103), dated May 2001 or as subsequently revised and updated.

''(xxiii) Truck parking facilities eligible for funding under section 1401 of the MAP–21.

''(xxiv) Systemic safety improvements.

''(5) MODEL INVENTORY OF ROADWAY ELEMENTS.—The term 'model inventory of roadway elements' means the listing and standardized coding by the Federal Highway Administration of roadway and traffic data elements critical to safety management, analysis, and decision-making.

''(6) PROJECT TO MAINTAIN MINIMUM LEVELS OF RETROREFLECTIVITY.—The term 'project to maintain minimum levels of retroreflectivity' means a project that is designed to maintain a highway sign or pavement marking retroreflectivity at or above the minimum levels prescribed in Federal or State regulations.

''(7) ROAD SAFETY AUDIT.—The term 'road safety audit' means a formal safety performance examination of an existing or future road or intersection by an independent multidisciplinary audit team.

''(8) ROAD USERS.—The term 'road user' means a motorist, passenger, public transportation operator or user, truck driver, bicyclist, motorcyclist, or pedestrian, including a person with disabilities.

''(9) SAFETY DATA.—

''(A) IN GENERAL.—The term 'safety data' means crash, roadway, and traffic data on a public road.

''(B) INCLUSION.—The term 'safety data' includes, in the case of a railway-highway grade crossing, the characteristics of highway and train traffic, licensing, and vehicle data.

''(10) SAFETY PROJECT UNDER ANY OTHER SECTION.—

''(A) IN GENERAL.—The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

''(B) INCLUSION.—The term 'safety project under any other section' includes—

''(i) a project consistent with the State strategic highway safety plan that promotes the awareness of the public and educates the public concerning highway safety matters (including motorcycle safety);

''(ii) a project to enforce highway safety laws; and

''(iii) a project to provide infrastructure and infrastructure-related equipment to support emergency services.

''(11) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'State highway safety improvement program' means a program of highway safety improvement projects, activities, plans and reports carried out as part of the Statewide transportation improvement program under section 135(g).

''(12) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' means a comprehensive plan, based on safety data, developed by a State transportation department that—

''(A) is developed after consultation with—

''(i) a highway safety representative of the Governor of the State;

''(ii) regional transportation planning organizations and metropolitan planning organizations, if any;

''(iii) representatives of major modes of transportation;

''(iv) State and local traffic enforcement officials;

''(v) a highway-rail grade crossing safety representative of the Governor of the State;

''(vi) representatives conducting a motor carrier safety program under section 31102, 31106, or 31309 of title 49;

''(vii) motor vehicle administration agencies;

''(viii) county transportation officials;

''(ix) State representatives of nonmotorized users; and

''(x) other major Federal, State, tribal, and local safety stakeholders;

''(B) analyzes and makes effective use of State, regional, local, or tribal safety data;

''(C) addresses engineering, management, operation, education, enforcement, and emergency services elements (including integrated, interoperable emergency communications) of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, all public roads, including non-State-owned public roads and roads on tribal land;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes;

''(F) describes a program of strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency;

''(H) is consistent with section 135(g); and

''(I) is updated and submitted to the Secretary for approval as required under subsection (d)(2).

''(13) SYSTEMIC SAFETY IMPROVEMENT.—The term 'systemic safety improvement' means an improvement that is widely implemented based on high-risk roadway features that are correlated with particular crash types, rather than crash frequency.

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

''(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal land.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To obligate funds apportioned under section 104(b)(3) to carry out this section, a State shall have in effect a State highway safety improvement program under which the State—

''(A) develops, implements, and updates a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in subsections (a)(12) and (d);

''(B) produces a program of projects or strategies to reduce identified safety problems; and

''(C) evaluates the strategic highway safety plan on a regularly recurring basis in accordance with subsection (d)(1) to ensure the accuracy of the data and priority of proposed strategies.

''(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State highway safety improvement program, a State shall—

''(A) have in place a safety data system with the ability to perform safety problem identification and countermeasure analysis—

''(i) to improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the safety data on all public roads, including non-State-owned public roads and roads on tribal land in the State;

''(ii) to evaluate the effectiveness of data improvement efforts;

''(iii) to link State data systems, including traffic records, with other data systems within the State;

''(iv) to improve the compatibility and interoperability of safety data with other State transportation-related data systems and the compatibility and interoperability of State safety data systems with data systems of other States and national data systems;

''(v) to enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances; and

''(vi) to improve the collection of data on nonmotorized crashes;

''(B) based on the analysis required by subparagraph (A)—

''(i) identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, and other highway users;

''(ii) using such criteria as the State determines to be appropriate, establish the relative severity of those locations, in terms of crashes (including crash rates), fatalities, serious injuries, traffic volume levels, and other relevant data;

''(iii) identify the number of fatalities and serious injuries on all public roads by location in the State;

''(iv) identify highway safety improvement projects on the basis of crash experience, crash potential, crash rate, or other data-supported means; and

''(v) consider which projects maximize opportunities to advance safety;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all public roads;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for safety data collection, analysis, and integration in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all public roads, including public non-State-owned roads and roads on tribal land;

''(iii) identifies hazardous locations, sections, and elements on all public roads that constitute a danger to motorists (including motorcyclists), bicyclists, pedestrians, persons with disabilities, and other highway users;

''(iv) includes a means of identifying the relative severity of hazardous locations described in clause (iii) in terms of crashes (including crash rate), serious injuries, fatalities, and traffic volume levels; and

''(v) improves the ability of the State to identify the number of fatalities and serious injuries on all public roads in the State with a breakdown by functional classification and ownership in the State;

''(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through safety data analysis;

''(ii) identify opportunities for preventing the development of such hazardous conditions; and

''(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

''(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

''(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

''(d) UPDATES TO STRATEGIC HIGHWAY SAFETY PLANS.—

''(1) ESTABLISHMENT OF REQUIREMENTS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the MAP–21, the Secretary shall establish requirements for regularly recurring State updates of strategic highway safety plans.

''(B) CONTENTS OF UPDATED STRATEGIC HIGHWAY SAFETY PLANS.—In establishing requirements under this subsection, the Secretary shall ensure that States take into consideration, with respect to updated strategic highway safety plans—

''(i) the findings of road safety audits;

''(ii) the locations of fatalities and serious injuries;

''(iii) the locations that do not have an empirical history of fatalities and serious injuries, but possess risk factors for potential crashes;

''(iv) rural roads, including all public roads, commensurate with fatality data;

''(v) motor vehicle crashes that include fatalities or serious injuries to pedestrians and bicyclists;

''(vi) the cost-effectiveness of improvements;

''(vii) improvements to rail-highway grade crossings; and

''(viii) safety on all public roads, including non-State-owned public roads and roads on tribal land.

''(2) APPROVAL OF UPDATED STRATEGIC HIGHWAY SAFETY PLANS.—

''(A) IN GENERAL.—Each State shall—

''(i) update the strategic highway safety plans of the State in accordance with the requirements established by the Secretary under this subsection; and

''(ii) submit the updated plans to the Secretary, along with a detailed description of the process used to update the plan.

''(B) REQUIREMENTS FOR APPROVAL.—The Secretary shall not approve the process for an updated strategic highway safety plan unless—

''(i) the updated strategic highway safety plan is consistent with the requirements of this subsection and subsection (a)(12); and

''(ii) the process used is consistent with the requirements of this subsection.

''(3) PENALTY FOR FAILURE TO HAVE AN APPROVED UPDATED STRATEGIC HIGHWAY SAFETY PLAN.—If a State does not have an updated strategic highway safety plan with a process approved by the Secretary by August 1 of the fiscal year beginning after the date of establishment of the requirements under paragraph (1), the State shall not be eligible to receive any additional limitation pursuant to the redistribution of the limitation on obligations for Federal-aid highway and highway safety construction programs that occurs after August 1 for each succeeding fiscal year until the fiscal year during which the plan is approved.

''(e) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—Funds apportioned to the State under section 104(b)(3) may be obligated to carry out—

''(A) any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail;

''(B) as provided in subsection (g); or

''(C) any project to maintain minimum levels of retroreflectivity with respect to a public road, without regard to whether the project is included in an applicable State strategic highway safety plan.

''(2) USE OF OTHER FUNDING FOR SAFETY.—

''(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

''(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of the safety needs and opportunities of the States by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

''(f) DATA IMPROVEMENT.—

''(1) DEFINITION OF DATA IMPROVEMENT ACTIVITIES.—In this subsection, the following definitions apply:

''(A) IN GENERAL.—The term 'data improvement activities' means a project or activity to further the capacity of a State to make more informed and effective safety infrastructure investment decisions.

''(B) INCLUSIONS.—The term 'data improvement activities' includes a project or activity—

''(i) to create, update, or enhance a highway basemap of all public roads in a State;

''(ii) to collect safety data, including data identified as part of the model inventory for roadway elements, for creation of or use on a highway basemap of all public roads in a State;

''(iii) to store and maintain safety data in an electronic manner;

''(iv) to develop analytical processes for safety data elements;

''(v) to acquire and implement roadway safety analysis tools; and

''(vi) to support the collection, maintenance, and sharing of safety data on all public roads and related systems associated with the analytical usage of that data.

''(2) MODEL INVENTORY OF ROADWAY ELEMENTS.—The Secretary shall—

''(A) establish a subset of the model inventory of roadway elements that are useful for the inventory of roadway safety; and

''(B) ensure that States adopt and use the subset to improve data collection.

''(g) SPECIAL RULES.—

''(1) HIGH-RISK RURAL ROAD SAFETY.—If the fatality rate on rural roads in a State increases over the most recent 2-year period for which data are available, that State shall be required to obligate in the next fiscal year for projects on high risk rural roads an amount equal to at least 200 percent of the amount of funds the State received for fiscal year 2009 for high risk rural roads under subsection (f) of this section, as in effect on the day before the date of enactment of the MAP–21.

''(2) OLDER DRIVERS.—If traffic fatalities and serious injuries per capita for drivers and pedestrians over the age of 65 in a State increases during the most recent 2-year period for which data are available, that State shall be required to include, in the subsequent Strategic Highway Safety Plan of the State, strategies to address the increases in those rates, taking into account the recommendations included in the publication of the Federal Highway Administration entitled 'Highway Design Handbook for Older Drivers and Pedestrians' (FHWA–RD–01–103), and dated May 2001, or as subsequently revised and updated.

''(h) REPORTS.—

''(1) IN GENERAL.—A State shall submit to the Secretary a report that—

''(A) describes progress being made to implement highway safety improvement projects under this section;

''(B) assesses the effectiveness of those improvements; and

''(C) describes the extent to which the improvements funded under this section have contributed to reducing—

''(i) the number and rate of fatalities on all public roads with, to the maximum extent practicable, a breakdown by functional classification and ownership in the State;

''(ii) the number and rate of serious injuries on all public roads with, to the maximum extent practicable, a breakdown by functional classification and ownership in the State; and

''(iii) the occurrences of fatalities and serious injuries at railway-highway crossings.

''(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for the submission of the report under paragraph (1).

''(3) TRANSPARENCY.—The Secretary shall make strategic highway safety plans submitted under subsection (d) and reports submitted under this subsection available to the public through—

''(A) the website of the Department; and

''(B) such other means as the Secretary determines to be appropriate.

''(4) DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION.—Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose relating to this section, shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in the reports, surveys, schedules, lists, or other data.

''(i) STATE PERFORMANCE TARGETS.—If the Secretary determines that a State has not met or made significant progress toward meeting the performance targets of the State established under section 150(d) by the date that is 2 years after the date of the establishment of the performance targets, the State shall—

''(1) use obligation authority equal to the apportionment of the State for the prior year under section 104(b)(3) only for highway safety improvement projects under this section until the Secretary determines that the State has met or made significant progress toward meeting the performance targets of the State; and

''(2) submit annually to the Secretary, until the Secretary determines that the State has met or made significant progress toward meeting the performance targets of the State, an implementation plan that—

''(A) identifies roadway features that constitute a hazard to road users;

''(B) identifies highway safety improvement projects on the basis of crash experience, crash potential, or other data-supported means;

''(C) describes how highway safety improvement program funds will be allocated, including projects, activities, and strategies to be implemented;

''(D) describes how the proposed projects, activities, and strategies funded under the State highway safety improvement program will allow the State to make progress toward achieving the safety performance targets of the State; and

''(E) describes the actions the State will undertake to meet the performance targets of the State.

''(j) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds apportioned to a State under section 104(b)(3) shall be 90 percent.''.

(b) STUDY OF HIGH-RISK RURAL ROADS BEST PRACTICES.—

(1) STUDY.—

(A) IN GENERAL.—The Secretary shall conduct a study of the best practices for implementing cost-effective roadway safety infrastructure improvements on high-risk rural roads.

(B) METHODOLOGY.—In carrying out the study, the Secretary shall—

(i) conduct a thorough literature review;

(ii) survey current practices of State departments of transportation; and

(iii) survey current practices of local units of government, as appropriate.

(C) CONSULTATION.—In carrying out the study, the Secretary shall consult with—

(i) State departments of transportation;

(ii) county engineers and public works professionals;

(iii) appropriate local officials; and

(iv) appropriate private sector experts in the field of roadway safety infrastructure.

(2) REPORT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the study.

(B) CONTENTS.—The report shall include—

(i) a summary of cost-effective roadway safety infrastructure improvements;

(ii) a summary of the latest research on the financial savings and reduction in fatalities and serious bodily injury crashes from the implementation of cost-effective roadway safety infrastructure improvements; and

(iii) recommendations for State and local governments on best practice methods to install cost-effective roadway safety infrastructure on high-risk rural roads.

(3) MANUAL.—

(A) DEVELOPMENT.—Based on the results of the study under paragraph (2), the Secretary, in consultation with the individuals and entities described in paragraph (1)(C), shall develop a best practices manual to support Federal, State, and local efforts to reduce fatalities and serious bodily injury crashes on high-risk rural roads through the use of cost-effective roadway safety infrastructure improvements.

(B) AVAILABILITY.—The manual shall be made available to State and local governments not later than 180 days after the date of submission of the report under paragraph (2).

(C) CONTENTS.—The manual shall include, at a minimum, a list of cost-effective roadway safety infrastructure improvements and best practices on the installation of cost-effective roadway safety infrastructure improvements on high-risk rural roads.

(D) USE OF MANUAL.—Use of the manual shall be voluntary and the manual shall not establish any binding standards or legal duties on State or local governments, or any other person.

SEC. 1113. CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.

(a) ELIGIBLE PROJECTS.—Section 149(b) of title 23, United States Code, is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking ''in subsection (c)'' and inserting ''in subsection (d)''; and

(B) by striking ''section 104(b)(2)'' and inserting ''section 104(b)(4)'';

(2) in paragraph (5)—

(A) by inserting ''add turning lanes,'' after ''improve intersections,''; and

(B) by striking ''paragraph;'' and inserting ''paragraph, including programs or projects to improve incident and emergency response or improve mobility, such as through real-time traffic, transit, and multimodal traveler information;'';

(3) in paragraph (6) by striking ''or'' at the end;

(4) in paragraph (7)(A)(ii) by striking ''published in the list under subsection (f)(2)'' and inserting ''verified technologies (as defined in section 791 of the Energy Policy Act of 2005 (42 U.S.C. 16131))'';

(5) by striking the matter following paragraph (7);

(6) by redesignating paragraph (7) as paragraph (8); and

(7) by inserting after paragraph (6) the following:

''(7) if the project or program shifts traffic demand to nonpeak hours or other transportation modes, increases vehicle occupancy rates, or otherwise reduces demand for roads through such means as telecommuting, ridesharing, carsharing, alternative work hours, and pricing; or''.

(b) SPECIAL RULES.—Section 149 of title 23, United States Code, is amended—

(1) by redesignating subsections (c) through (h) as subsections (d) through (i) respectively;

(2) by inserting after subsection (b) the following:

''(c) SPECIAL RULES.—

''(1) PROJECTS FOR PM–10 NONATTAINMENT AREAS.—A State may obligate funds apportioned to the State under section 104(b)(4) for a project or program for an area that is nonattainment for ozone or carbon monoxide, or both, and for PM–10 resulting from transportation activities, without regard to any limitation of the Department of Transportation relating to the type of ambient air quality standard such project or program addresses.

''(2) ELECTRIC VEHICLE AND NATURAL GAS VEHICLE INFRASTRUCTURE.—A State may obligate funds apportioned under section 104(b)(4) for a project or program to establish electric vehicle charging stations or natural gas vehicle refueling stations for the use of battery powered or natural gas fueled trucks or other motor vehicles at any location in the State except that such stations may not be established or supported where commercial establishments serving motor vehicle users are prohibited by section 111 of title 23, United States Code.

''(3) HOV FACILITIES.—No funds may be provided under this section for a project which will result in the construction of new capacity available to single occupant vehicles unless the project consists of a high occupancy vehicle facility available to single occupant vehicles only at other than peak travel times.'';

(3) by striking subsection (d) (as redesignated by paragraph (1)) and inserting the following:

''(d) STATES FLEXIBILITY.—

''(1) STATES WITHOUT A NONATTAINMENT AREA.—If a State does not have, and never has had, a nonattainment area designated under the Clean Air Act (42 U.S.C. 7401 et seq.), the State may use funds apportioned to the State under section 104(b)(4) for any project in the State that—

''(A) would otherwise be eligible under subsection (b) as if the project were carried out in a nonattainment or maintenance area; or

''(B) is eligible under the surface transportation program under section 133.

''(2) STATES WITH A NONATTAINMENT AREA.—

''(A) IN GENERAL.—If a State has a nonattainment area or maintenance area and received funds in fiscal year 2009 under section 104(b)(2)(D), as in effect on the day before the date of enactment of the MAP–21, above the amount of funds that the State would have received based on the nonattainment and maintenance area population of the State under subparagraphs (B) and (C) of section 104(b)(2), as in effect on the day before the date of enactment of the MAP–21, the State may use for any project that is eligible under the surface transportation program under section 133 an amount of funds apportioned to such State under section 104(b)(4) that is equal to the product obtained by multiplying—

''(i) the amount apportioned to such State under section 104(b)(4) (excluding the amount of funds reserved under paragraph (l)); by

''(ii) the ratio calculated under subparagraph (B).

''(B) RATIO.—For purposes of this paragraph, the ratio shall be calculated as the proportion that—

''(i) the amount for fiscal year 2009 such State was permitted by section 149(c)(2), as in effect on the day before the date of enactment of the MAP–21, to obligate in any area of the State for projects eligible under section 133, as in effect on the day before the date of enactment of the MAP–21t; bears to

''(ii) the total apportionment to such State for fiscal year 2009 under section 104(b)(2), as in effect on the day before the date of enactment of the MAP–21.

''(3) CHANGES IN DESIGNATION.—If a new nonattainment area is designated or a previously designated nonattainment area is redesignated as an attainment area in a State under the Clean Air Act (42 U.S.C. 7401 et seq.), the Secretary shall modify the amount such State is permitted to obligate in any area of the State for projects eligible under section 133.'';

(4) in subsection (f)(3) (as redesignated by paragraph (1)) by striking ''104(b)(2)'' and inserting ''104(b)(4)'';

(5) in subsection (g) (as redesignated by paragraph (1)) by striking paragraph (3) and inserting the following:

''(3) PRIORITY CONSIDERATION.—States and metropolitan planning organizations shall give priority in areas designated as nonattainment or maintenance for PM2.5 under the Clean Air Act (42 U.S.C. 7401 et seq.) in distributing funds received for congestion mitigation and air quality

projects and programs from apportionments under section 104(b)(4) to projects that are proven to reduce PM2.5, including diesel retrofits.'';

(6) by striking subsection (i) (as redesignated by paragraph (1)) and inserting the following:

''(i) EVALUATION AND ASSESSMENT OF PROJECTS.—

''(1) DATABASE.—

''(A) IN GENERAL.—Using appropriate assessments of projects funded under the congestion mitigation and air quality program and results from other research, the Secretary shall maintain and disseminate a cumulative database describing the impacts of the projects, including specific information about each project, such as the project name, location, sponsor, cost, and, to the extent already measured by the project sponsor, cost-effectiveness, based on reductions in congestion and emissions.

''(B) AVAILABILITY.—The database shall be published or otherwise made readily available by the Secretary in electronically accessible format and means, such as the Internet, for public review.

''(2) COST EFFECTIVENESS.—

''(A) IN GENERAL.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall evaluate projects on a periodic basis and develop a table or other similar medium that illustrates the cost-effectiveness of a range of project types eligible for funding under this section as to how the projects mitigate congestion and improve air quality.

''(B) CONTENTS.—The table described in subparagraph (A) shall show measures of cost-effectiveness, such as dollars per ton of emissions reduced, and assess those measures over a variety of timeframes to capture impacts on the planning timeframes outlined in section 134.

''(C) USE OF TABLE.—States and metropolitan planning organizations shall consider the information in the table when selecting projects or developing performance plans under subsection (l).

''(j) OPTIONAL PROGRAMMATIC ELIGIBILITY.—

''(1) IN GENERAL.—At the discretion of a metropolitan planning organization, a technical assessment of a selected program of projects may be conducted through modeling or other means to demonstrate the emissions reduction projection required under this section.

''(2) APPLICABILITY.—If an assessment described in paragraph (1) successfully demonstrates an emissions reduction, all projects included in such assessment shall be eligible for obligation under this section without further demonstration of emissions reduction of individual projects included in such assessment.

''(k) PRIORITY FOR USE OF FUNDS IN PM2.5 AREAS.—

''(1) IN GENERAL.—For any State that has a nonattainment or maintenance area for fine particulate matter, an amount equal to 25 percent of the funds apportioned to each State under section 104(b)(4) for a nonattainment or maintenance area that are based all or in part on the weighted population of such area in fine particulate matter nonattainment shall be obligated to projects that reduce such fine particulate matter emissions in such area, including diesel retrofits.

''(2) CONSTRUCTION EQUIPMENT AND VEHICLES.—In order to meet the requirements of paragraph (1), a State or metropolitan planning organization may elect to obligate funds to install diesel emission control technology on nonroad diesel equipment or on-road diesel equipment that is operated on a highway construction project within a PM2.5 nonattainment or maintenance area.

''(l) PERFORMANCE PLAN.—

''(1) IN GENERAL.—Each metropolitan planning organization serving a transportation management area (as defined in section 134) with a population over 1,000,000 people representing a nonattainment or maintenance area shall develop a performance plan that—

''(A) includes an area baseline level for traffic congestion and on-road mobile source emissions for which the area is in nonattainment or maintenance;

''(B) describes progress made in achieving the performance targets described in section 150(d); and

''(C) includes a description of projects identified for funding under this section and how such projects will contribute to achieving emission and traffic congestion reduction targets.

''(2) UPDATED PLANS.—Performance plans shall be updated biennially and include a separate report that assesses the progress of the program of projects under the previous plan in achieving the air quality and traffic congestion targets of the previous plan.

''(m) OPERATING ASSISTANCE.—A State may obligate funds apportioned under section 104(b)(2) in an area of such State that is otherwise eligible for obligations of such funds for operating costs under chapter 53 of title 49 or on a system that was previously eligible under this section.''.

(c) AIR QUALITY AND CONGESTION MITIGATION MEASURE OUTCOMES ASSESSMENT STUDY.—

(1) IN GENERAL.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall examine the outcomes of actions funded under the congestion mitigation and air quality improvement program since the date of enactment of the SAFETEA–LU (Public Law 109–59).

(2) GOALS.—The goals of the program shall include—

(A) the assessment and documentation, through outcomes research conducted on a representative sample of cases, of—

(i) the emission reductions achieved by federally supported surface transportation actions intended to reduce emissions or lessen traffic congestion; and

(ii) the air quality and human health impacts of those actions, including potential unrecognized or indirect consequences, attributable to those actions;

(B) an expanded base of empirical evidence on the air quality and human health impacts of actions described in paragraph (1); and

(C) an increase in knowledge of—

(i) the factors determining the air quality and human health changes associated with transportation emission reduction actions; and

(ii) other information to more accurately understand the validity of current estimation and modeling routines and ways to improve those routines.

(3) ADMINISTRATIVE ELEMENTS.—To carry out this subsection, the Secretary shall—

(A) make a grant for the coordination, selection, management, and reporting of component studies to an independent scientific research organization with the necessary experience in successfully conducting accountability and other studies on mobile source air pollutants and associated health effects;

(B) ensure that case studies are identified and conducted by teams selected through a competitive solicitation overseen by an independent committee of unbiased experts; and

(C) ensure that all findings and reports are peer-reviewed and published in a form that presents the findings together with reviewer comments.

(4) REPORT.—The Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(A) not later than 1 year after the date of enactment of the MAP–21, and for the following year, a report providing an initial scoping and plan, and status updates, respectively, for the program under this subsection; and

(B) not later than 2 years after the date of enactment of the MAP–21, a final report that describes the findings of, and recommendations resulting from, the program under this subsection.

(5) FUNDING.—Of the amounts made available to carry out section 104(a) for fiscal year 2013, the Secretary shall make available to carry out this subsection not more than $1,000,000.

SEC. 1114. TERRITORIAL AND PUERTO RICO HIGHWAY PROGRAM.

(a) IN GENERAL.—Section 165 of title 23, United States Code, is amended to read as follows:

''§ 165. Territorial and Puerto Rico highway program

''(a) DIVISION OF FUNDS.—Of funds made available in a fiscal year for the territorial and Puerto Rico highway program—

''(1) $150,000,000 shall be for the Puerto Rico highway program under subsection (b); and

''(2) $40,000,000 shall be for the territorial highway program under subsection (c).

''(b) PUERTO RICO HIGHWAY PROGRAM.—

''(1) IN GENERAL.—The Secretary shall allocate funds made available to carry out this subsection to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

''(2) TREATMENT OF FUNDS.—Amounts made available to carry out this subsection for a fiscal year shall be administered as follows:

''(A) APPORTIONMENT.—

''(i) IN GENERAL.—For the purpose of imposing any penalty under this title or title 49, the amounts shall be treated as being apportioned to Puerto Rico under sections 104(b) and 144 (as in effect for fiscal year 1997) for each program funded under those sections in an amount determined by multiplying—

''(I) the aggregate of the amounts for the fiscal year; by

''(II) the proportion that—

''(aa) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 1997; bears to

''(bb) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

''(ii) EXCEPTION.—Funds identified under clause (i) as having been apportioned for the national highway system, the surface transportation program, and the Interstate maintenance program shall be deemed to have been apportioned 50 percent for the national highway performance program and 50 percent for the surface transportation program for purposes of imposing such penalties.

''(B) PENALTY.—The amounts treated as being apportioned to Puerto Rico under each section referred to in subparagraph (A) shall be deemed to be required to be apportioned to Puerto Rico under that section for purposes of the imposition of any penalty under this title or title 49.

''(C) ELIGIBLE USES OF FUNDS.—Of amounts allocated to Puerto Rico for the Puerto Rico Highway Program for a fiscal year—

''(i) at least 50 percent shall be available only for purposes eligible under section 119;

''(ii) at least 25 percent shall be available only for purposes eligible under section 148; and

''(iii) any remaining funds may be obligated for activities eligible under chapter 1.

''(3) EFFECT ON APPORTIONMENTS.—Except as otherwise specifically provided, Puerto Rico shall not be eligible to receive funds apportioned to States under this title.

''(c) TERRITORIAL HIGHWAY PROGRAM.—

''(1) TERRITORY DEFINED.—In this subsection, the term 'territory' means any of the following territories of the United States:

''(A) American Samoa.

''(B) The Commonwealth of the Northern Mariana Islands.

''(C) Guam.

''(D) The United States Virgin Islands.

''(2) PROGRAM.—

''(A) IN GENERAL.—Recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the Secretary may carry out a program to assist each government of a

territory in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, that is—

''(i) designated by the Governor or chief executive officer of each territory; and

''(ii) approved by the Secretary.

''(B) FEDERAL SHARE.—The Federal share of Federal financial assistance provided to territories under this subsection shall be in accordance with section 120(g).

''(3) TECHNICAL ASSISTANCE.—

''(A) IN GENERAL.—To continue a long-range highway development program, the Secretary may provide technical assistance to the governments of the territories to enable the territories, on a continuing basis—

''(i) to engage in highway planning;

''(ii) to conduct environmental evaluations;

''(iii) to administer right-of-way acquisition and relocation assistance programs; and

''(iv) to design, construct, operate, and maintain a system of arterial and collector highways, including necessary inter-island connectors.

''(B) FORM AND TERMS OF ASSISTANCE.—Technical assistance provided under subparagraph (A), and the terms for the sharing of information among territories receiving the technical assistance, shall be included in the agreement required by paragraph (5).

''(4) NONAPPLICABILITY OF CERTAIN PROVISIONS.—

''(A) IN GENERAL.—Except to the extent that provisions of this chapter are determined by the Secretary to be inconsistent with the needs of the territories and the intent of this subsection, this chapter (other than provisions of this chapter relating to the apportionment and allocation of funds) shall apply to funds made available under this subsection.

''(B) APPLICABLE PROVISIONS.—The agreement required by paragraph (5) for each territory shall identify the sections of this chapter that are applicable to that territory and the extent of the applicability of those sections.

''(5) AGREEMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (D), none of the funds made available under this subsection shall be available for obligation or expenditure with respect to any territory until the chief executive officer of the territory has entered into an agreement (including an agreement entered into under section 215 as in effect on the day before the enactment of this section) with the Secretary providing that the government of the territory shall—

''(i) implement the program in accordance with applicable provisions of this chapter and paragraph (4);

''(ii) design and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are—

''(I) appropriate for each territory; and

''(II) approved by the Secretary;

''(iii) provide for the maintenance of facilities constructed or operated under this subsection in a condition to adequately serve the needs of present and future traffic; and

''(iv) implement standards for traffic operations and uniform traffic control devices that are approved by the Secretary.

''(B) TECHNICAL ASSISTANCE.—The agreement required by subparagraph (A) shall—

''(i) specify the kind of technical assistance to be provided under the program;

''(ii) include appropriate provisions regarding information sharing among the territories; and

''(iii) delineate the oversight role and responsibilities of the territories and the Secretary.

''(C) REVIEW AND REVISION OF AGREEMENT.—The agreement entered into under subparagraph (A) shall be reevaluated and, as necessary, revised, at least every 2 years.

''(D) EXISTING AGREEMENTS.—With respect to an agreement under this subsection or an agreement entered into under section 215 of this title as in effect on the day before the date of enactment of this subsection—

''(i) the agreement shall continue in force until replaced by an agreement entered into in accordance with subparagraph (A); and

''(ii) amounts made available under this subsection under the existing agreement shall be available for obligation or expenditure so long as the agreement, or the existing agreement entered into under subparagraph (A), is in effect.

''(6) ELIGIBLE USES OF FUNDS.—

''(A) IN GENERAL.—Funds made available under this subsection may be used only for the following projects and activities carried out in a territory:

''(i) Eligible surface transportation program projects described in section 133(b).

''(ii) Cost-effective, preventive maintenance consistent with section 116(e).

''(iii) Ferry boats, terminal facilities, and approaches, in accordance with subsections (b) and (c) of section 129.

''(iv) Engineering and economic surveys and investigations for the planning, and the financing, of future highway programs.

''(v) Studies of the economy, safety, and convenience of highway use.

''(vi) The regulation and equitable taxation of highway use.

''(vii) Such research and development as are necessary in connection with the planning, design, and maintenance of the highway system.

''(B) PROHIBITION ON USE OF FUNDS FOR ROUTINE MAINTENANCE.—None of the funds made available under this subsection shall be obligated or expended for routine maintenance.

''(7) LOCATION OF PROJECTS.—Territorial highway program projects (other than those described in paragraphs (2), (4), (7), (8), (14), and (19) of section 133(b)) may not be undertaken on roads functionally classified as local.''.

(b) CONFORMING AMENDMENTS.—

(1) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 165 and inserting the following:

''165. Territorial and Puerto Rico highway program.''.

(2) TERRITORIAL HIGHWAY PROGRAM.—

(A) REPEAL.—Section 215 of title 23, United States Code, is repealed.

(B) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 2 of title 23, United States Code, is amended by striking the item relating to section 215.

(C) DUNCAN HUNTER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2009.—Section 3512(e) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (48 U.S.C. 1421r(e)) is amended by striking ''section 215'' and inserting ''section 165''.

SEC. 1115. NATIONAL FREIGHT POLICY.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''§ 167. National freight policy

''(a) IN GENERAL.—It is the policy of the United States to improve the condition and performance of the national freight network to ensure that the national freight network provides the foundation for the United States to compete in the global economy and achieve each goal described in subsection (b).

''(b) GOALS.—The goals of the national freight policy are—

''(1) to invest in infrastructure improvements and to implement operational improvements that—

''(A) strengthen the contribution of the national freight network to the economic competitiveness of the United States;

''(B) reduce congestion; and

''(C) increase productivity, particularly for domestic industries and businesses that create high-value jobs;

''(2) to improve the safety, security, and resilience of freight transportation;

''(3) to improve the state of good repair of the national freight network;

''(4) to use advanced technology to improve the safety and efficiency of the national freight network;

''(5) to incorporate concepts of performance, innovation, competition, and accountability into the operation and maintenance of the national freight network; and

''(6) to improve the economic efficiency of the national freight network.

''(7) to reduce the environmental impacts of freight movement on the national freight network;

''(c) ESTABLISHMENT OF A NATIONAL FREIGHT NETWORK.—

''(1) IN GENERAL.—The Secretary shall establish a national freight network in accordance with this section to assist States in strategically directing resources toward improved system performance for efficient movement of freight on highways, including national highway system, freight intermodal connectors and aerotropolis transportation systems.

''(2) NETWORK COMPONENTS.—The national freight network shall consist of—

''(A) the primary freight network, as designated by the Secretary under subsection (d) (referred to in this section as the 'primary freight network') as most critical to the movement of freight;

''(B) the portions of the Interstate System not designated as part of the primary freight network; and

''(C) critical rural freight corridors established under subsection (e).

''(d) DESIGNATION OF PRIMARY FREIGHT NETWORK.—

''(1) INITIAL DESIGNATION OF PRIMARY FREIGHT NETWORK.—

''(A) DESIGNATION.—Not later than 1 year after the date of enactment of this section, the Secretary shall designate a primary freight network—

''(i) based on an inventory of national freight volume conducted by the Administrator of the Federal Highway Administration, in consultation with stakeholders, including system users, transport providers, and States; and

''(ii) that shall be comprised of not more than 27,000 centerline miles of existing roadways that are most critical to the movement of freight.

''(B) FACTORS FOR DESIGNATION.—In designating the primary freight network, the Secretary shall consider—

''(i) the origins and destinations of freight movement in the United States;

''(ii) the total freight tonnage and value of freight moved by highways;

''(iii) the percentage of annual average daily truck traffic in the annual average daily traffic on principal arterials;

''(iv) the annual average daily truck traffic on principal arterials;

''(v) land and maritime ports of entry;

''(vi) access to energy exploration, development, installation, or production areas;

''(vii) population centers; and

''(viii) network connectivity.

''(2) ADDITIONAL MILES ON PRIMARY FREIGHT NETWORK.—In addition to the miles initially designated under paragraph (1), the Secretary may increase the number of miles designated as part of the primary freight network by not more than 3,000 additional centerline miles of roadways (which may include existing or planned roads) critical to future efficient movement of goods on the primary freight network.

''(3) REDESIGNATION OF PRIMARY FREIGHT NETWORK.—Effective beginning 10 years after the designation of the primary freight network and every 10 years thereafter, using the designation factors described in paragraph (1), the Secretary shall redesignate the primary freight network (including additional mileage described in paragraph (2)).

''(e) CRITICAL RURAL FREIGHT CORRIDORS.—A State may designate a road within the borders of the State as a critical rural freight corridor if the road—

''(1) is a rural principal arterial roadway and has a minimum of 25 percent of the annual average daily traffic of the road measured in passenger vehicle equivalent units from trucks (FHWA vehicle class 8 to 13);

''(2) provides access to energy exploration, development, installation, or production areas;

''(3) connects the primary freight network, a roadway described in paragraph (1) or (2), or Interstate System to facilities that handle more than—

''(A) 50,000 20-foot equivalent units per year; or

''(B) 500,000 tons per year of bulk commodities.

''(f) NATIONAL FREIGHT STRATEGIC PLAN.—

''(1) INITIAL DEVELOPMENT OF NATIONAL FREIGHT STRATEGIC PLAN.—Not later than 3 years after the date of enactment of this section, the Secretary shall, in consultation with State departments of transportation and other appropriate public and private transportation stakeholders, develop and post on the Department of Transportation public website a national freight strategic plan that shall include—

''(A) an assessment of the condition and performance of the national freight network;

''(B) an identification of highway bottlenecks on the national freight network that create significant freight congestion problems, based on a quantitative methodology developed by the Secretary, which shall, at a minimum, include—

''(i) information from the Freight Analysis Network of the Federal Highway Administration; and

''(ii) to the maximum extent practicable, an estimate of the cost of addressing each bottleneck and any operational improvements that could be implemented;

''(C) forecasts of freight volumes for the 20-year period beginning in the year during which the plan is issued;

''(D) an identification of major trade gateways and national freight corridors that connect major population centers, trade gateways, and other major freight generators for current and forecasted traffic and freight volumes, the identification of which shall be revised, as appropriate, in subsequent plans;

''(E) an assessment of statutory, regulatory, technological, institutional, financial, and other barriers to improved freight transportation performance (including opportunities for overcoming the barriers);

''(F) an identification of routes providing access to energy exploration, development, installation, or production areas;

''(G) best practices for improving the performance of the national freight network;

''(H) best practices to mitigate the impacts of freight movement on communities;

''(I) a process for addressing multistate projects and encouraging jurisdictions to collaborate; and

''(J) strategies to improve freight intermodal connectivity.

''(2) UPDATES TO NATIONAL FREIGHT STRATEGIC PLAN.—Not later than 5 years after the date of completion of the first national freight strategic plan under paragraph (1), and every 5 years thereafter, the Secretary shall update and repost on the Department of Transportation public website a revised national freight strategic plan.

''(g) FREIGHT TRANSPORTATION CONDITIONS AND PERFORMANCE REPORTS.—Not later than 2 years after the date of enactment of this section, and biennially thereafter, the Secretary shall prepare a report that contains a description of the conditions and performance of the national freight network in the United States.

''(h) TRANSPORTATION INVESTMENT DATA AND PLANNING TOOLS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall—

''(A) begin development of new tools and improvement of existing tools or improve existing tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects, including—

''(i) methodologies for systematic analysis of benefits and costs;

''(ii) tools for ensuring that the evaluation of freight-related and other transportation projects could consider safety, economic competitiveness, environmental sustainability, and system condition in the project selection process; and

''(iii) other elements to assist in effective transportation planning;

''(B) identify transportation-related model data elements to support a broad range of evaluation methods and techniques to assist in making transportation investment decisions; and

''(C) at a minimum, in consultation with other relevant Federal agencies, consider any improvements to existing freight flow data collection efforts that could reduce identified freight data gaps and deficiencies and help improve forecasts of freight transportation demand.

''(2) CONSULTATION.—The Secretary shall consult with Federal, State, and other stakeholders to develop, improve, and implement the tools and collect the data in paragraph (1).

''(i) DEFINITION OF AEROTROPOLIS TRANSPORTATION SYSTEM.—In this section, the term 'aerotropolis transportation system' means a planned and coordinated multimodal freight and passenger transportation network that, as determined by the Secretary, provides efficient, cost-effective, sustainable, and intermodal connectivity to a defined region of economic significance centered around a major airport.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by adding at the end the following:

''167. National freight program.''.

SEC. 1116. PRIORITIZATION OF PROJECTS TO IMPROVE FREIGHT MOVEMENT.

(a) IN GENERAL.—Notwithstanding section 120 of title 23, United States Code, the Secretary may increase the Federal share payable for any project to 95 percent for projects on the Interstate System and 90 percent for any other project if the Secretary certifies that the project meets the requirements of this section.

(b) INCREASED FUNDING.—To be eligible for the increased Federal funding share under this section, a project shall—

(1) demonstrate the improvement made by the project to the efficient movement of freight, including making progress towards meeting performance targets for freight movement established under section 150(d) of title 23, United States Code; and

(2) be identified in a State freight plan developed pursuant to section 1118.

(c) ELIGIBLE PROJECTS.—Eligible projects to improve the movement of freight under this section may include, but are not limited to—

(1) construction, reconstruction, rehabilitation, and operational improvements directly relating to improving freight movement;

(2) intelligent transportation systems and other technology to improve the flow of freight;

(3) efforts to reduce the environmental impacts of freight movement on the primary freight network;

(4) railway-highway grade separation;

(5) geometric improvements to interchanges and ramps.

(6) truck-only lanes;

(7) climbing and runaway truck lanes;

(8) truck parking facilities eligible for funding under section 1401;

(9) real-time traffic, truck parking, roadway condition, and multimodal transportation information systems;

(10) improvements to freight intermodal connectors; and

(11) improvements to truck bottlenecks.

SEC. 1117. STATE FREIGHT ADVISORY COMMITTEES.

(a) IN GENERAL.—The Secretary shall encourage each State to establish a freight advisory committee consisting of a representative cross-section of public and private sector freight stakeholders, including representatives of ports, shippers, carriers, freight-related associations, the freight industry workforce, the transportation department of the State, and local governments.

(b) ROLE OF COMMITTEE.—A freight advisory committee of a State described in subsection (a) shall—

(1) advise the State on freight-related priorities, issues, projects, and funding needs;

(2) serve as a forum for discussion for State transportation decisions affecting freight mobility;

(3) communicate and coordinate regional priorities with other organizations;

(4) promote the sharing of information between the private and public sectors on freight issues; and

(5) participate in the development of the freight plan of the State described in section 1118.

SEC. 1118. STATE FREIGHT PLANS.

(a) IN GENERAL.—The Secretary shall encourage each State to develop a freight plan that provides a comprehensive plan for the immediate and long-range planning activities and investments of the State with respect to freight.

(b) PLAN CONTENTS.—A freight plan described in subsection (a) shall include, at a minimum—

(1) an identification of significant freight system trends, needs, and issues with respect to the State;

(2) a description of the freight policies, strategies, and performance measures that will guide the freight-related transportation investment decisions of the State;

(3) a description of how the plan will improve the ability of the State to meet the national freight goals established under section 167 of title 23, United States Code;

(4) evidence of consideration of innovative technologies and operational strategies, including intelligent transportation systems, that improve the safety and efficiency of freight movement;

(5) in the case of routes on which travel by heavy vehicles (including mining, agricultural, energy cargo or equipment, and timber vehicles) is projected to substantially deteriorate the condition of roadways, a description of improvements that may be required to reduce or impede the deterioration; and

(6) an inventory of facilities with freight mobility issues, such as truck bottlenecks, within the State, and a description of the strategies the State is employing to address those freight mobility issues.

(c) RELATIONSHIP TO LONG-RANGE PLAN.—A freight plan described in subsection (a) may be developed separate from or incorporated into the statewide strategic long-range transportation plan required by section 135 of title 23, United States Code.

SEC. 1119. FEDERAL LANDS AND TRIBAL TRANSPORTATION PROGRAMS.

(a) IN GENERAL.—Chapter 2 of title 23, United States Code, is amended by striking sections 201 through 204 and inserting the following:

''§201. Federal lands and tribal transportation programs

''(a) PURPOSE.—Recognizing the need for all public Federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to Federal-aid highways and other public transportation facilities, the Secretary of Transportation, in collaboration with the Secretaries of the appropriate Federal land management agencies, shall coordinate a uniform policy for all public Federal and tribal transportation facilities that shall apply to Federal lands transportation facilities, tribal transportation facilities, and Federal lands access transportation facilities.

''(b) AVAILABILITY OF FUNDS.—

''(1) AVAILABILITY.—Funds authorized for the tribal transportation program, the Federal lands

transportation program, and the Federal lands access program shall be available for contract upon apportionment, or on October 1 of the fiscal year for which the funds were authorized if no apportionment is required.

''(2) AMOUNT REMAINING.—Any amount remaining unexpended for a period of 3 years after the close of the fiscal year for which the funds were authorized shall lapse.

''(3) OBLIGATIONS.—The Secretary of the department responsible for the administration of funds under this subsection may incur obligations, approve projects, and enter into contracts under such authorizations, which shall be considered to be contractual obligations of the United States for the payment of the cost thereof, the funds of which shall be considered to have been expended when obligated.

''(4) EXPENDITURE.—

''(A) IN GENERAL.—Any funds authorized for any fiscal year after the date of enactment of this section under the Federal lands transportation program, the Federal lands access program, and the tribal transportation program shall be considered to have been expended if a sum equal to the total of the sums authorized for the fiscal year and previous fiscal years have been obligated.

''(B) CREDITED FUNDS.—Any funds described in subparagraph (A) that are released by payment of final voucher or modification of project authorizations shall be—

''(i) credited to the balance of unobligated authorizations; and

''(ii) immediately available for expenditure.

''(5) APPLICABILITY.—This section shall not apply to funds authorized before the date of enactment of this paragraph.

''(6) CONTRACTUAL OBLIGATION.—

''(A) IN GENERAL.—Notwithstanding any other provision of law (including regulations), the authorization by the Secretary, or the Secretary of the appropriate Federal land management agency if the agency is the contracting office, of engineering and related work for the development, design, and acquisition associated with a construction project, whether performed by contract or agreement authorized by law, or the approval by the Secretary of plans, specifications, and estimates for construction of a project, shall be considered to constitute a contractual obligation of the Federal Government to pay the total eligible cost of—

''(i) any project funded under this title; and

''(ii) any project funded pursuant to agreements authorized by this title or any other title.

''(B) EFFECT.—Nothing in this paragraph—

''(i) affects the application of the Federal share associated with the project being undertaken under this section; or

''(ii) modifies the point of obligation associated with Federal salaries and expenses.

''(7) FEDERAL SHARE.—

''(A) TRIBAL AND FEDERAL LANDS TRANSPORTATION PROGRAM.—The Federal share of the cost of a project carried out under the Federal lands transportation program or the tribal transportation program shall be 100 percent.

''(B) FEDERAL LANDS ACCESS PROGRAM.—The Federal share of the cost of a project carried out under the Federal lands access program shall be determined in accordance with section 120.

''(c) TRANSPORTATION PLANNING.—

''(1) TRANSPORTATION PLANNING PROCEDURES.—In consultation with the Secretary of each appropriate Federal land management agency, the Secretary shall implement transportation planning procedures for Federal lands and tribal transportation facilities that are consistent with the planning processes required under sections 134 and 135.

''(2) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.—The transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

''(3) INCLUSION IN OTHER PLANS.—Each regionally significant tribal transportation program, Federal lands transportation program, and Federal lands access program project shall be—

''(A) developed in cooperation with State and metropolitan planning organizations; and

''(B) included in appropriate tribal transportation program plans, Federal lands transportation program plans, Federal lands access program plans, State and metropolitan plans, and transportation improvement programs.

''(4) INCLUSION IN STATE PROGRAMS.—The approved tribal transportation program, Federal lands transportation program, and Federal lands access program transportation improvement programs shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

''(5) ASSET MANAGEMENT.—The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, implement safety, bridge, pavement, and congestion management systems for facilities funded under the tribal transportation program and the Federal lands transportation program in support of asset management.

''(6) DATA COLLECTION.—

''(A) DATA COLLECTION.—The Secretaries of the appropriate Federal land management agencies shall collect and report data necessary to implement the Federal lands transportation program, the Federal lands access program, and the tribal transportation program in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), including—

''(i) inventory and condition information on Federal lands transportation facilities and tribal transportation facilities; and

''(ii) bridge inspection and inventory information on any Federal bridge open to the public.

''(B) STANDARDS.—The Secretary, in coordination with the Secretaries of the appropriate Federal land management agencies, shall define the collection and reporting data standards.

''(7) ADMINISTRATIVE EXPENSES.—To implement the activities described in this subsection, including direct support of transportation planning activities among Federal land management agencies, the Secretary may use not more than 5 percent for each fiscal year of the funds authorized for programs under sections 203 and 204.

''(d) REIMBURSABLE AGREEMENTS.—In carrying out work under reimbursable agreements with any State, local, or tribal government under this title, the Secretary—

''(1) may, without regard to any other provision of law (including regulations), record obligations against accounts receivable from the entity; and

''(2) shall credit amounts received from the entity to the appropriate account, which shall occur not later than 90 days after the date of the original request by the Secretary for payment.

''(e) TRANSFERS.—

''(1) IN GENERAL.—To enable the efficient use of funds made available for the Federal lands transportation program and the Federal lands access program, the funds may be transferred by the Secretary within and between each program with the concurrence of, as appropriate—

''(A) the Secretary;

''(B) the affected Secretaries of the respective Federal land management agencies;

''(C) State departments of transportation; and

''(D) local government agencies.

''(2) CREDIT.—The funds described in paragraph (1) shall be credited back to the loaning entity with funds that are currently available for obligation at the time of the credit.

''§ 202. Tribal transportation program

''(a) USE OF FUNDS.—

''(1) IN GENERAL.—Funds made available under the tribal transportation program shall be used by the Secretary of Transportation and the Secretary of the Interior to pay the costs of—

''(A)(i) transportation planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of tribal transportation facilities;

''(ii) adjacent vehicular parking areas;

''(iii) interpretive signage;

''(iv) acquisition of necessary scenic easements and scenic or historic sites;

''(v) provisions for pedestrians and bicycles;

''(vi) environmental mitigation in or adjacent to tribal land—

''(I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

''(II) to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

''(vii) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and

''(viii) other appropriate public road facilities as determined by the Secretary;

''(B) operation and maintenance of transit programs and facilities that are located on, or provide access to, tribal land, or are administered by a tribal government; and

''(C) any transportation project eligible for assistance under this title that is located within, or that provides access to, tribal land, or is associated with a tribal government.

''(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the Interior may enter into a contract or other appropriate agreement with respect to the activity with—

''(A) a State (including a political subdivision of a State); or

''(B) an Indian tribe.

''(3) INDIAN LABOR.—Indian labor may be employed, in accordance with such rules and regulations as may be promulgated by the Secretary of the Interior, to carry out any construction or other activity described in paragraph (1).

''(4) FEDERAL EMPLOYMENT.—No maximum limitation on Federal employment shall be applicable to the construction or improvement of tribal transportation facilities.

''(5) FUNDS FOR CONSTRUCTION AND IMPROVEMENT.—All funds made available for the construction and improvement of tribal transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the Interior.

''(6) ADMINISTRATIVE EXPENSES.—Of the funds authorized to be appropriated for the tribal transportation program, not more than 6 percent may be used by the Secretary or the Secretary of the Interior for program management and oversight and project-related administrative expenses.

''(7) TRIBAL TECHNICAL ASSISTANCE CENTERS.—The Secretary of the Interior may reserve amounts from administrative funds of the Bureau of Indian Affairs that are associated with the tribal transportation program to fund tribal technical assistance centers under section 504(b).

''(8) MAINTENANCE.—

''(A) USE OF FUNDS.—Notwithstanding any other provision of this title, of the amount of funds allocated to an Indian tribe from the tribal transportation program, for the purpose of maintenance (excluding road sealing, which shall not be subject to any limitation), the Secretary shall not use an amount more than the greater of—

''(i) an amount equal to 25 percent; or

''(ii) $500,000.

''(B) RESPONSIBILITY OF BUREAU OF INDIAN AFFAIRS AND SECRETARY OF THE INTERIOR.—

''(i) BUREAU OF INDIAN AFFAIRS.—The Bureau of Indian Affairs shall retain primary responsibility, including annual funding request responsibility, for Bureau of Indian Affairs road maintenance programs on Indian reservations.

''(ii) SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall ensure that funding made available under this subsection for maintenance of tribal transportation facilities for each fiscal year is supplementary to, and not in lieu of, any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.

''(C) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.—

''(i) IN GENERAL.—An Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe shall assume the responsibility of the State for—

''(I) tribal transportation facilities; and

''(II) roads providing access to tribal transportation facilities.

''(ii) REQUIREMENTS.—Agreements entered into under clause (i) shall—

''(I) be negotiated between the State and the Indian tribe; and

''(II) not require the approval of the Secretary.

''(9) COOPERATION.—

''(A) IN GENERAL.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

''(B) FUNDS RECEIVED.—Any funds received from a State, county, or local subdivision shall be credited to appropriations available for the tribal transportation program.

''(10) COMPETITIVE BIDDING.—

''(A) CONSTRUCTION.—

''(i) IN GENERAL.—Subject to clause (ii) and subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

''(ii) EXCEPTION.—Clause (i) shall not apply if the Secretary or the Secretary of the Interior affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

''(B) APPLICABILITY.—Notwithstanding subparagraph (A), section 23 of the Act of June 25, 1910 (25 U.S.C. 47) and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall apply to all funds administered by the Secretary of the Interior that are appropriated for the construction and improvement of tribal transportation facilities.

''(b) FUNDS DISTRIBUTION.—

''(1) NATIONAL TRIBAL TRANSPORTATION FACILITY INVENTORY.—

''(A) IN GENERAL.—The Secretary of the Interior, in cooperation with the Secretary, shall maintain a comprehensive national inventory of tribal transportation facilities that are eligible for assistance under the tribal transportation program.

''(B) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORY.—For purposes of identifying the tribal transportation system and determining the relative transportation needs among Indian tribes, the Secretary shall include, at a minimum, transportation facilities that are eligible for assistance under the tribal transportation program that an Indian tribe has requested, including facilities that—

''(i) were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;

''(ii) are owned by an Indian tribal government;

''(iii) are owned by the Bureau of Indian Affairs;

''(iv) were constructed or reconstructed with funds from the Highway Trust Fund under the Indian reservation roads program since 1983;

''(v) are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives;

''(vi) are public roads within or providing access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian or Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians; or

''(vii) are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

''(C) LIMITATION ON PRIMARY ACCESS ROUTES.—For purposes of this paragraph, a proposed primary access route is the shortest practicable route connecting 2 points of the proposed route.

''(D) ADDITIONAL FACILITIES.—Nothing in this paragraph precludes the Secretary from including additional transportation facilities that are eligible for funding under the tribal transportation program in the inventory used for the national funding allocation if such additional facilities are included in the inventory in a uniform and consistent manner nationally.

''(E) BRIDGES.—All bridges in the inventory shall be recorded in the national bridge inventory administered by the Secretary under section 144.

''(2) REGULATIONS.—Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall maintain any regulations governing the tribal transportation program.

''(3) BASIS FOR FUNDING FORMULA.—

''(A) BASIS.—

''(i) IN GENERAL.—After making the set asides authorized under subparagraph (C) and subsections (c), (d), and (e) on October 1 of each fiscal year, the Secretary shall distribute the remainder authorized to be appropriated for the tribal transportation program under this section among Indian tribes as follows:

''(I) For fiscal year 2013—

''(aa) for each Indian tribe, 80 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

''(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

''(II) For fiscal year 2014—

''(aa) for each Indian tribe, 60 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

''(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

''(III) For fiscal year 2015—

''(aa) for each Indian tribe, 40 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

''(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

''(IV) For fiscal year 2016 and thereafter—

''(aa) for each Indian tribe, 20 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

''(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

''(ii) TRIBAL HIGH PRIORITY PROJECTS.—The High Priority Projects program as included in the Tribal Transportation Allocation Methodology of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP–21), shall not continue in effect.

''(B) TRIBAL SHARES.—Tribal shares under this program shall be determined using the national tribal transportation facility inventory as calculated for fiscal year 2012, and the most recent data on American Indian and Alaska Native population within each Indian tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), in the following manner:

''(i) 27 percent in the ratio that the total eligible road mileage in each tribe bears to the total eligible road mileage of all American Indians and Alaskan Natives. For the purposes of this calculation, eligible road mileage shall be computed based on the inventory described in paragraph (1), using only facilities included in the inventory described in clause (i), (ii), or (iii) of paragraph (1)(B).

''(ii) 39 percent in the ratio that the total population in each tribe bears to the total population of all American Indians and Alaskan Natives.

''(iii) 34 percent shall be divided equally among each Bureau of Indian Affairs region. Within each region, such share of funds shall be distributed to each Indian tribe in the ratio that the average total relative need distribution factors and population adjustment factors from fiscal years 2005 through 2011 for a tribe bears to the average total of relative need distribution factors and population adjustment factors for fiscal years 2005 through 2011 in that region.

''(C) TRIBAL SUPPLEMENTAL FUNDING.—

''(i) TRIBAL SUPPLEMENTAL FUNDING AMOUNT.—Of funds made available for each fiscal year for the tribal transportation program, the Secretary shall set aside the following amount for a tribal supplemental program:

''(I) If the amount made available for the tribal transportation program is less than or equal to $275,000,000, 30 percent of such amount.

''(II) If the amount made available for the tribal transportation program exceeds $275,000,000—

''(aa) $82,500,000; plus

''(bb) 12.5 percent of the amount made available for the tribal transportation program in excess of $275,000,000.

''(ii) TRIBAL SUPPLEMENTAL ALLOCATION.—The Secretary shall distribute tribal supplemental funds as follows:

''(I) DISTRIBUTION AMONG REGIONS.—Of the amounts set aside under clause (i), the Secretary shall distribute to each region of the Bureau of Indian Affairs a share of tribal supplemental funds in proportion to the regional total of tribal shares based on the cumulative tribal shares of all Indian tribes within such region under subparagraph (B).

''(II) DISTRIBUTION WITHIN A REGION.—Of the amount that a region receives under subclause (I), the Secretary shall distribute tribal supplemental funding among Indian tribes within such region as follows:

''(aa) TRIBAL SUPPLEMENTAL AMOUNTS.—The Secretary shall determine—

''(AA) which such Indian tribes would be entitled under subparagraph (A) to receive in a fiscal year less funding than they would receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in subpart C of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP–21); and

''(BB) the combined amount that such Indian tribes would be entitled to receive in fiscal year 2011 pursuant to such relative need distribution factor and population adjustment factor in excess of the amount that they would be entitled to receive in the fiscal year under subparagraph (B).

''(bb) COMBINED AMOUNT.—Subject to subclause (III), the Secretary shall distribute to each Indian tribe that meets the criteria described in item (aa)(AA) a share of funding under this subparagraph in proportion to the share of the combined amount determined under item (aa)(BB) attributable to such Indian tribe.

''(III) CEILING.—An Indian tribe may not receive under subclause (II) and based on its tribal share under subparagraph (A) a combined amount that exceeds the amount that such Indian tribe would be entitled to receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in subpart C of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP–21).

''(IV) OTHER AMOUNTS.—If the amount made available for a region under subclause (I) exceeds the amount distributed among Indian tribes within that region under subclause (II), the Secretary shall distribute the remainder of such region's funding under such subclause among all Indian tribes in that region in proportion to the combined amount that each such Indian tribe received under subparagraph (A) and subclauses (I), (II), and (III).]

''(4) TRANSFERRED FUNDS.—

''(A) IN GENERAL.—Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and made available for immediate use by, eligible Indian tribes, in accordance with the formula for distribution of funds under the tribal transportation program.

''(B) USE OF FUNDS.—Notwithstanding any other provision of this section, funds made available to Indian tribes for tribal transportation facilities shall be expended on projects identified in a transportation improvement program approved by the Secretary.

''(5) HEALTH AND SAFETY ASSURANCES.—Notwithstanding any other provision of law, an Indian tribal government may approve plans, specifications, and estimates and commence road and bridge construction with funds made available from the tribal transportation program through a contract or agreement under Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), if the Indian tribal government—

''(A) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

''(B) obtains the advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and

''(C) provides a copy of the certification under subparagraph (A) to the Deputy Assistant Secretary for Tribal Government Affairs, Department of Transportation, or the Assistant Secretary for Indian Affairs, Department of the Interior, as appropriate.

''(6) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available through the Secretary of the Interior under this chapter and section 125(e) for tribal transportation facilities to pay for the costs of programs, services, functions, and activities, or portions of programs, services, functions, or activities, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any tribal transportation facility shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(B) EXCLUSION OF AGENCY PARTICIPATION.—All funds, including contract support costs, for programs, functions, services, or activities, or portions of programs, services, functions, or activities, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A), without regard to the organizational level at which the Department of the Interior has previously carried out such programs, functions, services, or activities.

''(7) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available to an Indian tribal government under this chapter for a tribal transportation facility program or project shall be made available, on the request of the Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, design, engineering, construction, and maintenance relating to the program or project.

''(B) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (A), all funds, including contract support costs, for a program or project to which subparagraph (A) applies shall be paid to the Indian tribal government without regard to the organizational level at which the Department of the Interior has previously carried out, or the Department of Transportation has previously carried out under the tribal transportation program, the programs, functions, services, or activities involved.

''(C) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or project to which this chapter applies may form a consortium to be considered as a single Indian tribe for the purpose of participating in the project under this section.

''(D) SECRETARY AS SIGNATORY.—Notwithstanding any other provision of law, the Secretary is authorized to enter into a funding agreement with an Indian tribal government to carry out a tribal transportation facility program or project under subparagraph (A) that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe.

''(E) FUNDING.—The amount an Indian tribal government receives for a program or project under subparagraph (A) shall equal the sum of the funding that the Indian tribal government would otherwise receive for the program or project in accordance with the funding formula established under this subsection and such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

''(F) ELIGIBILITY.—

''(i) IN GENERAL.—Subject to clause (ii) and the approval of the Secretary, funds may be made available under subparagraph (A) to an Indian tribal government for a program or project in a fiscal year only if the Indian tribal government requesting such funds demonstrates to the satisfaction of the Secretary financial stability and financial management capability during the 3 fiscal years immediately preceding the fiscal year for which the request is being made.

''(ii) CONSIDERATIONS.—An Indian tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the contracts or self-governance funding agreements made by the Indian tribe with any Federal agency under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) during the 3-fiscal year period referred in clause (i) shall be conclusive evidence of the financial stability and financial management capability of the Indian tribe for purposes of clause (i).

''(G) ASSUMPTION OF FUNCTIONS AND DUTIES.—An Indian tribal government receiving funding under subparagraph (A) for a program or project shall assume all functions and duties that the Secretary of the Interior would have performed with respect to a program or project under this chapter, other than those functions and duties that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(H) POWERS.—An Indian tribal government receiving funding under subparagraph (A) for a program or project shall have all powers that the Secretary of the Interior would have exercised in administering the funds transferred to the Indian tribal government for such program or project under this section if the funds had not been transferred, except to the extent that such powers are powers that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(I) DISPUTE RESOLUTION.—In the event of a disagreement between the Secretary or the Secretary of the Interior and an Indian tribe over whether a particular function, duty, or power may be lawfully transferred to the Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Indian tribe shall have the right to pursue all alternative dispute resolution and appeal procedures authorized by that Act, including regulations issued to carry out the Act.

''(J) TERMINATION OF CONTRACT OR AGREEMENT.—On the date of the termination of a contract or agreement under this section by an Indian tribal government, the Secretary shall transfer all funds that would have been allocated to the Indian tribal government under the contract or agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.

''(c) PLANNING.—

''(1) IN GENERAL.—For each fiscal year, not more than 2 percent of the funds made available for the tribal transportation program shall be allocated among Indian tribal governments that apply for transportation planning pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(2) REQUIREMENT.—An Indian tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation planning process in accordance with section 201(c).

''(3) SELECTION AND APPROVAL OF PROJECTS.—A project funded under this section shall be—

''(A) selected by the Indian tribal government from the transportation improvement program; and

''(B) subject to the approval of the Secretary of the Interior and the Secretary.

''(d) TRIBAL TRANSPORTATION FACILITY BRIDGES.—

''(1) NATIONWIDE PRIORITY PROGRAM.—The Secretary shall maintain a nationwide priority program for improving deficient bridges eligible for the tribal transportation program.

''(2) FUNDING.—Before making any distribution under subsection (b), the Secretary shall set aside not more than 2 percent of the funds made available under the tribal transportation program for each fiscal year to be allocated—

''(A) to carry out any planning, design, engineering, preconstruction, construction, and inspection of a project to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or

''(B) to implement any countermeasure for deficient tribal transportation facility bridges, including multiple-pipe culverts.

''(3) ELIGIBLE BRIDGES.—To be eligible to receive funding under this subsection, a bridge described in paragraph (1) shall—

''(A) have an opening of not less than 20 feet;

''(B) be classified as a tribal transportation facility; and

''(C) be structurally deficient or functionally obsolete.

''(4) APPROVAL REQUIREMENT.—The Secretary may make funds available under this subsection for preliminary engineering, construction, and

construction engineering activities after approval of required documentation and verification of eligibility in accordance with this title.

''(e) SAFETY.—

''(1) FUNDING.—Before making any distribution under subsection (b), the Secretary shall set aside not more than 2 percent of the funds made available under the tribal transportation program for each fiscal year to be allocated based on an identification and analysis of highway safety issues and opportunities on tribal land, as determined by the Secretary, on application of the Indian tribal governments for eligible projects described in section 148(a)(4).

''(2) PROJECT SELECTION.—An Indian tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall select projects from the transportation improvement program, subject to the approval of the Secretary and the Secretary of the Interior.

''(f) FEDERAL-AID ELIGIBLE PROJECTS.—Before approving as a project on a tribal transportation facility any project eligible for funds apportioned under section 104 in a State, the Secretary shall, for projects on tribal transportation facilities, determine that the obligation of funds for the project is supplementary to and not in lieu of the obligation of a fair and equitable share of funds apportioned to the State under section 104.

''§ 203. Federal lands transportation program

''(a) USE OF FUNDS.—

''(1) IN GENERAL.—Funds made available under the Federal lands transportation program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the costs of—

''(A) program administration, transportation planning, research, preventive maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of Federal lands transportation facilities, and—

''(i) adjacent vehicular parking areas;

''(ii) acquisition of necessary scenic easements and scenic or historic sites;

''(iii) provision for pedestrians and bicycles;

''(iv) environmental mitigation in or adjacent to Federal land open to the public—

''(I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

''(II) to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

''(v) construction and reconstruction of roadside rest areas, including sanitary and water facilities;

''(vi) congestion mitigation; and

''(vii) other appropriate public road facilities, as determined by the Secretary;

''(B) operation and maintenance of transit facilities;

''(C) any transportation project eligible for assistance under this title that is on a public road within or adjacent to, or that provides access to, Federal lands open to the public; and

''(D) not more $10,000,000 of the amounts made available per fiscal year to carry out this section for activities eligible under subparagraph (A)(iv).

''(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to the activity with—

''(A) a State (including a political subdivision of a State); or

''(B) an Indian tribe.

''(3) ADMINISTRATION.—All appropriations for the construction and improvement of Federal lands transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

''(4) COOPERATION.—

''(A) IN GENERAL.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

''(B) FUNDS RECEIVED.—Any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands transportation facilities to which the funds were contributed.

''(5) COMPETITIVE BIDDING.—

''(A) IN GENERAL.—Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

''(b) AGENCY PROGRAM DISTRIBUTIONS.—

''(1) IN GENERAL.—On October 1, 2011, and on October 1 of each fiscal year thereafter, the Secretary shall allocate the sums authorized to be appropriated for the fiscal year for the Federal lands transportation program on the basis of applications of need, as determined by the Secretary—

''(A) in consultation with the Secretaries of the applicable Federal land management agencies; and

''(B) in coordination with the transportation plans required under section 201 of the respective transportation systems of—

''(i) the National Park Service;

''(ii) the Forest Service;

''(iii) the United States Fish and Wildlife Service;

''(iv) the Corps of Engineers; and

''(v) the Bureau of Land Management.

''(2) APPLICATIONS.—

''(A) REQUIREMENTS.—Each application submitted by a Federal land management agency shall include proposed programs at various potential funding levels, as defined by the Secretary following collaborative discussions with applicable Federal land management agencies.

''(B) CONSIDERATION BY SECRETARY.—In evaluating an application submitted under subparagraph (A), the Secretary shall consider the extent to which the programs support—

''(i) the transportation goals of—

''(I) a state of good repair of transportation facilities;

''(II) a reduction of bridge deficiencies, and

''(III) an improvement of safety;

''(ii) high-use Federal recreational sites or Federal economic generators; and

''(iii) the resource and asset management goals of the Secretary of the respective Federal land management agency.

''(C) PERMISSIVE CONTENTS.—Applications may include proposed programs the duration of which extend over a multiple-year period to support long-term transportation planning and resource management initiatives.

''(c) NATIONAL FEDERAL LANDS TRANSPORTATION FACILITY INVENTORY.—

''(1) IN GENERAL.—The Secretaries of the appropriate Federal land management agencies, in cooperation with the Secretary, shall maintain a comprehensive national inventory of public Federal lands transportation facilities.

''(2) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORIES.—To identify the Federal lands transportation system and determine the relative transportation needs among Federal land management agencies, the inventories shall include, at a minimum, facilities that—

''(A) provide access to high-use Federal recreation sites or Federal economic generators, as determined by the Secretary in coordination with the respective Secretaries of the appropriate Federal land management agencies; and

''(B) are owned by 1 of the following agencies:

''(i) The National Park Service.

''(ii) The Forest Service.

''(iii) The United States Fish and Wildlife Service.

''(iv) The Bureau of Land Management.

''(v) The Corps of Engineers.

''(3) AVAILABILITY.—The inventories shall be made available to the Secretary.

''(4) UPDATES.—The Secretaries of the appropriate Federal land management agencies shall update the inventories of the appropriate Federal land management agencies, as determined by the Secretary after collaborative discussions with the Secretaries of the appropriate Federal land management agencies.

''(5) REVIEW.—A decision to add or remove a facility from the inventory shall not be considered a Federal action for purposes of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(d) BICYCLE SAFETY.—The Secretary of the appropriate Federal land management agency shall prohibit the use of bicycles on each federally owned road that has a speed limit of 30 miles per hour or greater and an adjacent paved path for use by bicycles within 100 yards of the road unless the Secretary determines that the bicycle level of service on that roadway is rated B or higher.

''§ 204. Federal lands access program

''(a) USE OF FUNDS.—

''(1) IN GENERAL.—Funds made available under the Federal lands access program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the cost of—

''(A) transportation planning, research, engineering, preventive maintenance, rehabilitation, restoration, construction, and reconstruction of Federal lands access transportation facilities located on or adjacent to, or that provide access to, Federal land, and—

''(i) adjacent vehicular parking areas;

''(ii) acquisition of necessary scenic easements and scenic or historic sites;

''(iii) provisions for pedestrians and bicycles;

''(iv) environmental mitigation in or adjacent to Federal land to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity;

''(v) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and

''(vi) other appropriate public road facilities, as determined by the Secretary;

''(B) operation and maintenance of transit facilities; and

''(C) any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, Federal land.

''(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to the activity with—

''(A) a State (including a political subdivision of a State); or

''(B) an Indian tribe.

''(3) ADMINISTRATION.—All appropriations for the construction and improvement of Federal lands access transportation facilities shall be administered in conformity with regulations and agreements approved by the Secretary.

''(4) COOPERATION.—

''(A) IN GENERAL.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

''(B) FUNDS RECEIVED.—Any funds received from a State, county, or local subdivision for a Federal lands access transportation facility project shall be credited to appropriations available under the Federal lands access program.

''(5) COMPETITIVE BIDDING.—

''(A) IN GENERAL.—Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

''(b) PROGRAM DISTRIBUTIONS.—

''(1) IN GENERAL.—Funding made available to carry out the Federal lands access program shall be allocated among those States that have Federal land, in accordance with the following formula:

''(A) 80 percent of the available funding for use in those States that contain at least 1½ percent of the total public land in the United States managed by the agencies described in paragraph (2), to be distributed as follows:

''(i) 30 percent in the ratio that—

''(I) recreational visitation within each such State; bears to

''(II) the recreational visitation within all such States.

''(ii) 5 percent in the ratio that—

''(I) the Federal land area within each such State; bears to

''(II) the Federal land area in all such States.

''(iii) 55 percent in the ratio that—

''(I) the Federal public road miles within each such State; bears to

''(II) the Federal public road miles in all such States.

''(iv) 10 percent in the ratio that—

''(I) the number of Federal public bridges within each such State; bears to

''(II) the number of Federal public bridges in all such States.

''(B) 20 percent of the available funding for use in those States that do not contain at least 1½ percent of the total public land in the United States managed by the agencies described in paragraph (2), to be distributed as follows:

''(i) 30 percent in the ratio that—

''(I) recreational visitation within each such State; bears to

''(II) the recreational visitation within all such States.

''(ii) 5 percent in the ratio that—

''(I) the Federal land area within each such State; bears to

''(II) the Federal land area in all such States.

''(iii) 55 percent in the ratio that—

''(I) the Federal public road miles within each such State; bears to

''(II) the Federal public road miles in all such States.

''(iv) 10 percent in the ratio that—

''(I) the number of Federal public bridges within each such State; bears to

''(II) the number of Federal public bridges in all such States.

''(2) DATA SOURCE.—Data necessary to distribute funding under paragraph (1) shall be provided by the following Federal land management agencies:

''(A) The National Park Service.

''(B) The Forest Service.

''(C) The United States Fish and Wildlife Service.

''(D) The Bureau of Land Management.

''(E) The Corps of Engineers.

''(c) PROGRAMMING DECISIONS COMMITTEE.—

''(1) IN GENERAL.—Programming decisions shall be made within each State by a committee comprised of—

''(A) a representative of the Federal Highway Administration;

''(B) a representative of the State Department of Transportation; and

''(C) a representative of any appropriate political subdivision of the State.

''(2) CONSULTATION REQUIREMENT.—The committee described in paragraph (1) shall cooperate with each applicable Federal agency in each State before any joint discussion or final programming decision.

''(3) PROJECT PREFERENCE.—In making a programming decision under paragraph (1), the committee shall give preference to projects that provide access to, are adjacent to, or are located within high-use Federal recreation sites or Federal economic generators, as identified by the Secretaries of the appropriate Federal land management agencies.''.

(b) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.—Section 214 of title 23, United States Code, is repealed.

(c) CONFORMING AMENDMENTS.—

(1) CHAPTER 2 ANALYSIS.—The analysis for chapter 2 of title 23, United States Code, is amended—

(A) by striking the items relating to sections 201 through 204 and inserting the following:

''201. Federal lands and tribal transportation programs.

''202. Tribal transportation program.

''203. Federal lands transportation program.

''204. Federal lands access program.''; and

(B) by striking the item relating to section 214.

(2) DEFINITION.—Section 138(a) of title 23, United States Code, is amended in the third sentence by striking ''park road or parkway under section 204 of this title'' and inserting ''Federal lands transportation facility''.

(3) RULES, REGULATIONS, AND RECOMMENDATIONS.—Section 315 of title 23, United States Code, is amended by striking ''204(f)'' and inserting ''202(a)(5), 203(a)(3),''.

SEC. 1120. PROJECTS OF NATIONAL AND REGIONAL SIGNIFICANCE.

Section 1301 of the SAFETEA–LU (23 U.S.C. 101 note; 119 Stat. 1198) is amended—

(1) in subsection (b), by striking ''States'' and inserting ''eligible applicants'';

(2) in subsection (c), by striking paragraph (3) and inserting the following:

''(3) ELIGIBLE APPLICANT.—The term 'eligible applicant' means—

''(A) a State department of transportation or a group of State departments of transportation;

''(B) a tribal government or consortium of tribal governments;

''(C) a transit agency; or

''(D) a multi-State or multi-jurisdictional group of the agencies described in subparagraphs (A) through (C).'';

(3) in subsection (d)(2), by striking ''75'' and inserting ''50'';

(4) in subsection (e), by striking ''State'' and inserting ''eligible applicant'';

(5) in subsection (f)(3) by striking subparagraph (B) and inserting the following:

''(B) improves roadways vital to national energy security; and'';

(6) in subsection (g)(1) by adding at the end the following:

''(E) CONGRESSIONAL APPROVAL.—The Secretary may not issue a letter of intent, enter into a full funding grant agreement under paragraph (2), or make any other obligation or commitment to fund a project under this section if a joint resolution of disapproval is enacted disapproving funding for the project before the last day of the 60-day period described in subparagraph (B).'';

(7) in subsection (k), by adding at the end the following:

''(3) PROJECT SELECTION JUSTIFICATIONS.—

''(A) IN GENERAL.—Not later than 30 days after the date on which the Secretary selects a project for funding under this section, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes the reasons for selecting the project, based on the criteria described in subsection (f).

''(B) INCLUSIONS.—The report submitted under subparagraph (A) shall specify each criteria described in subsection (f) that the project meets.

''(C) AVAILABILITY.—The Secretary shall make available on the website of the Department the report submitted under subparagraph (A).''; and

(8) by striking subsections (l) and (m) and inserting the following:

''(l) REPORT.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of the MAP–21, the Secretary shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate regarding projects of national and regional significance.

''(2) PURPOSE.—The purpose of the report issued under this subsection shall be to identify projects of national and regional significance that—

''(A) will significantly improve the performance of the Federal-aid highway system, nationally or regionally;

''(B) is able to—

''(i) generate national economic benefits that reasonably exceed the costs of the projects, including increased access to jobs, labor, and other critical economic inputs;

''(ii) reduce long-term congestion, including impacts in the State, region, and the United States, and increase speed, reliability, and accessibility of the movement of people or freight; and

''(iii) improve transportation safety, including reducing transportation accidents, and serious injuries and fatalities; and

''(C) can be supported by an acceptable degree of non-Federal financial commitments.

''(3) CONTENTS.—The report issued under this subsection shall include—

''(A) a comprehensive list of each project of national and regional significance that—

''(i) has been complied through a survey of State departments of transportation; and

''(ii) has been classified by the Secretary as a project of regional or national significance in accordance with this section;

''(B) an analysis of the information collected under paragraph (1), including a discussion of the factors supporting each classification of a project as a project of regional or national significance; and

''(C) recommendations on financing for eligible project costs.

''(m) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000,000 for fiscal year 2013, to remain available until expended.''.

SEC. 1121. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.

(a) CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.—Section 147 of title 23, United States Code, is amended—

(1) by striking subsections (c) and (d);

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(3) by inserting after subsection (b) the following:

''(c) DISTRIBUTION OF FUNDS.—Of the amounts made available to ferry systems and public entities responsible for developing ferries under this section for a fiscal year, 100 percent shall be allocated in accordance with the formula set forth in subsection (d).

''(d) FORMULA.—Of the amounts allocated pursuant to subsection (c)—

''(1) 20 percent shall be allocated among eligible entities in the proportion that—

''(A) the number of ferry passengers carried by each ferry system in the most recent fiscal year; bears to

''(B) the number of ferry passengers carried by all ferry systems in the most recent fiscal year;

''(2) 45 percent shall be allocated among eligible entities in the proportion that—

''(A) the number of vehicles carried by each ferry system in the most recent fiscal year; bears to

''(B) the number of vehicles carried by all ferry systems in the most recent fiscal year; and

''(3) 35 percent shall be allocated among eligible entities in the proportion that—

''(A) the total route miles serviced by each ferry system; bears to

''(B) the total route miles serviced by all ferry systems.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $67,000,000 for each of fiscal years 2013 and 2014.''.

(b) NATIONAL FERRY DATABASE.—Section 1801(e) of the SAFETEA–LU (23 U.S.C. 129 note; Public Law 109–59) is amended—

(1) in paragraph (2), by inserting '', including any Federal, State, and local government funding sources,'' after ''sources''; and

(2) in paragraph (4)—

(A) in subparagraph (B), by striking ''and'' at the end;

(B) by redesignating subparagraph (C) as subparagraph (D);

(C) by inserting after subparagraph (B), the following:

''(C) ensure that the database is consistent with the national transit database maintained by the Federal Transit Administration; and''; and

(D) in subparagraph (D) (as redesignated by subparagraph (B)), by striking ''2009'' and inserting ''2014''.

SEC. 1122. TRANSPORTATION ALTERNATIVES.

(a) IN GENERAL.—Section 213 of title 23, United States Code, is amended to read as follows:

''§ 213. Transportation alternatives

''(a) RESERVATION OF FUNDS.—

''(1) IN GENERAL.—On October 1 of each of fiscal years 2013 and 2014, the Secretary shall proportionally reserve from the funds apportioned to a State under section 104(b) to carry out the requirements of this section an amount equal to the amount obtained by multiplying the amount determined under paragraph (2) by the ratio that—

''(A) the amount apportioned to the State for the transportation enhancements program for fiscal year 2009 under section 133(d)(2), as in effect on the day before the date of enactment of the MAP-21; bears to

''(B) the total amount of funds apportioned to all States for that fiscal year for the transportation enhancements program for fiscal year 2009.

''(2) CALCULATION OF NATIONAL AMOUNT.—The Secretary shall determine an amount for each fiscal year that is equal to 2 percent of the amounts authorized to be appropriated for such fiscal year from the Highway Trust Fund (other than the Mass Transit Account) to carry out chapters 1, 2, 5, and 6 of this title.

''(b) ELIGIBLE PROJECTS.—A State may obligate the funds reserved under this section for any of the following projects or activities:

''(1) Transportation alternatives, as defined in section 101.

''(2) The recreational trails program under section 206.

''(3) The safe routes to school program under section 1404 of the SAFETEA–LU (23 U.S.C. 402 note; Public Law 109–59).

''(4) Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

''(c) ALLOCATIONS OF FUNDS.—

''(1) CALCULATION.—Of the funds reserved in a State under this section—

''(A) 50 percent for a fiscal year shall be obligated under this section to any eligible entity in proportion to their relative shares of the population of the State—

''(i) in urbanized areas of the State with an urbanized area population of over 200,000;

''(ii) in areas of the State other than urban areas with a population greater than 5,000; and

''(iii) in other areas of the State; and

''(B) 50 percent shall be obligated in any area of the State.

''(2) METROPOLITAN AREAS.—Funds attributed to an urbanized area under paragraph (1)(A)(i) may be obligated in the metropolitan area established under section 134 that encompasses the urbanized area.

''(3) DISTRIBUTION AMONG URBANIZED AREAS OF OVER 200,000 POPULATION.—

''(A) IN GENERAL.—Except as provided in paragraph (1)(B), the amount of funds that a State is required to obligate under paragraph (1)(A)(i) shall be obligated in urbanized areas described in paragraph (1)(A)(i) based on the relative population of the areas.

''(B) OTHER FACTORS.—A State may obligate the funds described in subparagraph (A) based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to base the obligation on other factors and the Secretary grants the request.

''(4) ACCESS TO FUNDS.—

''(A) IN GENERAL.—Each State or metropolitan planning organization required to obligate funds in accordance with paragraph (1) shall develop a competitive process to allow eligible entities to submit projects for funding that achieve the objectives of this subsection.

''(B) DEFINITION OF ELIGIBLE ENTITY.—In this paragraph, the term 'eligible entity' means—

''(i) a local government;

''(ii) a regional transportation authority;

''(iii) a transit agency;

''(iv) a natural resource or public land agency;

''(v) a school district, local education agency, or school;

''(vi) a tribal government; and

''(vii) any other local or regional governmental entity with responsibility for or oversight of transportation or recreational trails (other than a metropolitan planning organization or a State agency) that the State determines to be eligible, consistent with the goals of this subsection.

''(5) SELECTION OF PROJECTS.—For funds reserved in a State under this section and suballocated to a metropolitan planning area under paragraph (1)(A)(i), each such metropolitan planning organization shall select projects carried out within the boundaries of the applicable metropolitan planning area, in consultation with the relevant State.

''(d) FLEXIBILITY OF EXCESS RESERVED FUNDING.—Beginning in the second fiscal year after the date of enactment of the MAP-21, if on August 1 of that fiscal year the unobligated balance of available funds reserved by a State under this section exceeds 100 percent of such reserved amount in such fiscal year, the State may thereafter obligate the amount of excess funds for any activity—

''(1) that is eligible to receive funding under this section; or

''(2) for which the Secretary has approved the obligation of funds for any State under section 149.

''(e) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded under this section (excluding those carried out under subsection (f)) shall be treated as projects on a Federal-aid highway under this chapter.

''(f) CONTINUATION OF CERTAIN RECREATIONAL TRAILS PROJECTS.—Each State shall—

''(1) obligate an amount of funds reserved under this section equal to the amount of the funds apportioned to the State for fiscal year 2009 under section 104(h)(2) for projects relating to recreational trails under section 206;

''(2) return 1 percent of those funds to the Secretary for the administration of that program; and

''(3) comply with the provisions of the administration of the recreational trails program under section 206, including the use of apportioned funds described under subsection (d)(3)(A) of that section.

''(g) STATE FLEXIBILITY.—A State may opt out of the recreational trails program under subsection (f) if the Governor of the State notifies the Secretary not later than 30 days prior to apportionments being made for any fiscal year.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 2 of title 23, United States Code, is amended by striking the item relating to section 213 and inserting the following:

''213. Transportation alternatives''.

SEC. 1123. TRIBAL HIGH PRIORITY PROJECTS PROGRAM.

(a) DEFINITIONS.—In this section:

(1) EMERGENCY OR DISASTER.—The term ''emergency or disaster'' means damage to a tribal transportation facility that—

(A) renders the tribal transportation facility impassable or unusable;

(B) is caused by—

(i) a natural disaster over a widespread area; or

(ii) a catastrophic failure from an external cause; and

(C) would be eligible under the emergency relief program under section 125 of title 23, United States Code, but does not meet the funding thresholds required by that section.

(2) LIST.—The term ''list'' means the funding priority list developed under subsection (c)(5).

(3) PROGRAM.—The term ''program'' means the Tribal High Priority Projects program established under subsection (b)(1).

(4) PROJECT.—The term ''project'' means a project provided funds under the program.

(b) PROGRAM.—

(1) IN GENERAL.—The Secretary shall use amounts made available under subsection (h) to carry out a Tribal High Priority Projects program under which funds shall be provided to eligible applicants in accordance with this section.

(2) ELIGIBLE APPLICANTS.—Applicants eligible for program funds under this section include—

(A) an Indian tribe whose annual allocation of funding under section 202 of title 23, United States Code, is insufficient to complete the highest priority project of the Indian tribe;

(B) a governmental subdivision of an Indian tribe—

(i) that is authorized to administer the funding of the Indian tribe under section 202 of title 23, United States Code; and

(ii) for which the annual allocation under that section is insufficient to complete the highest priority project of the Indian tribe; or

(C) any Indian tribe that has an emergency or disaster with respect to a transportation facility included on the national inventory of tribal transportation facilities under section 202(b)(1) of title 23, United States Code.

(c) PROJECT APPLICATIONS; FUNDING.—

(1) IN GENERAL.—To apply for funds under this section, an eligible applicant shall submit to the Department of the Interior or the Department an application that includes—

(A) project scope of work, including deliverables, budget, and timeline;

(B) the amount of funds requested;

(C) project information addressing—

(i) the ranking criteria identified in paragraph (3); or

(ii) the nature of the emergency or disaster;

(D) documentation that the project meets the definition of a tribal transportation facility and is included in the national inventory of tribal transportation facilities under section 202(b)(1) of title 23, United States Code;

(E) documentation of official tribal action requesting the project;

(F) documentation from the Indian tribe providing authority for the Secretary of the Interior to place the project on a transportation improvement program if the project is selected and approved; and

(G) any other information the Secretary of the Interior or Secretary considers appropriate to make a determination.

(2) LIMITATION ON APPLICATIONS.—An applicant for funds under the program may only have 1 application for assistance under this section pending at any 1 time, including any emergency or disaster application.

(3) APPLICATION RANKING.—

(A) IN GENERAL.—The Secretary of the Interior and the Secretary shall determine the eligibility of, and fund, program applications, subject to the availability of funds.

(B) RANKING CRITERIA.—The project ranking criteria for applications under this section shall include—

(i) the existence of safety hazards with documented fatality and injury accidents;

(ii) the number of years since the Indian tribe last completed a construction project funded by section 202 of title 23, United States Code;

(iii) the readiness of the Indian tribe to proceed to construction or bridge design need;

(iv) the percentage of project costs matched by funds that are not provided under section 202 of title 23, United States Code, with projects with a greater percentage of other sources of matching funds ranked ahead of lesser matches);

(v) the amount of funds requested, with requests for lesser amounts given greater priority;

(vi) the challenges caused by geographic isolation; and

(vii) all weather access for employment, commerce, health, safety, educational resources, or housing.

(4) PROJECT SCORING MATRIX.—The project scoring matrix established in the appendix to part 170 of title 25, Code of Regulations (as in effect on the date of enactment of this Act) shall be used to rank all applications accepted under this section.

(5) FUNDING PRIORITY LIST.—

(A) IN GENERAL.—The Secretary of the Interior and the Secretary shall jointly produce a funding priority list that ranks the projects approved for funding under the program.

(B) LIMITATION.—The number of projects on the list shall be limited by the amount of funding made available.

(6) TIMELINE.—The Secretary of the Interior and the Secretary shall—

(A) require applications for funding no sooner than 60 days after funding is made available pursuant to subsection (a);

(B) notify all applicants and Regions in writing of acceptance of applications;

(C) rank all accepted applications in accordance with the project scoring matrix, develop the funding priority list, and return unaccepted applications to the applicant with an explanation of deficiencies;

(D) notify all accepted applicants of the projects included on the funding priority list no later than 180 days after the application deadline has passed pursuant to subparagraph (A); and

(E) distribute funds to successful applicants.

(d) EMERGENCY OR DISASTER PROJECT APPLICATIONS.—

(1) IN GENERAL.—Notwithstanding subsection (c)(6), an eligible applicant may submit an emergency or disaster project application at any time during the fiscal year.

(2) CONSIDERATION AS PRIORITY.—The Secretary shall—

(A) consider project applications submitted under paragraph (1) to be a priority; and

(B) fund the project applications in accordance with paragraph (3).

(3) FUNDING.—

(A) IN GENERAL.—If an eligible applicant submits an application for a project under this subsection before the issuance of the list under subsection (c)(5) and the project is determined to be eligible for program funds, the Secretary of the Interior shall provide funding for the project before providing funding for other approved projects on the list.

(B) SUBMISSION AFTER ISSUANCE OF LIST.—If an eligible applicant submits an application under this subsection after the issuance of the list under subsection (c)(5) and the distribution of program funds in accordance with the list, the Secretary of the Interior shall provide funding for the project on the date on which unobligated funds provided to projects on the list are returned to the Department of the Interior.

(C) EFFECT ON OTHER PROJECTS.—If the Secretary of the Interior uses funding previously designated for a project on the list to fund an emergency or disaster project under this subsection, the project on the list that did not receive funding as a result of the redesignation of funds shall move to the top of the list the following year.

(4) EMERGENCY OR DISASTER PROJECT COST.—The cost of a project submitted as an emergency or disaster under this subsection shall be at least 10 percent of the distribution of funds of the Indian tribe under section 202(b) of title 23, United States Code.

(e) LIMITATION ON USE OF FUNDS.—Program funds shall not be used for—

(1) transportation planning;

(2) research;

(3) routine maintenance activities;

(4) structures and erosion protection unrelated to transportation and roadways;

(5) general reservation planning not involving transportation;

(6) landscaping and irrigation systems not involving transportation programs and projects;

(7) work performed on projects that are not included on a transportation improvement program approved by the Federal Highway Administration, unless otherwise authorized by the Secretary of the Interior and the Secretary;

(8) the purchase of equipment unless otherwise authorized by Federal law; or

(9) the condemnation of land for recreational trails.

(f) LIMITATION ON PROJECT AMOUNTS.—Project funding shall be limited to a maximum of $1,000,000 per application, except that funding for disaster or emergency projects shall also be limited to the estimated cost of repairing damage to the tribal transportation facility.

(g) COST ESTIMATE CERTIFICATION.—All cost estimates prepared for a project shall be required to be submitted by the applicant to the Secretary of the Interior and the Secretary for certification and approval.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated $30,000,000 out of the general fund of the Treasury to carry out the program for each of fiscal years 2013 and 2014.

(2) ADMINISTRATION.—The funds made available under paragraph (1) shall be administered in the same manner as funds made available for the tribal transportation program under section 202 of title 23, United States Code, except that—

(A) the funds made available for the program shall remain available until September 30 of the third fiscal year after the year appropriated; and

(B) the Federal share of the cost of a project shall be 100 percent.

Subtitle B—Performance Management

SEC. 1201. METROPOLITAN TRANSPORTATION PLANNING.

(a) IN GENERAL.—Section 134 of title 23, United States Code, is amended to read as follows:

"§ 134. Metropolitan transportation planning

''(a) POLICY.—It is in the national interest—

''(1) to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

''(2) to encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).

''(b) DEFINITIONS.—In this section and section 135, the following definitions apply:

''(1) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

''(2) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the policy board of an organization established as a result of the designation process under subsection (d).

''(3) NONMETROPOLITAN AREA.—The term 'nonmetropolitan area' means a geographic area outside designated metropolitan planning areas.

''(4) NONMETROPOLITAN LOCAL OFFICIAL.—The term 'nonmetropolitan local official' means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

''(5) REGIONAL TRANSPORTATION PLANNING ORGANIZATION.—The term 'regional transportation planning organization' means a policy board of an organization established as the result of a designation under section 135(m).

''(6) TIP.—The term 'TIP' means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

''(7) URBANIZED AREA.—The term 'urbanized area' means a geographic area with a population of 50,000 or more, as determined by the Bureau of the Census.

''(c) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPS.—To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State.

''(2) CONTENTS.—The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

''(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as determined by the Bureau of the Census); or

''(B) in accordance with procedures established by applicable State or local law.

''(2) STRUCTURE.—Not later than 2 years after the date of enactment of MAP-21, each metropolitan planning organization that serves an area designated as a transportation management area shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

''(C) appropriate State officials.

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under

any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

''(A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and

''(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

''(4) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

''(5) REDESIGNATION PROCEDURES.—

''(A) IN GENERAL.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as determined by the Bureau of the Census) as appropriate to carry out this section.

''(B) RESTRUCTURING.—A metropolitan planning organization may be restructured to meet the requirements of paragraph (2) without undertaking a redesignation.

''(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

''(e) METROPOLITAN PLANNING AREA BOUNDARIES.—

''(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

''(2) INCLUDED AREA.—Each metropolitan planning area—

''(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

''(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

''(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

''(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—

''(A) IN GENERAL.—Notwithstanding paragraph (2), except as provided in subparagraph (B), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA-LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained.

''(B) EXCEPTION.—The boundaries described in subparagraph (A) may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(5).

''(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of the SAFETEA-LU, as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

''(A) shall be established in the manner described in subsection (d)(1);

''(B) shall encompass the areas described in paragraph (2)(A);

''(C) may encompass the areas described in paragraph (2)(B); and

''(D) may address any nonattainment area identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

''(f) COORDINATION IN MULTISTATE AREAS.—

''(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

''(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any 2 or more States—

''(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

''(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

''(3) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

''(g) MPO CONSULTATION IN PLAN AND TIP COORDINATION.—

''(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

''(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE MPOS.—If a transportation improvement, funded from the Highway Trust Fund or authorized under chapter 53 of title 49, is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

''(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—

''(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities.

''(B) REQUIREMENTS.—Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

''(i) recipients of assistance under chapter 53 of title 49;

''(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

''(iii) recipients of assistance under section 204.

''(h) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

''(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of people and for freight;

''(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

''(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) PERFORMANCE-BASED APPROACH.—

''(A) IN GENERAL.—The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of this title and in section 5301(c) of title 49.

''(B) PERFORMANCE TARGETS.—

''(i) SURFACE TRANSPORTATION PERFORMANCE TARGETS.—

''(I) IN GENERAL.—Each metropolitan planning organization shall establish performance targets that address the performance measures described in section 150(c), where applicable, to use in tracking progress towards attainment of critical outcomes for the region of the metropolitan planning organization.

''(II) COORDINATION.—Selection of performance targets by a metropolitan planning organization shall be coordinated with the relevant State to ensure consistency, to the maximum extent practicable.

''(ii) PUBLIC TRANSPORTATION PERFORMANCE TARGETS.—Selection of performance targets by a metropolitan planning organization shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d) of title 49.

''(C) TIMING.—Each metropolitan planning organization shall establish the performance targets under subparagraph (B) not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

''(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A metropolitan planning organization shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed under chapter 53 of title 49 by providers of public transportation, required as part of a performance-based program.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraphs (1) and (2) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

''(i) DEVELOPMENT OF TRANSPORTATION PLAN.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection.

''(B) FREQUENCY.—

''(i) IN GENERAL.—The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

''(I) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

''(II) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a).

''(ii) OTHER AREAS.—In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

''(2) TRANSPORTATION PLAN.—A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

''(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—

''(i) IN GENERAL.—An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, nonmotorized transportation facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions.

''(ii) FACTORS.—In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as the factors relate to a 20-year forecast period.

''(B) PERFORMANCE MEASURES AND TARGETS.—A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (h)(2).

''(C) SYSTEM PERFORMANCE REPORT.—A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (h)(2), including—

''(i) progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports; and

''(ii) for metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.

''(D) MITIGATION ACTIVITIES.—

''(i) IN GENERAL.—A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

''(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

''(E) FINANCIAL PLAN.—

''(i) IN GENERAL.—A financial plan that—

''(I) demonstrates how the adopted transportation plan can be implemented;

''(II) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan; and

''(III) recommends any additional financing strategies for needed projects and programs.

''(ii) INCLUSIONS.—The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(iii) COOPERATIVE DEVELOPMENT.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

''(F) OPERATIONAL AND MANAGEMENT STRATEGIES.—Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

''(G) CAPITAL INVESTMENT AND OTHER STRATEGIES.—Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

''(H) TRANSPORTATION AND TRANSIT ENHANCEMENT ACTIVITIES.—Proposed transportation and transit enhancement activities.

''(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas that are in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by that Act.

''(4) OPTIONAL SCENARIO DEVELOPMENT.—

''(A) IN GENERAL.—A metropolitan planning organization may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan, in accordance with subparagraph (B).

''(B) RECOMMENDED COMPONENTS.—A metropolitan planning organization that chooses to develop multiple scenarios under subparagraph (A) shall be encouraged to consider—

''(i) potential regional investment strategies for the planning horizon;

''(ii) assumed distribution of population and employment;

''(iii) a scenario that, to the maximum extent practicable, maintains baseline conditions for the performance measures identified in subsection (h)(2);

''(iv) a scenario that improves the baseline conditions for as many of the performance measures identified in subsection (h)(2) as possible;

''(v) revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and

''(vi) estimated costs and potential revenues available to support each scenario.

''(C) METRICS.—In addition to the performance measures identified in section 150(c), metropolitan planning organizations may evaluate scenarios developed under this paragraph using locally-developed measures.

''(5) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

''(B) ISSUES.—The consultation shall involve, as appropriate—

''(i) comparison of transportation plans with State conservation plans or maps, if available; or

''(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

''(6) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

''(B) CONTENTS OF PARTICIPATION PLAN.—A participation plan—

''(i) shall be developed in consultation with all interested parties; and

''(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

''(C) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(7) PUBLICATION.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

''(8) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(C).

''(j) METROPOLITAN TIP.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the metropolitan planning area that—

''(i) contains projects consistent with the current metropolitan transportation plan;

''(ii) reflects the investment priorities established in the current metropolitan transportation plan; and

''(iii) once implemented, is designed to make progress toward achieving the performance targets established under subsection (h)(2).

''(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

''(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

''(D) UPDATING AND APPROVAL.—The TIP shall be—

''(i) updated at least once every 4 years; and

''(ii) approved by the metropolitan planning organization and the Governor.

''(2) CONTENTS.—

''(A) PRIORITY LIST.—The TIP shall include a priority list of proposed Federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

''(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

''(i) demonstrates how the TIP can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

''(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

''(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

''(D) PERFORMANCE TARGET ACHIEVEMENT.—The transportation improvement program shall include, to the maximum extent practicable, a description of the anticipated effect of the transportation improvement program toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.

''(3) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of title 49.

''(B) PROJECTS UNDER CHAPTER 2.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

''(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.

''(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

''(4) NOTICE AND COMMENT.—Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

''(5) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of Federally funded projects in metropolitan areas shall be carried out, from the approved TIP—

''(i) by—

''(I) in the case of projects under this title, the State; and

''(II) in the case of projects under chapter 53 of title 49, the designated recipients of public transportation funding; and

''(ii) in cooperation with the metropolitan planning organization.

''(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

''(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

''(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

''(7) PUBLICATION.—

''(A) PUBLICATION OF TIPS.—A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

''(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—

''(i) IN GENERAL.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review.

''(ii) REQUIREMENT.—The listing shall be consistent with the categories identified in the TIP.

''(k) TRANSPORTATION MANAGEMENT AREAS.—

''(1) IDENTIFICATION AND DESIGNATION.—

''(A) REQUIRED IDENTIFICATION.—The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

''(B) DESIGNATIONS ON REQUEST.—The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

''(2) TRANSPORTATION PLANS.—In a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

''(3) CONGESTION MANAGEMENT PROCESS.—

''(A) IN GENERAL.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies.

''(B) SCHEDULE.—The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.

''(4) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—All Federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under this title (excluding projects carried out on the National Highway System) or under chapter 53 of title 49 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

''(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and

''(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

''(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

''(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

''(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

''(C) EFFECT OF FAILURE TO CERTIFY.—

''(i) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this title and chapter 53 of title 49.

''(ii) RESTORATION OF WITHHELD FUNDS.—The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

''(D) REVIEW OF CERTIFICATION.—In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

''(l) REPORT ON PERFORMANCE-BASED PLANNING PROCESSES.—

''(1) IN GENERAL.—The Secretary shall submit to Congress a report on the effectiveness of the performance-based planning processes of metropolitan planning organizations under this section, taking into consideration the requirements of this subsection

''(2) REPORT.—Not later than 5 years after the date of enactment of the MAP–21, the Secretary shall submit to Congress a report evaluating—

''(A) the overall effectiveness of performance-based planning as a tool for guiding transportation investments;

''(B) the effectiveness of the performance-based planning process of each metropolitan planning organization under this section;

''(C) the extent to which metropolitan planning organizations have achieved, or are currently making substantial progress toward achieving, the performance targets specified under this section and whether metropolitan planning organizations are developing meaningful performance targets; and

''(D) the technical capacity of metropolitan planning organizations that operate within a metropolitan planning area of less than 200,000 and their ability to carry out the requirements of this section.

''(3) PUBLICATION.—The report under paragraph (2) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

''(m) ABBREVIATED PLANS FOR CERTAIN AREAS.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

''(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(n) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provisions of this title or chapter 53 of title, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

''(2) APPLICABILITY.—This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).

''(o) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

''(p) FUNDING.—Funds set aside under section 104(f) of this title or section 5305(g) of title 49 shall be available to carry out this section.

''(q) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and TIPs described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under that Act.''.

(b) STUDY ON METROPOLITAN PLANNING SCENARIO DEVELOPMENT.—

(1) IN GENERAL.—The Secretary shall evaluate the costs and benefits associated with metropolitan planning organizations developing multiple scenarios for consideration as a part of the development of their metropolitan transportation plan.

(2) INCLUSIONS.—The evaluation shall include an analysis of the technical and financial capacity of the metropolitan planning organization needed to develop scenarios described in paragraph (1).

SEC. 1202. STATEWIDE AND NONMETROPOLITAN TRANSPORTATION PLANNING.

(a) IN GENERAL.—Section 135 of title 23, United States Code, is amended to read as follows:

''§ 135. Statewide and nonmetropolitan transportation planning

''(a) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—Subject to section 134, to accomplish the objectives stated in section 134(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State.

''(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 134(a) and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—A State shall—

''(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 134 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

''(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) INTERSTATE AGREEMENTS.—

''(1) IN GENERAL.—Two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

''(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

''(d) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will—

''(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of people and freight;

''(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

''(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) PERFORMANCE-BASED APPROACH.—

''(A) IN GENERAL.—The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of this title and in section 5301(c) of title 49.

''(B) PERFORMANCE TARGETS.—

''(i) SURFACE TRANSPORTATION PERFORMANCE TARGETS.—

''(I) IN GENERAL.—Each State shall establish performance targets that address the performance measures described in section 150(c), where applicable, to use in tracking progress towards attainment of critical outcomes for the State.

''(II) COORDINATION.—Selection of performance targets by a State shall be coordinated with the relevant metropolitan planning organizations to ensure consistency, to the maximum extent practicable.

''(ii) PUBLIC TRANSPORTATION PERFORMANCE TARGETS.—In urbanized areas not represented by a metropolitan planning organization, selection of performance targets by a State shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d) of title 49.

''(C) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this paragraph, in other State transportation plans and transportation processes, as well as any plans developed pursuant to chapter 53 of title 49 by providers of public transportation in urbanized areas not represented by a metropolitan planning organization required as part of a performance-based program.

''(D) USE OF PERFORMANCE MEASURES AND TARGETS.—The performance measures and targets established under this paragraph shall be considered by a State when developing policies, programs, and investment priorities reflected in the statewide transportation plan and statewide transportation improvement program.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to take into consideration the factors specified in paragraphs (1) and (2) shall not be subject to review by any court under this title, chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, a statewide transportation improvement program, a project or strategy, or the certification of a planning process.

''(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall, at a minimum—

''(1) with respect to nonmetropolitan areas, cooperate with affected local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m);

''(2) consider the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) consider coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—Each State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN AREAS.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

''(B) NONMETROPOLITAN AREAS.—

''(i) IN GENERAL.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in cooperation with affected nonmetropolitan officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m).

''(ii) ROLE OF SECRETARY.—The Secretary shall not review or approve the consultation process in each State.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

''(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

''(3) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—In developing the statewide transportation plan, the State shall provide to—

''(i) nonmetropolitan local elected officials or, if applicable, through regional transportation planning organizations described in subsection (m), an opportunity to participate in accordance with subparagraph (B)(i); and

''(ii) citizens, affected public agencies, representatives of public transportation employees,

freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties a reasonable opportunity to comment on the proposed plan.

''(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

''(i) develop and document a consultative process to carry out subparagraph (A)(i) that is separate and discrete from the public involvement process developed under clause (ii);

''(ii) hold any public meetings at convenient and accessible locations and times;

''(iii) employ visualization techniques to describe plans; and

''(iv) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(4) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

''(5) FINANCIAL PLAN.—The statewide transportation plan may include—

''(A) a financial plan that—

''(i) demonstrates how the adopted statewide transportation plan can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan; and

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(B) for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

''(7) PERFORMANCE-BASED APPROACH.—The statewide transportation plan should include—

''(A) a description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (d)(2); and

''(B) a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (d)(2), including progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports;

''(8) EXISTING SYSTEM.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—Each State shall develop a statewide transportation improvement program for all areas of the State.

''(B) DURATION AND UPDATING OF PROGRAM.—Each program developed under subparagraph (A) shall cover a period of 4 years and shall be updated every 4 years or more frequently if the Governor of the State elects to update more frequently.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

''(B) NONMETROPOLITAN AREAS.—

''(i) IN GENERAL.—With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m).

''(ii) ROLE OF SECRETARY.—The Secretary shall not review or approve the specific consultation process in the State.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the proposed program.

''(4) PERFORMANCE TARGET ACHIEVEMENT.—A statewide transportation improvement program shall include, to the maximum extent practicable, a discussion of the anticipated effect of the statewide transportation improvement program toward achieving the performance targets established in the statewide transportation plan, linking investment priorities to those performance targets.

''(5) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include Federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—

''(i) IN GENERAL.—An annual listing of projects for which funds have been obligated for the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review.

''(ii) FUNDING CATEGORIES.—The listing described in clause (i) shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

''(C) PROJECTS UNDER CHAPTER 2.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

''(i) consistent with the statewide transportation plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

''(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as a nonattainment area for ozone, particulate matter, or carbon monoxide under part D of title I of that Act (42 U.S.C. 7501 et seq.).

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—

''(i) IN GENERAL.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs.

''(ii) ADDITIONAL PROJECTS.—The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

''(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

''(H) PRIORITIES.—The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this title and chapter 53 of title 49.

''(6) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.—

''(A) IN GENERAL.—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under this title or under sections 5310 and 5311 of title 49), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (m).

''(B) OTHER PROJECTS.—Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under this title or under sections 5310, 5311, 5316, and 5317 of title 49 shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

''(7) TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

''(8) PLANNING FINDING.—A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 134.

''(9) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to

advance a project included in the approved transportation improvement program in place of another project in the program.

''(h) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.—

''(1) IN GENERAL.—The Secretary shall establish criteria to evaluate the effectiveness of the performance-based planning processes of States, taking into consideration the following:

''(A) The extent to which the State is making progress toward achieving, the performance targets described in subsection (d)(2), taking into account whether the State developed appropriate performance targets.

''(B) The extent to which the State has made transportation investments that are efficient and cost-effective.

''(C) The extent to which the State—

''(i) has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable; and

''(ii) provides reports allowing the public to access the information being collected in a format that allows the public to meaningfully assess the performance of the State.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 5 years after the date of enactment of the MAP–21, the Secretary shall submit to Congress a report evaluating—

''(i) the overall effectiveness of performance-based planning as a tool for guiding transportation investments; and

''(ii) the effectiveness of the performance-based planning process of each State.

''(B) PUBLICATION.—The report under subparagraph (A) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

''(i) FUNDING.—Funds apportioned under section 104(b)(5) of this title and set aside under section 5305(g) of title 49 shall be available to carry out this section.

''(j) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT PROCESSES.—For purposes of this section and section 134, and sections 5303 and 5304 of title 49, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 134, and sections 5303 and 5304 of title 49, if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section and section 134 and sections 5303 and 5304 of title 49, as appropriate.

''(k) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the transportation improvement program are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the transportation improvement program described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(l) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States. The Secretary shall not require a State to deviate from its established planning update cycle to implement changes made by this section. States shall reflect changes made to their transportation plan or transportation improvement program updates not later than 2 years after the date of issuance of guidance by the Secretary under this subsection.

''(m) DESIGNATION OF REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process required by this section, a State may establish and designate regional transportation planning organizations to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs, with an emphasis on addressing the needs of nonmetropolitan areas of the State.

''(2) STRUCTURE.—A regional transportation planning organization shall be established as a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

''(3) REQUIREMENTS.—A regional transportation planning organization shall establish, at a minimum—

''(A) a policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

''(B) a fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

''(4) DUTIES.—The duties of a regional transportation planning organization shall include—

''(A) developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

''(B) developing a regional transportation improvement program for consideration by the State;

''(C) fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;

''(D) providing technical assistance to local officials;

''(E) participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;

''(F) providing a forum for public participation in the statewide and regional transportation planning processes;

''(G) considering and sharing plans and programs with neighboring regional transportation planning organizations, metropolitan planning organizations, and, where appropriate, tribal organizations; and

''(H) conducting other duties, as necessary, to support and enhance the statewide planning process under subsection (d).

''(5) STATES WITHOUT REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—If a State chooses not to establish or designate a regional transportation planning organization, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 135 and inserting the following:

''135. Statewide and nonmetropolitan transportation planning.''.

SEC. 1203. NATIONAL GOALS AND PERFORMANCE MANAGEMENT MEASURES.

(a) IN GENERAL.—Section 150 of title 23, United States Code, is amended to read as follows:

''§ 150. National goals and performance management measures

''(a) DECLARATION OF POLICY.—Performance management will transform the Federal-aid highway program and provide a means to the most efficient investment of Federal transportation funds by refocusing on national transportation goals, increasing the accountability and transparency of the Federal-aid highway program, and improving project decisionmaking through performance-based planning and programming.

''(b) NATIONAL GOALS.—It is in the interest of the United States to focus the Federal-aid highway program on the following national goals:

''(1) SAFETY.—To achieve a significant reduction in traffic fatalities and serious injuries on all public roads.

''(2) INFRASTRUCTURE CONDITION.—To maintain the highway infrastructure asset system in a state of good repair.

''(3) CONGESTION REDUCTION.—To achieve a significant reduction in congestion on the National Highway System.

''(4) SYSTEM RELIABILITY.—To improve the efficiency of the surface transportation system.

''(5) FREIGHT MOVEMENT AND ECONOMIC VITALITY.—To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development.

''(6) ENVIRONMENTAL SUSTAINABILITY.—To enhance the performance of the transportation system while protecting and enhancing the natural environment.

''(7) REDUCED PROJECT DELIVERY DELAYS.—To reduce project costs, promote jobs and the economy, and expedite the movement of people and goods by accelerating project completion through eliminating delays in the project development and delivery process, including reducing regulatory burdens and improving agencies' work practices.

''(c) ESTABLISHMENT OF PERFORMANCE MEASURES.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of the MAP–21, the Secretary, in consultation with State departments of transportation, metropolitan planning organizations, and other stakeholders, shall promulgate a rulemaking that establishes performance measures and standards.

''(2) ADMINISTRATION.—In carrying out paragraph (1), the Secretary shall—

''(A) provide States, metropolitan planning organizations, and other stakeholders not less than 90 days to comment on any regulation proposed by the Secretary under that paragraph;

''(B) take into consideration any comments relating to a proposed regulation received during that comment period; and

''(C) limit performance measures only to those described in this subsection.

''(3) NATIONAL HIGHWAY PERFORMANCE PROGRAM.—

''(A) IN GENERAL.—Subject to subparagraph (B), for the purpose of carrying out section 119, the Secretary shall establish —

''(i) minimum standards for States to use in developing and operating bridge and pavement management systems;

''(ii) measures for States to use to assess—

''(I) the condition of pavements on the Interstate system;

''(II) the condition of pavements on the National Highway System (excluding the Interstate);

''(III) the condition of bridges on the National Highway System;

''(IV) the performance of the Interstate System; and

''(V) the performance of the National Highway System (excluding the Interstate System);

''(iii) minimum levels for the condition of pavement on the Interstate System, only for the purposes of carrying out section 119(f)(1); and

''(iv) the data elements that are necessary to collect and maintain standardized data to carry out a performance-based approach.

''(B) REGIONS.—In establishing minimum condition levels under subparagraph (A)(iii), if the

Secretary determines that various geographic regions of the United States experience disparate factors contributing to the condition of pavement on the Interstate System in those regions, the Secretary may establish different minimum levels for each region;

''(4) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—For the purpose of carrying out section 148, the Secretary shall establish measures for States to use to assess—

''(A) serious injuries and fatalities per vehicle mile traveled; and

''(B) the number of serious injuries and fatalities.

''(5) CONGESTION MITIGATION AND AIR QUALITY PROGRAM.—For the purpose of carrying out section 149, the Secretary shall establish measures for States to use to assess—

''(A) traffic congestion; and

''(B) on-road mobile source emissions.

''(6) NATIONAL FREIGHT MOVEMENT.—The Secretary shall establish measures for States to use to assess freight movement on the Interstate System.

''(d) ESTABLISHMENT OF PERFORMANCE TARGETS.—

''(1) IN GENERAL.—Not later than 1 year after the Secretary has promulgated the final rulemaking under subsection (c), each State shall set performance targets that reflect the measures identified in paragraphs (3), (4), (5), and (6) of subsection (c).

''(2) DIFFERENT APPROACHES FOR URBAN AND RURAL AREAS.—In the development and implementation of any performance target, a State may, as appropriate, provide for different performance targets for urbanized and rural areas.

''(e) REPORTING ON PERFORMANCE TARGETS.—Not later than 4 years after the date of enactment of the MAP–21 and biennially thereafter, a State shall submit to the Secretary a report that describes—

''(1) the condition and performance of the National Highway System in the State;

''(2) the effectiveness of the investment strategy document in the State asset management plan for the National Highway System;

''(3) progress in achieving performance targets identified under subsection (d); and

''(4) the ways in which the State is addressing congestion at freight bottlenecks, including those identified in the National Freight Strategic Plan, within the State.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 150 and inserting the following:

''150. National goals and performance management measures.''.

Subtitle C—Acceleration of Project Delivery

SEC. 1301. DECLARATION OF POLICY AND PROJECT DELIVERY INITIATIVE.

(a) IN GENERAL.—It is the policy of the United States that—

(1) it is in the national interest for the Department, State departments of transportation, transit agencies, and all other recipients of Federal transportation funds—

(A) to accelerate project delivery and reduce costs; and

(B) to ensure that the planning, design, engineering, construction, and financing of transportation projects is done in an efficient and effective manner, promoting accountability for public investments and encouraging greater private sector involvement in project financing and delivery while enhancing safety and protecting the environment;

(2) delay in the delivery of transportation projects increases project costs, harms the economy of the United States, and impedes the travel of the people of the United States and the shipment of goods for the conduct of commerce; and

(3) the Secretary shall identify and promote the deployment of innovation aimed at reducing the time and money required to deliver transportation projects while enhancing safety and protecting the environment.

(b) PROJECT DELIVERY INITIATIVE.—

(1) IN GENERAL.—To advance the policy described in subsection (a), the Secretary shall carry out a project delivery initiative under this section.

(2) PURPOSES.—The purposes of the project delivery initiative shall be—

(A) to develop and advance the use of best practices to accelerate project delivery and reduce costs across all modes of transportation and expedite the deployment of technology and innovation;

(B) to implement provisions of law designed to accelerate project delivery; and

(C) to select eligible projects for applying experimental features to test innovative project delivery techniques.

(3) ADVANCING THE USE OF BEST PRACTICES.—

(A) IN GENERAL.—In carrying out the initiative under this section, the Secretary shall identify and advance best practices to reduce delivery time and project costs, from planning through construction, for transportation projects and programs of projects regardless of mode and project size.

(B) ADMINISTRATION.—To advance the use of best practices, the Secretary shall—

(i) engage interested parties, affected communities, resource agencies, and other stakeholders to gather information regarding opportunities for accelerating project delivery and reducing costs;

(ii) establish a clearinghouse for the collection, documentation, and advancement of existing and new innovative approaches and best practices;

(iii) disseminate information through a variety of means to transportation stakeholders on new innovative approaches and best practices; and

(iv) provide technical assistance to assist transportation stakeholders in the use of flexibility authority to resolve project delays and accelerate project delivery if feasible.

(4) IMPLEMENTATION OF ACCELERATED PROJECT DELIVERY.—The Secretary shall ensure that the provisions of this subtitle designed to accelerate project delivery are fully implemented, including—

(A) expanding eligibility of early acquisition of property prior to completion of environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) allowing the use of the construction manager or general contractor method of contracting in the Federal-aid highway system; and

(C) establishing a demonstration program to streamline the relocation process by permitting a lump-sum payment for acquisition and relocation if elected by the displaced occupant.

(c) EXPEDITED PROJECT DELIVERY.—Section 101(b) of title 23, United States Code, is amended by adding at the end the following:

''(4) EXPEDITED PROJECT DELIVERY.—

''(A) IN GENERAL.—Congress declares that it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process.

''(B) POLICY OF THE UNITED STATES.—Accordingly, it is the policy of the United States that—

''(i) the Secretary shall have the lead role among Federal agencies in carrying out the environmental review process for surface transportation projects;

''(ii) each Federal agency shall cooperate with the Secretary to expedite the environmental review process for surface transportation projects;

''(iii) project sponsors shall not be prohibited from carrying out preconstruction project development activities concurrently with the environmental review process;

''(iv) programmatic approaches shall be used to reduce the need for project-by-project reviews and decisions by Federal agencies; and

''(v) the Secretary shall identify opportunities for project sponsors to assume responsibilities of the Secretary where such responsibilities can be assumed in a manner that protects public health, the environment, and public participation.''.

SEC. 1302. ADVANCE ACQUISITION OF REAL PROPERTY INTERESTS.

(a) REAL PROPERTY INTERESTS.—Section 108 of title 23, United States Code, is amended—

(1) by striking ''real property'' each place it appears and inserting ''real property interests'';

(2) by striking ''right-of-way'' each place it appears and inserting ''real property interest''; and

(3) by striking ''rights-of-way'' each place it appears and inserting ''real property interests''.

(b) STATE-FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.—Section 108(c) of title 23, United States Code, is amended—

(1) in the subsection heading, by striking ''EARLY ACQUISITION OF RIGHTS-OF-WAY'' and inserting ''STATE-FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS'';

(2) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(3) in paragraph (2) (as so redesignated)—

(A) in the heading, by striking ''GENERAL RULE'' and inserting ''ELIGIBILITY FOR REIMBURSEMENT''; and

(B) by striking ''Subject to paragraph (2)'' and inserting ''Subject to paragraph (3)'';

(4) by inserting before paragraph (2) (as so redesignated) the following:

''(1) IN GENERAL.—A State may carry out, at the expense of the State, acquisitions of interests in real property for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project by the State or any Federal agency.''; and

(5) in paragraph (3) (as so redesignated)—

(A) in the matter preceding subparagraph (A), by striking ''in paragraph (1)'' and inserting ''in paragraph (2)''; and

(B) in subparagraph (G), by striking ''both the Secretary and the Administrator of the Environmental Protection Agency have concurred'' and inserting ''the Secretary has determined''.

(c) FEDERALLY FUNDED ACQUISITION OF REAL PROPERTY INTERESTS.—Section 108 of title 23, United States Code, is amended by adding at the end the following:

''(d) FEDERALLY FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.—

''(1) DEFINITION OF ACQUISITION OF A REAL PROPERTY INTEREST.—In this subsection, the term 'acquisition of a real property interest' includes the acquisition of—

''(A) any interest in land;

''(B) a contractual right to acquire any interest in land; or

''(C) any other similar action to acquire or preserve rights-of-way for a transportation facility.

''(2) AUTHORIZATION.—The Secretary may authorize the use of funds apportioned to a State under this title for the acquisition of a real property interest by a State.

''(3) STATE CERTIFICATION.—A State requesting Federal funding for an acquisition of a real property interest shall certify in writing, with concurrence by the Secretary, that—

''(A) the State has authority to acquire the real property interest under State law; and

''(B) the acquisition of the real property interest—

''(i) is for a transportation purpose;

''(ii) will not cause any significant adverse environmental impact;

''(iii) will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of the Secretary on any approval required for the project;

''(iv) does not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process;

''(v) is consistent with the State transportation planning process under section 135;

''(vi) complies with other applicable Federal laws (including regulations);

''(vii) will be acquired through negotiation, without the threat of condemnation; and

''(viii) will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

''(4) ENVIRONMENTAL COMPLIANCE.—

''(A) IN GENERAL.—Before authorizing Federal funding for an acquisition of a real property interest, the Secretary shall complete the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the acquisition of the real property interest.

''(B) INDEPENDENT UTILITY.—The acquisition of a real property interest—

''(i) shall be treated as having independent utility for purposes of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(ii) shall not limit consideration of alternatives for future transportation improvements with respect to the real property interest.

''(5) PROGRAMMING.—

''(A) IN GENERAL.—The acquisition of a real property interest for which Federal funding is requested shall be included as a project in an applicable transportation improvement program under sections 134 and 135 and sections 5303 and 5304 of title 49.

''(B) ACQUISITION PROJECT.—The acquisition project may consist of the acquisition of a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

''(6) DEVELOPMENT.—Real property interests acquired under this subsection may not be developed in anticipation of a project until all required environmental reviews for the project have been completed.

''(7) REIMBURSEMENT.—If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by subsection (a)(2), the Secretary shall offset the amount reimbursed against funds apportioned to the State.

''(8) OTHER REQUIREMENTS AND CONDITIONS.—

''(A) APPLICABLE LAW.—The acquisition of a real property interest shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally funded transportation projects.

''(B) ADDITIONAL CONDITIONS.—The Secretary may establish such other conditions or restrictions on acquisitions under this subsection as the Secretary determines to be appropriate.''.

SEC. 1303. LETTING OF CONTRACTS.

(a) EFFICIENCIES IN CONTRACTING.—Section 112(b) of title 23, United States Code, is amended by adding at the end the following:

''(4) METHOD OF CONTRACTING.—

''(A) IN GENERAL.—

''(i) 2-PHASE CONTRACT.—A contracting agency may award a 2-phase contract to a construction manager or general contractor for preconstruction and construction services.

''(ii) PRECONSTRUCTION SERVICES PHASE.—In the preconstruction services phase of a contract under this paragraph, the contractor shall provide the contracting agency with advice for scheduling, work sequencing, cost engineering, constructability, cost estimating, and risk identification.

''(iii) AGREEMENT.—Prior to the start of the construction services phase, the contracting agency and the contractor may agree to a price and other factors specified in regulation for the construction of the project or a portion of the project.

''(iv) CONSTRUCTION PHASE.—If an agreement is reached under clause (iii), the contractor shall be responsible for the construction of the project or portion of the project at the negotiated price and in compliance with the other factors specified in the agreement.

''(B) SELECTION.—A contract shall be awarded to a contractor under this paragraph using a competitive selection process based on qualifications, experience, best value, or any other combination of factors considered appropriate by the contracting agency.

''(C) TIMING.—

''(i) RELATIONSHIP TO NEPA PROCESS.—Prior to the completion of the environmental review process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), a contracting agency may—

''(I) issue requests for proposals;

''(II) proceed with the award of a contract for preconstruction services under subparagraph (A)(ii); and

''(III) issue notices to proceed with a preliminary design and any work related to preliminary design, to the extent that those actions do not limit any reasonable range of alternatives.

''(ii) CONSTRUCTION SERVICES PHASE.—A contracting agency shall not proceed with the award of the construction services phase of a contract under subparagraph (A)(iv) and shall not proceed, or permit any consultant or contractor to proceed, with final design or construction until completion of the environmental review process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

''(iii) APPROVAL REQUIREMENT.—Prior to authorizing construction activities, the Secretary shall approve—

''(I) the price estimate of the contracting agency for the entire project; and

''(II) any price agreement with the general contractor for the project or a portion of the project.

''(iv) DESIGN ACTIVITIES.—

''(I) IN GENERAL.—A contracting agency may proceed, at the expense of the contracting agency, with design activities at any level of detail for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project.

''(II) REIMBURSEMENT.—Design activities carried out under subclause (I) shall be eligible for Federal reimbursement as a project expense in accordance with the requirements under section 109(r).

''(v) TERMINATION PROVISION.—The Secretary shall require a contract to include an appropriate termination provision in the event that a no-build alternative is selected.''.

(b) REGULATIONS.—The Secretary shall promulgate such regulations as are necessary to carry out the amendment made by subsection (a).

(c) EFFECT ON EXPERIMENTAL PROGRAM.—Nothing in this section or the amendment made by this section affects the authority to carry out, or any project carried out under, any experimental program concerning construction manager risk that is being carried out by the Secretary as of the date of enactment of this Act.

SEC. 1304. INNOVATIVE PROJECT DELIVERY METHODS.

(a) DECLARATION OF POLICY.—

(1) IN GENERAL.—Congress declares that it is in the national interest to promote the use of innovative technologies and practices that increase the efficiency of construction of, improve the safety of, and extend the service life of highways and bridges.

(2) INCLUSIONS.—The innovative technologies and practices described in paragraph (1) include state-of-the-art intelligent transportation system technologies, elevated performance standards, and new highway construction business practices that improve highway safety and quality, accelerate project delivery, and reduce congestion related to highway construction.

(b) FEDERAL SHARE.—Section 120(c) of title 23, United States Code, is amended by adding at the end the following:

''(3) INNOVATIVE PROJECT DELIVERY.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), the Federal share payable on account of a project, program, or activity carried out with funds apportioned under paragraph (1), (2), or (5) of section 104(b) may, at the discretion of the State, be up to 100 percent for any such project, program, or activity that the Secretary determines—

''(i) contains innovative project delivery methods that improve work zone safety for motorists or workers and the quality of the facility;

''(ii) contains innovative technologies, manufacturing processes, financing, or contracting methods that improve the quality of, extend the service life of, or decrease the long-term costs of maintaining highways and bridges;

''(iii) accelerates project delivery while complying with other applicable Federal laws (including regulations) and not causing any significant adverse environmental impact; or

''(iv) reduces congestion related to highway construction.

''(B) EXAMPLES.—Projects, programs, and activities described in subparagraph (A) may include the use of—

''(i) prefabricated bridge elements and systems and other technologies to reduce bridge construction time;

''(ii) innovative construction equipment, materials, or techniques, including the use of in-place recycling technology and digital 3-dimensional modeling technologies;

''(iii) innovative contracting methods, including the design-build and the construction manager-general contractor contracting methods;

''(iv) intelligent compaction equipment; or

''(v) contractual provisions that offer a contractor an incentive payment for early completion of the project, program, or activity, subject to the condition that the incentives are accounted for in the financial plan of the project, when applicable.

''(C) LIMITATIONS.—

''(i) IN GENERAL.—In each fiscal year, a State may use the authority under subparagraph (A) for up to 10 percent of the combined apportionments of the State under paragraphs (1), (2), and (5) of section 104(b).

''(ii) FEDERAL SHARE INCREASE.—The Federal share payable on account of a project, program, or activity described in subparagraph (A) may be increased by up to 5 percent of the total project cost.''.

SEC. 1305. EFFICIENT ENVIRONMENTAL REVIEWS FOR PROJECT DECISIONMAKING.

(a) FLEXIBILITY.—Section 139(b) of title 23, United States Code, is amended—

(1) in paragraph (2) by inserting '', and any requirements established under this section may be satisfied,'' after ''exercised''; and

(2) by adding at the end the following:

''(3) PROGRAMMATIC COMPLIANCE.—

''(A) IN GENERAL.—The Secretary shall initiate a rulemaking to allow for the use of programmatic approaches to conduct environmental reviews that—

''(i) eliminate repetitive discussions of the same issues;

''(ii) focus on the actual issues ripe for analyses at each level of review; and

''(iii) are consistent with—

''(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(II) other applicable laws.

''(B) REQUIREMENTS.—In carrying out subparagraph (A), the Secretary shall—

''(i) before initiating the rulemaking under that subparagraph, consult with relevant Federal agencies and State resource agencies, State departments of transportation, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches;

''(ii) emphasize the importance of collaboration among relevant Federal agencies, State

agencies, and Indian tribes in undertaking programmatic reviews, especially with respect to including reviews with a broad geographic scope;

''(iii) ensure that the programmatic reviews—

''(I) promote transparency, including of the analyses and data used in the environmental reviews, the treatment of any deferred issues raised by agencies or the public, and the temporal and special scales to be used to analyze such issues;

''(II) use accurate and timely information in reviews, including—

''(aa) criteria for determining the general duration of the usefulness of the review; and

''(bb) the timeline for updating any out-of-date review;

''(III) describe—

''(aa) the relationship between programmatic analysis and future tiered analysis; and

''(bb) the role of the public in the creation of future tiered analysis; and

''(IV) are available to other relevant Federal and State agencies, Indian tribes, and the public;

''(iv) allow not fewer than 60 days of public notice and comment on any proposed rule; and

''(v) address any comments received under clause (iv).''.

(b) FEDERAL LEAD AGENCY.—Section 139(c) of title 23, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking ''The Department of Transportation'' and inserting the following:

''(A) IN GENERAL.—The Department of Transportation''; and

(B) by adding at the end the following:

''(B) MODAL ADMINISTRATION.—If the project requires approval from more than 1 modal administration within the Department, the Secretary may designate a single modal administration to serve as the Federal lead agency for the Department in the environmental review process for the project.''.

(c) PARTICIPATING AGENCIES.—Section 139(d) of title 23, United States Code, is amended—

(1) by striking paragraph (4) and inserting the following:

''(4) EFFECT OF DESIGNATION.—

''(A) REQUIREMENT.—A participating agency shall comply with the requirements of this section.

''(B) IMPLICATION.—Designation as a participating agency under this subsection shall not imply that the participating agency—

''(i) supports a proposed project; or

''(ii) has any jurisdiction over, or special expertise with respect to evaluation of, the project.''; and

(2) by striking paragraph (7) and inserting the following:

''(7) CONCURRENT REVIEWS.—Each participating agency and cooperating agency shall—

''(A) carry out the obligations of that agency under other applicable law concurrently, and in conjunction, with the review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), unless doing so would impair the ability of the Federal agency to conduct needed analysis or otherwise carry out those obligations; and

''(B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.''.

(d) PROJECT INITIATION.—Section 139(e) of title 23, United States Code, is amended—

(1) by striking ''The project sponsor'' and inserting the following:

''(1) IN GENERAL.—The project sponsor''; and

(2) by adding at the end the following:

''(2) SUBMISSION OF DOCUMENTS.—The project sponsor may satisfy the requirement under paragraph (1) by submitting to the Secretary any relevant documents containing the information described in that paragraph, including a draft notice for publication in the Federal Register announcing the preparation of an environmental review for the project.''.

(e) COORDINATION AND SCHEDULING.—Section 139(g)(1)(B)(i) of title 23, United States Code, is amended by inserting ''and the concurrence of'' after ''consultation with''.

SEC. 1306. ACCELERATED DECISIONMAKING.

Section 139(h) of title 23, United States Code, is amended by striking paragraph (4) and inserting the following:

''(4) INTERIM DECISION ON ACHIEVING ACCELERATED DECISIONMAKING.—

''(A) IN GENERAL.—Not later than 30 days after the close of the public comment period on a draft environmental impact statement, the Secretary may convene a meeting with the project sponsor, lead agency, resource agencies, and any relevant State agencies to ensure that all parties are on schedule to meet deadlines for decisions to be made regarding the project.

''(B) DEADLINES.—The deadlines referred to in subparagraph (A) shall be those established under subsection (g), or any other deadlines established by the lead agency, in consultation with the project sponsor and other relevant agencies.

''(C) FAILURE TO ASSURE.—If the relevant agencies cannot provide reasonable assurances that the deadlines described in subparagraph (B) will be met, the Secretary may initiate the issue resolution and referral process described under paragraph (5) and before the completion of the record of decision.

''(5) ACCELERATED ISSUE RESOLUTION AND REFERRAL.—

''(A) AGENCY ISSUE RESOLUTION MEETING.—

''(i) IN GENERAL.—A Federal agency of jurisdiction, project sponsor, or the Governor of a State in which a project is located may request an issue resolution meeting to be conducted by the lead agency.

''(ii) ACTION BY LEAD AGENCY.—The lead agency shall convene an issue resolution meeting under clause (i) with the relevant participating agencies and the project sponsor, including the Governor only if the meeting was requested by the Governor, to resolve issues that could—

''(I) delay completion of the environmental review process; or

''(II) result in denial of any approvals required for the project under applicable laws.

''(iii) DATE.—A meeting requested under this subparagraph shall be held by not later than 21 days after the date of receipt of the request for the meeting, unless the lead agency determines that there is good cause to extend the time for the meeting.

''(iv) NOTIFICATION.—On receipt of a request for a meeting under this subparagraph, the lead agency shall notify all relevant participating agencies of the request, including the issue to be resolved, and the date for the meeting.

''(v) DISPUTES.—If a relevant participating agency with jurisdiction over an approval required for a project under applicable law determines that the relevant information necessary to resolve the issue has not been obtained and could not have been obtained within a reasonable time, but the lead agency disagrees, the resolution of the dispute shall be forwarded to the heads of the relevant agencies for resolution.

''(vi) CONVENTION BY LEAD AGENCY.—A lead agency may convene an issue resolution meeting under this subsection at any time without the request of the Federal agency of jurisdiction, project sponsor, or the Governor of a State.

''(B) ELEVATION OF ISSUE RESOLUTION.—

''(i) IN GENERAL.—If issue resolution is not achieved by not later than 30 days after the date of a relevant meeting under subparagraph (A), the Secretary shall notify the lead agency, the heads of the relevant participating agencies, and the project sponsor (including the Governor only if the initial issue resolution meeting request came from the Governor) that an issue resolution meeting will be convened.

''(ii) REQUIREMENTS.—The Secretary shall identify the issues to be addressed at the meeting and convene the meeting not later than 30 days after the date of issuance of the notice.

''(C) REFERRAL OF ISSUE RESOLUTION.—

''(i) REFERRAL TO COUNCIL ON ENVIRONMENTAL QUALITY.—

''(I) IN GENERAL.—If resolution is not achieved by not later than 30 days after the date of an issue resolution meeting under subparagraph (B), the Secretary shall refer the matter to the Council on Environmental Quality.

''(II) MEETING.—Not later than 30 days after the date of receipt of a referral from the Secretary under subclause (I), the Council on Environmental Quality shall hold an issue resolution meeting with the lead agency, the heads of relevant participating agencies, and the project sponsor (including the Governor only if an initial request for an issue resolution meeting came from the Governor).

''(ii) REFERRAL TO THE PRESIDENT.—If a resolution is not achieved by not later than 30 days after the date of the meeting convened by the Council on Environmental Quality under clause (i)(II), the Secretary shall refer the matter directly to the President.

''(6) FINANCIAL PENALTY PROVISIONS.—

''(A) IN GENERAL.—A Federal agency of jurisdiction over an approval required for a project under applicable laws shall complete any required approval on an expeditious basis using the shortest existing applicable process.

''(B) FAILURE TO DECIDE.—

''(i) IN GENERAL.—If an agency described in subparagraph (A) fails to render a decision under any Federal law relating to a project that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, or other approval by the date described in clause (ii), an amount of funding equal to the amounts specified in subclause (I) or (II) shall be rescinded from the applicable office of the head of the agency, or equivalent office to which the authority for rendering the decision has been delegated by law by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C)—

''(I) $20,000 for any project for which an annual financial plan under section 106(i) is required; or

''(II) $10,000 for any other project requiring preparation of an environmental assessment or environmental impact statement.

''(ii) DESCRIPTION OF DATE.—The date referred to in clause (i) is the later of—

''(I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and

''(II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) LIMITATIONS.—

''(i) IN GENERAL.—No rescission of funds under subparagraph (B) relating to an individual project shall exceed, in any fiscal year, an amount equal to 2.5 percent of the funds made available for the applicable agency office.

''(ii) FAILURE TO DECIDE.—The total amount rescinded in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 7 percent of the funds made available for the applicable agency office for that fiscal year.

''(D) NO FAULT OF AGENCY.—A rescission of funds under this paragraph shall not be made if the lead agency for the project certifies that—

''(i) the agency has not received necessary information or approvals from another entity, such as the project sponsor, in a manner that affects the ability of the agency to meet any requirements under State, local, or Federal law; or

''(ii) significant new information or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application.

''(E) LIMITATION.—The Federal agency with jurisdiction for the decision from which funds are rescinded pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

''(F) AUDITS.—In any fiscal year in which any funds are rescinded from a Federal agency pursuant to this paragraph, the Inspector General of that agency shall—

''(i) conduct an audit to assess compliance with the requirements of this paragraph; and

''(ii) not later than 120 days after the end of the fiscal year during which the rescission occurred, submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing the reasons why the transfers were levied, including allocations of resources.

''(G) EFFECT OF PARAGRAPH.—Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

''(7) EXPEDIENT DECISIONS AND REVIEWS.—To ensure that Federal environmental decisions and reviews are expeditiously made—

''(A) adequate resources made available under this title shall be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are completed on an expeditious basis and that the shortest existing applicable process under that Act is implemented; and

''(B) the President shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, not less frequently than once every 120 days after the date of enactment of the MAP–21, a report on the status and progress of the following projects and activities funded under this title with respect to compliance with applicable requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.):

''(i) Projects and activities required to prepare an annual financial plan under section 106(i).

''(ii) A sample of not less than 5 percent of the projects requiring preparation of an environmental impact statement or environmental assessment in each State.''.

SEC. 1307. ASSISTANCE TO AFFECTED FEDERAL AND STATE AGENCIES.

Section 139(j) of title 23, United States Code, is amended by adding at the end the following:

''(6) MEMORANDUM OF UNDERSTANDING.—Prior to providing funds approved by the Secretary for dedicated staffing at an affected Federal agency under paragraphs (1) and (2), the affected Federal agency and the State agency shall enter into a memorandum of understanding that establishes the projects and priorities to be addressed by the use of the funds.''.

SEC. 1308. LIMITATIONS ON CLAIMS.

Section 139(l) of title 23, United States Code, is amended—

(1) in paragraph (1) by striking ''180 days'' and inserting ''150 days''; and

(2) in paragraph (2) by striking ''180 days'' and inserting ''150 days''.

SEC. 1309. ACCELERATING COMPLETION OF COMPLEX PROJECTS WITHIN 4 YEARS.

Section 139 of title 23, United States Code, is amended by adding at the end the following:

''(m) ENHANCED TECHNICAL ASSISTANCE AND ACCELERATED PROJECT COMPLETION.—

''(1) DEFINITION OF COVERED PROJECT.—In this subsection, the term 'covered project' means a project—

''(A) that has an ongoing environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(B) for which at least 2 years, beginning on the date on which a notice of intent is issued, have elapsed without the issuance of a record of decision.

''(2) TECHNICAL ASSISTANCE.—At the request of a project sponsor or the Governor of a State in which a project is located, the Secretary shall provide additional technical assistance to resolve for a covered project any outstanding issues and project delay, including by—

''(A) providing additional staff, training, and expertise;

''(B) facilitating interagency coordination;

''(C) promoting more efficient collaboration; and

''(D) supplying specialized onsite assistance.

''(3) SCOPE OF WORK.—

''(A) IN GENERAL.—In providing technical assistance for a covered project under this subsection, the Secretary shall establish a scope of work that describes the actions that the Secretary will take to resolve the outstanding issues and project delays, including establishing a schedule under subparagraph (B).

''(B) SCHEDULE.—

''(i) IN GENERAL.—The Secretary shall establish and meet a schedule for the completion of any permit, approval, review, or study, required for the covered project by the date that is not later than 4 years after the date on which a notice of intent for the covered project is issued.

''(ii) INCLUSIONS.—The schedule under clause (i) shall—

''(I) comply with all applicable laws;

''(II) require the concurrence of the Council on Environmental Quality and each participating agency for the project with the State in which the project is located or the project sponsor, as applicable; and

''(III) reflect any new information that becomes available and any changes in circumstances that may result in new significant impacts that could affect the timeline for completion of any permit, approval, review, or study required for the covered project.

''(4) CONSULTATION.—In providing technical assistance for a covered project under this subsection, the Secretary shall consult, if appropriate, with resource and participating agencies on all methods available to resolve the outstanding issues and project delays for a covered project as expeditiously as possible.

''(5) ENFORCEMENT.—

''(A) IN GENERAL.—All provisions of this section shall apply to this subsection, including the financial penalty provisions under subsection (h)(6).

''(B) RESTRICTION.—If the Secretary enforces this subsection under subsection (h)(6), the Secretary may use a date included in a schedule under paragraph (3)(B) that is created pursuant to and is in compliance with this subsection in lieu of the dates under subsection (h)(6)(B)(ii).''.

SEC. 1310. INTEGRATION OF PLANNING AND ENVIRONMENTAL REVIEW.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code (as amended by section 1115(a)), is amended by adding at the end the following:

''§ 168. Integration of planning and environmental review

''(a) DEFINITIONS.—In this section, the following definitions apply:

''(1) ENVIRONMENTAL REVIEW PROCESS.—The term 'environmental review process' means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(2) PLANNING PRODUCT.—The term 'planning product' means a detailed and timely decision, analysis, study, or other documented information that—

''(A) is the result of an evaluation or decision-making process carried out during transportation planning, including a detailed corridor plan or a transportation plan developed under section 134 that fully analyzes impacts on mobility, adjacent communities, and the environment;

''(B) is intended to be carried into the transportation project development process; and

''(C) has been approved by the State, all local and tribal governments where the project is located, and by any relevant metropolitan planning organization.

''(3) PROJECT.—The term 'project' has the meaning given the term in section 139(a).

''(4) PROJECT SPONSOR.—The term 'project sponsor' has the meaning given the term in section 139(a).

''(b) ADOPTION OF PLANNING PRODUCTS FOR USE IN NEPA PROCEEDINGS.—

''(1) IN GENERAL.—Subject to the conditions set forth in subsection (d), the Federal lead agency for a project may adopt and use a planning product in proceedings relating to any class of action in the environmental review process of the project.

''(2) IDENTIFICATION.—When the Federal lead agency makes a determination to adopt and use a planning product, the Federal lead agency shall identify those agencies that participated in the development of the planning products.

''(3) PARTIAL ADOPTION OF PLANNING PRODUCTS.—The Federal lead agency may adopt a planning product under paragraph (1) in its entirety or may select portions for adoption.

''(4) TIMING.—A determination under paragraph (1) with respect to the adoption of a planning product may be made at the time the lead agencies decide the appropriate scope of environmental review for the project but may also occur later in the environmental review process, as appropriate.

''(c) APPLICABILITY.—

''(1) PLANNING DECISIONS.—Planning decisions that may be adopted pursuant to this section include—

''(A) whether tolling, private financial assistance, or other special financial measures are necessary to implement the project;

''(B) a decision with respect to modal choice, including a decision to implement corridor or subarea study recommendations to advance different modal solutions as separate projects with independent utility;

''(C) a basic description of the environmental setting;

''(D) a decision with respect to methodologies for analysis; and

''(E) an identification of programmatic level mitigation for potential impacts that the Federal lead agency, in consultation with Federal, State, local, and tribal resource agencies, determines are most effectively addressed at a regional or national program level, including—

''(i) system-level measures to avoid, minimize, or mitigate impacts of proposed transportation investments on environmental resources, including regional ecosystem and water resources; and

''(ii) potential mitigation activities, locations, and investments.

''(2) PLANNING ANALYSES.—Planning analyses that may be adopted pursuant to this section include studies with respect to—

''(A) travel demands;

''(B) regional development and growth;

''(C) local land use, growth management, and development;

''(D) population and employment;

''(E) natural and built environmental conditions;

''(F) environmental resources and environmentally sensitive areas;

''(G) potential environmental effects, including the identification of resources of concern and potential cumulative effects on those resources, identified as a result of a statewide or regional cumulative effects assessment; and

''(H) mitigation needs for a proposed action, or for programmatic level mitigation, for potential effects that the Federal lead agency determines are most effectively addressed at a regional or national program level.

''(d) CONDITIONS.—Adoption and use of a planning product under this section is subject to a determination by the Federal lead agency, with the concurrence of other participating agencies with relevant expertise and project

sponsors as appropriate, and with an opportunity for public notice and comment and consideration of those comments by the Federal lead agency, that the following conditions have been met:

''(1) The planning product was developed through a planning process conducted pursuant to applicable Federal law.

''(2) The planning product was developed by engaging in active consultation with appropriate Federal and State resource agencies and Indian tribes.

''(3) The planning process included broad multidisciplinary consideration of systems-level or corridor-wide transportation needs and potential effects, including effects on the human and natural environment.

''(4) During the planning process, notice was provided through publication or other means to Federal, State, local, and tribal governments that might have an interest in the proposed project, and to members of the general public, of the planning products that the planning process might produce and that might be relied on during any subsequent environmental review process, and such entities have been provided an appropriate opportunity to participate in the planning process leading to such planning product.

''(5) After initiation of the environmental review process, but prior to determining whether to rely on and use the planning product, the lead Federal agency has made documentation relating to the planning product available to Federal, State, local, and tribal governments that may have an interest in the proposed action, and to members of the general public, and has considered any resulting comments.

''(6) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the planning product.

''(7) The planning product has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.

''(8) The planning product is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the environmental review process.

''(9) The planning product is appropriate for adoption and use in the environmental review process for the project.

''(10) The planning product was approved not later than 5 years prior to date on which the information is adopted pursuant to this section.

''(e) EFFECT OF ADOPTION.—Any planning product adopted by the Federal lead agency in accordance with this section may be incorporated directly into an environmental review process document or other environmental document and may be relied upon and used by other Federal agencies in carrying out reviews of the project.

''(f) RULES OF CONSTRUCTION.—

''(1) IN GENERAL.—This section shall not be construed to make the environmental review process applicable to the transportation planning process conducted under this title and chapter 53 of title 49.

''(2) TRANSPORTATION PLANNING ACTIVITIES.—Initiation of the environmental review process as a part of, or concurrently with, transportation planning activities does not subject transportation plans and programs to the environmental review process.

''(3) PLANNING PRODUCTS.—This section shall not be construed to affect the use of planning products in the environmental review process pursuant to other authorities under any other provision of law or to restrict the initiation of the environmental review process during planning.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code (as amended by section 1115(b)), is amended by adding at end the following:

''Sec. 168. Integration of planning and environmental review.''.

SEC. 1311. DEVELOPMENT OF PROGRAMMATIC MITIGATION PLANS.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code (as amended by section 1310(a)), is amended by adding at the end the following:

''§ 169. Development of programmatic mitigation plans

''(a) IN GENERAL.—As part of the statewide or metropolitan transportation planning process, a State or metropolitan planning organization may develop 1 or more programmatic mitigation plans to address the potential environmental impacts of future transportation projects.

''(b) SCOPE.—

''(1) SCALE.—A programmatic mitigation plan may be developed on a regional, ecosystem, watershed, or statewide scale.

''(2) RESOURCES.—The plan may encompass multiple environmental resources within a defined geographic area or may focus on a specific resource, such as aquatic resources, parkland, or wildlife habitat.

''(3) PROJECT IMPACTS.—The plan may address impacts from all projects in a defined geographic area or may focus on a specific type of project.

''(4) CONSULTATION.—The scope of the plan shall be determined by the State or metropolitan planning organization, as appropriate, in consultation with the agency or agencies with jurisdiction over the resources being addressed in the mitigation plan.

''(c) CONTENTS.—A programmatic mitigation plan may include—

''(1) an assessment of the condition of environmental resources in the geographic area covered by the plan, including an assessment of recent trends and any potential threats to those resources;

''(2) an assessment of potential opportunities to improve the overall quality of environmental resources in the geographic area covered by the plan, through strategic mitigation for impacts of transportation projects;

''(3) standard measures for mitigating certain types of impacts;

''(4) parameters for determining appropriate mitigation for certain types of impacts, such as mitigation ratios or criteria for determining appropriate mitigation sites;

''(5) adaptive management procedures, such as protocols that involve monitoring predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring; and

''(6) acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

''(d) PROCESS.—Before adopting a programmatic mitigation plan, a State or metropolitan planning organization shall—

''(1) consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

''(2) make a draft of the plan available for review and comment by applicable environmental resource agencies and the public;

''(3) consider any comments received from such agencies and the public on the draft plan; and

''(4) address such comments in the final plan.

''(e) INTEGRATION WITH OTHER PLANS.—A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, and land use plans.

''(f) CONSIDERATION IN PROJECT DEVELOPMENT AND PERMITTING.—If a programmatic mitigation plan has been developed pursuant to this section, any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project may use the recommendations in a programmatic mitigation plan when carrying out the responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(g) PRESERVATION OF EXISTING AUTHORITIES.—Nothing in this section limits the use of programmatic approaches to reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code (as amended by section 1309(b)), is amended by adding at the end the following:

''Sec. 169. Development of programmatic mitigation plans.''.

SEC. 1312. STATE ASSUMPTION OF RESPONSIBILITY FOR CATEGORICAL EXCLUSIONS.

Section 326 of title 23, United States Code, is amended—

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

''(4) PRESERVATION OF FLEXIBILITY.—The Secretary shall not require a State, as a condition of assuming responsibility under this section, to forego project delivery methods that are otherwise permissible for highway projects.'';

(2) by striking subsection (d) and inserting the following:

''(d) TERMINATION.—

''(1) TERMINATION BY THE SECRETARY.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

''(2) TERMINATION BY THE STATE.—The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.''; and

(3) by adding at the end the following:

''(f) LEGAL FEES.—A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorney's fees directly attributable to eligible activities associated with the project.''.

SEC. 1313. SURFACE TRANSPORTATION PROJECT DELIVERY PROGRAM.

(a) PROGRAM NAME.—Section 327 of title 23, United States Code, is amended—

(1) in the section heading by striking ''pilot''; and

(2) in subsection (a)(1) by striking ''pilot''.

(b) ASSUMPTION OF RESPONSIBILITY.—Section 327(a)(2) of title 23, United States Code, is amended—

(1) in subparagraph (B)—

(A) in clause (i) by striking ''but''; and

(B) by striking clause (ii) and inserting the following:

''(ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more railroad, public transportation, or multimodal projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

''(iii) in a State that has assumed the responsibilities of the Secretary under clause (ii), a recipient of assistance under chapter 53 of title 49 may request that the Secretary maintain the responsibilities of the Secretary with respect to 1 or more public transportation projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 13 4321 et seq.); but

''(iv) the Secretary may not assign—

''(I) any responsibility imposed on the Secretary by section 134 or 135 or section 5303 or 5304 of title 49; or

''(II) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506).''; and

(2) by adding at the end the following:

''(F) PRESERVATION OF FLEXIBILITY.—The Secretary may not require a State, as a condition of participation in the program, to forego

project delivery methods that are otherwise permissible for projects.

''(G) LEGAL FEES.—A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorneys' fees directly attributable to eligible activities associated with the project.''.

(c) STATE PARTICIPATION.—Section 327(b) of title 23, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) PARTICIPATING STATES.—All States are eligible to participate in the program.''; and

(2) in paragraph (2) by striking ''date of enactment of this section, the Secretary shall promulgate'' and inserting ''date on which amendments to this section by the MAP-21 take effect, the Secretary shall amend, as appropriate,''.

(d) WRITTEN AGREEMENT.—Section 327(c) of title 23, United States Code, is amended—

(1) in paragraph (3)(D) by striking the period at the end and inserting a semicolon; and

(2) by adding at the end the following:

''(4) require the State to provide to the Secretary any information the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

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

''(6) be renewable.''.

(e) CONFORMING AMENDMENT.—Section 327(e) of title 23, United States Code, is amended by striking ''subsection (i)'' and inserting ''subsection (j)''.

(f) AUDITS.—Section 327(g)(1)(B) of title 23, United States Code, is amended by striking ''subsequent year'' and inserting ''of the third and fourth years''.

(g) MONITORING.—Section 327 of title 23, United States Code, is amended—

(1) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(2) by inserting after subsection (g) the following:

''(h) MONITORING.—After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.''.

(h) TERMINATION.—Section 327(j) of title 23, United States Code (as so redesignated), is amended to read as follows:

''(j) TERMINATION.—

''(1) TERMINATION BY THE SECRETARY.—The Secretary may terminate the participation of any State in the program if—

''(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

''(B) the Secretary provides to the State—

''(i) notification of the determination of noncompliance; and

''(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

''(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.

''(2) TERMINATION BY THE STATE.—The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.''.

(i) CLERICAL AMENDMENT.—The item relating to section 327 in the analysis of title 23, United States Code, is amended to read as follows:

''327. Surface transportation project delivery program.''.

SEC. 1314. APPLICATION OF CATEGORICAL EXCLUSIONS FOR MULTIMODAL PROJECTS.

(a) IN GENERAL.—Section 304 of title 49, United States Code, is amended to read as follows:

''§ 304. Application of categorical exclusions for multimodal projects

''(a) DEFINITIONS.—In this section, the following definitions apply:

''(1) COOPERATING AUTHORITY.—The term 'cooperating authority' means a Department of Transportation operating authority that is not the lead authority with respect to a project.

''(2) LEAD AUTHORITY.—The term 'lead authority' means a Department of Transportation operating administration or secretarial office that—

''(A) is the lead authority over a proposed multimodal project; and

''(B) has determined that the components of the project that fall under the modal expertise of the lead authority—

''(i) satisfy the conditions for a categorical exclusion under implementing regulations or procedures of the lead authority under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(ii) do not require the preparation of an environmental assessment or environmental impact statement under that Act.

''(3) MULTIMODAL PROJECT.—The term 'multimodal project' has the meaning given the term in section 139(a) of title 23.

''(b) EXERCISE OF AUTHORITIES.—The authorities granted in this section may be exercised for a multimodal project, class of projects, or program of projects that are carried out under this title.

''(c) APPLICATION OF CATEGORICAL EXCLUSIONS FOR MULTIMODAL PROJECTS.—In considering the environmental impacts of a proposed multimodal project, a lead authority may apply a categorical exclusion designated under the implementing regulations or procedures of a cooperating authority for other components of the project, subject to the conditions that—

''(1) the multimodal project is funded under 1 grant agreement administered by the lead authority;

''(2) the multimodal project has components that require the expertise of a cooperating authority to assess the environmental impacts of the components;

''(3) the component of the project to be covered by the categorical exclusion of the cooperating authority has independent utility;

''(4) the cooperating authority, in consultation with the lead authority—

''(A) follows implementing regulations or procedures under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

''(B) determines that a categorical exclusion under that Act applies to the components; and

''(5) the lead authority has determined that—

''(A) the project, using the categorical exclusions of the lead authority and each applicable cooperating authority, does not individually or cumulatively have a significant impact on the environment; and

''(B) extraordinary circumstances do not exist that merit additional analysis and documentation in an environmental impact statement or environmental assessment required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(d) MODAL COOPERATION.—

''(1) IN GENERAL.—A cooperating authority shall provide modal expertise to the lead authority on such aspects of the multimodal project in which the cooperating authority has expertise.

''(2) USE OF CATEGORICAL EXCLUSION.—In a case described in paragraph (1), the 1 or more categorical exclusions of a cooperating authority may be applied by the lead authority once the cooperating authority reviews the project on behalf of the lead authority and determines the project satisfies the conditions for a categorical exclusion under the implementing regulations or procedures of the cooperating authority under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section.''.

(b) CONFORMING AMENDMENT.—The item relating to section 304 in the analysis for title 49, United States Code, is amended to read as follows:

''304. Application of categorical exclusions for multimodal projects''.

SEC. 1315. CATEGORICAL EXCLUSIONS IN EMERGENCIES.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, for the repair or reconstruction of any road, highway, or bridge that is in operation or under construction when damaged by an emergency declared by the Governor of the State and concurred in by the Secretary, or for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall publish a notice of proposed rulemaking to treat any such repair or reconstruction activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act) if such repair or reconstruction activity is—

(1) in the same location with the same capacity, dimensions, and design as the original road, highway, or bridge as before the declaration described in this section; and

(2) commenced within a 2-year period beginning on the date of a declaration described in this section.

(b) RULEMAKING.—

(1) IN GENERAL.—The Secretary shall ensure that the rulemaking helps to conserve Federal resources and protects public safety and health by providing for periodic evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction activities.

(2) REASONABLE ALTERNATIVES.—The reasonable alternatives described in paragraph (1) include actions that could reduce the need for Federal funds to be expended on such repair and reconstruction activities, better protect public safety and health and the environment, and meet transportation needs as described in relevant and applicable Federal, State, local and tribal plans.

SEC. 1316. CATEGORICAL EXCLUSIONS FOR PROJECTS WITHIN THE RIGHT-OF-WAY.

(a) IN GENERAL.—The Secretary shall—

(1) not later than 180 days after the date of enactment of this Act, designate any project (as defined in section 101(a) of title 23, United States Code) within an existing operational right-of-way as an action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(c) of title 23, Code of Federal Regulations; and

(2) not later than 150 days after the date of enactment of this Act, promulgate regulations to carry out paragraph (1).

(b) DEFINITION OF AN OPERATIONAL RIGHT-OF-WAY.—In this section, the term ''operational right-of-way'' means all real property interests acquired for the construction, operation, or mitigation of a project (as defined in section 101(a) of title 23, United States Code), including the locations of the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway.

SEC. 1317. CATEGORICAL EXCLUSION FOR PROJECTS OF LIMITED FEDERAL ASSISTANCE.

Not later than 180 days after the date of enactment of this Act, the Secretary shall—

(1) designate as an action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(c) of

title 23, Code of Federal Regulations, any project—

(A) that receives less than $5,000,000 of Federal funds; or

(B) with a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost; and

(2) not later than 150 days after the date of enactment of this Act, promulgate regulations to carry out paragraph (1).

SEC. 1318. PROGRAMMATIC AGREEMENTS AND ADDITIONAL CATEGORICAL EXCLUSIONS.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

(1) survey the use by the Department of categorical exclusions in transportation projects since 2005;

(2) publish a review of the survey that includes a description of—

(A) the types of actions categorically excluded; and

(B) any requests previously received by the Secretary for new categorical exclusions; and

(3) solicit requests from State departments of transportation, transit authorities, metropolitan planning organizations, or other government agencies for new categorical exclusions.

(b) NEW CATEGORICAL EXCLUSIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to propose new categorical exclusions received by the Secretary under subsection (a), to the extent that the categorical exclusions meet the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(a) of title 23, Code of Federal Regulations (as those regulations are in effect on the date of the notice).

(c) ADDITIONAL ACTIONS.—The Secretary shall issue a proposed rulemaking to move the following types of actions from subsection (d) of section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act), to subsection (c) of that section, to the extent that such movement complies with the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act):

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing).

(2) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(d) PROGRAMMATIC AGREEMENTS.—

(1) IN GENERAL.—The Secretary shall seek opportunities to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews.

(2) INCLUSIONS.—Programmatic agreements authorized under paragraph (1) may include agreements that allow a State to determine on behalf of the Federal Highway Administration whether a project is categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) DETERMINATIONS.—An agreement described in paragraph (2) may include determinations by the Secretary of the types of projects categorically excluded (consistent with section 1508.4 of title 40, Code of Federal Regulations) in the State in addition to the types listed in subsections (c) and (d) of section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act).

SEC. 1319. ACCELERATED DECISIONMAKING IN ENVIRONMENTAL REVIEWS.

(a) IN GENERAL.—In preparing a final environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if the lead agency modifies the statement in response to comments that are minor and are confined to factual corrections or explanations of why the comments do not warrant additional agency response, the lead agency may write on errata sheets attached to the statement instead of rewriting the draft statement, subject to the condition that the errata sheets—

(1) cite the sources, authorities, or reasons that support the position of the agency; and

(2) if appropriate, indicate the circumstances that would trigger agency reappraisal or further response.

(b) INCORPORATION.—To the maximum extent practicable, the lead agency shall expeditiously develop a single document that consists of a final environmental impact statement and a record of decision, unless—

(1) the final environmental impact statement makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or

(2) there are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.

SEC. 1320. MEMORANDA OF AGENCY AGREEMENTS FOR EARLY COORDINATION.

(a) IN GENERAL.—It is the sense of Congress that—

(1) the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other and other agencies on environmental review and project delivery activities at the earliest practicable time to avoid delays and duplication of effort later in the process, head off potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

(2) such cooperation should include the development of policies and the designation of staff that advise planning agencies or project sponsors of studies or other information foreseeably required for later Federal action and early consultation with appropriate State and local agencies and Indian tribes.

(b) TECHNICAL ASSISTANCE.—If requested at any time by a State or local planning agency, the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process, shall, to the extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or local planning agency on accomplishing the early coordination activities described in subsection (d).

(c) MEMORANDUM OF AGENCY AGREEMENT.—If requested at any time by a State or local planning agency, the lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, State, and local governments and other appropriate entities to accomplish the early coordination activities described in subsection (d).

(d) EARLY COORDINATION ACTIVITIES.—Early coordination activities shall include, to the maximum extent practicable, the following:

(1) Technical assistance on identifying potential impacts and mitigation issues in an integrated fashion.

(2) The potential appropriateness of using planning products and decisions in later environmental reviews.

(3) The identification and elimination from detailed study in the environmental review process of the issues that are not significant or that have been covered by prior environmental reviews.

(4) The identification of other environmental review and consultation requirements so that the lead and cooperating agencies may prepare, as appropriate, other required analyses and studies concurrently with planning activities.

(5) The identification by agencies with jurisdiction over any permits related to the project of any and all relevant information that will reasonably be required for the project.

(6) The reduction of duplication between requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and State and local planning and environmental review requirements, unless the agencies are specifically barred from doing so by applicable law.

(7) Timelines for the completion of agency actions during the planning and environmental review processes.

(8) Other appropriate factors.

SEC. 1321. ENVIRONMENTAL PROCEDURES INITIATIVE.

(a) ESTABLISHMENT.—For grant programs under which funds are distributed by formula by the Department, the Secretary shall establish an initiative to review and develop consistent procedures for environmental permitting and procurement requirements that apply to a project carried out under title 23, United States Code, or chapter 53 of title 49, United States Code.

(b) REPORT.—The Secretary shall publish the results of the initiative described in subsection (a) in an electronically accessible format.

SEC. 1322. REVIEW OF STATE ENVIRONMENTAL REVIEWS AND APPROVALS FOR THE PURPOSE OF ELIMINATING DUPLICATION OF ENVIRONMENTAL REVIEWS.

For environmental reviews and approvals carried out on projects funded under title 23, United States Code, the Comptroller General of the United States shall—

(1) review State laws and procedures for conducting environmental reviews with regard to such projects and identify the States that have environmental laws that provide environmental protections and opportunities for public involvement that are equivalent to those provided by Federal environmental laws;

(2) determine the frequency and cost of environmental reviews carried out at the Federal level that are duplicative of State reviews that provide equivalent environmental protections and opportunities for public involvement; and

(3) not later than 2 years after the date of enactment of this Act, submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes the results of the review and determination made under this section.

SEC. 1323. REVIEW OF FEDERAL PROJECT AND PROGRAM DELIVERY.

(a) COMPLETION TIME ASSESSMENTS AND REPORTS.—

(1) IN GENERAL.—For projects funded under title 23, United States Code, the Secretary shall compare—

(A)(i) the completion times of categorical exclusions, environmental assessments, and environmental impact statements initiated after calendar year 2005; to

(ii) the completion times of categorical exclusions, environmental assessments, and environmental impact statements initiated during a period prior to calendar year 2005; and

(B)(i) the completion times of categorical exclusions, environmental assessments, and environmental impact statements initiated during the period beginning on January 1, 2005, and ending on the date of enactment of this Act; to

(ii) the completion times of categorical exclusions, environmental assessments, and environmental impact statements initiated after the date of enactment of this Act.

(2) REPORT.—The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) not later than 1 year after the date of enactment of this Act, a report that—

(i) describes the results of the review conducted under paragraph (1)(A); and

(ii) identifies any change in the timing for completions, including the reasons for any such change and the reasons for delays in excess of 5 years; and

(B) not later than 5 years after the date of enactment of this Act, a report that—

(i) describes the results of the review conducted under paragraph (1)(B); and

(ii) identifies any change in the timing for completions, including the reasons for any such change and the reasons for delays in excess of 5 years.

(b) ADDITIONAL REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the types and justification for the additional categorical exclusions granted under the authority provided under sections 1316 and 1317.

(c) GAO REPORT.—The Comptroller General of the United States shall—

(1) assess the reforms carried out under this subtitle (including the amendments made by this subtitle); and

(2) not later than 5 years after the date of enactment of this Act, submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes the results of the assessment.

(d) INSPECTOR GENERAL REPORT.—The Inspector General of the Department of Transportation shall—

(1) assess the reforms carried out under this subtitle (including the amendments made by this subtitle); and

(2) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate—

(A) not later than 2 years after the date of enactment of this Act, an initial report of the findings of the Inspector General; and

(B) not later than 4 years after the date of enactment of this Act, a final report of the findings.

Subtitle D—Highway Safety

SEC. 1401. JASON'S LAW.

(a) IN GENERAL.—It is the sense of Congress that it is a national priority to address projects under this section for the shortage of long-term parking for commercial motor vehicles on the National Highway System to improve the safety of motorized and nonmotorized users and for commercial motor vehicle operators.

(b) ELIGIBLE PROJECTS.—Eligible projects under this section are those that—

(1) serve the National Highway System; and

(2) may include the following:

(A) Constructing safety rest areas (as defined in section 120(c) of title 23, United States Code) that include parking for commercial motor vehicles.

(B) Constructing commercial motor vehicle parking facilities adjacent to commercial truck stops and travel plazas.

(C) Opening existing facilities to commercial motor vehicle parking, including inspection and weigh stations and park-and-ride facilities.

(D) Promoting the availability of publicly or privately provided commercial motor vehicle parking on the National Highway System using intelligent transportation systems and other means.

(E) Constructing turnouts along the National Highway System for commercial motor vehicles.

(F) Making capital improvements to public commercial motor vehicle parking facilities currently closed on a seasonal basis to allow the facilities to remain open year-round.

(G) Improving the geometric design of interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

(c) SURVEY AND COMPARATIVE ASSESSMENT.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with relevant State motor carrier safety personnel, shall conduct a survey of each State—

(A) to evaluate the capability of the State to provide adequate parking and rest facilities for commercial motor vehicles engaged in interstate transportation;

(B) to assess the volume of commercial motor vehicle traffic in the State; and

(C) to develop a system of metrics to measure the adequacy of commercial motor vehicle parking facilities in the State.

(2) RESULTS.—The results of the survey under paragraph (1) shall be made available to the public on the website of the Department of Transportation.

(3) PERIODIC UPDATES.—The Secretary shall periodically update the survey under this subsection.

(d) ELECTRIC VEHICLE AND NATURAL GAS VEHICLE INFRASTRUCTURE.—

(1) IN GENERAL.—Except as provided in paragraph (2), a State may establish electric vehicle charging stations or natural gas vehicle refueling stations for the use of battery-powered or natural gas-fueled trucks or other motor vehicles at any parking facility funded or authorized under this Act or title 23, United States Code.

(2) EXCEPTION.—Electric vehicle battery charging stations or natural gas vehicle refueling stations may not be established or supported under paragraph (1) if commercial establishments serving motor vehicle users are prohibited by section 111 of title 23, United States Code.

(3) FUNDS.—Charging or refueling stations described in paragraph (1) shall be eligible for the same funds as are available for the parking facilities in which the stations are located.

(e) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded through the authority provided under this section shall be treated as projects on a Federal-aid highway under chapter 1 of title 23, United States Code.

SEC. 1402. OPEN CONTAINER REQUIREMENTS.

Section 154(c) of title 23, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) FISCAL YEAR 2012 AND THEREAFTER.—

''(A) RESERVATION OF FUNDS.—On October 1, 2011, and each October 1 thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall reserve an amount equal to 2.5 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State certifies to the Secretary the means by which the State will use those reserved funds in accordance with subparagraphs (A) and (B) of paragraph (1) and paragraph (3).

''(B) TRANSFER OF FUNDS.—As soon as practicable after the date of receipt of a certification from a State under subparagraph (A), the Secretary shall—

''(i) transfer the reserved funds identified by the State for use as described in subparagraphs (A) and (B) of paragraph (1) to the apportionment of the State under section 402; and

''(ii) release the reserved funds identified by the State as described in paragraph (3).'';

(2) by striking paragraph (3) and inserting the following:

''(3) USE FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

''(A) IN GENERAL.—A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148.

''(B) STATE DEPARTMENTS OF TRANSPORTATION.—If the State makes an election under subparagraph (A), the funds shall be transferred to the department of transportation of the State, which shall be responsible for the administration of the funds.''; and

(3) by striking paragraph (5) and inserting the following:

''(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (2) may be derived from the following:

''(A) The apportionment of the State under section 104(b)(l).

''(B) The apportionment of the State under section 104(b)(2).''.

SEC. 1403. MINIMUM PENALTIES FOR REPEAT OFFENDERS FOR DRIVING WHILE INTOXICATED OR DRIVING UNDER THE INFLUENCE.

(a) DEFINITIONS.—Section 164(a) of title 23, United States Code, is amended—

(1) by striking paragraph (3);

(2) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively; and

(3) in paragraph (4) (as so redesignated) by striking subparagraph (A) and inserting the following:

''(A) receive—

''(i) a suspension of all driving privileges for not less than 1 year; or

''(ii) a suspension of unlimited driving privileges for 1 year, allowing for the reinstatement of limited driving privileges subject to restrictions and limited exemptions as established by State law, if an ignition interlock device is installed for not less than 1 year on each of the motor vehicles owned or operated, or both, by the individual;''.

(b) TRANSFER OF FUNDS.—Section 164(b) of title 23, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) FISCAL YEAR 2012 AND THEREAFTER.—

''(A) RESERVATION OF FUNDS.—On October 1, 2011, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall reserve an amount equal to 2.5 percent of the funds to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b) until the State certifies to the Secretary the means by which the States will use those reserved funds among the uses authorized under subparagraphs (A) and (B) of paragraph (1), and paragraph (3).

''(B) TRANSFER OF FUNDS.—As soon as practicable after the date of receipt of a certification from a State under subparagraph (A), the Secretary shall—

''(i) transfer the reserved funds identified by the State for use as described in subparagraphs (A) and (B) of paragraph (1) to the apportionment of the State under section 402; and

''(ii) release the reserved funds identified by the State as described in paragraph (3).'';

(2) by striking paragraph (3) and inserting the following:

''(3) USE FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

''(A) IN GENERAL.—A State may elect to use all or a portion of the funds transferred under paragraph (2) for activities eligible under section 148.

''(B) STATE DEPARTMENTS OF TRANSPORTATION.—If the State makes an election under subparagraph (A), the funds shall be transferred to the department of transportation of the State, which shall be responsible for the administration of the funds.''; and

(3) by striking paragraph (5) and inserting the following:

''(5) DERIVATION OF AMOUNT TO BE TRANSFERRED.—The amount to be transferred under paragraph (2) may be derived from the following:

''(A) The apportionment of the State under section 104(b)(1).

''(B) The apportionment of the State under section 104(b)(2).''.

SEC. 1404. ADJUSTMENTS TO PENALTY PROVISIONS.

(a) VEHICLE WEIGHT LIMITATIONS.—Section 127(a)(1) of title 23, United States Code, is amended by striking ''No funds shall be apportioned in any fiscal year under section 104(b)(1) of this title to any State which'' and inserting ''The Secretary shall withhold 50 percent of the apportionment of a State under section 104(b)(1) in any fiscal year in which the State''.

(b) CONTROL OF JUNKYARDS.—Section 136 of title 23, United States Code, is amended—

(1) in subsection (b), in the first sentence—

(A) by striking ''10 per centum'' and inserting ''7 percent''; and

(B) by striking ''section 104 of this title'' and inserting ''paragraphs (1) through (5) of section 104(b)''; and

(2) by adding at the end the following:

''(n) DEFINITIONS.—For purposes of this section, the terms 'primary system' and 'Federal-aid primary system' mean any highway that is on the National Highway System, which includes the Interstate Highway System.''.

(c) ENFORCEMENT OF VEHICLE SIZE AND WEIGHT LAWS.—Section 141(b)(2) of title 23, United States Code, is amended—

(1) by striking ''10 per centum'' and inserting ''7 percent''; and

(2) by striking ''section 104 of this title'' and inserting ''paragraphs (1) through (5) of section 104(b)''.

(d) PROOF OF PAYMENT OF THE HEAVY VEHICLE USE TAX.—Section 141(c) of title 23, United States Code, is amended—

(1) by striking ''section 104(b)(4)'' each place it appears and inserting ''section 104(b)(1)''; and

(2) in the first sentence by striking ''25 per centum'' and inserting ''8 percent''.

(e) USE OF SAFETY BELTS.—Section 153(h) of title 23, United States Code, is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraph (2) as paragraph (1);

(3) in paragraph (1) (as so redesignated)—

(A) by striking the paragraph heading and inserting ''PRIOR TO FISCAL YEAR 2012''; and

(B) by inserting ''and before October 1, 2011,'' after ''September 30, 1994,''; and

(4) by inserting after paragraph (1) (as so redesignated) the following:

''(2) FISCAL YEAR 2012 AND THEREAFTER.—If, at any time in a fiscal year beginning after September 30, 2011, a State does not have in effect a law described in subsection (a)(2), the Secretary shall transfer an amount equal to 2 percent of the funds apportioned to the State for the succeeding fiscal year under each of paragraphs (1) through (3) of section 104(b) to the apportionment of the State under section 402.''.

(f) NATIONAL MINIMUM DRINKING AGE.—Section 158(a)(1) of title 23, United States Code, is amended—

(1) by striking ''The Secretary'' and inserting the following:

''(A) FISCAL YEARS BEFORE 2012.—The Secretary''; and

(2) by adding at the end the following:

''(B) FISCAL YEAR 2012 AND THEREAFTER.—For fiscal year 2012 and each fiscal year thereafter, the amount to be withheld under this section shall be an amount equal to 8 percent of the amount apportioned to the noncompliant State, as described in subparagraph (A), under paragraphs (1) and (2) of section 104(b).''.

(g) DRUG OFFENDERS.—Section 159 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (1);

(C) in paragraph (1) (as so redesignated) by striking ''(including any amounts withheld under paragraph (1))''; and

(D) by inserting after paragraph (1) (as so redesignated) the following:

''(2) FISCAL YEAR 2012 AND THEREAFTER.—The Secretary shall withhold an amount equal to 8 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on the first day of each fiscal year beginning after September 30, 2011, if the State fails to meet the requirements of paragraph (3) on the first day of the fiscal year.''; and

(2) by striking subsection (b) and inserting the following:

''(b) EFFECT OF NONCOMPLIANCE.—No funds withheld under this section from apportionments to any State shall be available for apportionment to that State.''.

(h) ZERO TOLERANCE BLOOD ALCOHOL CONCENTRATION FOR MINORS.—Section 161(a) of title 23, United States Code, is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraph (2) as paragraph (1);

(3) in paragraph (1) (as so redesignated)—

(A) by striking the paragraph heading and inserting ''PRIOR TO FISCAL YEAR 2012''; and

(B) by inserting ''through fiscal year 2011'' after ''each fiscal year thereafter''; and

(4) by inserting after paragraph (1) (as so redesignated) the following:

''(2) FISCAL YEAR 2012 AND THEREAFTER.—The Secretary shall withhold an amount equal to 8 percent of the amount required to be apportioned to any State under each of paragraphs (1) and (2) of section 104(b) on October 1, 2011, and on October 1 of each fiscal year thereafter, if the State does not meet the requirement of paragraph (3) on that date.''.

(i) OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS.—Section 163(e) of title 23, United States Code, is amended by striking paragraphs (1) and (2) and inserting the following:

''(1) FISCAL YEARS 2007 THROUGH 2011.—On October 1, 2006, and October 1 of each fiscal year thereafter through fiscal year 2011, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold an amount equal to 8 percent of the amounts to be apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b).

''(2) FISCAL YEAR 2012 AND THEREAFTER.—On October 1, 2011, and October 1 of each fiscal year thereafter, if a State has not enacted or is not enforcing a law described in subsection (a), the Secretary shall withhold an amount equal to 6 percent of the amounts to be apportioned to the State on that date under each of paragraphs (1) and (2) of section 104(b).''.

(j) COMMERCIAL DRIVER'S LICENSE.—Section 31314 of title 49, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) PENALTIES IMPOSED IN FISCAL YEAR 2012 AND THEREAFTER.—Effective beginning on October 1, 2011—

''(1) the penalty for the first instance of noncompliance by a State under this section shall be not more than an amount equal to 4 percent of funds required to be apportioned to the noncompliant State under paragraphs (1) and (2) of section 104(b) of title 23; and

''(2) the penalty for subsequent instances of noncompliance shall be not more than an amount equal to 8 percent of funds required to be apportioned to the noncompliant State under paragraphs (1) and (2) of section 104(b) of title 23.''.

SEC. 1405. HIGHWAY WORKER SAFETY.

Not later than 60 days after the date of enactment of this Act, the Secretary shall modify section 630.1108(a) of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act), to ensure that—

(1) at a minimum, positive protective measures are used to separate workers on highway construction projects from motorized traffic in all work zones conducted under traffic in areas that offer workers no means of escape (such as tunnels and bridges), unless an engineering study determines otherwise;

(2) temporary longitudinal traffic barriers are used to protect workers on highway construction projects in long-duration stationary work zones when the project design speed is anticipated to be high and the nature of the work requires workers to be within 1 lane-width from the edge of a live travel lane, unless—

(A) an analysis by the project sponsor determines otherwise; or

(B) the project is outside of an urbanized area and the annual average daily traffic load of the applicable road is less than 100 vehicles per hour; and

(3) when positive protective devices are necessary for highway construction projects, those devices are paid for on a unit-pay basis, unless doing so would create a conflict with innovative contracting approaches, such as design-build or some performance-based contracts under which the contractor is paid to assume a certain risk allocation and payment is generally made on a lump-sum basis.

Subtitle E—Miscellaneous

SEC. 1501. REAL-TIME RIDESHARING.

Paragraph (3) of section 101(a) of title 23, United States Code (as redesignated by section 1103(a)(2)), is amended by striking ''and designating existing facilities for use for preferential parking for carpools'' and inserting ''designating existing facilities for use for preferential parking for carpools, and real-time ridesharing projects, such as projects where drivers, using an electronic transfer of funds, recover costs directly associated with the trip provided through the use of location technology to quantify those direct costs, subject to the condition that the cost recovered does not exceed the cost of the trip provided''.

SEC. 1502. PROGRAM EFFICIENCIES.

The first sentence of section 102(b) of title 23, United States Code, is amended by striking ''made available for such engineering'' and inserting ''reimbursed for the preliminary engineering''.

SEC. 1503. PROJECT APPROVAL AND OVERSIGHT.

(a) IN GENERAL.—Section 106 of title 23, United States Code, is amended—

(1) in subsection (a)(2) by inserting ''recipient'' before ''formalizing'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in the heading, by striking ''NON-INTERSTATE'';

(ii) by striking ''but not on the Interstate System''; and inserting '', including projects on the Interstate System''; and

(iii) by striking ''of projects'' and all that follows through the period at the end and inserting ''with respect to the projects unless the Secretary determines that the assumption is not appropriate.''; and

(B) by striking paragraph (4) and inserting the following:

''(4) LIMITATION ON INTERSTATE PROJECTS.—

''(A) IN GENERAL.—The Secretary shall not assign any responsibilities to a State for projects the Secretary determines to be in a high risk category, as defined under subparagraph (B).

''(B) HIGH RISK CATEGORIES.—The Secretary may define the high risk categories under this subparagraph on a national basis, a State-by-State basis, or a national and State-by-State basis, as determined to be appropriate by the Secretary.'';

(3) in subsection (e)—

(A) in paragraph (1)(A)—

(i) in the matter preceding clause (i)—

(I) by striking ''concept'' and inserting ''planning''; and

(II) by striking ''multidisciplined'' and inserting ''multidisciplinary''; and

(ii) by striking clause (i) and inserting the following:

''(i) providing the needed functions safely, reliably, and at the lowest overall lifecycle cost;'';

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A) by striking ''or other cost-reduction analysis'';

(ii) in subparagraph (A)—

(I) by striking ''Federal-aid system'' and inserting ''National Highway System receiving Federal assistance''; and

(II) by striking ''$25,000,000'' and inserting ''$50,000,000''; and

(iii) in subparagraph (B)—

(I) by inserting ''on the National Highway System receiving Federal assistance'' after ''a bridge project''; and

(II) by striking ''$20,000,000'' and inserting ''$40,000,000''; and

(C) by striking paragraph (4) and inserting the following:

''(4) REQUIREMENTS.—

''(A) VALUE ENGINEERING PROGRAM.—The State shall develop and carry out a value engineering program that—

''(i) establishes and documents value engineering program policies and procedures;

''(ii) ensures that the required value engineering analysis is conducted before completing the final design of a project;

''(iii) ensures that the value engineering analysis that is conducted, and the recommendations developed and implemented for each project, are documented in a final value engineering report; and

''(iv) monitors, evaluates, and annually submits to the Secretary a report that describes the results of the value analyses that are conducted and the recommendations implemented for each of the projects described in paragraph (2) that are completed in the State.

''(B) BRIDGE PROJECTS.—The value engineering analysis for a bridge project under paragraph (2) shall—

''(i) include bridge superstructure and substructure requirements based on construction material; and

''(ii) be evaluated by the State—

''(I) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

''(II) using an analysis of lifecycle costs and duration of project construction.

''(5) DESIGN-BUILD PROJECTS.—A requirement to provide a value engineering analysis under this subsection shall not apply to a project delivered using the design-build method of construction.'';

(4) in subsection (h)—

(A) in paragraph (1)(B) by inserting '', including a phasing plan when applicable'' after ''financial plan''; and

(B) by striking paragraph (3) and inserting the following:

''(3) FINANCIAL PLAN.—A financial plan—

''(A) shall be based on detailed estimates of the cost to complete the project;

''(B) shall provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project;

''(C) may include a phasing plan that identifies fundable incremental improvements or phases that will address the purpose and the need of the project in the short term in the event there are insufficient financial resources to complete the entire project. If a phasing plan is adopted for a project pursuant to this section, the project shall be deemed to satisfy the fiscal constraint requirements in the statewide and metropolitan planning requirements in sections 134 and 135; and

''(D) shall assess the appropriateness of a public-private partnership to deliver the project.''; and

(5) by adding at the end the following:

''(j) USE OF ADVANCED MODELING TECHNOLOGIES.—

''(1) DEFINITION OF ADVANCED MODELING TECHNOLOGY.—In this subsection, the term 'advanced modeling technology' means an available or developing technology, including 3-dimensional digital modeling, that can—

''(A) accelerate and improve the environmental review process;

''(B) increase effective public participation;

''(C) enhance the detail and accuracy of project designs;

''(D) increase safety;

''(E) accelerate construction, and reduce construction costs; or

''(F) otherwise expedite project delivery with respect to transportation projects that receive Federal funding.

''(2) PROGRAM.—With respect to transportation projects that receive Federal funding, the Secretary shall encourage the use of advanced modeling technologies during environmental, planning, financial management, design, simulation, and construction processes of the projects.

''(3) ACTIVITIES.—In carrying out paragraph (2), the Secretary shall—

''(A) compile information relating to advanced modeling technologies, including industry best practices with respect to the use of the technologies;

''(B) disseminate to States information relating to advanced modeling technologies, including industry best practices with respect to the use of the technologies; and

''(C) promote the use of advanced modeling technologies.

''(4) COMPREHENSIVE PLAN.—The Secretary shall develop and publish on the public website of the Department of Transportation a detailed and comprehensive plan for the implementation of paragraph (2).''.

(b) REVIEW OF OVERSIGHT PROGRAM.—

(1) IN GENERAL.—The Secretary shall review the oversight program established under section 106(g) of title 23, United States Code, to determine the efficacy of the program in monitoring the effective and efficient use of funds authorized to carry out title 23, United States Code.

(2) MINIMUM REQUIREMENTS FOR REVIEW.—At a minimum, the review under paragraph (1) shall assess the capability of the program to—

(A) identify projects funded under title 23, United States Code, for which there are cost or schedule overruns; and

(B) evaluate the extent of such overruns.

(3) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the review conducted under paragraph (1), which shall include recommendations for legislative changes to improve the oversight program established under section 106(g) of title 23, United States Code.

(c) TRANSPARENCY AND ACCOUNTABILITY.—

(1) DATA COLLECTION.—The Secretary shall compile and make available on the public website of the Department of Transportation the annual expenditure data for funds made available under title 23 and chapter 53 of title 49, United States Code.

(2) REQUIREMENTS.—In carrying out paragraph (1), the Secretary shall ensure that the data made available on the public website of the Department of Transportation—

(A) is organized by project and State;

(B) to the maximum extent practicable, is updated regularly to reflect the current status of obligations, expenditures, and Federal-aid projects; and

(C) can be searched and downloaded by users of the website.

(3) REPORT TO CONGRESS.—The Secretary shall annually submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing a summary of the data described in paragraph (1) for the 1-year period ending on the date on which the report is submitted.

SEC. 1504. STANDARDS.

Section 109 of title 23, United States Code, is amended by adding at the end the following:

''(r) PAVEMENT MARKINGS.—The Secretary shall not approve any pavement markings project that includes the use of glass beads containing more than 200 parts per million of arsenic or lead, as determined in accordance with Environmental Protection Agency testing methods 3052, 6010B, or 6010C.''.

SEC. 1505. JUSTIFICATION REPORTS FOR ACCESS POINTS ON THE INTERSTATE SYSTEM.

Section 111 of title 23, United States Code, is amended by adding at the end the following:

''(e) JUSTIFICATION REPORTS.—If the Secretary requests or requires a justification report for a project that would add a point of access to, or exit from, the Interstate System, the Secretary may permit a State transportation department to approve the report.''.

SEC. 1506. CONSTRUCTION.

Section 114(b) of title 23, United States Code, is amended—

(1) in subsection (b)—

(A) by striking paragraph (1) and inserting the following:

''(1) LIMITATION ON CONVICT LABOR.—Convict labor shall not be used in construction of Federal-aid highways or portions of Federal-aid highways unless the labor is performed by convicts who are on parole, supervised release, or probation.''; and

(B) in paragraph (3) by inserting ''in existence during that period'' after ''located on a Federal-aid system''; and

(2) by adding at the end the following:

''(d) VETERANS EMPLOYMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), a recipient of Federal financial assistance under this chapter shall, to the extent practicable, encourage contractors working on a highway project funded using the assistance to make a best faith effort in the hiring or referral of laborers on any project for the construction of a highway to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract.

''(2) ADMINISTRATION.—This subsection shall not—

''(A) apply to projects subject to section 140(d); or

''(B) be administered or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, a female, or any equally qualified former employee.''.

SEC. 1507. MAINTENANCE.

Section 116 of title 23, United States Code, is amended—

(1) by redesignating subsections (a) through (d) as subsections (b) through (e), respectively;

(2) by inserting before subsection (b) (as so redesignated) the following:

''(a) DEFINITIONS.—In this section, the following definitions apply:

''(1) PREVENTIVE MAINTENANCE.—The term 'preventive maintenance' includes pavement preservation programs and activities.

''(2) PAVEMENT PRESERVATION PROGRAMS AND ACTIVITIES.—The term 'pavement preservation programs and activities' means programs and activities employing a network level, long-term strategy that enhances pavement performance by using an integrated, cost-effective set of practices that extend pavement life, improve safety, and meet road user expectations.'';

(3) in subsection (b) (as so redesignated)—

(A) in the first sentence, by inserting ''or other direct recipient'' before ''to maintain''; and

(B) by striking the second sentence;

(4) by striking subsection (c) (as so redesignated) and inserting the following:

''(c) AGREEMENT.—In any State in which the State transportation department or other direct recipient is without legal authority to maintain a project described in subsection (b), the transportation department or direct recipient shall enter into a formal agreement with the appropriate officials of the county or municipality in which the project is located to provide for the maintenance of the project.''; and

(5) in the first sentence of subsection (d) (as so redesignated) by inserting ''or other direct recipient'' after ''State transportation department''.

SEC. 1508. FEDERAL SHARE PAYABLE.

Section 120 of title 23, United States Code, is amended—

(1) in the first sentence of subsection (c)(1)—

(A) by inserting ''maintaining minimum levels of retroreflectivity of highway signs or pavement markings,'' after ''traffic control signalization,'';

(B) by inserting ''shoulder and centerline rumble strips and stripes,'' after ''pavement marking,''; and

(C) by striking ''Federal-aid systems'' and inserting ''Federal-aid programs'';

(2) by striking subsection (e) and inserting the following:

''(e) EMERGENCY RELIEF.—The Federal share payable for any repair or reconstruction provided for by funds made available under section 125 for any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on the system as provided in subsections (a) and (b), except that—

''(1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the cost of the repairs;

''(2) the Federal share payable for any repair or reconstruction of Federal land transportation facilities, Federal land access transportation facilities, and tribal transportation facilities may amount to 100 percent of the cost of the repair or reconstruction;

''(3) the Secretary shall extend the time period in paragraph (1) taking into consideration any delay in the ability of the State to access damaged facilities to evaluate damage and the cost of repair; and

''(4) the Federal share payable for eligible permanent repairs to restore damaged facilities to predisaster condition may amount to 90 percent of the cost of the repairs if the eligible expenses incurred by the State due to natural disasters or catastrophic failures in a Federal fiscal year exceeds the annual apportionment of the State under section 104 for the fiscal year in which the disasters or failures occurred.'';

(3) by striking subsection (g) and redesignating subsections (h) through (l) as subsections (g) through (k), respectively;

(4) in subsection (i)(1)(A) (as redesignated by paragraph (3)) by striking ''and the Appalachian development highway system program under section 14501 of title 40''; and

(5) by striking subsections (j) and (k) (as redesignated by paragraph (3)) and inserting the following:

''(j) USE OF FEDERAL AGENCY FUNDS.—Notwithstanding any other provision of law, any Federal funds other than those made available under this title and title 49 may be used to pay the non-Federal share of the cost of any transportation project that is within, adjacent to, or provides access to Federal land, the Federal share of which is funded under this title or chapter 53 of title 49.

''(k) USE OF FEDERAL LAND AND TRIBAL TRANSPORTATION FUNDS.—Notwithstanding any other provision of law, the funds authorized to be appropriated to carry out the tribal transportation program under section 202 and the Federal lands transportation program under section 203 may be used to pay the non-Federal share of the cost of any project that is funded under this title or chapter 53 of title 49 and that provides access to or within Federal or tribal land.''.

SEC. 1509. TRANSFERABILITY OF FEDERAL-AID HIGHWAY FUNDS.

(a) IN GENERAL.—Section 126 of title 23, United States Code, is amended to read as follows:

''§ 126. Transferability of Federal-aid highway funds

''(a) IN GENERAL.—Notwithstanding any other provision of law, subject to subsection (b), a State may transfer from an apportionment under section 104(b) not to exceed 50 percent of the amount apportioned for the fiscal year to any other apportionment of the State under that section.

''(b) APPLICATION TO CERTAIN SET-ASIDES.—

''(1) IN GENERAL.—Funds that are subject to sections 104(d) and 133(d) shall not be transferred under this section.

''(2) FUNDS TRANSFERRED BY STATES.—Funds transferred by a State under this section of the funding reserved for the State under section 213 for a fiscal year may only come from the portion of those funds that are available for obligation in any area of the State under section 213(c)(1)(B).''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the item relating to section 126 and inserting the following:

''126. Transferability of Federal-aid highway funds.''.

SEC. 1510. IDLE REDUCTION TECHNOLOGY.

Section 127(a)(12) of title 23, United States Code, is amended—

(1) in subparagraph (B), by striking ''400'' and inserting ''550''; and

(2) in subparagraph (C)(ii), by striking ''400-pound'' and inserting ''550-pound''.

SEC. 1511. SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.

Section 127 of title 23, United States Code, is amended by inserting at the end the following:

''(i) SPECIAL PERMITS DURING PERIODS OF NATIONAL EMERGENCY.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, a State may issue special permits during an emergency to overweight vehicles and loads that can easily be dismantled or divided if—

''(A) the President has declared the emergency to be a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

''(B) the permits are issued in accordance with State law; and

''(C) the permits are issued exclusively to vehicles and loads that are delivering relief supplies.

''(2) EXPIRATION.—A permit issued under paragraph (1) shall expire not later than 120 days after the date of the declaration of emergency under subparagraph (A) of that paragraph.''.

SEC. 1512. TOLLING.

(a) AMENDMENT TO TOLLING PROVISION.—Section 129(a) of title 23, United States Code, is amended to read as follows:

''(a) BASIC PROGRAM.—

''(1) AUTHORIZATION FOR FEDERAL PARTICIPATION.—Subject to the provisions of this section, Federal participation shall be permitted on the same basis and in the same manner as construction of toll-free highways is permitted under this chapter in the—

''(A) initial construction of a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel;

''(B) initial construction of 1 or more lanes or other improvements that increase capacity of a highway, bridge, or tunnel (other than a highway on the Interstate System) and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free lanes, excluding auxiliary lanes, after the construction is not less than the number of toll-free lanes, excluding auxiliary lanes, before the construction;

''(C) initial construction of 1 or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction;

''(D) reconstruction, resurfacing, restoration, rehabilitation, or replacement of a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel;

''(E) reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility;

''(F) reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility;

''(G) reconstruction, restoration, or rehabilitation of a highway on the Interstate System if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after reconstruction, restoration, or rehabilitation is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before reconstruction, restoration, or rehabilitation;

''(H) conversion of a high occupancy vehicle lane on a highway, bridge, or tunnel to a toll facility; and

''(I) preliminary studies to determine the feasibility of a toll facility for which Federal participation is authorized under this paragraph.

''(2) OWNERSHIP.—Each highway, bridge, tunnel, or approach to the highway, bridge, or tunnel constructed under this subsection shall—

''(A) be publicly owned; or

''(B) be privately owned if the public authority with jurisdiction over the highway, bridge, tunnel, or approach has entered into a contract with 1 or more private persons to design, finance, construct, and operate the facility and the public authority will be responsible for complying with all applicable requirements of this title with respect to the facility.

''(3) LIMITATIONS ON USE OF REVENUES.—

''(A) IN GENERAL.—A public authority with jurisdiction over a toll facility shall use all toll revenues received from operation of the toll facility only for—

''(i) debt service with respect to the projects on or for which the tolls are authorized, including funding of reasonable reserves and debt service on refinancing;

''(ii) a reasonable return on investment of any private person financing the project, as determined by the State or interstate compact of States concerned;

''(iii) any costs necessary for the improvement and proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation;

''(iv) if the toll facility is subject to a public-private partnership agreement, payments that the party holding the right to toll revenues owes to the other party under the public-private partnership agreement; and

''(v) if the public authority certifies annually that the tolled facility is being adequately maintained, any other purpose for which Federal funds may be obligated by a State under this title.

''(B) ANNUAL AUDIT.—

''(i) IN GENERAL.—A public authority with jurisdiction over a toll facility shall conduct or have an independent auditor conduct an annual audit of toll facility records to verify adequate maintenance and compliance with subparagraph (A), and report the results of the audits to the Secretary.

''(ii) RECORDS.—On reasonable notice, the public authority shall make all records of the public authority pertaining to the toll facility available for audit by the Secretary.

''(C) NONCOMPLIANCE.—If the Secretary concludes that a public authority has not complied with the limitations on the use of revenues described in subparagraph (A), the Secretary may require the public authority to discontinue collecting tolls until an agreement with the Secretary is reached to achieve compliance with the limitation on the use of revenues described in subparagraph (A).

''(4) LIMITATIONS ON CONVERSION OF HIGH OCCUPANCY VEHICLE FACILITIES ON INTERSTATE SYSTEM.—

''(A) IN GENERAL.—A public authority with jurisdiction over a high occupancy vehicle facility on the Interstate System may undertake reconstruction, restoration, or rehabilitation under paragraph (1)(G) on the facility, and may levy tolls on vehicles, excluding high occupancy vehicles, using the reconstructed, restored, or rehabilitated facility, if the public authority—

''(i) in the case of a high occupancy vehicle facility that affects a metropolitan area, submits to the Secretary a written assurance that the metropolitan planning organization designated under section 5203 of title 49 for the area has been consulted concerning the placement and amount of tolls on the converted facility;

''(ii) develops, manages, and maintains a system that will automatically collect the toll; and

''(iii) establishes policies and procedures—

''(I) to manage the demand to use the facility by varying the toll amount that is charged; and

''(II) to enforce sanctions for violations of use of the facility.

''(B) EXEMPTION FROM TOLLS.—In levying tolls on a facility under subparagraph (A), a public authority may designate classes of vehicles that are exempt from the tolls or charge different toll rates for different classes of vehicles.

''(5) SPECIAL RULE FOR FUNDING.—

''(A) IN GENERAL.—In the case of a toll facility under the jurisdiction of a public authority of a State (other than the State transportation department), on request of the State transportation department and subject to such terms and conditions as the department and public authority may agree, the Secretary, working through the State department of transportation, shall reimburse the public authority for the Federal share of the costs of construction of the project carried out on the toll facility under this subsection in the same manner and to the same extent as the department would be reimbursed if the project was being carried out by the department.

''(B) SOURCE.—The reimbursement of funds under this paragraph shall be from sums apportioned to the State under this chapter and available for obligations on projects on the Federal-aid system in the State on which the project is being carried out.

''(6) LIMITATION ON FEDERAL SHARE.—The Federal share payable for a project described in paragraph (1) shall be a percentage determined by the State, but not to exceed 80 percent.

''(7) MODIFICATIONS.—If a public authority (including a State transportation department) with jurisdiction over a toll facility subject to an agreement under this section or section 119(e), as in effect on the day before the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1915), requests modification of the agreement, the Secretary shall modify the agreement to allow the continuation of tolls in accordance with paragraph (3) without repayment of Federal funds.

''(8) LOANS.—

''(A) IN GENERAL.—

''(i) LOANS.—Using amounts made available under this title, a State may loan to a public or private entity constructing or proposing to construct under this section a toll facility or non-toll facility with a dedicated revenue source an amount equal to all or part of the Federal share of the cost of the project if the project has a revenue source specifically dedicated to the project.

''(ii) DEDICATED REVENUE SOURCES.—Dedicated revenue sources for non-toll facilities include excise taxes, sales taxes, motor vehicle use fees, tax on real property, tax increment financing, and such other dedicated revenue sources as the Secretary determines appropriate.

''(B) COMPLIANCE WITH FEDERAL LAWS.—As a condition of receiving a loan under this paragraph, the public or private entity that receives the loan shall ensure that the project will be carried out in accordance with this title and any other applicable Federal law, including any applicable provision of a Federal environmental law.

''(C) SUBORDINATION OF DEBT.—The amount of any loan received for a project under this paragraph may be subordinated to any other debt financing for the project.

''(D) OBLIGATION OF FUNDS LOANED.—Funds loaned under this paragraph may only be obligated for projects under this paragraph.

''(E) REPAYMENT.—The repayment of a loan made under this paragraph shall commence not later than 5 years after date on which the facility that is the subject of the loan is open to traffic.

''(F) TERM OF LOAN.—The term of a loan made under this paragraph shall not exceed 30 years from the date on which the loan funds are obligated.

''(G) INTEREST.—A loan made under this paragraph shall bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible.

''(H) REUSE OF FUNDS.—Amounts repaid to a State from a loan made under this paragraph may be obligated—

''(i) for any purpose for which the loan funds were available under this title; and

''(ii) for the purchase of insurance or for use as a capital reserve for other forms of credit enhancement for project debt in order to improve credit market access or to lower interest rates for projects eligible for assistance under this title.

''(I) GUIDELINES.—The Secretary shall establish procedures and guidelines for making loans under this paragraph.

''(9) STATE LAW PERMITTING TOLLING.—If a State does not have a highway, bridge, or tunnel toll facility as of the date of enactment of the MAP–21, before commencing any activity authorized under this section, the State shall have in effect a law that permits tolling on a highway, bridge, or tunnel.

''(10) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) HIGH OCCUPANCY VEHICLE; HOV.—The term 'high occupancy vehicle' or 'HOV' means a vehicle with not fewer than 2 occupants.

''(B) INITIAL CONSTRUCTION.—

''(i) IN GENERAL.—The term 'initial construction' means the construction of a highway, bridge, tunnel, or other facility at any time before it is open to traffic.

''(ii) EXCLUSIONS.—The term 'initial construction' does not include any improvement to a highway, bridge, tunnel, or other facility after it is open to traffic.

''(C) PUBLIC AUTHORITY.—The term 'public authority' means a State, interstate compact of States, or public entity designated by a State.

''(D) TOLL FACILITY.—The term 'toll facility' means a toll highway, bridge, or tunnel or approach to the highway, bridge, or tunnel constructed under this subsection.''.

(b) ELECTRONIC TOLL COLLECTION INTEROPERABILITY REQUIREMENTS.—Not later than 4 years after the date of enactment of this Act, all toll facilities on the Federal-aid highways shall implement technologies or business practices that provide for the interoperability of electronic toll collection programs.

SEC. 1513. MISCELLANEOUS PARKING AMENDMENTS.

(a) FRINGE AND CORRIDOR PARKING FACILITIES.—Section 137 of title 23, United States Code, is amended—

(1) in subsection (f)(1)—

(A) by striking ''104(b)(4)'' and inserting ''104(b)(1)''; and

(B) by inserting ''including the addition of electric vehicle charging stations or natural gas vehicle refueling stations,'' after ''new facilities,''; and

(2) by adding at the end the following:

''(g) FUNDING.—The addition of electric vehicle charging stations or natural gas vehicle refueling stations to new or previously funded parking facilities shall be eligible for funding under this section.''.

(b) PUBLIC TRANSPORTATION.—Section 142(a)(1) of title 23, United States Code, is amended by inserting '', which may include electric vehicle charging stations or natural gas vehicle refueling stations,'' after ''parking facilities''.

(c) FOREST DEVELOPMENT ROADS AND TRAILS.—Section 205(d) of title 23, United States Code, is amended by inserting '', which may include electric vehicle charging stations or natural gas vehicle refueling stations,'' after ''parking areas''.

SEC. 1514. HOV FACILITIES.

Section 166 of title 23, United States Code, is amended—

(1) in subsection (b)(5)—

(A) in subparagraph (A) by striking ''2009'' and inserting ''2017'';

(B) in subparagraph (B) by striking ''2009'' and inserting ''2017''; and

(C) in subparagraph (C)—

(i) by striking ''subparagraph (B)'' and inserting ''this paragraph''; and

(ii) by inserting ''or equal to'' after ''less than'';

(2) in subsection (c) by striking paragraph (3) and inserting the following:

''(3) TOLL REVENUE.—Toll revenue collected under this section is subject to the requirements of section 129(a)(3).''; and

(3) in subsection (d)(1)—

(A) in the matter preceding subparagraph (A)—

(i) by striking ''in a fiscal year shall certify'' and inserting ''shall submit to the Secretary a report demonstrating that the facility is not already degraded, and that the presence of the vehicles will not cause the facility to become degraded, and certify''; and

(ii) by striking ''in the fiscal year'';

(B) in subparagraph (A) by inserting ''and submitting to the Secretary annual reports of those impacts'' after ''adjacent highways'';

(C) in subparagraph (C) by striking ''if the presence of the vehicles has degraded the operation of the facility'' and inserting ''whenever the operation of the facility is degraded''; and

(D) by adding at the end the following:

''(D) MAINTENANCE OF OPERATING PERFORMANCE.—Not later than 180 days after the date on which a facility is degraded pursuant to the standard specified in paragraph (2), the State agency with jurisdiction over the facility shall bring the facility into compliance with the minimum average operating speed performance standard through changes to operation of the facility, including—

''(i) increasing the occupancy requirement for HOV lanes;

''(ii) varying the toll charged to vehicles allowed under subsection (b) to reduce demand;

''(iii) discontinuing allowing non-HOV vehicles to use HOV lanes under subsection (b); or

''(iv) increasing the available capacity of the HOV facility.

''(E) COMPLIANCE.—If the State fails to bring a facility into compliance under subparagraph (D), the Secretary shall subject the State to appropriate program sanctions under section 1.36 of title 23, Code of Federal Regulations (or successor regulations), until the performance is no longer degraded.''.

SEC. 1515. FUNDING FLEXIBILITY FOR TRANSPORTATION EMERGENCIES.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code (as amended by section 1311(a)), is amended by adding at the end the following:

"§ 170. Funding flexibility for transportation emergencies

''(a) IN GENERAL.—Notwithstanding any other provision of law, a State may use up to 100 percent of any covered funds of the State to repair or replace a transportation facility that has suffered serious damage as a result of a natural disaster or catastrophic failure from an external cause.

''(b) DECLARATION OF EMERGENCY.—Funds may be used under this section only for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

''(c) REPAYMENT.—Funds used under subsection (a) shall be repaid to the program from which the funds were taken in the event that such repairs or replacement are subsequently covered by a supplemental appropriation of funds.

''(d) DEFINITIONS.—In this section, the following definitions apply:

''(1) COVERED FUNDS.—The term 'covered funds' means any amounts apportioned to a State under section 104(b), other than amounts suballocated to metropolitan areas and other areas of the State under section 133(d), but including any such amounts required to be set aside for a purpose other than the repair or replacement of a transportation facility under this section.

''(2) TRANSPORTATION FACILITY.—The term 'transportation facility' means any facility eligible for assistance under section 125.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code (as amended by section 1311(b)), is amended by adding at the end the following:

''170. Funding flexibility for transportation emergencies.''.

SEC. 1516. DEFENSE ACCESS ROAD PROGRAM ENHANCEMENTS TO ADDRESS TRANSPORTATION INFRASTRUCTURE IN THE VICINITY OF MILITARY INSTALLATIONS.

The second sentence of section 210(a)(2) of title 23, United States Code, is amended by inserting '', in consultation with the Secretary of Transportation,'' before ''shall determine''.

SEC. 1517. MAPPING.

(a) IN GENERAL.—Section 306 of title 23, United States Code, is amended—

(1) in subsection (a) by striking ''may'' and inserting ''shall'';

(2) in subsection (b) in the second sentence by striking ''State and'' and inserting ''State government and''; and

(3) by adding at the end the following:

''(c) IMPLEMENTATION.—The Secretary shall develop a process for the oversight and monitoring, on an annual basis, of the compliance of each State with the guidance issued under subsection (b).''.

(b) SURVEY.—Not later than 2 years after the date of enactment of this Act, the Secretary shall conduct a survey of all States to determine what percentage of projects carried out under title 23, United States Code, in each State utilize private sector sources for surveying and mapping services.

SEC. 1518. BUY AMERICA PROVISIONS.

Section 313 of title 23, United States Code, is amended by adding at the end the following:

''(g) APPLICATION TO HIGHWAY PROGRAMS.—The requirements under this section shall apply to all contracts eligible for assistance under this chapter for a project carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), regardless of the funding source of such contracts, if at least 1 contract for the project is funded with amounts made available to carry out this title.''.

SEC. 1519. CONSOLIDATION OF PROGRAMS; REPEAL OF OBSOLETE PROVISIONS.

(a) CONSOLIDATION OF PROGRAMS.—From administrative funds made available under section 104(a) of title 23, United States Code, not less than $3,000,000 for each of fiscal years 2013 and 2014 shall be made available—

(1) to carry out safety-related activities, including—

(A) to carry out the operation lifesaver program—

(i) to provide public information and education programs to help prevent and reduce motor vehicle accidents, injuries, and fatalities; and

(ii) to improve driver performance at railway-highway crossings; and

(B) to provide work zone safety grants in accordance with subsections (a) and (b) of section 1409 of the SAFETEA–LU (23 U.S.C. 401 note; 119 Stat. 1232); and

(2) to operate authorized safety-related clearinghouses, including—

(A) the national work zone safety information clearinghouse authorized by section 358(b)(2) of the National Highway System Designation Act of 1995 (23 U.S.C. 401 note; 109 Stat. 625); and

(B) a public road safety clearinghouse in accordance with section 1411(a) of the SAFETEA–LU (23 U.S.C. 402 note; 119 Stat. 1234).

(b) REPEALS.—

(1) TITLE 23.—

(A) IN GENERAL.—Sections 105, 110, 117, 124, 151, 155, 157, 160, 212, 216, 303, and 309 of title 23, United States Code, are repealed.

(B) SET ASIDES.—Section 118 of title 23, United States Code, is amended—

(i) by striking subsection (c); and

(ii) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(2) SAFETEA–LU.—Sections 1302, 1305, 1306, 1803, 1804, 1907, and 1958 of SAFETEA–LU (Public Law 109–59) are repealed.

(3) ADDITIONAL.—Section 1132 of the Energy Independence and Security Act of 2007 (Public Law 110–140; 121 Stat. 1763) is repealed.

(c) CONFORMING AMENDMENTS.—

(1) TITLE ANALYSIS.—

(A) CHAPTER 1.—The analysis for chapter 1 of title 23, United States Code, is amended by striking the items relating to sections 105, 110, 117, 124, 151, 155, 157, and 160.

(B) CHAPTER 2.—The analysis for chapter 2 of title 23, United States Code, is amended by striking the items relating to sections 212 and 216.

(C) CHAPTER 3.—The analysis for chapter 3 of title 23, United States Code, is amended by striking the items relating to sections 303 and 309.

(2) TABLE OF CONTENTS.—The table of contents contained in section 1(b) of SAFETEA–LU (Public Law 109–59; 119 Stat. 1144) is amended by striking the items relating to sections 1302, 1305, 1306, 1803, 1804, 1907, and 1958.

(3) SECTION 104.—Section 104(e) of title 23, United States Code, is amended by striking '', 105,''.

(4) SECTION 109.—Section 109(q) of title 23, United States Code, is amended by striking ''in accordance with section 303 or''.

(5) SECTION 118.—Section 118(b) of title 23, United States Code, is amended—

(A) by striking paragraph (1) and all that follows through the heading of paragraph (2); and

(B) by striking ''(other than for Interstate construction)''.

(6) SECTION 130.—Section 130 of title 23, United States Code, is amended—

(A) in subsection (e) by striking ''section 104(b)(5)'' and inserting ''section 104(b)(3)'';

(B) in subsection (f)(1) by inserting ''as in effect on the day before the date of enactment of the MAP–21'' after ''section 104(b)(3)(A)''; and

(C) in subsection (l) by striking paragraphs (3) and (4).

(7) SECTION 131.—Section 131(m) of title 23, United States Code, is amended by striking ''Subject to approval by the Secretary in accordance with the program of projects approval process of section 105, a State'' and inserting ''A State''.

(8) SECTION 133.—Paragraph (13) of section 133(b) of title 23, United States Code (as amended by section 1108(a)(3)), is amended by striking ''under section 303.''

(9) SECTION 142.—Section 142 of title 23, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) by striking ''motor vehicles (other than rail)'' and inserting ''buses'';

(II) by striking ''(hereafter in this section referred to as 'buses')'';

(III) by striking ''Federal-aid systems'' and inserting ''Federal-aid highways''; and

(IV) by striking ''Federal-aid system'' and inserting ''Federal-aid highway''; and

(ii) in paragraph (2)—

(I) by striking ''as a project on the the surface transportation program for''; and

(II) by striking ''section 104(b)(3)'' and inserting ''section 104(b)(2)'';

(B) in subsection (b) by striking ''104(b)(4)'' and inserting ''104(b)(1)'';

(C) in subsection (c)—

(i) by striking ''system'' in each place it appears and inserting ''highway''; and

(ii) by striking ''highway facilities'' and inserting ''highways eligible under the program that is the source of the funds'';

(D) in subsection (e)(2) by striking ''Notwithstanding section 209(f)(1) of the Highway Revenue Act of 1956, the Highway Trust Fund shall be available for making expenditures to meet obligations resulting from projects authorized by subsection (a)(2) of this section and such projects'' and inserting ''Projects authorized by subsection (a)(2)''; and

(E) in subsection (f) by striking ''exits'' and inserting ''exists''.

(10) SECTION 145.—Section 145(b) of title 23, United States Code, is amended by striking ''section 117 of this title,''.

(11) SECTION 218.—Section 218 of title 23, United States Code, is amended—

(A) in subsection (a)—

(i) by striking the first two sentences;

(ii) in the third sentence—

(I) by striking '', in addition to such funds,''; and

(II) by striking ''such highway or'';

(iii) by striking the fourth sentence and fifth sentences;

(B) by striking subsection (b); and

(C) by redesignating subsection (c) as subsection (b).

(12) SECTION 610.—Section 610(d)(1)(B) of title 23, United States Code, is amended by striking ''under section 105''.

SEC. 1520. DENALI COMMISSION.

The Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended—

(1) in section 305, by striking subsection (c) and inserting the following:

''(c) GIFTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Commission, on behalf of the United States, may accept use, and dispose of gifts or donations of services, property, or money for purposes of carrying out this Act.

''(2) CONDITIONAL.—With respect to conditional gifts—

''(A)(i) the Commission, on behalf of the United States, may accept conditional gifts for purposes of carrying out this Act, if approved by the Federal Cochairperson; and

''(ii) the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with the condition applicable to the gift; but

''(B) no gift shall be accepted that is conditioned on any expenditure not to be funded from the gift or from the income generated by the gift unless the expenditure has been approved by Act of Congress.''; and

(2) by adding at the end the following:

"SEC. 311. TRANSFER OF FUNDS FROM OTHER FEDERAL AGENCIES.

''(a) IN GENERAL.—Subject to subsection (c), for purposes of this Act, the Commission may accept transfers of funds from other Federal agencies.

''(b) TRANSFERS.—Any Federal agency authorized to carry out an activity that is within the authority of the Commission may transfer to the Commission any appropriated funds for the activity.

''(c) TREATMENT.—Any funds transferred to the Commission under this subsection—

''(1) shall remain available until expended; and

''(2) may, to the extent necessary to carry out this Act, be transferred to, and merged with, the amounts made available by appropriations Acts for the Commission by the Federal Cochairperson.''.

SEC. 1521. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 AMENDMENTS.

(a) MOVING AND RELATED EXPENSES.—Section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4622) is amended—

(1) in subsection (a)(4) by striking ''$10,000'' and inserting ''$25,000, as adjusted by regulation, in accordance with section 213(d)''; and

(2) in the second sentence of subsection (c) by striking ''$20,000'' and inserting ''$40,000, as adjusted by regulation, in accordance with section 213(d)''.

(b) REPLACEMENT HOUSING FOR HOMEOWNERS.—The first sentence of section 203(a)(1) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623(a)(1)) is amended—

(1) by striking ''$22,500'' and inserting ''$31,000, as adjusted by regulation, in accordance with 213(d),''; and

(2) by striking ''one hundred and eighty days prior to'' and inserting ''90 days before''.

(c) REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS.—Section 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4624) is amended—

(1) in the second sentence of subsection (a) by striking ''$5,250'' and inserting ''$7,200, as adjusted by regulation, in accordance with section 213(d)''; and

(2) in the second sentence of subsection (b) by striking '', except'' and all that follows through the end of the subsection and inserting a period.

(d) DUTIES OF LEAD AGENCY.—Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) is amended—

(1) in subsection (b)—

(A) in paragraph (2) by striking ''and'' at the end;

(B) in paragraph (3) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) that each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of this Act shall provide to the lead agency an annual summary report the describes the activities conducted by the Federal agency.''; and

(2) by adding at the end the following:

''(d) ADJUSTMENT OF PAYMENTS.—The head of the lead agency may adjust, by regulation, the amounts of relocation payments provided under sections 202(a)(4), 202(c), 203(a), and 204(a) if the head of the lead agency determines that cost of living, inflation, or other factors indicate that the payments should be adjusted to meet the policy objectives of this Act.''.

(e) AGENCY COORDINATION.—Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is amended by inserting after section 213 (42 U.S.C. 4633) the following:

"SEC. 214. AGENCY COORDINATION.

''(a) AGENCY CAPACITY.—Each Federal agency responsible for funding or carrying out relocation and acquisition activities shall have adequately trained personnel and such other resources as are necessary to manage and oversee the relocation and acquisition program of the Federal agency in accordance with this Act.

''(b) INTERAGENCY AGREEMENTS.—Not later than 1 year after the date of enactment of this section, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall enter into a memorandum of understanding with the lead agency that—

''(1) provides for periodic training of the personnel of the Federal agency, which in the case of a Federal agency that provides Federal financial assistance, may include personnel of any displacing agency that receives Federal financial assistance;

''(2) addresses ways in which the lead agency may provide assistance and coordination to the Federal agency relating to compliance with the Act on a program or project basis; and

''(3) addresses the funding of the training, assistance, and coordination activities provided by the lead agency, in accordance with subsection (c).

''(c) INTERAGENCY PAYMENTS.—

''(1) IN GENERAL.—For the fiscal year that begins 1 year after the date of enactment of this section, and each fiscal year thereafter, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall transfer to the lead agency for the fiscal year, such funds as are necessary, but not less than $35,000, to support the training, assistance, and coordination activities of the lead agency described in subsection (b).

''(2) INCLUDED COSTS.—The cost to a Federal agency of providing the funds described in paragraph (1) shall be included as part of the cost of 1 or more programs or projects undertaken by the Federal agency or with Federal financial assistance that result in the displacement of persons or the acquisition of real property.''.

(f) COOPERATION WITH FEDERAL AGENCIES.—Section 308 of title 23, United States Code, is amended by striking subsection (a) and inserting the following:

''(a) AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—The Secretary may perform, by contract or otherwise, authorized engineering or other services in connection with the survey, construction, maintenance, or improvement of highways for other Federal agencies, cooperating foreign countries, and State cooperating agencies.

''(2) INCLUSIONS.—Services authorized under paragraph (1) may include activities authorized under section 214 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

''(3) REIMBURSEMENT.—Reimbursement for services carried out under this subsection (including depreciation on engineering and road-building equipment) shall be credited to the applicable appropriation.''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act.

(2) EXCEPTION.—The amendments made by subsections (a) through (c) shall take effect 2 years after the date of enactment of this Act.

SEC. 1522. EXTENSION OF PUBLIC TRANSIT VEHICLE EXEMPTION FROM AXLE WEIGHT RESTRICTIONS.

Section 1023(h) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 127 note; Public Law 102–240) is amended—

(1) in the heading of paragraph (1) by striking ''TEMPORARY EXEMPTION'' and inserting ''EXEMPTION'';

(2) in paragraph (1)—

(A) in the matter preceding subparagraph (A) by striking '', for the period beginning on October 6, 1992, and ending on October 1, 2009,'';

(B) in subparagraph (A) by striking ''or'' at the end;

(C) in subparagraph (B) by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(C) any motor home (as defined in section 571.3 of title 49, Code of Federal Regulations (or successor regulation)).''; and

(3) in paragraph (2)(A) by striking ''For the period beginning on the date of enactment of this subparagraph and ending on September 30, 2009, a'' and inserting ''A''.

SEC. 1523. USE OF DEBRIS FROM DEMOLISHED BRIDGES AND OVERPASSES.

Section 1805(a) of the SAFETEA–LU (23 U.S.C. 144 note; 119 Stat. 1459) is amended by striking ''highway bridge replacement and rehabilitation program under section 144'' and inserting ''national highway performance program under section 119''.

SEC. 1524. USE OF YOUTH SERVICE AND CONSERVATION CORPS.

(a) IN GENERAL.—The Secretary shall encourage the States and regional transportation planning agencies to enter into contracts and cooperative agreements with qualified youth service or conservation corps, as defined in sections 122(a)(2) of Public Law 101–610 (42 U.S.C. 12572(a)(2)) and 106(c)(3) of Public Law 103–82 (42 U.S.C. 12656(c)(3)) to perform appropriate projects eligible under sections 162, 206, 213, and 217 of title 23, United States Code, and under section 1404 of the SAFETEA–LU (119 Stat. 1228).

(b) REQUIREMENTS.—Under any contract or cooperative agreement entered into with a qualified youth service or conservation corps under this section, the Secretary shall—

(1) set the amount of a living allowance or rate of pay for each participant in such corps at—

(A) such amount or rate as required under State law in a State with such requirements; or

(B) for corps in States not described in subparagraph (A), at such amount or rate as determined by the Secretary, not to exceed the maximum living allowance authorized by section 140 of Public Law 101–610 (42 U.S.C. 12594); and

(2) not subject such corps to the requirements of section 112 of title 23, United States Code.

SEC. 1525. STATE AUTONOMY FOR CULVERT PIPE SELECTION.

Not later than 180 days after the date of enactment of this Act, the Secretary shall modify section 635.411 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act), to ensure that States shall have the autonomy to determine culvert and storm sewer material types to be included in the construction of a project on a Federal-aid highway.

SEC. 1526. EVACUATION ROUTES.

Each State shall give adequate consideration to the needs of evacuation routes in the State, including such routes serving or adjacent to facilities operated by the Armed Forces, when allocating funds apportioned to the State under title 23, United States Code, for the construction of Federal-aid highways.

SEC. 1527. CONSOLIDATION OF GRANTS.

(a) DEFINITIONS.—In this section, the term ''recipient'' means—

(1) a State, local, or tribal government, including—

(A) a territory of the United States;

(B) a transit agency;

(C) a port authority;

(D) a metropolitan planning organization; or

(E) any other political subdivision of a State or local government;

(2) a multistate or multijurisdictional group, if each member of the group is an entity described in paragraph (1); and

(3) a public-private partnership, if both parties are engaged in building the project.

(b) CONSOLIDATION.—

(1) IN GENERAL.—A recipient that receives multiple grant awards from the Department to support 1 multimodal project may request that the Secretary designate 1 modal administration in the Department to be the lead administering authority for the overall project.

(2) NEW STARTS.—Any project that includes funds awarded under section 5309 of title 49, United States Code, shall be exempt from consolidation under this section unless the grant recipient requests the Federal Transit Administration to be the lead administering authority.

(3) REVIEW.—

(A) IN GENERAL.—Not later than 30 days after the date on which a request under paragraph (1) is made, the Secretary shall review the request and approve or deny the designation of a single modal administration as the lead administering authority and point of contact for the Department.

(B) NOTIFICATION.—

(i) IN GENERAL.—The Secretary shall notify the requestor of the decision of the Secretary under subparagraph (A) in such form and at such time as the Secretary and the requestor agree.

(ii) DENIAL.—If a request is denied, the Secretary shall provide the requestor with a detailed explanation of the reasoning of the Secretary with the notification under clause (i).

(c) DUTIES.—

(1) IN GENERAL.—A modal administration designated as a lead administering authority under this section shall—

(A) be responsible for leading and coordinating the integrated project management team, which shall consist of all of the other modal administrations in the Department relating to the multimodal project; and

(B) to the extent feasible during the first 30 days of carrying out the multimodal project, identify overlapping or duplicative regulatory requirements that exist for the project and propose a single, streamlined approach to meeting all of the applicable regulatory requirements through the activities described in subsection (d).

(2) ADMINISTRATION.—

(A) IN GENERAL.—The Secretary shall transfer all amounts that have been awarded for the multimodal project to the modal administration designated as the lead administering authority.

(B) OPTION.—

(i) IN GENERAL.—Participation under this section shall be optional for recipients, and no recipient shall be required to participate.

(ii) SECRETARIAL DUTIES.—The Secretary is not required to identify every recipient that may be eligible to participate under this section.

(d) COOPERATION.—

(1) IN GENERAL.—The Secretary and modal administrations with relevant jurisdiction over a multimodal project should cooperate on project review and delivery activities at the earliest practicable time.

(2) PURPOSES.—The purposes of the cooperation under paragraph (1) are—

(A) to avoid delays and duplication of effort later in the process;

(B) to prevent potential conflicts; and

(C) to ensure that planning and project development decisions are made in a streamlined manner and consistent with applicable law.

(e) APPLICABILITY.—Nothing in this section shall—

(1) supersede, amend, or modify the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other Federal environmental law; or

(2) affect the responsibility of any Federal officer to comply with or enforce any law described in paragraph (1).

SEC. 1528. APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.

(a) SENSE OF THE SENATE.—It is the Sense of the Senate that the timely completion of the Appalachian development highway system is a transportation priority in the national interest.

(b) MODIFIED FEDERAL SHARE FOR PROJECTS ON ADHS.—For fiscal years 2012 through 2021, the Federal share payable for the cost of constructing highways and access roads on the Appalachian development highway system under section 14501 of title 40, United States Code, with funds made available to a State for fiscal year 2012 or a previous fiscal year for the Appalachian development highway system program, or with funds made available for fiscal year 2012 or a previous fiscal year for a specific project, route, or corridor on that system, shall be 100 percent.

(c) FEDERAL SHARE FOR OTHER FUNDS USED ON ADHS.—For fiscal years 2012 through 2021, the Federal share payable for the cost of constructing highways and access roads on the Appalachian development highway system under section 14501 of title 40, United States Code, with Federal funds apportioned to a State for a program other than the Appalachian development highway system program shall be 100 percent.

(d) COMPLETION PLAN.—

(1) IN GENERAL.—Subject to paragraph (2), not later than 1 year after the date of enactment of the MAP–21, each State represented on the Appalachian Regional Commission shall establish a plan for the completion of the designated corridors of the Appalachian development highway system within the State, including annual performance targets, with a target completion date.

(2) SIGNIFICANT UNCOMPLETED MILES.—If the percentage of remaining Appalachian development highway system needs for a State, according to the latest cost to complete estimate for the Appalachian development highway system, is greater than 15 percent of the total cost to complete estimate for the entire Appalachian development highway system, the State shall not establish a plan under paragraph (1) that would result in a reduction of obligated funds for the Appalachian development highway system within the State for any subsequent fiscal year.

SEC. 1529. ENGINEERING JUDGMENT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall issue guidance to State transportation departments clarifying that the standards, guidance, and options for design and application of traffic control devices provided in the Manual on Uniform Traffic Control Devices should not be considered a substitute for engineering judgment.

SEC. 1530. TRANSPORTATION TRAINING AND EMPLOYMENT PROGRAMS.

To encourage the development of careers in the transportation field, the Secretary of Education and the Secretary of Labor are encouraged to use funds for training and employment education programs—

(1) to develop programs for transportation-related careers and trades; and

(2) to work with the Secretary to carry out programs developed under paragraph (1).

SEC. 1531. NOTICE OF CERTAIN GRANT AWARDS.

(a) DEFINITION OF COVERED GRANT AWARD.—In this section, the term ''covered grant award'' means a grant award—

(1) made—

(A) by the Department; and

(B) with funds made available under this Act; and

(2) in an amount equal to or greater than $500,000.

(b) NOTICE.—Except to the extent otherwise expressly provided in another provision of law, at least 3 business days before a covered grant award is announced, the Secretary shall provide to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate written notice of the covered grant award.

SEC. 1532. BUDGET JUSTIFICATION.

The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a budget justification for each agency of the Department concurrently with the annual budget submission of the President to Congress under section 1105(a) of title 31, United States Code.

SEC. 1533. PROHIBITION ON USE OF FUNDS FOR AUTOMATED TRAFFIC ENFORCEMENT.

(a) DEFINITION OF AUTOMATED TRAFFIC ENFORCEMENT SYSTEM.—In this section, the term ''automated traffic enforcement system'' means any camera that captures an image of a vehicle for the purposes of traffic law enforcement.

(b) USE OF FUNDS.—Except as provided in subsection (c), for fiscal years 2013 and 2014, funds apportioned to a State under section 104(b)(3) of title 23, United States Code, may not be used for any program to purchase, operate, or maintain an automated traffic enforcement system.

(c) EXCEPTION.—Subsection (b) shall not apply to automated traffic enforcement systems used to improve safety in school zones.

SEC. 1534. PUBLIC-PRIVATE PARTNERSHIPS.

(a) BEST PRACTICES.—The Secretary shall compile, and make available to the public on the website of the Department, best practices on how States, public transportation agencies, and other public officials can work with the private sector in the development, financing, construction, and operation of transportation facilities.

(b) CONTENTS.—The best practices compiled under subsection (a) shall include polices and techniques to ensure that the interests of the traveling public and State and local governments are protected in any agreement entered into with the private sector for the development, financing, construction, and operation of transportation facilities.

(c) TECHNICAL ASSISTANCE.—The Secretary, on request, may provide technical assistance to States, public transportation agencies, and other public officials regarding proposed public-private partnership agreements for the development, financing, construction, and operation of transportation facilities, including assistance in analyzing whether the use of a public-private partnership agreement would provide value compared with traditional public delivery methods.

(d) STANDARD TRANSACTION CONTRACTS.—

(1) DEVELOPMENT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall develop standard public-private partnership transaction model contracts for the most popular types of public-private partnerships for the development, financing, construction, and operation of transportation facilities.

(2) USE.—The Secretary shall encourage States, public transportation agencies, and other public officials to use the model contracts as a base template when developing their own public-private partnership agreements for the development, financing, construction, and operation of transportation facilities.

SEC. 1535. REPORT ON HIGHWAY TRUST FUND EXPENDITURES.

(a) INITIAL REPORT.—Not later than 150 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report describing the activities funded from the Highway Trust Fund during each of fiscal years 2009 through 2011, including for purposes other than construction and maintenance of highways and bridges.

(b) UPDATES.—Not later than 5 years after the date on which the report is submitted under subsection (a) and every 5 years thereafter, the Comptroller General of the United States shall submit to Congress a report that updates the information provided in the report under that subsection for the applicable 5-year period.

(c) INCLUSIONS.—A report submitted under subsection (a) or (b) shall include information similar to the information included in the report of the Government Accountability Office numbered ''GAO–09–729R'' and entitled ''Highway

Trust Fund Expenditures on Purposes Other Than Construction and Maintenance of Highways and Bridges During Fiscal Years 2004–2008''.

SEC. 1536. SENSE OF CONGRESS ON HARBOR MAINTENANCE.

(a) FINDINGS.—Congress finds that—

(1) there are 926 coastal, Great Lakes, and inland harbors maintained by the Corps of Engineers;

(2) according to the Bureau of Transportation Statistics—

(A) in 2009, the ports and waterways of the United States handled more than 2,200,000,000 short tons of imports, exports, and domestic shipments; and

(B) in 2010, United States ports were responsible for more than $1,400,000,000,000 in waterborne imports and exports;

(3) according to the Congressional Research Service, full channel dimensions are, on average, available approximately ⅓ of the time at the 59 harbors of the United States with the highest use rates;

(4) in 1986, Congress created the Harbor Maintenance Trust Fund to provide funds for the operation and maintenance of the navigation channels of the United States;

(5) in fiscal year 2012, the Harbor Maintenance Trust Fund is expected to grow from $6,280,000,000 to $7,011,000,000, an increase of approximately 13 percent;

(6) despite growth of the Harbor Maintenance Trust Fund, expenditures from the Harbor Maintenance Trust Fund have not been sufficiently spent; and

(7) inadequate investment in dredging needs is restricting access to the ports of the United States for domestic shipping, imports, and exports and therefore threatening the economic competitiveness of the United States.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Administration should request full use of the Harbor Maintenance Trust Fund for operating and maintaining the navigation channels of the United States;

(2) the amounts in the Harbor Maintenance Trust Fund should be fully expended to operate and maintain the navigation channels of the United States; and

(3) Congress should ensure that other programs, projects, and activities of the Civil Works Program of the Corps of Engineers, especially those programs, projects, and activities relating to inland navigation and flood control, are not adversely impacted.

SEC. 1537. ESTIMATE OF HARBOR MAINTENANCE NEEDS.

For fiscal year 2014 and each fiscal year thereafter, the President's budget request submitted pursuant to section 1105 of title 31, United States Code, shall include—

(1) an estimate of the nationwide average availability, expressed as a percentage, of the authorized depth and authorized width of all navigation channels authorized to be maintained using appropriations from the Harbor Maintenance Trust Fund that would result from harbor maintenance activities to be funded by the budget request; and

(2) an estimate of the average annual amount of appropriations from the Harbor Maintenance Trust Fund that would be required to increase that average availability to 95 percent over a 3-year period.

SEC. 1538. ASIAN CARP.

(a) DEFINITIONS.—In this section:

(1) HYDROLOGICAL SEPARATION.—The term ''hydrological separation'' means a physical separation on the Chicago Area Waterway System that—

(A) would disconnect the Mississippi River watershed from the Lake Michigan watershed; and

(B) shall be designed to be adequate in scope to prevent the transfer of all aquatic species between each of those bodies of water.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Army, acting through the Chief of Engineers.

(b) EXPEDITED STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary shall—

(A) expedite completion of the report for the study authorized by section 3061(d) of the Water Resources Development Act of 2007 (Public Law 110–114; 121 Stat. 1121); and

(B) if the Secretary determines a project is justified in the completed report, proceed directly to project preconstruction engineering and design.

(2) FOCUS.—In expediting the completion of the study and report under paragraph (1), the Secretary shall focus on—

(A) the prevention of the spread of aquatic nuisance species between the Great Lakes and Mississippi River Basins, such as through the permanent hydrological separation of the Great Lakes and Mississippi River Basins; and

(B) the watersheds of the following rivers and tributaries associated with the Chicago Area Waterway System:

(i) The Illinois River, at and in the vicinity of Chicago, Illinois.

(ii) The Chicago River, Calumet River, North Shore Channel, Chicago Sanitary and Ship Canal, and Cal-Sag Channel in the State of Illinois.

(iii) The Grand Calumet River and Little Calumet River in the States of Illinois and Indiana.

(3) EFFICIENT USE OF FUNDS.—The Secretary shall ensure the efficient use of funds to maximize the timely completion of the study and report under paragraph (1).

(4) DEADLINE.—The Secretary shall complete the report under paragraph (1) by not later than 18 months after the date of enactment of this Act.

(5) INTERIM REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Environment and Public Works of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives a report describing—

(A) interim milestones that will be met prior to final completion of the study and report under paragraph (1); and

(B) funding necessary for completion of the study and report under paragraph (1), including funding necessary for completion of each interim milestone identified under subparagraph (A).

SEC. 1539. REST AREAS.

(a) AGREEMENTS RELATING TO USE OF AND ACCESS TO RIGHTS-OF-WAY—INTERSTATE SYSTEM.—Section 111 of title 23, United States Code, is amended—

(1) in subsection (a) in the second sentence by striking the period and inserting ''and will not change the boundary of any right-of-way on the Interstate System to accommodate construction of, or afford access to, an automotive service station or other commercial establishment.'';

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(3) by inserting after subsection (a) the following:

''(b) REST AREAS.—

''(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary shall permit a State to acquire, construct, operate, and maintain a rest area along a highway on the Interstate System in such State.

''(2) LIMITED ACTIVITIES.—The Secretary shall permit limited commercial activities within a rest area under paragraph (1), if the activities are available only to customers using the rest area and are limited to—

''(A) commercial advertising and media displays if such advertising and displays are—

''(i) exhibited solely within any facility constructed in the rest area; and

''(ii) not legible from the main traveled way;

''(B) items designed to promote tourism in the State, limited to books, DVDs, and other media;

''(C) tickets for events or attractions in the State of a historical or tourism-related nature;

''(D) travel-related information, including maps, travel booklets, and hotel coupon booklets; and

''(E) lottery machines, provided that the priority afforded to blind vendors under subsection (c) applies to this subparagraph.

''(3) PRIVATE OPERATORS.—A State may permit a private party to operate such commercial activities.

''(4) LIMITATION ON USE OF REVENUES.—A State shall use any revenues received from the commercial activities in a rest area under this section to cover the costs of acquiring, constructing, operating, and maintaining rest areas in the State.''.

(b) CONTROL OF OUTDOOR ADVERTISING.—Section 131(i) of title 23, United States Code, is amended by adding at the end the following:

''A State may permit the installation of signs that acknowledge the sponsorship of rest areas within such rest areas or along the main traveled way of the system, provided that such signs shall not affect the safe and efficient utilization of the Interstate System and the primary system. The Secretary shall establish criteria for the installation of such signs on the main traveled way, including criteria pertaining to the placement of rest area sponsorship acknowledgment signs in relation to the placement of advance guide signs for rest areas.''.

Subtitle F—Gulf Coast Restoration

SEC. 1601. SHORT TITLE.

This subtitle may be cited as the ''Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012''.

SEC. 1602. GULF COAST RESTORATION TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the ''Gulf Coast Restoration Trust Fund'' (referred to in this section as the ''Trust Fund''), consisting of such amounts as are deposited in the Trust Fund under this Act or any other provision of law.

(b) TRANSFERS.—The Secretary of the Treasury shall deposit in the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid by responsible parties after the date of enactment of this Act in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

(c) EXPENDITURES.—Amounts in the Trust Fund, including interest earned on advances to the Trust Fund and proceeds from investment under subsection (d), shall—

(1) be available for expenditure, without further appropriation, solely for the purpose and eligible activities of this subtitle and the amendments made by this subtitle; and

(2) remain available until expended, without fiscal year limitation.

(d) INVESTMENT.—Amounts in the Trust Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from, any such investment shall be available for expenditure in accordance with this subtitle and the amendments made by this subtitle.

(e) ADMINISTRATION.—Not later than 180 days after the date of enactment of this Act, after providing notice and an opportunity for public comment, the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, shall establish such procedures as the Secretary determines to be necessary to deposit amounts in, and expend amounts from, the Trust Fund pursuant to this subtitle, including—

(1) procedures to assess whether the programs and activities carried out under this subtitle and the amendments made by this subtitle achieve compliance with applicable requirements, including procedures by which the Secretary of the Treasury may determine whether an expenditure by a Gulf Coast State or coastal political subdivision (as those terms are defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321)) pursuant to such a program or activity achieves compliance;

(2) auditing requirements to ensure that amounts in the Trust Fund are expended as intended; and

(3) procedures for identification and allocation of funds available to the Secretary under other provisions of law that may be necessary to pay the administrative expenses directly attributable to the management of the Trust Fund.

(f) SUNSET.—The authority for the Trust Fund shall terminate on the date all funds in the Trust Fund have been expended.

SEC. 1603. GULF COAST NATURAL RESOURCES RESTORATION AND ECONOMIC RECOVERY.

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) is amended—

(1) in subsection (a)—

(A) in paragraph (25)(B), by striking ''and'' at the end;

(B) in paragraph (26)(D), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(27) the term 'best available science' means science that—

''(A) maximizes the quality, objectivity, and integrity of information, including statistical information;

''(B) uses peer-reviewed and publicly available data; and

''(C) clearly documents and communicates risks and uncertainties in the scientific basis for such projects;

''(28) the term 'Chairperson' means the Chairperson of the Council;

''(29) the term 'coastal political subdivision' means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico;

''(30) the term 'Comprehensive Plan' means the comprehensive plan developed by the Council pursuant to subsection (t);

''(31) the term 'Council' means the Gulf Coast Ecosystem Restoration Council established pursuant to subsection (t);

''(32) the term 'Deepwater Horizon oil spill' means the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment;

''(33) the term 'Gulf Coast region' means—

''(A) in the Gulf Coast States, the coastal zones (as that term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)), except that, in this section, the term 'coastal zones' includes land within the coastal zones that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government)) that border the Gulf of Mexico;

''(B) any adjacent land, water, and watersheds, that are within 25 miles of the coastal zones described in subparagraph (A) of the Gulf Coast States; and

''(C) all Federal waters in the Gulf of Mexico;

''(34) the term 'Gulf Coast State' means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas; and

''(35) the term 'Trust Fund' means the Gulf Coast Restoration Trust Fund established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.'';

(2) in subsection (s), by inserting ''except as provided in subsection (t)'' before the period at the end; and

(3) by adding at the end the following:

''(t) GULF COAST RESTORATION AND RECOVERY.—

''(1) STATE ALLOCATION AND EXPENDITURES.—

''(A) IN GENERAL.—Of the total amounts made available in any fiscal year from the Trust Fund, 35 percent shall be available, in accordance with the requirements of this section, to the Gulf Coast States in equal shares for expenditure for ecological and economic restoration of the Gulf Coast region in accordance with this subsection.

''(B) USE OF FUNDS.—

''(i) ELIGIBLE ACTIVITIES IN THE GULF COAST REGION.—Subject to clause (iii), amounts provided to the Gulf Coast States under this subsection may only be used to carry out 1 or more of the following activities in the Gulf Coast region:

''(I) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

''(II) Mitigation of damage to fish, wildlife, and natural resources.

''(III) Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

''(IV) Workforce development and job creation.

''(V) Improvements to or on State parks located in coastal areas affected by the Deepwater Horizon oil spill.

''(VI) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

''(VII) Coastal flood protection and related infrastructure.

''(VIII) Planning assistance.

''(IX) Administrative costs of complying with this subsection.

''(ii) ACTIVITIES TO PROMOTE TOURISM AND SEAFOOD IN THE GULF COAST REGION.—Amounts provided to the Gulf Coast States under this subsection may be used to carry out 1 or more of the following activities:

''(I) Promotion of tourism in the Gulf Coast Region, including recreational fishing.

''(II) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

''(iii) LIMITATION.—

''(I) IN GENERAL.—Of the amounts received by a Gulf Coast State under this subsection, not more than 3 percent may be used for administrative costs eligible under clause (i)(IX).

''(II) CLAIMS FOR COMPENSATION.—Activities funded under this subsection may not be included in any claim for compensation paid out by the Oil Spill Liability Trust Fund after the date of enactment of this subsection.

''(C) COASTAL POLITICAL SUBDIVISIONS.—

''(i) DISTRIBUTION.—In the case of a State where the coastal zone includes the entire State—

''(I) 75 percent of funding shall be provided directly to the 8 disproportionately affected counties impacted by the Deepwater Horizon oil spill; and

''(II) 25 percent shall be provided directly to nondisproportionately impacted counties within the State.

''(ii) NONDISPROPORTIONATELY IMPACTED COUNTIES.—The total amounts made available to coastal political subdivisions in the State of Florida under clause (i)(II) shall be distributed according to the following weighted formula:

''(I) 34 percent based on the weighted average of the population of the county.

''(II) 33 percent based on the weighted average of the county per capita sales tax collections estimated for fiscal year 2012.

''(III) 33 percent based on the inverse proportion of the weighted average distance from the Deepwater Horizon oil rig to each of the nearest and farthest points of the shoreline.

''(D) LOUISIANA.—

''(i) IN GENERAL.—Of the total amounts made available to the State of Louisiana under this paragraph:

''(I) 70 percent shall be provided directly to the State in accordance with this subsection.

''(II) 30 percent shall be provided directly to parishes in the coastal zone (as defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)) of the State of Louisiana according to the following weighted formula:

''(aa) 40 percent based on the weighted average of miles of the parish shoreline oiled.

''(bb) 40 percent based on the weighted average of the population of the parish.

''(cc) 20 percent based on the weighted average of the land mass of the parish.

''(ii) CONDITIONS.—

''(I) LAND USE PLAN.—As a condition of receiving amounts allocated under this paragraph, the chief executive of the eligible parish shall certify to the Governor of the State that the parish has completed a comprehensive land use plan.

''(II) OTHER CONDITIONS.—A coastal political subdivision receiving funding under this paragraph shall meet all of the conditions in subparagraph (E).

''(E) CONDITIONS.—As a condition of receiving amounts from the Trust Fund, a Gulf Coast State, including the entities described in subparagraph (F), or a coastal political subdivision shall—

''(i) agree to meet such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund will be used in accordance with this subsection;

''(ii) certify in such form and in such manner as the Secretary of the Treasury determines necessary that the project or program for which the Gulf Coast State or coastal political subdivision is requesting amounts—

''(I) is designed to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast;

''(II) carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B);

''(III) was selected based on meaningful input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations; and

''(IV) in the case of a natural resource protection or restoration project, is based on the best available science;

''(iii) certify that the project or program and the awarding of a contract for the expenditure of amounts received under this paragraph are consistent with the standard procurement rules and regulations governing a comparable project or program in that State, including all applicable competitive bidding and audit requirements; and

''(iv) develop and submit a multiyear implementation plan for the use of such amounts, which may include milestones, projected completion of each activity, and a mechanism to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill.

''(F) APPROVAL BY STATE ENTITY, TASK FORCE, OR AGENCY.—The following Gulf Coast State entities, task forces, or agencies shall carry out the duties of a Gulf Coast State pursuant to this paragraph:

''(i) ALABAMA.—

''(I) IN GENERAL.—In the State of Alabama, the Alabama Gulf Coast Recovery Council, which shall be comprised of only the following:

''(aa) The Governor of Alabama, who shall also serve as Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council.

''(bb) The Director of the Alabama State Port Authority, who shall also serve as Vice Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council in the absence of the Chairperson.

''(cc) The Chairman of the Baldwin County Commission.

''(dd) The President of the Mobile County Commission.

''(ee) The Mayor of the city of Bayou La Batre.

''(ff) The Mayor of the town of Dauphin Island.

''(gg) The Mayor of the city of Fairhope.

''(hh) The Mayor of the city of Gulf Shores.

''(ii) The Mayor of the city of Mobile.

''(jj) The Mayor of the city of Orange Beach.

''(II) VOTE.—Each member of the Alabama Gulf Coast Recovery Council shall be entitled to 1 vote.

''(III) MAJORITY VOTE.—All decisions of the Alabama Gulf Coast Recovery Council shall be made by majority vote.

''(IV) LIMITATION ON ADMINISTRATIVE EXPENSES.—Administrative duties for the Alabama Gulf Coast Recovery Council may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.

''(ii) LOUISIANA.—In the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana.

''(iii) MISSISSIPPI.—In the State of Mississippi, the Mississippi Department of Environmental Quality.

''(iv) TEXAS.—In the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

''(G) COMPLIANCE WITH ELIGIBLE ACTIVITIES.—If the Secretary of the Treasury determines that an expenditure by a Gulf Coast State or coastal political subdivision of amounts made available under this subsection does not meet one of the activities described in clauses (i) and (ii) of subparagraph (B), the Secretary shall make no additional amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until such time as an amount equal to the amount expended for the unauthorized use—

''(i) has been deposited by the Gulf Coast State or coastal political subdivision in the Trust Fund; or

''(ii) has been authorized by the Secretary of the Treasury for expenditure by the Gulf Coast State or coastal political subdivision for a project or program that meets the requirements of this subsection.

''(H) COMPLIANCE WITH CONDITIONS.—If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), where applicable, the Secretary of the Treasury shall make no amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until all conditions of this paragraph are met.

''(I) PUBLIC INPUT.—In meeting any condition of this paragraph, a Gulf Coast State may use an appropriate procedure for public consultation in that Gulf Coast State, including consulting with one or more established task forces or other entities, to develop recommendations for proposed projects and programs that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

''(J) PREVIOUSLY APPROVED PROJECTS AND PROGRAMS.—A Gulf Coast State or coastal political subdivision shall be considered to have met the conditions of subparagraph (E) for a specific project or program if, before the date of enactment of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012—

''(i) the Gulf Coast State or coastal political subdivision has established conditions for carrying out projects and programs that are substantively the same as the conditions described in subparagraph (E); and

''(ii) the applicable project or program carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B).

''(K) LOCAL PREFERENCE.—In awarding contracts to carry out a project or program under this paragraph, a Gulf Coast State or coastal political subdivision may give a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.

''(L) UNUSED FUNDS.—Funds allocated to a State or coastal political subdivision under this paragraph shall remain in the Trust Fund until such time as the State or coastal political subdivision develops and submits a plan identifying uses for those funds in accordance with subparagraph (E)(iv).

''(M) JUDICIAL REVIEW.—If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), the Gulf Coast State or coastal political subdivision may obtain expedited judicial review within 90 days after that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

''(N) COST-SHARING.—

''(i) IN GENERAL.—A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available under this paragraph to that Gulf Coast State or coastal political subdivision to satisfy the non-Federal share of the cost of any project or program authorized by Federal law that is an eligible activity described in clauses (i) and (ii) of subparagraph (B).

''(ii) EFFECT ON OTHER FUNDS.—The use of funds made available from the Trust Fund to satisfy the non-Federal share of the cost of a project or program that meets the requirements of clause (i) shall not affect the priority in which other Federal funds are allocated or awarded.

''(2) COUNCIL ESTABLISHMENT AND ALLOCATION.—

''(A) IN GENERAL.—Of the total amount made available in any fiscal year from the Trust Fund, 30 percent shall be disbursed to the Council to carry out the Comprehensive Plan.

''(B) COUNCIL EXPENDITURES.—

''(i) IN GENERAL.—In accordance with this paragraph, the Council shall expend funds made available from the Trust Fund to undertake projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

''(ii) ALLOCATION AND EXPENDITURE PROCEDURES.—The Secretary of the Treasury shall develop such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund to the Council to implement the Comprehensive Plan will be used in accordance with this paragraph.

''(iii) ADMINISTRATIVE EXPENSES.—Of the amounts received by the Council under this paragraph, not more than 3 percent may be used for administrative expenses, including staff.

''(C) GULF COAST ECOSYSTEM RESTORATION COUNCIL.—

''(i) ESTABLISHMENT.—There is established as an independent entity in the Federal Government a council to be known as the 'Gulf Coast Ecosystem Restoration Council'.

''(ii) MEMBERSHIP.—The Council shall consist of the following members, or in the case of a Federal agency, a designee at the level of the Assistant Secretary or the equivalent:

''(I) The Secretary of the Interior.

''(II) The Secretary of the Army.

''(III) The Secretary of Commerce.

''(IV) The Administrator of the Environmental Protection Agency.

''(V) The Secretary of Agriculture.

''(VI) The head of the department in which the Coast Guard is operating.

''(VII) The Governor of the State of Alabama.

''(VIII) The Governor of the State of Florida.

''(IX) The Governor of the State of Louisiana.

''(X) The Governor of the State of Mississippi.

''(XI) The Governor of the State of Texas.

''(iii) ALTERNATE.—A Governor appointed to the Council by the President may designate an alternate to represent the Governor on the Council and vote on behalf of the Governor.

''(iv) CHAIRPERSON.—From among the Federal agency members of the Council, the representatives of States on the Council shall select, and the President shall appoint, 1 Federal member to serve as Chairperson of the Council.

''(v) PRESIDENTIAL APPOINTMENT.—All Council members shall be appointed by the President.

''(vi) COUNCIL ACTIONS.—

''(I) IN GENERAL.—The following actions by the Council shall require the affirmative vote of the Chairperson and a majority of the State members to be effective:

''(aa) Approval of a Comprehensive Plan and future revisions to a Comprehensive Plan.

''(bb) Approval of State plans pursuant to paragraph (3)(B)(iv).

''(cc) Approval of reports to Congress pursuant to clause (vii)(VII).

''(dd) Approval of transfers pursuant to subparagraph (E)(ii)(I).

''(ee) Other significant actions determined by the Council.

''(II) QUORUM.—A majority of State members shall be required to be present for the Council to take any significant action.

''(III) AFFIRMATIVE VOTE REQUIREMENT CONSIDERED MET.—For approval of State plans pursuant to paragraph (3)(B)(iv), the certification by a State member of the Council that the plan satisfies all requirements of clauses (i) and (ii) of paragraph (3)(B), when joined by an affirmative vote of the Federal Chairperson of the Council, shall be considered to satisfy the requirements for affirmative votes under subclause (I).

''(IV) PUBLIC TRANSPARENCY.—Appropriate actions of the Council, including significant actions and associated deliberations, shall be made available to the public via electronic means prior to any vote.

''(vii) DUTIES OF COUNCIL.—The Council shall—

''(I) develop the Comprehensive Plan and future revisions to the Comprehensive Plan;

''(II) identify as soon as practicable the projects that—

''(aa) have been authorized prior to the date of enactment of this subsection but not yet commenced; and

''(bb) if implemented quickly, would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, barrier islands, dunes, and coastal wetlands of the Gulf Coast region;

''(III) establish such other 1 or more advisory committees as may be necessary to assist the Council, including a scientific advisory committee and a committee to advise the Council on public policy issues;

''(IV) collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring carried out pursuant to sections 1604 and 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

''(V) develop standard terms to include in contracts for projects and programs awarded pursuant to the Comprehensive Plan that provide a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State;

''(VI) prepare an integrated financial plan and recommendations for coordinated budget requests for the amounts proposed to be expended by the Federal agencies represented on the Council for projects and programs in the Gulf Coast States; and

''(VII) submit to Congress an annual report that—

''(aa) summarizes the policies, strategies, plans, and activities for addressing the restoration and protection of the Gulf Coast region;

''(bb) describes the projects and programs being implemented to restore and protect the Gulf Coast region, including—

''(AA) a list of each project and program;

''(BB) an identification of the funding provided to projects and programs identified in subitem (AA);

''(CC) an identification of each recipient for funding identified in subitem (BB); and

''(DD) a description of the length of time and funding needed to complete the objectives of each project and program identified in subitem (AA);

''(cc) makes such recommendations to Congress for modifications of existing laws as the Council determines necessary to implement the Comprehensive Plan;

''(dd) reports on the progress on implementation of each project or program—

''(AA) after 3 years of ongoing activity of the project or program, if applicable; and

''(BB) on completion of the project or program;

''(ee) includes the information required to be submitted under section 1605(c)(4) of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and

''(ff) submits the reports required under item (dd) to—

''(AA) the Committee on Science, Space, and Technology, the Committee on Natural Resources, the Committee on Transportation and Infrastructure, and the Committee on Appropriations of the House of Representatives; and

''(BB) the Committee on Environment and Public Works, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Appropriations of the Senate.

''(viii) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—The Council, or any other advisory committee established under this subparagraph, shall not be considered an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.).

''(ix) SUNSET.—The authority for the Council, and any other advisory committee established under this subparagraph, shall terminate on the date all funds in the Trust Fund have been expended.

''(D) COMPREHENSIVE PLAN.—

''(i) PROPOSED PLAN.—

''(I) IN GENERAL.—Not later than 180 days after the date of enactment of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012, the Chairperson, on behalf of the Council and after appropriate public input, review, and comment, shall publish a proposed plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

''(II) INCLUSIONS.—The proposed plan described in subclause (I) shall include and incorporate the findings and information prepared by the President's Gulf Coast Restoration Task Force.

''(ii) PUBLICATION.—

''(I) INITIAL PLAN.—Not later than 1 year after the date of enactment of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 and after notice and opportunity for public comment, the Chairperson, on behalf of the Council and after approval by the Council, shall publish in the Federal Register the initial Comprehensive Plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

''(II) COOPERATION WITH GULF COAST RESTORATION TASK FORCE.—The Council shall develop the initial Comprehensive Plan in close coordination with the President's Gulf Coast Restoration Task Force.

''(III) CONSIDERATIONS.—In developing the initial Comprehensive Plan and subsequent updates, the Council shall consider all relevant findings, reports, or research prepared or funded under section 1604 or 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

''(IV) CONTENTS.—The initial Comprehensive Plan shall include—

''(aa) such provisions as are necessary to fully incorporate in the Comprehensive Plan the strategy, projects, and programs recommended by the President's Gulf Coast Restoration Task Force;

''(bb) a list of any project or program authorized prior to the date of enactment of this subsection but not yet commenced, the completion of which would further the purposes and goals of this subsection and of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

''(cc) a description of the manner in which amounts from the Trust Fund projected to be made available to the Council for the succeeding 10 years will be allocated; and

''(dd) subject to available funding in accordance with clause (iii), a prioritized list of specific projects and programs to be funded and carried out during the 3-year period immediately following the date of publication of the initial Comprehensive Plan, including a table that illustrates the distribution of projects and programs by the Gulf Coast State.

''(V) PLAN UPDATES.—The Council shall update—

''(aa) the Comprehensive Plan every 5 years in a manner comparable to the manner established in this subparagraph for each 5-year period for which amounts are expected to be made available to the Gulf Coast States from the Trust Fund; and

''(bb) the 3-year list of projects and programs described in subclause (IV)(dd) annually.

''(iii) RESTORATION PRIORITIES.—Except for projects and programs described in clause (ii)(IV)(bb), in selecting projects and programs to include on the 3-year list described in clause (ii)(IV)(dd), based on the best available science, the Council shall give highest priority to projects that address 1 or more of the following criteria:

''(I) Projects that are projected to make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region, without regard to geographic location within the Gulf Coast region.

''(II) Large-scale projects and programs that are projected to substantially contribute to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

''(III) Projects contained in existing Gulf Coast State comprehensive plans for the restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

''(IV) Projects that restore long-term resiliency of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands most impacted by the Deepwater Horizon oil spill.

''(E) IMPLEMENTATION.—

''(i) IN GENERAL.—The Council, acting through the Federal agencies represented on the Council and Gulf Coast States, shall expend funds made available from the Trust Fund to carry out projects and programs adopted in the Comprehensive Plan.

''(ii) ADMINISTRATIVE RESPONSIBILITY.—

''(I) IN GENERAL.—Primary authority and responsibility for each project and program included in the Comprehensive Plan shall be assigned by the Council to a Gulf Coast State represented on the Council or a Federal agency.

''(II) TRANSFER OF AMOUNTS.—Amounts necessary to carry out each project or program included in the Comprehensive Plan shall be transferred by the Secretary of the Treasury from the Trust Fund to that Federal agency or Gulf Coast State as the project or program is implemented, subject to such conditions as the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

''(III) LIMITATION ON TRANSFERS.—

''(aa) GRANTS TO NONGOVERNMENTAL ENTITIES.—In the case of funds transferred to a Federal or State agency under subclause (II), the agency shall not make 1 or more grants or cooperative agreements to a nongovernmental entity if the total amount provided to the entity would equal or exceed 10 percent of the total amount provided to the agency for that particular project or program, unless the 1 or more grants have been reported in accordance with item (bb).

''(bb) REPORTING OF GRANTEES.—At least 30 days prior to making a grant or entering into a cooperative agreement described in item (aa), the name of each grantee, including the amount and purpose of each grant or cooperative agreement, shall be published in the Federal Register and delivered to the congressional committees listed in subparagraph (C)(vii)(VII)(ff).

''(cc) ANNUAL REPORTING OF GRANTEES.—Annually, the name of each grantee, including the amount and purposes of each grant or cooperative agreement, shall be published in the Federal Register and delivered to Congress as part of the report submitted pursuant to subparagraph (C)(vii)(VII).

''(IV) PROJECT AND PROGRAM LIMITATION.—The Council, a Federal agency, or a State may not carry out a project or program funded under this paragraph outside of the Gulf Coast region.

''(F) COORDINATION.—The Council and the Federal members of the Council may develop memoranda of understanding establishing integrated funding and implementation plans among the member agencies and authorities.

''(3) OIL SPILL RESTORATION IMPACT ALLOCATION.—

''(A) IN GENERAL.—

''(i) DISBURSEMENT.—Of the total amount made available from the Trust Fund, 30 percent shall be disbursed pursuant to the formula in clause (ii) to the Gulf Coast States on the approval of the plan described in subparagraph (B)(i).

''(ii) FORMULA.—Subject to subparagraph (B), for each Gulf Coast State, the amount disbursed under this paragraph shall be based on a formula established by the Council by regulation that is based on a weighted average of the following criteria:

''(I) 40 percent based on the proportionate number of miles of shoreline in each Gulf Coast State that experienced oiling on or before April 10, 2011, compared to the total number of miles of shoreline that experienced oiling as a result of the Deepwater Horizon oil spill.

''(II) 40 percent based on the inverse proportion of the average distance from the mobile offshore drilling unit Deepwater Horizon at the time of the explosion to the nearest and farthest point of the shoreline that experienced oiling of each Gulf Coast State.

''(III) 20 percent based on the average population in the 2010 decennial census of coastal counties bordering the Gulf of Mexico within each Gulf Coast State.

''(iii) MINIMUM ALLOCATION.—The amount disbursed to a Gulf Coast State for each fiscal year under clause (ii) shall be at least 5 percent of the total amounts made available under this paragraph.

''(B) DISBURSEMENT OF FUNDS.—

''(i) IN GENERAL.—The Council shall disburse amounts to the respective Gulf Coast States in accordance with the formula developed under subparagraph (A) for projects, programs, and activities that will improve the ecosystems or economy of the Gulf Coast region, subject to the condition that each Gulf Coast State submits a plan for the expenditure of amounts disbursed under this paragraph that meets the following criteria:

''(I) All projects, programs, and activities included in the plan are eligible activities pursuant to clauses (i) and (ii) of paragraph (1)(B).

''(II) The projects, programs, and activities included in the plan contribute to the overall economic and ecological recovery of the Gulf Coast.

''(III) The plan takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Plan, as described in paragraph (2)(B)(i).

''(ii) FUNDING.—

''(I) IN GENERAL.—Except as provided in subclause (II), the plan described in clause (i) may use not more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i).

''(II) EXCEPTION.—The plan described in clause (i) may propose to use more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i) if the plan certifies that—

''(aa) ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

''(bb) additional investment in infrastructure is required to mitigate the impacts of the Deepwater Horizon Oil Spill to the ecosystem or economy.

''(iii) DEVELOPMENT.—The plan described in clause (i) shall be developed by—

''(I) in the State of Alabama, the Alabama Gulf Coast Recovery Council established under paragraph (1)(F)(i);

''(II) in the State of Florida, a consortia of local political subdivisions that includes at a minimum 1 representative of each affected county;

''(III) in the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana;

''(IV) in the State of Mississippi, the Office of the Governor or an appointee of the Office of the Governor; and

''(V) in the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

''(iv) APPROVAL.—Not later than 60 days after the date on which a plan is submitted under clause (i), the Council shall approve or disapprove the plan based on the conditions of clause (i).

''(C) DISAPPROVAL.—If the Council disapproves a plan pursuant to subparagraph (B)(iv), the Council shall—

''(i) provide the reasons for disapproval in writing; and

''(ii) consult with the State to address any identified deficiencies with the State plan.

''(D) FAILURE TO SUBMIT ADEQUATE PLAN.—If a State fails to submit an adequate plan under this paragraph, any funds made available under this paragraph shall remain in the Trust Fund until such date as a plan is submitted and approved pursuant to this paragraph.

''(E) JUDICIAL REVIEW.—If the Council fails to approve or take action within 60 days on a plan, as described in subparagraph (B)(iv), the State may obtain expedited judicial review within 90 days of that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

''(F) COST-SHARING.—

''(i) IN GENERAL.—A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available to that Gulf Coast State or coastal political subdivision under this paragraph to satisfy the non-Federal share of any project or program that—

''(I) is authorized by other Federal law; and

''(II) is an eligible activity described in clause (i) or (ii) of paragraph (1)(B).

''(ii) EFFECT ON OTHER FUNDS.—The use of funds made available from the Trust Fund under this paragraph to satisfy the non-Federal share of the cost of a project or program described in clause (i) shall not affect the priority in which other Federal funds are allocated or awarded.

''(4) AUTHORIZATION OF INTEREST TRANSFERS.—Of the total amount made available for any fiscal year from the Trust Fund that is equal to the interest earned by the Trust Fund and proceeds from investments made by the Trust Fund in the preceding fiscal year—

''(A) 50 percent shall be divided equally between—

''(i) the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program authorized in section 1604 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and

''(ii) the centers of excellence research grants authorized in section 1605 of that Act; and

''(B) 50 percent shall be made available to the Gulf Coast Ecosystem Restoration Council to carry out the Comprehensive Plan pursuant to paragraph (2).''.

SEC. 1604. GULF COAST ECOSYSTEM RESTORATION SCIENCE, OBSERVATION, MONITORING, AND TECHNOLOGY PROGRAM.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the National Oceanic and Atmospheric Administration.

(2) COMMISSION.—The term ''Commission'' means the Gulf States Marine Fisheries Commission.

(3) DIRECTOR.—The term ''Director'' means the Director of the United States Fish and Wildlife Service.

(4) PROGRAM.—The term ''program'' means the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program established under this section.

(b) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator, in consultation with the Director, shall establish the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industry in the Gulf of Mexico.

(2) EXPENDITURE OF FUNDS.—For each fiscal year, amounts made available to carry out this subsection may be expended for, with respect to the Gulf of Mexico—

(A) marine and estuarine research;

(B) marine and estuarine ecosystem monitoring and ocean observation;

(C) data collection and stock assessments;

(D) pilot programs for—

(i) fishery independent data; and

(ii) reduction of exploitation of spawning aggregations; and

(E) cooperative research.

(3) COOPERATION WITH THE COMMISSION.—For each fiscal year, amounts made available to carry out this subsection may be transferred to the Commission to establish a fisheries monitoring and research program, with respect to the Gulf of Mexico.

(4) CONSULTATION.—The Administrator and the Director shall consult with the Regional Gulf of Mexico Fishery Management Council and the Commission in carrying out the program.

(c) SPECIES INCLUDED.—The research, monitoring, assessment, and programs eligible for amounts made available under the program shall include all marine, estuarine, aquaculture, and fish species in State and Federal waters of the Gulf of Mexico.

(d) RESEARCH PRIORITIES.—In distributing funding under this subsection, priority shall be given to integrated, long-term projects that—

(1) build on, or are coordinated with, related research activities; and

(2) address current or anticipated marine ecosystem, fishery, or wildlife management information needs.

(e) DUPLICATION.—In carrying out this section, the Administrator, in consultation with the Director, shall seek to avoid duplication of other research and monitoring activities.

(f) COORDINATION WITH OTHER PROGRAMS.—The Administrator, in consultation with the Director, shall develop a plan for the coordination of projects and activities between the program and other existing Federal and State science and technology programs in the States of Alabama, Florida, Louisiana, Mississippi, and Texas, as well as between the centers of excellence.

(g) LIMITATION ON EXPENDITURES.—

(1) IN GENERAL.—Not more than 3 percent of funds provided in subsection (h) shall be used for administrative expenses.

(2) NOAA.—The funds provided in subsection (h) may not be used—

(A) for any existing or planned research led by the National Oceanic and Atmospheric Administration, unless agreed to in writing by the grant recipient;

(B) to implement existing regulations or initiate new regulations promulgated or proposed by the National Oceanic and Atmospheric Administration; or

(C) to develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853a)) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

(h) FUNDING.—Of the total amount made available for each fiscal year for the Gulf Coast Restoration Trust Fund established under section 1602, 2.5 percent shall be available to carry out the program.

(i) SUNSET.—The program shall cease operations when all funds in the Gulf Coast Restoration Trust Fund established under section 1602 have been expended.

SEC. 1605. CENTERS OF EXCELLENCE RESEARCH GRANTS.

(a) IN GENERAL.—Of the total amount made available for each fiscal year from the Gulf Coast Restoration Trust Fund established under section 1602, 2.5 percent shall be made available to the Gulf Coast States (as defined in section 311(a) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012)), in equal shares, exclusively for grants in accordance with subsection (c) to establish centers of excellence to conduct research only on the Gulf Coast Region (as defined in section 311 of the Federal Water Pollution Control Act (33. U.S.C. 1321)).

(b) APPROVAL BY STATE ENTITY, TASK FORCE, OR AGENCY.—The duties of a Gulf Coast State under this section shall be carried out by the applicable Gulf Coast State entities, task forces, or agencies listed in section 311(t)(1)(F) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012), and for the State of Florida, a consortium of public and private research institutions within the State, which shall include the Florida Department of Environmental Protection and the

Florida Fish and Wildlife Conservation Commission, for that Gulf Coast State.

(c) GRANTS.—

(1) IN GENERAL.—A Gulf Coast State shall use the amounts made available to carry out this section to award competitive grants to nongovernmental entities and consortia in the Gulf Coast region (including public and private institutions of higher education) for the establishment of centers of excellence as described in subsection (d).

(2) APPLICATION.—To be eligible to receive a grant under this subsection, an entity or consortium described in paragraph (1) shall submit to a Gulf Coast State an application at such time, in such manner, and containing such information as the Gulf Coast State determines to be appropriate.

(3) PRIORITY.—In awarding grants under this subsection, a Gulf Coast State shall give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants with interest and expertise in any discipline described in subsection (d) on which the proposal of the center of excellence will be focused.

(4) REPORTING.—

(A) IN GENERAL.—Each Gulf Coast State shall provide annually to the Gulf Coast Ecosystem Restoration Council established under section 311(t)(2)(C) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012) information regarding all grants, including the amount, discipline or disciplines, and recipients of the grants, and in the case of any grant awarded to a consortium, the membership of the consortium.

(B) INCLUSION.—The Gulf Coast Ecosystem Restoration Council shall include the information received under subparagraph (A) in the annual report to Congress of the Council required under section 311(t)(2)(C)(vii)(VII) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012).

(d) DISCIPLINES.—Each center of excellence shall focus on science, technology, and monitoring in at least 1 of the following disciplines:

(1) Coastal and deltaic sustainability, restoration and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast Region.

(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

(4) Sustainable and resilient growth, economic and commercial development in the Gulf Coast Region.

(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

SEC. 1606. EFFECT.

(a) DEFINITION OF DEEPWATER HORIZON OIL SPILL.—In this section, the term ''Deepwater Horizon oil spill'' has the meaning given the term in section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).

(b) EFFECT AND APPLICATION.—Nothing in this subtitle or any amendment made by this subtitle—

(1) supersedes or otherwise affects any other provision of Federal law, including, in particular, laws providing recovery for injury to natural resources under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) and laws for the protection of public health and the environment; or

(2) applies to any fine collected under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) for any incident other than the Deepwater Horizon oil spill.

(c) USE OF FUNDS.—Funds made available under this subtitle may be used only for eligible activities specifically authorized by this subtitle and the amendments made by this subtitle.

SEC. 1607. RESTORATION AND PROTECTION ACTIVITY LIMITATIONS.

(a) WILLING SELLER.—Funds made available under this subtitle may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

(b) ACQUISITION OF FEDERAL LAND.—None of the funds made available under this subtitle may be used to acquire land in fee title by the Federal Government unless—

(1) the land is acquired by exchange or donation; or

(2) the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region and has the concurrence of the Governor of the State in which the acquisition will take place.

SEC. 1608. INSPECTOR GENERAL.

The Office of the Inspector General of the Department of the Treasury shall have authority to conduct, supervise, and coordinate audits and investigations of projects, programs, and activities funded under this subtitle and the amendments made by this subtitle.

TITLE II—AMERICA FAST FORWARD FINANCING INNOVATION

SEC. 2001. SHORT TITLE.

This title may be cited as the ''America Fast Forward Financing Innovation Act of 2012''.

SEC. 2002. TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT OF 1998 AMENDMENTS.

Sections 601 through 609 of title 23, United States Code, are amended to read as follows:

''§ 601. Generally applicable provisions

''(a) DEFINITIONS.—In this chapter, the following definitions apply:

''(1) CONTINGENT COMMITMENT.—The term 'contingent commitment' means a commitment to obligate an amount from future available budget authority that is—

''(A) contingent on those funds being made available in law at a future date; and

''(B) not an obligation of the Federal Government.

''(2) ELIGIBLE PROJECT COSTS.—The term 'eligible project costs' means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of—

''(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

''(B) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land relating to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

''(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

''(3) FEDERAL CREDIT INSTRUMENT.—The term 'Federal credit instrument' means a secured loan, loan guarantee, or line of credit authorized to be made available under this chapter with respect to a project.

''(4) INVESTMENT-GRADE RATING.—The term 'investment-grade rating' means a rating of BBB minus, Baa3, bbb minus, BBB (low), or higher assigned by a rating agency to project obligations.

''(5) LENDER.—The term 'lender' means any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including—

''(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

''(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

''(6) LETTER OF INTEREST.—The term 'letter of interest' means a letter submitted by a potential applicant prior to an application for credit assistance in a format prescribed by the Secretary on the website of the TIFIA program that—

''(A) describes the project and the location, purpose, and cost of the project;

''(B) outlines the proposed financial plan, including the requested credit assistance and the proposed obligor;

''(C) provides a status of environmental review; and

''(D) provides information regarding satisfaction of other eligibility requirements of the TIFIA program.

''(7) LINE OF CREDIT.—The term 'line of credit' means an agreement entered into by the Secretary with an obligor under section 604 to provide a direct loan at a future date upon the occurrence of certain events.

''(8) LIMITED BUYDOWN.—The term 'limited buydown' means, subject to the conditions described in section 603(b)(4)(C), a buydown of the interest rate by the obligor if the interest rate has increased between—

''(A)(i) the date on which a project application acceptable to the Secretary is submitted; or

''(ii) the date on which the Secretary entered into a master credit agreement; and

''(B) the date on which the Secretary executes the Federal credit instrument.

''(9) LOAN GUARANTEE.—The term 'loan guarantee' means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

''(10) MASTER CREDIT AGREEMENT.—The term 'master credit agreement' means an agreement to extend credit assistance for a program of projects secured by a common security pledge (which shall receive an investment grade rating from a rating agency), or for a single project covered under section 602(b)(2) that would—

''(A) make contingent commitments of 1 or more secured loans or other Federal credit instruments at future dates, subject to the availability of future funds being made available to carry out this chapter;

''(B) establish the maximum amounts and general terms and conditions of the secured loans or other Federal credit instruments;

''(C) identify the 1 or more dedicated non-Federal revenue sources that will secure the repayment of the secured loans or secured Federal credit instruments;

''(D) provide for the obligation of funds for the secured loans or secured Federal credit instruments after all requirements have been met for the projects subject to the master credit agreement, including—

''(i) completion of an environmental impact statement or similar analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

''(ii) compliance with such other requirements as are specified in section 602(c); and

''(iii) the availability of funds to carry out this chapter; and

''(E) require that contingent commitments result in a financial close and obligation of credit assistance not later than 3 years after the date of entry into the master credit agreement, or release of the commitment, unless otherwise extended by the Secretary.

''(11) OBLIGOR.—The term 'obligor' means a party that—

''(A) is primarily liable for payment of the principal of or interest on a Federal credit instrument; and

''(B) may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

''(12) PROJECT.—The term 'project' means—

''(A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;

''(B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

''(C) a project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and

''(D) a project that—

''(i) is a project—

''(I) for a public freight rail facility or a private facility providing public benefit for highway users by way of direct freight interchange between highway and rail carriers;

''(II) for an intermodal freight transfer facility;

''(III) for a means of access to a facility described in subclause (I) or (II);

''(IV) for a service improvement for a facility described in subclause (I) or (II) (including a capital investment for an intelligent transportation system); or

''(V) that comprises a series of projects described in subclauses (I) through (IV) with the common objective of improving the flow of goods;

''(ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements;

''(iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port; and

''(iv) is composed of related highway, surface transportation, transit, rail, or intermodal capital improvement projects eligible for assistance under this section in order to meet the eligible project cost threshold under section 602, by grouping related projects together for that purpose, subject to the condition that the credit assistance for the projects is secured by a common pledge.

''(13) PROJECT OBLIGATION.—The term 'project obligation' means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

''(14) RATING AGENCY.—The term 'rating agency' means a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as that term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

''(15) RURAL INFRASTRUCTURE PROJECT.—The term 'rural infrastructure project' means a surface transportation infrastructure project located in any area other than a city with a population of more than 250,000 inhabitants within the city limits.

''(16) SECURED LOAN.—The term 'secured loan' means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 603.

''(17) STATE.—The term 'State' has the meaning given the term in section 101.

''(18) SUBSIDY AMOUNT.—The term 'subsidy amount' means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument—

''(A) calculated on a net present value basis; and

''(B) excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

''(19) SUBSTANTIAL COMPLETION.—The term 'substantial completion' means—

''(A) the opening of a project to vehicular or passenger traffic; or

''(B) a comparable event, as determined by the Secretary and specified in the credit agreement.

''(20) TIFIA PROGRAM.—The term 'TIFIA program' means the transportation infrastructure finance and innovation program of the Department.

''(b) TREATMENT OF CHAPTER.—For purposes of this title, this chapter shall be treated as being part of chapter 1.

''§ 602. Determination of eligibility and project selection

''(a) ELIGIBILITY.—

''(1) IN GENERAL.—A project shall be eligible to receive credit assistance under this chapter if—

''(A) the entity proposing to carry out the project submits a letter of interest prior to submission of a formal application for the project; and

''(B) the project meets the criteria described in this subsection.

''(2) CREDITWORTHINESS.—

''(A) IN GENERAL.—To be eligible for assistance under this chapter, a project shall satisfy applicable creditworthiness standards, which, at a minimum, shall include—

''(i) a rate covenant, if applicable;

''(ii) adequate coverage requirements to ensure repayment;

''(iii) an investment grade rating from at least 2 rating agencies on debt senior to the Federal credit instrument; and

''(iv) a rating from at least 2 rating agencies on the Federal credit instrument, subject to the condition that, with respect to clause (iii), if the total amount of the senior debt and the Federal credit instrument is less than $75,000,000, 1 rating agency opinion for each of the senior debt and Federal credit instrument shall be sufficient.

''(B) SENIOR DEBT.—Notwithstanding subparagraph (A), in a case in which the Federal credit instrument is the senior debt, the Federal credit instrument shall be required to receive an investment grade rating from at least 2 rating agencies, unless the credit instrument is for an amount less than $75,000,000, in which case 1 rating agency opinion shall be sufficient.

''(3) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—A project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this chapter.

''(4) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary shall submit a project application that is acceptable to the Secretary.

''(5) ELIGIBLE PROJECT COSTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under this chapter, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

''(i)(I) $50,000,000; or

''(II) in the case of a rural infrastructure project, $25,000,000; and

''(ii) 33⅓ percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

''(B) INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project costs shall be reasonably anticipated to equal or exceed $15,000,000.

''(6) DEDICATED REVENUE SOURCES.—The applicable Federal credit instrument shall be repayable, in whole or in part, from—

''(A) tolls;

''(B) user fees;

''(C) payments owing to the obligor under a public-private partnership; or

''(D) other dedicated revenue sources that also secure or fund the project obligations.

''(7) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraph (3).

''(8) APPLICATIONS WHERE OBLIGOR WILL BE IDENTIFIED LATER.—A State, local government, agency or instrumentality of a State or local government, or public authority may submit to the Secretary an application under paragraph (4), under which a private party to a public-private partnership will be—

''(A) the obligor; and

''(B) identified later through completion of a procurement and selection of the private party.

''(9) BENEFICIAL EFFECTS.—The Secretary shall determine that financial assistance for the project under this chapter will—

''(A) foster, if appropriate, partnerships that attract public and private investment for the project;

''(B) enable the project to proceed at an earlier date than the project would otherwise be able to proceed or reduce the lifecycle costs (including debt service costs) of the project; and

''(C) reduce the contribution of Federal grant assistance for the project.

''(10) PROJECT READINESS.—To be eligible for assistance under this chapter, the applicant shall demonstrate a reasonable expectation that the contracting process for construction of the project can commence by not later than 90 days after the date on which a Federal credit instrument is obligated for the project under this chapter.

''(b) SELECTION AMONG ELIGIBLE PROJECTS.—

''(1) ESTABLISHMENT.—The Secretary shall establish a rolling application process under which projects that are eligible to receive credit assistance under subsection (a) shall receive credit assistance on terms acceptable to the Secretary, if adequate funds are available to cover the subsidy costs associated with the Federal credit instrument.

''(2) ADEQUATE FUNDING NOT AVAILABLE.—If the Secretary fully obligates funding to eligible projects in a fiscal year, and adequate funding is not available to fund a credit instrument, a project sponsor of an eligible project may elect to enter into a master credit agreement and wait until the earlier of—

''(A) the following fiscal year; and

''(B) the fiscal year during which additional funds are available to receive credit assistance.

''(3) PRELIMINARY RATING OPINION LETTER.—The Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency—

''(A) indicating that the senior obligations of the project, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating; and

''(B) including a preliminary rating opinion on the Federal credit instrument.

''(c) FEDERAL REQUIREMENTS.—

''(1) IN GENERAL.—In addition to the requirements of this title for highway projects, the requirements of chapter 53 of title 49 for transit projects, and the requirements of section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under this chapter and projects assisted with those funds:

''(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

''(B) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

''(2) NEPA.—No funding shall be obligated for a project that has not received an environmental categorical exclusion, a finding of no

significant impact, or a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(d) APPLICATION PROCESSING PROCEDURES.—

''(1) NOTICE OF COMPLETE APPLICATION.—Not later than 30 days after the date of receipt of an application under this section, the Secretary shall provide to the applicant a written notice to inform the applicant whether—

''(A) the application is complete; or

''(B) additional information or materials are needed to complete the application.

''(2) APPROVAL OR DENIAL OF APPLICATION.—Not later than 60 days after the date of issuance of the written notice under paragraph (1), the Secretary shall provide to the applicant a written notice informing the applicant whether the Secretary has approved or disapproved the application.

''(e) DEVELOPMENT PHASE ACTIVITIES.—Any credit instrument secured under this chapter may be used to finance up to 100 percent of the cost of development phase activities as described in section 601(a)(1)(A).

''§ 603. Secured loans

''(a) IN GENERAL.—

''(1) AGREEMENTS.—Subject to paragraphs (2) and (3), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

''(A) to finance eligible project costs of any project selected under section 602;

''(B) to refinance interim construction financing of eligible project costs of any project selected under section 602;

''(C) to refinance existing Federal credit instruments for rural infrastructure projects; or

''(D) to refinance long-term project obligations or Federal credit instruments, if the refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

''(i) is selected under section 602; or

''(ii) otherwise meets the requirements of section 602.

''(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

''(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account each rating letter provided by an agency under section 602(b)(3)(B).

''(b) TERMS AND LIMITATIONS.—

''(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

''(2) MAXIMUM AMOUNT.—The amount of a secured loan under this section shall not exceed the lesser of 49 percent of the reasonably anticipated eligible project costs or if the secured loan does not receive an investment grade rating, the amount of the senior project obligations.

''(3) PAYMENT.—A secured loan under this section—

''(A) shall—

''(i) be payable, in whole or in part, from—

''(I) tolls;

''(II) user fees;

''(III) payments owing to the obligor under a public-private partnership; or

''(IV) other dedicated revenue sources that also secure the senior project obligations; and

''(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

''(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

''(4) INTEREST RATE.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the interest rate on a secured loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

''(B) RURAL INFRASTRUCTURE PROJECTS.—

''(i) IN GENERAL.—The interest rate of a loan offered to a rural infrastructure project under this chapter shall be at ½ of the Treasury Rate in effect on the date of execution of the loan agreement.

''(ii) APPLICATION.—The rate described in clause (i) shall only apply to any portion of a loan the subsidy cost of which is funded by amounts set aside for rural infrastructure projects under section 608(a)(3)(A).

''(C) LIMITED BUYDOWNS.—The interest rate of a secured loan under this section may not be lowered by more than the lower of—

''(i) 1½ percentage points (150 basis points); or

''(ii) the amount of the increase in the interest rate.

''(5) MATURITY DATE.—The final maturity date of the secured loan shall be the lesser of—

''(A) 35 years after the date of substantial completion of the project; and

''(B) if the useful life of the capital asset being financed is of a lesser period, the useful life of the asset.

''(6) NONSUBORDINATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

''(B) PREEXISTING INDENTURE.—

''(i) IN GENERAL.—The Secretary shall waive the requirement under subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if—

''(I) the secured loan is rated in the A category or higher;

''(II) the secured loan is secured and payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and

''(III) the TIFIA program share of eligible project costs is 33 percent or less.

''(ii) LIMITATION.—If the Secretary waives the nonsubordination requirement under this subparagraph—

''(I) the maximum credit subsidy to be paid by the Federal Government shall be not more than 10 percent of the principal amount of the secured loan; and

''(II) the obligor shall be responsible for paying the remainder of the subsidy cost, if any.

''(7) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

''(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under this chapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

''(9) MAXIMUM FEDERAL INVOLVEMENT.—The total Federal assistance provided on a project receiving a loan under this chapter shall not exceed 80 percent of the total project cost.

''(c) REPAYMENT.—

''(1) SCHEDULE.—The Secretary shall establish a repayment schedule for each secured loan under this section based on—

''(A) the projected cash flow from project revenues and other repayment sources; and

''(B) the useful life of the project.

''(2) COMMENCEMENT.—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

''(3) DEFERRED PAYMENTS.—

''(A) IN GENERAL.—If, at any time after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

''(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

''(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

''(ii) be scheduled to be amortized over the remaining term of the loan.

''(C) CRITERIA.—

''(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.

''(ii) REPAYMENT STANDARDS.—The criteria established pursuant to clause (i) shall include standards for reasonable assurance of repayment.

''(4) PREPAYMENT.—

''(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

''(B) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

''(d) SALE OF SECURED LOANS.—

''(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

''(2) CONSENT OF OBLIGOR.—In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the written consent of the obligor.

''(e) LOAN GUARANTEES.—

''(1) IN GENERAL.—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan under this section if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

''(2) TERMS.—The terms of a loan guarantee under paragraph (1) shall be consistent with the terms required under this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

''§ 604. Lines of credit

''(a) IN GENERAL.—

''(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available to 1 or more obligors lines of credit in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 602.

''(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

''(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(3), shall determine an appropriate capital reserve subsidy

amount for each line of credit, taking into account the rating opinion letter.

''(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on the senior obligations of the project receiving an investment-grade rating from 2 rating agencies.

''(b) TERMS AND LIMITATIONS.—

''(1) IN GENERAL.—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines to be appropriate.

''(2) MAXIMUM AMOUNTS.—The total amount of a line of credit under this section shall not exceed 33 percent of the reasonably anticipated eligible project costs.

''(3) DRAWS.—Any draw on a line of credit under this section shall—

''(A) represent a direct loan; and

''(B) be made only if net revenues from the project (including capitalized interest, but not including reasonably required financing reserves) are insufficient to pay the costs specified in subsection (a)(2).

''(4) INTEREST RATE.—Except as provided in subparagraphs (B) and (C) of section 603(b)(4), the interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year United States Treasury securities, as of the date of execution of the line of credit agreement.

''(5) SECURITY.—A line of credit issued under this section—

''(A) shall—

''(i) be payable, in whole or in part, from—

''(I) tolls;

''(II) user fees;

''(III) payments owing to the obligor under a public-private partnership; or

''(IV) other dedicated revenue sources that also secure the senior project obligations; and

''(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

''(B) may have a lien on revenues described in subparagraph (A), subject to any lien securing project obligations.

''(6) PERIOD OF AVAILABILITY.—The full amount of a line of credit under this section, to the extent not drawn upon, shall be available during the 10-year period beginning on the date of substantial completion of the project.

''(7) RIGHTS OF THIRD-PARTY CREDITORS.—

''(A) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on a line of credit under this section.

''(B) ASSIGNMENT.—An obligor may assign a line of credit under this section to—

''(i) 1 or more lenders; or

''(ii) a trustee on the behalf of such a lender.

''(8) NONSUBORDINATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

''(B) PRE-EXISTING INDENTURE.—

''(i) IN GENERAL.—The Secretary shall waive the requirement of subparagraph (A) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture, if—

''(I) the line of credit is rated in the A category or higher;

''(II) the TIFIA program loan resulting from a draw on the line of credit is payable from pledged revenues not affected by project performance, such as a tax-backed revenue pledge or a system-backed pledge of project revenues; and

''(III) the TIFIA program share of eligible project costs is 33 percent or less.

''(ii) LIMITATION.—If the Secretary waives the nonsubordination requirement under this subparagraph—

''(I) the maximum credit subsidy to be paid by the Federal Government shall be not more than 10 percent of the principal amount of the secured loan; and

''(II) the obligor shall be responsible for paying the remainder of the subsidy cost.

''(9) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

''(10) RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.—A project that receives a line of credit under this section also shall not receive a secured loan or loan guarantee under section 603 in an amount that, combined with the amount of the line of credit, exceeds 49 percent of eligible project costs.

''(c) REPAYMENT.—

''(1) TERMS AND CONDITIONS.—The Secretary shall establish repayment terms and conditions for each direct loan under this section based on—

''(A) the projected cash flow from project revenues and other repayment sources; and

''(B) the useful life of the asset being financed.

''(2) TIMING.—All repayments of principal or interest on a direct loan under this section shall be scheduled—

''(A) to commence not later than 5 years after the end of the period of availability specified in subsection (b)(6); and

''(B) to conclude, with full repayment of principal and interest, by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).

''§ 605. Program administration

''(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under this chapter.

''(b) FEES.—The Secretary may collect and spend fees, contingent on authority being provided in appropriations Acts, at a level that is sufficient to cover—

''(1) the costs of services of expert firms retained pursuant to subsection (d); and

''(2) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments.

''(c) SERVICER.—

''(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

''(2) DUTIES.—A servicer appointed under paragraph (1) shall act as the agent for the Secretary.

''(3) FEE.—A servicer appointed under paragraph (1) shall receive a servicing fee, subject to approval by the Secretary.

''(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

''(e) EXPEDITED PROCESSING.—The Secretary shall implement procedures and measures to economize the time and cost involved in obtaining approval and the issuance of credit assistance under this chapter.

''§ 606. State and local permits

''The provision of credit assistance under this chapter with respect to a project shall not—

''(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;

''(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

''(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

''§ 607. Regulations

''The Secretary may promulgate such regulations as the Secretary determines to be appropriate to carry out this chapter.

''§ 608. Funding

''(a) FUNDING.—

''(1) SPENDING AND BORROWING AUTHORITY.—Spending and borrowing authority for a fiscal year to enter into Federal credit instruments shall be promptly apportioned to the Secretary on a fiscal-year basis.

''(2) REESTIMATES.—If the subsidy cost of a Federal credit instrument is reestimated, the cost increase or decrease of the reestimate shall be borne by, or benefit, the general fund of the Treasury, consistent with section 504(f) the Congressional Budget Act of 1974 (2 U.S.C. 661c(f)).

''(3) RURAL SET-ASIDE.—

''(A) IN GENERAL.—Of the total amount of funds made available to carry out this chapter for each fiscal year, not more than 10 percent shall be set aside for rural infrastructure projects.

''(B) REOBLIGATION.—Any amounts set aside under subparagraph (A) that remain unobligated by June 1 of the fiscal year for which the amounts were set aside shall be available for obligation by the Secretary on projects other than rural infrastructure projects.

''(4) REDISTRIBUTION OF AUTHORIZED FUNDING.—

''(A) IN GENERAL.—Beginning in fiscal year 2014, on April 1 of each fiscal year, if the cumulative unobligated and uncommitted balance of funding available exceeds 75 percent of the amount made available to carry out this chapter for that fiscal year, the Secretary shall distribute to the States the amount of funds and associated obligation authority in excess of that amount.

''(B) DISTRIBUTION.—The amounts and obligation authority distributed under this paragraph shall be distributed, in the same manner as obligation authority is distributed to the States for the fiscal year, based on the proportion that—

''(i) the relative share of each State of obligation authority for the fiscal year; bears to

''(ii) the total amount of obligation authority distributed to all States for the fiscal year.

''(C) PURPOSE.—Funds distributed under subparagraph (B) shall be available for any purpose described in section 133(b).

''(5) AVAILABILITY.—Amounts made available to carry out this chapter shall remain available until expended.

''(6) ADMINISTRATIVE COSTS.—Of the amounts made available to carry out this chapter, the Secretary may use not more than 0.50 percent for each fiscal year for the administration of this chapter.

''(b) CONTRACT AUTHORITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, execution of a term sheet by the Secretary of a Federal credit instrument that uses amounts made available under this chapter shall impose on the United States a contractual obligation to fund the Federal credit investment.

''(2) AVAILABILITY.—Amounts made available to carry out this chapter for a fiscal year shall be available for obligation on October 1 of the fiscal year.

''§ 609. Reports to Congress

''(a) IN GENERAL.—On June 1, 2012, and every 2 years thereafter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this chapter (other than section 610), including a recommendation as to whether the objectives of this chapter (other than section 610) are best served by—

''(1) continuing the program under the authority of the Secretary;

''(2) establishing a Federal corporation or federally sponsored enterprise to administer the program; or

''(3) phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this chapter (other than section 610) without Federal participation.

''(b) APPLICATION PROCESS REPORT.—

''(1) IN GENERAL.—Not later than December 1, 2012, and annually thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that includes a list of all of the letters of interest and applications received from project sponsors for assistance under this chapter (other than section 610) during the preceding fiscal year.

''(2) INCLUSIONS.—

''(A) IN GENERAL.—Each report under paragraph (1) shall include, at a minimum, a description of, with respect to each letter of interest and application included in the report—

''(i) the date on which the letter of interest or application was received;

''(ii) the date on which a notification was provided to the project sponsor regarding whether the application was complete or incomplete;

''(iii) the date on which a revised and completed application was submitted (if applicable);

''(iv) the date on which a notification was provided to the project sponsor regarding whether the project was approved or disapproved; and

''(v) if the project was not approved, the reason for the disapproval.

''(B) CORRESPONDENCE.—Each report under paragraph (1) shall include copies of any correspondence provided to the project sponsor in accordance with section 602(d).''.

DIVISION B—PUBLIC TRANSPORTATION

SEC. 20001. SHORT TITLE.

This division may be cited as the ''Federal Public Transportation Act of 2012''.

SEC. 20002. REPEALS.

(a) CHAPTER 53.—Chapter 53 of title 49, United States Code, is amended by striking sections 5308, 5316, 5317, 5320, and 5328.

(b) TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—Section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) is repealed.

(c) SAFETEA–LU.—The following provisions are repealed:

(1) Section 3009(i) of SAFETEA–LU (Public Law 109–59; 119 Stat. 1572).

(2) Section 3011(c) of SAFETEA–LU (49 U.S.C. 5309 note).

(3) Section 3012(b) of SAFETEA–LU (49 U.S.C. 5310 note).

(4) Section 3045 of SAFETEA–LU (49 U.S.C. 5308 note).

(5) Section 3046 of SAFETEA–LU (49 U.S.C. 5338 note).

SEC. 20003. POLICIES AND PURPOSES.

Section 5301 of title 49, United States Code, is amended to read as follows:

''§ 5301. Policies and purposes

''(a) DECLARATION OF POLICY.—It is in the interest of the United States, including the economic interest of the United States, to foster the development and revitalization of public transportation systems with the cooperation of both public transportation companies and private companies engaged in public transportation.

''(b) GENERAL PURPOSES.—The purposes of this chapter are to—

''(1) provide funding to support public transportation;

''(2) improve the development and delivery of capital projects;

''(3) establish standards for the state of good repair of public transportation infrastructure and vehicles;

''(4) promote continuing, cooperative, and comprehensive planning that improves the performance of the transportation network;

''(5) establish a technical assistance program to assist recipients under this chapter to more effectively and efficiently provide public transportation service;

''(6) continue Federal support for public transportation providers to deliver high quality service to all users, including individuals with disabilities, seniors, and individuals who depend on public transportation;

''(7) support research, development, demonstration, and deployment projects dedicated to assisting in the delivery of efficient and effective public transportation service; and

''(8) promote the development of the public transportation workforce.''.

SEC. 20004. DEFINITIONS.

Section 5302 of title 49, United States Code, is amended to read as follows:

''§ 5302. Definitions

''Except as otherwise specifically provided, in this chapter the following definitions apply:

''(1) ASSOCIATED TRANSIT IMPROVEMENT.—The term 'associated transit improvement' means, with respect to any project or an area to be served by a project, projects that are designed to enhance public transportation service or use and that are physically or functionally related to transit facilities. Eligible projects are—

''(A) historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service;

''(B) bus shelters;

''(C) landscaping and streetscaping, including benches, trash receptacles, and street lights;

''(D) pedestrian access and walkways;

''(E) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles;

''(F) signage; or

''(G) enhanced access for persons with disabilities to public transportation.

''(2) BUS RAPID TRANSIT SYSTEM.—The term 'bus rapid transit system' means a bus transit system—

''(A) in which the majority of each line operates in a separated right-of-way dedicated for public transportation use during peak periods; and

''(B) that includes features that emulate the services provided by rail fixed guideway public transportation systems, including—

''(i) defined stations;

''(ii) traffic signal priority for public transportation vehicles;

''(iii) short headway bidirectional services for a substantial part of weekdays and weekend days; and

''(iv) any other features the Secretary may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail fixed guideway public transportation systems.

''(3) CAPITAL PROJECT.—The term 'capital project' means a project for—

''(A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

''(B) rehabilitating a bus;

''(C) remanufacturing a bus;

''(D) overhauling rail rolling stock;

''(E) preventive maintenance;

''(F) leasing equipment or a facility for use in public transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction;

''(G) a joint development improvement that—

''(i) enhances economic development or incorporates private investment, such as commercial and residential development;

''(ii)(I) enhances the effectiveness of public transportation and is related physically or functionally to public transportation; or

''(II) establishes new or enhanced coordination between public transportation and other transportation;

''(iii) provides a fair share of revenue that will be used for public transportation;

''(iv) provides that a person making an agreement to occupy space in a facility constructed under this paragraph shall pay a fair share of the costs of the facility through rental payments and other means;

''(v) may include—

''(I) property acquisition;

''(II) demolition of existing structures;

''(III) site preparation;

''(IV) utilities;

''(V) building foundations;

''(VI) walkways;

''(VII) pedestrian and bicycle access to a public transportation facility;

''(VIII) construction, renovation, and improvement of intercity bus and intercity rail stations and terminals;

''(IX) renovation and improvement of historic transportation facilities;

''(X) open space;

''(XI) safety and security equipment and facilities (including lighting, surveillance, and related intelligent transportation system applications);

''(XII) facilities that incorporate community services such as daycare or health care;

''(XIII) a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall; and

''(XIV) construction of space for commercial uses; and

''(vi) does not include outfitting of commercial space (other than an intercity bus or rail station or terminal) or a part of a public facility not related to public transportation;

''(H) the introduction of new technology, through innovative and improved products, into public transportation;

''(I) the provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143), but only for grant recipients that are in compliance with applicable requirements of that Act, including both fixed route and demand responsive service, and only for amounts not to exceed 10 percent of such recipient's annual formula apportionment under sections 5307 and 5311;

''(J) establishing a debt service reserve, made up of deposits with a bondholder's trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter;

''(K) mobility management—

''(i) consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental entity, under this chapter (other than section 5309); but

''(ii) excluding operating public transportation services; or

''(L) associated capital maintenance, including—

''(i) equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and

''(ii) reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.

''(4) DESIGNATED RECIPIENT.—The term 'designated recipient' means—

''(A) an entity designated, in accordance with the planning process under sections 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of

public transportation, to receive and apportion amounts under section 5336 to urbanized areas of 200,000 or more in population; or

''(B) a State or regional authority, if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.

''(5) DISABILITY.—The term 'disability' has the same meaning as in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

''(6) EMERGENCY REGULATION.—The term 'emergency regulation' means a regulation—

''(A) that is effective temporarily before the expiration of the otherwise specified periods of time for public notice and comment under section 5334(c); and

''(B) prescribed by the Secretary as the result of a finding that a delay in the effective date of the regulation—

''(i) would injure seriously an important public interest;

''(ii) would frustrate substantially legislative policy and intent; or

''(iii) would damage seriously a person or class without serving an important public interest.

''(7) FIXED GUIDEWAY.—The term 'fixed guideway' means a public transportation facility—

''(A) using and occupying a separate right-of-way for the exclusive use of public transportation;

''(B) using rail;

''(C) using a fixed catenary system;

''(D) for a passenger ferry system; or

''(E) for a bus rapid transit system.

''(8) GOVERNOR.—The term 'Governor'—

''(A) means the Governor of a State, the mayor of the District of Columbia, and the chief executive officer of a territory of the United States; and

''(B) includes the designee of the Governor.

''(9) JOB ACCESS AND REVERSE COMMUTE PROJECT.—

''(A) IN GENERAL.—The term 'job access and reverse commute project' means a transportation project to finance planning, capital, and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public transportation services from urbanized areas and rural areas to suburban employment locations.

''(B) DEFINITIONS.—In this paragraph:

''(i) ELIGIBLE LOW-INCOME INDIVIDUAL.—The term 'eligible low-income individual' means an individual whose family income is at or below 150 percent of the poverty line (as that term is defined in section 673(2) of the Community Service Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section) for a family of the size involved.

''(ii) WELFARE RECIPIENT.—The term 'welfare recipient' means an individual who has received assistance under a State or tribal program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) at any time during the 3-year period before the date on which the applicant applies for a grant under section 5307 or 5311.

''(10) LOCAL GOVERNMENTAL AUTHORITY.—The term 'local governmental authority' includes—

''(A) a political subdivision of a State;

''(B) an authority of at least 1 State or political subdivision of a State;

''(C) an Indian tribe; and

''(D) a public corporation, board, or commission established under the laws of a State.

''(11) LOW-INCOME INDIVIDUAL.—The term 'low-income individual' means an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section, for a family of the size involved.

''(12) NET PROJECT COST.—The term 'net project cost' means the part of a project that reasonably cannot be financed from revenues.

''(13) NEW BUS MODEL.—The term 'new bus model' means a bus model (including a model using alternative fuel)—

''(A) that has not been used in public transportation in the United States before the date of production of the model; or

''(B) used in public transportation in the United States, but being produced with a major change in configuration or components.

''(14) PUBLIC TRANSPORTATION.—The term 'public transportation'—

''(A) means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and

''(B) does not include—

''(i) intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity);

''(ii) intercity bus service;

''(iii) charter bus service;

''(iv) school bus service;

''(v) sightseeing service;

''(vi) courtesy shuttle service for patrons of one or more specific establishments; or

''(vii) intra-terminal or intra-facility shuttle services.

''(15) REGULATION.—The term 'regulation' means any part of a statement of general or particular applicability of the Secretary designed to carry out, interpret, or prescribe law or policy in carrying out this chapter.

''(16) RURAL AREA.—The term 'rural area' means an area encompassing a population of less than 50,000 people that has not been designated in the most recent decennial census as an 'urbanized area' by the Secretary of Commerce.

''(17) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

''(18) SENIOR.—The term 'senior' means an individual who is 65 years of age or older.

''(19) STATE.—The term 'State' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

''(20) STATE OF GOOD REPAIR.—The term 'state of good repair' has the meaning given that term by the Secretary, by rule, under section 5326(b).

''(21) TRANSIT.—The term 'transit' means public transportation.

''(22) URBAN AREA.—The term 'urban area' means an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in the locality.

''(23) URBANIZED AREA.—The term 'urbanized area' means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an 'urbanized area' by the Secretary of Commerce.''.

SEC. 20005. METROPOLITAN TRANSPORTATION PLANNING.

(a) AMENDMENT.—Section 5303 of title 49, United States Code, is amended to read as follows:

''§ 5303. Metropolitan transportation planning

''(a) POLICY.—It is in the national interest—

''(1) to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

''(2) to encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 5304(d).

''(b) DEFINITIONS.—In this section and section 5304, the following definitions apply:

''(1) METROPOLITAN PLANNING AREA.—The term 'metropolitan planning area' means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

''(2) METROPOLITAN PLANNING ORGANIZATION.—The term 'metropolitan planning organization' means the policy board of an organization established as a result of the designation process under subsection (d).

''(3) NONMETROPOLITAN AREA.—The term 'nonmetropolitan area' means a geographic area outside designated metropolitan planning areas.

''(4) NONMETROPOLITAN LOCAL OFFICIAL.—The term 'nonmetropolitan local official' means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

''(5) REGIONAL TRANSPORTATION PLANNING ORGANIZATION.—The term 'regional transportation planning organization' means a policy board of an organization established as the result of a designation under section 5304(l).

''(6) TIP.—The term 'TIP' means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

''(7) URBANIZED AREA.—The term 'urbanized area' means a geographic area with a population of 50,000 or more, as determined by the Bureau of the Census.

''(c) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPS.—To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State.

''(2) CONTENTS.—The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

''(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as determined by the Bureau of the Census); or

''(B) in accordance with procedures established by applicable State or local law.

''(2) STRUCTURE.—Not later than 2 years after the date of enactment of the Federal Public Transportation Act of 2012, each metropolitan planning organization that serves an area designated as a transportation management area shall consist of—

''(A) local elected officials;

''(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

''(C) appropriate State officials.

''(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

''(A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and

''(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

''(4) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

''(5) REDESIGNATION PROCEDURES.—

''(A) IN GENERAL.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as determined by the Bureau of the Census) as appropriate to carry out this section.

''(B) RESTRUCTURING.—A metropolitan planning organization may be restructured to meet the requirements of paragraph (2) without undertaking a redesignation.

''(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

''(e) METROPOLITAN PLANNING AREA BOUNDARIES.—

''(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

''(2) INCLUDED AREA.—Each metropolitan planning area—

''(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

''(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

''(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

''(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—

''(A) IN GENERAL.—Notwithstanding paragraph (2), except as provided in subparagraph (B), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA-LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained.

''(B) EXCEPTION.—The boundaries described in subparagraph (A) may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(5).

''(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of the SAFETEA-LU, as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

''(A) shall be established in the manner described in subsection (d)(1);

''(B) shall encompass the areas described in paragraph (2)(A);

''(C) may encompass the areas described in paragraph (2)(B); and

''(D) may address any nonattainment area identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

''(f) COORDINATION IN MULTISTATE AREAS.—

''(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

''(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any 2 or more States—

''(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

''(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

''(3) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

''(g) MPO CONSULTATION IN PLAN AND TIP COORDINATION.—

''(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

''(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE MPOS.—If a transportation improvement, funded under this chapter or title 23, is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

''(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—

''(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities.

''(B) REQUIREMENTS.—Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

''(i) recipients of assistance under this chapter;

''(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

''(iii) recipients of assistance under section 204 of title 23.

''(h) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

''(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of people and for freight;

''(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

''(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) PERFORMANCE-BASED APPROACH.—

''(A) IN GENERAL.—The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of title 23 and the general purposes described in section 5301.

''(B) PERFORMANCE TARGETS.—

''(i) SURFACE TRANSPORTATION PERFORMANCE TARGETS.—

''(I) IN GENERAL.—Each metropolitan planning organization shall establish performance targets that address the performance measures described in section 150(c) of title 23, where applicable, to use in tracking progress towards attainment of critical outcomes for the region of the metropolitan planning organization.

''(II) COORDINATION.—Selection of performance targets by a metropolitan planning organization shall be coordinated with the relevant State to ensure consistency, to the maximum extent practicable.

''(ii) PUBLIC TRANSPORTATION PERFORMANCE TARGETS.—Selection of performance targets by a metropolitan planning organization shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d).

''(C) TIMING.—Each metropolitan planning organization shall establish the performance targets under subparagraph (B) not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

''(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A metropolitan planning organization shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed by recipients of assistance under this chapter, required as part of a performance-based program.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraphs (1) and (2) shall not be reviewable by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

''(i) DEVELOPMENT OF TRANSPORTATION PLAN.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection.

''(B) FREQUENCY.—

''(i) IN GENERAL.—The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

''(I) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

''(II) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a).

''(ii) OTHER AREAS.—In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

''(2) TRANSPORTATION PLAN.—A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

''(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—

''(i) IN GENERAL.—An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, nonmotorized transportation facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions.

''(ii) FACTORS.—In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as the factors relate to a 20-year forecast period.

''(B) PERFORMANCE MEASURES AND TARGETS.—A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (h)(2).

''(C) SYSTEM PERFORMANCE REPORT.—A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (h)(2), including—

''(i) progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports; and

''(ii) for metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.

''(D) MITIGATION ACTIVITIES.—

''(i) IN GENERAL.—A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

''(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

''(E) FINANCIAL PLAN.—

''(i) IN GENERAL.—A financial plan that—

''(I) demonstrates how the adopted transportation plan can be implemented;

''(II) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan; and

''(III) recommends any additional financing strategies for needed projects and programs.

''(ii) INCLUSIONS.—The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(iii) COOPERATIVE DEVELOPMENT.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

''(F) OPERATIONAL AND MANAGEMENT STRATEGIES.—Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

''(G) CAPITAL INVESTMENT AND OTHER STRATEGIES.—Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

''(H) TRANSPORTATION AND TRANSIT ENHANCEMENT ACTIVITIES.—Proposed transportation and transit enhancement activities.

''(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas that are in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by that Act.

''(4) OPTIONAL SCENARIO DEVELOPMENT.—

''(A) IN GENERAL.—A metropolitan planning organization may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan, in accordance with subparagraph (B).

''(B) RECOMMENDED COMPONENTS.—A metropolitan planning organization that chooses to develop multiple scenarios under subparagraph (A) shall be encouraged to consider—

''(i) potential regional investment strategies for the planning horizon;

''(ii) assumed distribution of population and employment;

''(iii) a scenario that, to the maximum extent practicable, maintains baseline conditions for the performance measures identified in subsection (h)(2);

''(iv) a scenario that improves the baseline conditions for as many of the performance measures identified in subsection (h)(2) as possible;

''(v) revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and

''(vi) estimated costs and potential revenues available to support each scenario.

''(C) METRICS.—In addition to the performance measures identified in section 150(c) of title 23, metropolitan planning organizations may evaluate scenarios developed under this paragraph using locally-developed measures.

''(5) CONSULTATION.—

''(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

''(B) ISSUES.—The consultation shall involve, as appropriate—

''(i) comparison of transportation plans with State conservation plans or maps, if available; or

''(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

''(6) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

''(B) CONTENTS OF PARTICIPATION PLAN.—A participation plan—

''(i) shall be developed in consultation with all interested parties; and

''(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

''(C) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

''(i) hold any public meetings at convenient and accessible locations and times;

''(ii) employ visualization techniques to describe plans; and

''(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(7) PUBLICATION.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

''(8) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(C).

''(j) METROPOLITAN TIP.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the metropolitan planning area that—

''(i) contains projects consistent with the current metropolitan transportation plan;

''(ii) reflects the investment priorities established in the current metropolitan transportation plan; and

''(iii) once implemented, is designed to make progress toward achieving the performance targets established under subsection (h)(2).

''(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

''(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

''(D) UPDATING AND APPROVAL.—The TIP shall be—

''(i) updated at least once every 4 years; and

''(ii) approved by the metropolitan planning organization and the Governor.

''(2) CONTENTS.—

''(A) PRIORITY LIST.—The TIP shall include a priority list of proposed Federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

''(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

''(i) demonstrates how the TIP can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

''(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

''(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

''(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

''(D) PERFORMANCE TARGET ACHIEVEMENT.—The transportation improvement program shall include, to the maximum extent practicable, a description of the anticipated effect of the transportation improvement program toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.

''(3) INCLUDED PROJECTS.—

''(A) PROJECTS UNDER THIS CHAPTER AND TITLE 23.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under this chapter and chapter 1 of title 23.

''(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

''(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.

''(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

''(4) NOTICE AND COMMENT.—Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

''(5) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of Federally funded projects in metropolitan areas shall be carried out, from the approved TIP—

''(i) by—

''(I) in the case of projects under title 23, the State; and

''(II) in the case of projects under this chapter, the designated recipients of public transportation funding; and

''(ii) in cooperation with the metropolitan planning organization.

''(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

''(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

''(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

''(7) PUBLICATION.—

''(A) PUBLICATION OF TIPS.—A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

''(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—

''(i) IN GENERAL.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review.

''(ii) REQUIREMENT.—The listing shall be consistent with the categories identified in the TIP.

''(k) TRANSPORTATION MANAGEMENT AREAS.—

''(1) IDENTIFICATION AND DESIGNATION.—

''(A) REQUIRED IDENTIFICATION.—The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

''(B) DESIGNATIONS ON REQUEST.—The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

''(2) TRANSPORTATION PLANS.—In a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

''(3) CONGESTION MANAGEMENT PROCESS.—

''(A) IN GENERAL.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this chapter and title 23 through the use of travel demand reduction and operational management strategies.

''(B) SCHEDULE.—The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.

''(4) SELECTION OF PROJECTS.—

''(A) IN GENERAL.—All Federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (excluding projects carried out on the National Highway System) or under this chapter shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

''(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

''(5) CERTIFICATION.—

''(A) IN GENERAL.—The Secretary shall—

''(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and

''(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

''(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

''(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

''(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

''(C) EFFECT OF FAILURE TO CERTIFY.—

''(i) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this chapter and title 23.

''(ii) RESTORATION OF WITHHELD FUNDS.—The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

''(D) REVIEW OF CERTIFICATION.—In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

''(l) REPORT ON PERFORMANCE-BASED PLANNING PROCESSES.—

''(1) IN GENERAL.—The Secretary shall submit to Congress a report on the effectiveness of the performance-based planning processes of metropolitan planning organizations under this section, taking into consideration the requirements of this subsection

''(2) REPORT.—Not later than 5 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to Congress a report evaluating—

''(A) the overall effectiveness of performance-based planning as a tool for guiding transportation investments;

''(B) the effectiveness of the performance-based planning process of each metropolitan planning organization under this section;

''(C) the extent to which metropolitan planning organizations have achieved, or are currently making substantial progress toward achieving, the performance targets specified under this section and whether metropolitan planning organizations are developing meaningful performance targets; and

''(D) the technical capacity of metropolitan planning organizations that operate within a metropolitan planning area of less than 200,000 and their ability to carry out the requirements of this section.

''(3) PUBLICATION.—The report under paragraph (2) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

''(m) ABBREVIATED PLANS FOR CERTAIN AREAS.—

''(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

''(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

''(n) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

''(1) IN GENERAL.—Notwithstanding any other provisions of this chapter or title 23, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

''(2) APPLICABILITY.—This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).

''(o) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this chapter or title 23.

''(p) FUNDING.—Funds set aside under section 104(f) of title 23 or section 5305(g) shall be available to carry out this section.

''(q) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and TIPs described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under that Act.''.

(b) PILOT PROGRAM FOR TRANSIT-ORIENTED DEVELOPMENT PLANNING.—

(1) DEFINITIONS.—In this subsection the following definitions shall apply:

(A) ELIGIBLE PROJECT.—The term ''eligible project'' means a new fixed guideway capital project or a core capacity improvement project, as those terms are defined in section 5309 of title 49, United States Code, as amended by this division.

(B) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(2) GENERAL AUTHORITY.—The Secretary may make grants under this subsection to a State or local governmental authority to assist in financing comprehensive planning associated with an eligible project that seeks to—

(A) enhance economic development, ridership, and other goals established during the project development and engineering processes;

(B) facilitate multimodal connectivity and accessibility;

(C) increase access to transit hubs for pedestrian and bicycle traffic;

(D) enable mixed-use development;

(E) identify infrastructure needs associated with the eligible project; and

(F) include private sector participation.

(3) ELIGIBILITY.—A State or local governmental authority that desires to participate in the program under this subsection shall submit to the Secretary an application that contains, at a minimum—

(A) identification of an eligible project;

(B) a schedule and process for the development of a comprehensive plan;

(C) a description of how the eligible project and the proposed comprehensive plan advance the metropolitan transportation plan of the metropolitan planning organization;

(D) proposed performance criteria for the development and implementation of the comprehensive plan; and

(E) identification of—

(i) partners;

(ii) availability of and authority for funding; and

(iii) potential State, local or other impediments to the implementation of the comprehensive plan.

SEC. 20006. STATEWIDE AND NONMETROPOLITAN TRANSPORTATION PLANNING.

Section 5304 of title 49, United States Code, is amended to read as follows:

''§ 5304. Statewide and nonmetropolitan transportation planning

''(a) GENERAL REQUIREMENTS.—

''(1) DEVELOPMENT OF PLANS AND PROGRAMS.—Subject to section 5303, to accomplish the objectives stated in section 5303(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State.

''(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

''(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 5303(a) and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

''(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—A State shall—

''(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 5303 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

''(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

''(c) INTERSTATE AGREEMENTS.—

''(1) IN GENERAL.—Two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

''(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

''(d) SCOPE OF PLANNING PROCESS.—

''(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will—

''(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

''(B) increase the safety of the transportation system for motorized and nonmotorized users;

''(C) increase the security of the transportation system for motorized and nonmotorized users;

''(D) increase the accessibility and mobility of people and freight;

''(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

''(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

''(G) promote efficient system management and operation; and

''(H) emphasize the preservation of the existing transportation system.

''(2) PERFORMANCE-BASED APPROACH.—

''(A) IN GENERAL.—The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in section 150(b) of title 23 and the general purposes described in section 5301.

''(B) PERFORMANCE TARGETS.—

''(i) SURFACE TRANSPORTATION PERFORMANCE TARGETS.—

''(I) IN GENERAL.—Each State shall establish performance targets that address the performance measures described in section 150(c) of title 23, where applicable, to use in tracking progress towards attainment of critical outcomes for the State.

''(II) COORDINATION.—Selection of performance targets by a State shall be coordinated with the relevant metropolitan planning organizations to ensure consistency, to the maximum extent practicable.

''(ii) PUBLIC TRANSPORTATION PERFORMANCE TARGETS.—In urbanized areas with a population of fewer than 200,000 individuals, as calculated according to the most recent decennial census, and not represented by a metropolitan planning organization, selection of performance targets by a State shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d).

''(C) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this paragraph, in other State transportation plans and transportation processes, as well as any plans developed pursuant to title 23 by providers of public transportation in urbanized areas with a population of fewer than 200,000 individuals, as calculated according to the most recent decennial census, and not represented by a metropolitan planning organization, required as part of a performance-based program.

''(D) USE OF PERFORMANCE MEASURES AND TARGETS.—The performance measures and targets established under this paragraph shall be considered by a State when developing policies, programs, and investment priorities reflected in the statewide transportation plan and statewide transportation improvement program.

''(3) FAILURE TO CONSIDER FACTORS.—The failure to take into consideration the factors specified in paragraphs (1) and (2) shall not be subject to review by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, a statewide transportation improvement program, a project or strategy, or the certification of a planning process.

''(e) ADDITIONAL REQUIREMENTS.—''In carrying out planning under this section, each State shall, at a minimum—

''(1) with respect to nonmetropolitan areas, cooperate with affected local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (l);

''(2) consider the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

''(3) consider coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

''(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

''(1) DEVELOPMENT.—Each State shall develop a long-range statewide transportation plan,

with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN AREAS.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.

''(B) NONMETROPOLITAN AREAS.—

''(i) IN GENERAL.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in cooperation with affected nonmetropolitan officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (l).

''(ii) ROLE OF SECRETARY.—The Secretary shall not review or approve the consultation process in each State.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

''(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

''(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

''(3) PARTICIPATION BY INTERESTED PARTIES.—

''(A) IN GENERAL.—In developing the statewide transportation plan, the State shall provide to—

''(i) nonmetropolitan local elected officials, or, if applicable, through regional transportation planning organizations described in subsection (l), an opportunity to participate in accordance with subparagraph (B)(i); and

''(ii) citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties a reasonable opportunity to comment on the proposed plan.

''(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

''(i) develop and document a consultative process to carry out subparagraph (A)(i) that is separate and discrete from the public involvement process developed under clause (ii);

''(ii) hold any public meetings at convenient and accessible locations and times;

''(iii) employ visualization techniques to describe plans; and

''(iv) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

''(4) MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

''(B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

''(5) FINANCIAL PLAN.—The statewide transportation plan may include—

''(A) a financial plan that—

''(i) demonstrates how the adopted statewide transportation plan can be implemented;

''(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan; and

''(iii) recommends any additional financing strategies for needed projects and programs; and

''(B) for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

''(7) PERFORMANCE-BASED APPROACH.—The statewide transportation plan should include—

''(A) a description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (d)(2); and

''(B) a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (d)(2), including progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports;

''(8) EXISTING SYSTEM.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

''(9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

''(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

''(1) DEVELOPMENT.—

''(A) IN GENERAL.—Each State shall develop a statewide transportation improvement program for all areas of the State.

''(B) DURATION AND UPDATING OF PROGRAM.—Each program developed under subparagraph (A) shall cover a period of 4 years and shall be updated every 4 years or more frequently if the Governor of the State elects to update more frequently.

''(2) CONSULTATION WITH GOVERNMENTS.—

''(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.

''(B) NONMETROPOLITAN AREAS.—

''(i) IN GENERAL.—With respect to each nonmetropolitan area in the State, the program shall be developed in cooperation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (l).

''(ii) ROLE OF SECRETARY.—The Secretary shall not review or approve the specific consultation process in the State.

''(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

''(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the proposed program.

''(4) PERFORMANCE TARGET ACHIEVEMENT.—A statewide transportation improvement program shall include, to the maximum extent practicable, a discussion of the anticipated effect of the statewide transportation improvement program toward achieving the performance targets established in the statewide transportation plan, linking investment priorities to those performance targets.

''(5) INCLUDED PROJECTS.—

''(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include Federally supported surface transportation expenditures within the boundaries of the State.

''(B) LISTING OF PROJECTS.—

''(i) IN GENERAL.—An annual listing of projects for which funds have been obligated for the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review.

''(ii) FUNDING CATEGORIES.—The listing described in clause (i) shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

''(C) PROJECTS UNDER CHAPTER 2.—

''(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

''(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

''(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

''(i) consistent with the statewide transportation plan developed under this section for the State;

''(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

''(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as a nonattainment area for ozone, particulate matter, or carbon monoxide under part D of title I of that Act (42 U.S.C. 7501 et seq.).

''(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

''(F) FINANCIAL PLAN.—

''(i) IN GENERAL.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs.

''(ii) ADDITIONAL PROJECTS.—The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

''(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

''(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be

required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

''(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

''(H) PRIORITIES.—The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this chapter and title 23.

''(6) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.—

''(A) IN GENERAL.—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this chapter), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (l).

''(B) OTHER PROJECTS.—Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this chapter shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

''(7) TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

''(8) PLANNING FINDING.—A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 5303.

''(9) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

''(h) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.—

''(1) IN GENERAL.—The Secretary shall establish criteria to evaluate the effectiveness of the performance-based planning processes of States, taking into consideration the following:

''(A) The extent to which the State is making progress toward achieving, the performance targets described in subsection (d)(2), taking into account whether the State developed appropriate performance targets.

''(B) The extent to which the State has made transportation investments that are efficient and cost-effective.

''(C) The extent to which the State—

''(i) has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable; and

''(ii) provides reports allowing the public to access the information being collected in a format that allows the public to meaningfully assess the performance of the State.

''(2) REPORT.—

''(A) IN GENERAL.—Not later than 5 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to Congress a report evaluating—

''(i) the overall effectiveness of performance-based planning as a tool for guiding transportation investments; and

''(ii) the effectiveness of the performance-based planning process of each State.

''(B) PUBLICATION.—The report under subparagraph (A) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

''(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT PROCESSES.—For purposes of this section and section 5303, and sections 134 and 135 of title 23, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this this section and section 5303, and sections 134 and 135 of title 23, if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section and section 5303, and sections 134 and 135 of title 23, as appropriate.

''(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the transportation improvement program are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the transportation improvement program described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(k) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States. The Secretary shall not require a State to deviate from its established planning update cycle to implement changes made by this section. States shall reflect changes made to their transportation plan or transportation improvement program updates not later than 2 years after the date of issuance of guidance by the Secretary under this subsection.

''(l) DESIGNATION OF REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—

''(1) IN GENERAL.—To carry out the transportation planning process required by this section, a State may establish and designate regional transportation planning organizations to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs, with an emphasis on addressing the needs of nonmetropolitan areas of the State.

''(2) STRUCTURE.—A regional transportation planning organization shall be established as a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

''(3) REQUIREMENTS.—A regional transportation planning organization shall establish, at a minimum—

''(A) a policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

''(B) a fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

''(4) DUTIES.—The duties of a regional transportation planning organization shall include—

''(A) developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

''(B) developing a regional transportation improvement program for consideration by the State;

''(C) fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;

''(D) providing technical assistance to local officials;

''(E) participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;

''(F) providing a forum for public participation in the statewide and regional transportation planning processes;

''(G) considering and sharing plans and programs with neighboring regional transportation planning organizations, metropolitan planning organizations, and, where appropriate, tribal organizations; and

''(H) conducting other duties, as necessary, to support and enhance the statewide planning process under subsection (d).

''(5) STATES WITHOUT REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—If a State chooses not to establish or designate a regional transportation planning organization, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.''.

SEC. 20007. URBANIZED AREA FORMULA GRANTS.

Section 5307 of title 49, United States Code, is amended to read as follows:

''§ 5307. Urbanized area formula grants

''(a) GENERAL AUTHORITY.—

''(1) GRANTS.—The Secretary may make grants under this section for—

''(A) capital projects;

''(B) planning;

''(C) job access and reverse commute projects; and

''(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census.

''(2) SPECIAL RULE.—The Secretary may make grants under this section to finance the operating cost of equipment and facilities for use in public transportation, excluding rail fixed guideway, in an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census—

''(A) for public transportation systems that operate 75 or fewer buses in fixed route service during peak service hours, in an amount not to exceed 75 percent of the share of the apportionment which is attributable to such systems within the urbanized area, as measured by vehicle revenue hours; and

''(B) for public transportation systems that operate a minimum of 76 buses and a maximum of 100 buses in fixed route service during peak service hours, in an amount not to exceed 50 percent of the share of the apportionment which is attributable to such systems within the urbanized area, as measured by vehicle revenue hours.

''(b) PROGRAM OF PROJECTS.—Each recipient of a grant shall—

''(1) make available to the public information on amounts available to the recipient under this section;

''(2) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed;

''(3) publish a proposed program of projects in a way that affected individuals, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the recipient;

''(4) provide an opportunity for a public hearing in which to obtain the views of individuals on the proposed program of projects;

''(5) ensure that the proposed program of projects provides for the coordination of public transportation services assisted under section 5336 of this title with transportation services assisted from other United States Government sources;

''(6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and

''(7) make the final program of projects available to the public.

''(c) GRANT RECIPIENT REQUIREMENTS.—A recipient may receive a grant in a fiscal year only if—

''(1) the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (b) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a Governor under this section)—

''(A) has or will have the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

''(B) has or will have satisfactory continuing control over the use of equipment and facilities;

''(C) will maintain equipment and facilities;

''(D) will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—

''(i) senior;

''(ii) individual who, because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semiambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and

''(iii) individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. 401 et seq. and 1395 et seq.);

''(E) in carrying out a procurement under this section, will comply with sections 5323 and 5325;

''(F) has complied with subsection (b) of this section;

''(G) has available and will provide the required amounts as provided by subsection (d) of this section;

''(H) will comply with sections 5303 and 5304;

''(I) has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;

''(J)(i) will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least 1 percent of the amount the recipient receives for each fiscal year under section 5336 of this title; or

''(ii) has decided that the expenditure for security projects is not necessary;

''(K) in the case of a recipient for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census—

''(i) will expend not less than 1 percent of the amount the recipient receives each fiscal year under this section for associated transit improvements, as defined in section 5302; and

''(ii) will submit an annual report listing projects carried out in the preceding fiscal year with those funds; and

''(L) will comply with section 5329(d); and

''(2) the Secretary accepts the certification.

''(d) GOVERNMENT SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall be for 80 percent of the net project cost of the project. The recipient may provide additional local matching amounts.

''(2) OPERATING EXPENSES.—A grant for operating expenses under this section may not exceed 50 percent of the net project cost of the project.

''(3) REMAINING COSTS.—Subject to paragraph (4), the remainder of the net project costs shall be provided—

''(A) in cash from non-Government sources other than revenues from providing public transportation services;

''(B) from revenues from the sale of advertising and concessions;

''(C) from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital;

''(D) from amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; and

''(E) from amounts received under a service agreement with a State or local social service agency or private social service organization.

''(4) USE OF CERTAIN FUNDS.—For purposes of subparagraphs (D) and (E) of paragraph (3), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(e) UNDERTAKING PROJECTS IN ADVANCE.—

''(1) PAYMENT.—The Secretary may pay the Government share of the net project cost to a State or local governmental authority that carries out any part of a project eligible under subparagraph (A) or (B) of subsection (a)(1) without the aid of amounts of the Government and according to all applicable procedures and requirements if—

''(A) the recipient applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before carrying out any part of the project, the Secretary approves the plans and specifications for the part in the same way as for other projects under this section.

''(2) APPROVAL OF APPLICATION.—The Secretary may approve an application under paragraph (1) of this subsection only if an authorization for this section is in effect for the fiscal year to which the application applies. The Secretary may not approve an application if the payment will be more than—

''(A) the recipient's expected apportionment under section 5336 of this title if the total amount authorized to be appropriated for the fiscal year to carry out this section is appropriated; less

''(B) the maximum amount of the apportionment that may be made available for projects for operating expenses under this section.

''(3) FINANCING COSTS.—

''(A) IN GENERAL.—The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the recipient to the extent proceeds of the bonds are expended in carrying out the part.

''(B) LIMITATION ON THE AMOUNT OF INTEREST.—The amount of interest allowed under this paragraph may not be more than the most favorable financing terms reasonably available for the project at the time of borrowing.

''(C) CERTIFICATION.—The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(f) REVIEWS, AUDITS, AND EVALUATIONS.—

''(1) ANNUAL REVIEW.—

''(A) IN GENERAL.—At least annually, the Secretary shall carry out, or require a recipient to have carried out independently, reviews and audits the Secretary considers appropriate to establish whether the recipient has carried out—

''(i) the activities proposed under subsection (c) of this section in a timely and effective way and can continue to do so; and

''(ii) those activities and its certifications and has used amounts of the Government in the way required by law.

''(B) AUDITING PROCEDURES.—An audit of the use of amounts of the Government shall comply with the auditing procedures of the Comptroller General.

''(2) TRIENNIAL REVIEW.—At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed under subsection (c) of this section and the planning process required under sections 5303, 5304, and 5305 of this title. To the extent practicable, the Secretary shall coordinate such reviews with any related State or local reviews.

''(3) ACTIONS RESULTING FROM REVIEW, AUDIT, OR EVALUATION.—The Secretary may take appropriate action consistent with a review, audit, and evaluation under this subsection, including making an appropriate adjustment in the amount of a grant or withdrawing the grant.

''(g) TREATMENT.—For purposes of this section, the United States Virgin Islands shall be treated as an urbanized area, as defined in section 5302.

''(h) PASSENGER FERRY GRANTS.—

''(1) IN GENERAL.—The Secretary may make grants under this subsection to recipients for passenger ferry projects that are eligible for a grant under subsection (a).

''(2) GRANT REQUIREMENTS.—Except as otherwise provided in this subsection, a grant under this subsection shall be subject to the same terms and conditions as a grant under subsection (a).

''(3) COMPETITIVE PROCESS.—The Secretary shall solicit grant applications and make grants for eligible projects on a competitive basis.''.

SEC. 20008. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS.

(a) IN GENERAL.—Section 5309 of title 49, United States Code, is amended to read as follows:

''§5309. Fixed guideway capital investment grants

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) APPLICANT.—The term 'applicant' means a State or local governmental authority that applies for a grant under this section.

''(2) CORE CAPACITY IMPROVEMENT PROJECT.—The term 'core capacity improvement project' means a substantial corridor-based capital investment in an existing fixed guideway system that increases the capacity of a corridor by not less than 10 percent. The term does not include project elements designed to maintain a state of good repair of the existing fixed guideway system.

''(3) CORRIDOR-BASED BUS RAPID TRANSIT PROJECT.—The term 'corridor-based bus rapid transit project' means a small start project utilizing buses in which the project represents a substantial investment in a defined corridor as demonstrated by features that emulate the services provided by rail fixed guideway public transportation systems, including defined stations; traffic signal priority for public transportation vehicles; short headway bidirectional services for a substantial part of weekdays and weekend days; and any other features the Secretary may determine support a long-term corridor investment, but the majority of which does not operate in a separated right-of-way dedicated for public transportation use during peak periods.

''(4) FIXED GUIDEWAY BUS RAPID TRANSIT PROJECT.—The term 'fixed guideway bus rapid transit project' means a bus capital project—

''(A) in which the majority of the project operates in a separated right-of-way dedicated for public transportation use during peak periods;

''(B) that represents a substantial investment in a single route in a defined corridor or subarea; and

''(C) that includes features that emulate the services provided by rail fixed guideway public transportation systems, including—

''(i) defined stations;

''(ii) traffic signal priority for public transportation vehicles;

''(iii) short headway bidirectional services for a substantial part of weekdays and weekend days; and

''(iv) any other features the Secretary may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail fixed guideway public transportation systems.

''(5) NEW FIXED GUIDEWAY CAPITAL PROJECT.—The term 'new fixed guideway capital project' means—

''(A) a new fixed guideway project that is a minimum operable segment or extension to an existing fixed guideway system; or

''(B) a fixed guideway bus rapid transit project that is a minimum operable segment or an extension to an existing bus rapid transit system.

''(6) PROGRAM OF INTERRELATED PROJECTS.—The term 'program of interrelated projects' means the simultaneous development of—

''(A) 2 or more new fixed guideway capital projects or core capacity improvement projects; or

''(B) 1 or more new fixed guideway capital projects and 1 or more core capacity improvement projects.

''(7) SMALL START PROJECT.—The term 'small start project' means a new fixed guideway capital project or corridor-based bus rapid transit project for which—

''(A) the Federal assistance provided or to be provided under this section is less than $75,000,000; and

''(B) the total estimated net capital cost is less than $250,000,000.

''(b) GENERAL AUTHORITY.—The Secretary may make grants under this section to State and local governmental authorities to assist in financing—

''(1) new fixed guideway capital projects or small start projects, including the acquisition of real property, the initial acquisition of rolling stock for the system, the acquisition of rights-of-way, and relocation, for fixed guideway corridor development for projects in the advanced stages of project development or engineering; and

''(2) core capacity improvement projects, including the acquisition of real property, the acquisition of rights-of-way, double tracking, signalization improvements, electrification, expanding system platforms, acquisition of rolling stock associated with corridor improvements increasing capacity, construction of infill stations, and such other capacity improvement projects as the Secretary determines are appropriate to increase the capacity of an existing fixed guideway system corridor by at least 10 percent. Core capacity improvement projects do not include elements to improve general station facilities or parking, or acquisition of rolling stock alone.

''(c) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary may make a grant under this section for new fixed guideway capital projects, small start projects, or core capacity improvement projects, if the Secretary determines that—

''(A) the project is part of an approved transportation plan required under sections 5303 and 5304; and

''(B) the applicant has, or will have—

''(i) the legal, financial, and technical capacity to carry out the project, including the safety and security aspects of the project;

''(ii) satisfactory continuing control over the use of the equipment or facilities; and

''(iii) the technical and financial capacity to maintain new and existing equipment and facilities.

''(2) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(c)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the determinations required under this subsection.

''(3) TECHNICAL CAPACITY.—The Secretary shall use an expedited technical capacity review process for applicants that have recently and successfully completed at least 1 new fixed guideway capital project, or core capacity improvement project, if—

''(A) the applicant achieved budget, cost, and ridership outcomes for the project that are consistent with or better than projections; and

''(B) the applicant demonstrates that the applicant continues to have the staff expertise and other resources necessary to implement a new project.

''(4) RECIPIENT REQUIREMENTS.—A recipient of a grant awarded under this section shall be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for purposes of this section.

''(d) NEW FIXED GUIDEWAY GRANTS.—

''(1) PROJECT DEVELOPMENT PHASE.—

''(A) ENTRANCE INTO PROJECT DEVELOPMENT PHASE.—A new fixed guideway capital project shall enter into the project development phase when—

''(i) the applicant—

''(I) submits a letter to the Secretary describing the project and requesting entry into the project development phase; and

''(II) initiates activities required to be carried out under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the project; and

''(ii) the Secretary—

''(I) responds in writing to the applicant within 45 days whether the information provided is sufficient to enter into the project development phase, including, when necessary, a detailed description of any information deemed insufficient; and

''(II) provides concurrent notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of whether the new fixed guideway capital project is entering the project development phase.

''(B) ACTIVITIES DURING PROJECT DEVELOPMENT PHASE.—Concurrent with the analysis required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), each applicant shall develop sufficient information to enable the Secretary to make findings of project justification, policies and land use patterns that promote public transportation, and local financial commitment under this subsection.

''(C) COMPLETION OF PROJECT DEVELOPMENT ACTIVITIES REQUIRED.—

''(i) IN GENERAL.—Not later than 2 years after the date on which a project enters into the project development phase, the applicant shall complete the activities required to obtain a project rating under subsection (g)(2) and submit completed documentation to the Secretary.

''(ii) EXTENSION OF TIME.—Upon the request of an applicant, the Secretary may extend the time period under clause (i), if the applicant submits to the Secretary—

''(I) a reasonable plan for completing the activities required under this paragraph; and

''(II) an estimated time period within which the applicant will complete such activities.

''(2) ENGINEERING PHASE.—

''(A) IN GENERAL.—A new fixed guideway capital project may advance to the engineering phase upon completion of activities required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as demonstrated by a record of decision with respect to the project, a finding that the project has no significant impact, or a determination that the project is categorically excluded, only if the Secretary determines that the project—

''(i) is selected as the locally preferred alternative at the completion of the process required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

''(ii) is adopted into the metropolitan transportation plan required under section 5303;

''(iii) is justified based on a comprehensive review of the project's mobility improvements, the project's environmental benefits, congestion relief associated with the project, economic development effects associated with the project, policies and land use patterns of the project that support public transportation, and the project's cost-effectiveness as measured by cost per rider;

''(iv) is supported by policies and land use patterns that promote public transportation, including plans for future land use and rezoning, and economic development around public transportation stations; and

''(v) is supported by an acceptable degree of local financial commitment (including evidence of stable and dependable financing sources), as required under subsection (f).

''(B) DETERMINATION THAT PROJECT IS JUSTIFIED.—In making a determination under subparagraph (A)(iii), the Secretary shall evaluate, analyze, and consider—

''(i) the reliability of the forecasting methods used to estimate costs and utilization made by the recipient and the contractors to the recipient; and

''(ii) population density and current public transportation ridership in the transportation corridor.

''(e) CORE CAPACITY IMPROVEMENT PROJECTS.—

''(1) PROJECT DEVELOPMENT PHASE.—

''(A) ENTRANCE INTO PROJECT DEVELOPMENT PHASE.—A core capacity improvement project shall be deemed to have entered into the project development phase if—

''(i) the applicant—

''(I) submits a letter to the Secretary describing the project and requesting entry into the project development phase; and

''(II) initiates activities required to be carried out under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the project; and

''(ii) the Secretary—

''(I) responds in writing to the applicant within 45 days whether the information provided is sufficient to enter into the project development phase, including when necessary a detailed description of any information deemed insufficient; and

''(II) provides concurrent notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of whether the core capacity improvement project is entering the project development phase.

''(B) ACTIVITIES DURING PROJECT DEVELOPMENT PHASE.—Concurrent with the analysis required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), each applicant shall develop sufficient information to enable the Secretary to make findings of project justification and local financial commitment under this subsection.

''(C) COMPLETION OF PROJECT DEVELOPMENT ACTIVITIES REQUIRED.—

''(i) IN GENERAL.—Not later than 2 years after the date on which a project enters into the project development phase, the applicant shall complete the activities required to obtain a project rating under subsection (g)(2) and submit completed documentation to the Secretary.

''(ii) EXTENSION OF TIME.—Upon the request of an applicant, the Secretary may extend the time period under clause (i), if the applicant submits to the Secretary—

''(I) a reasonable plan for completing the activities required under this paragraph; and

''(II) an estimated time period within which the applicant will complete such activities.

''(2) ENGINEERING PHASE.—

''(A) IN GENERAL.—A core capacity improvement project may advance into the engineering phase upon completion of activities required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as demonstrated by a record of decision with respect to the project, a finding that the project has no significant impact, or a determination that the project is categorically excluded, only if the Secretary determines that the project—

''(i) is selected as the locally preferred alternative at the completion of the process required under the National Environmental Policy Act of 1969;

''(ii) is adopted into the metropolitan transportation plan required under section 5303;

''(iii) is in a corridor that is—

''(I) at or over capacity; or

''(II) projected to be at or over capacity within the next 5 years;

''(iv) is justified based on a comprehensive review of the project's mobility improvements, the project's environmental benefits, congestion relief associated with the project, economic development effects associated with the project, the capacity needs of the corridor, and the project's cost-effectiveness as measured by cost per rider; and

''(v) is supported by an acceptable degree of local financial commitment (including evidence of stable and dependable financing sources), as required under subsection (f).

''(B) DETERMINATION THAT PROJECT IS JUSTIFIED.—In making a determination under subparagraph (A)(iv), the Secretary shall evaluate, analyze, and consider—

''(i) the reliability of the forecasting methods used to estimate costs and utilization made by the recipient and the contractors to the recipient;

''(ii) whether the project will increase capacity at least 10 percent in a corridor;

''(iii) whether the project will improve interconnectivity among existing systems; and

''(iv) whether the project will improve environmental outcomes.

''(f) FINANCING SOURCES.—

''(1) REQUIREMENTS.—In determining whether a project is supported by an acceptable degree of local financial commitment and shows evidence of stable and dependable financing sources for purposes of subsection (d)(2)(A)(v) or (e)(2)(A)(v), the Secretary shall require that—

''(A) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases or funding shortfalls;

''(B) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

''(C) local resources are available to recapitalize, maintain, and operate the overall existing and proposed public transportation system, including essential feeder bus and other services necessary to achieve the projected ridership levels without requiring a reduction in existing public transportation services or level of service to operate the project.

''(2) CONSIDERATIONS.—In assessing the stability, reliability, and availability of proposed sources of local financing for purposes of subsection (d)(2)(A)(v) or (e)(2)(A)(v), the Secretary shall consider—

''(A) the reliability of the forecasting methods used to estimate costs and revenues made by the recipient and the contractors to the recipient;

''(B) existing grant commitments;

''(C) the degree to which financing sources are dedicated to the proposed purposes;

''(D) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose;

''(E) the extent to which the project has a local financial commitment that exceeds the required non-Government share of the cost of the project; and

''(F) private contributions to the project, including cost-effective project delivery, management or transfer of project risks, expedited project schedule, financial partnering, and other public-private partnership strategies.

''(g) PROJECT ADVANCEMENT AND RATINGS.—

''(1) PROJECT ADVANCEMENT.—A new fixed guideway capital project or core capacity improvement project proposed to be carried out using a grant under this section may not advance from the project development phase to the engineering phase, or from the engineering phase to the construction phase, unless the Secretary determines that—

''(A) the project meets the applicable requirements under this section; and

''(B) there is a reasonable likelihood that the project will continue to meet the requirements under this section.

''(2) RATINGS.—

''(A) OVERALL RATING.—In making a determination under paragraph (1), the Secretary shall evaluate and rate a project as a whole on a 5-point scale (high, medium-high, medium, medium-low, or low) based on—

''(i) in the case of a new fixed guideway capital project, the project justification criteria under subsection (d)(2)(A)(iii), the policies and land use patterns that support public transportation, and the degree of local financial commitment; and

''(ii) in the case of a core capacity improvement project, the capacity needs of the corridor, the project justification criteria under subsection (e)(2)(A)(iv), and the degree of local financial commitment.

''(B) INDIVIDUAL RATINGS FOR EACH CRITERION.—In rating a project under this paragraph, the Secretary shall—

''(i) provide, in addition to the overall project rating under subparagraph (A), individual ratings for each of the criteria established under subsection (d)(2)(A)(iii) or (e)(2)(A)(iv), as applicable; and

''(ii) give comparable, but not necessarily equal, numerical weight to each of the criteria established under subsections (d)(2)(A)(iii) or (e)(2)(A)(iv), as applicable, in calculating the overall project rating under clause (i).

''(C) MEDIUM RATING NOT REQUIRED.—The Secretary shall not require that any single project justification criterion meet or exceed a 'medium' rating in order to advance the project from one phase to another.

''(3) WARRANTS.—The Secretary shall, to the maximum extent practicable, develop and use special warrants for making a project justification determination under subsection (d)(2) or (e)(2), as applicable, for a project proposed to be funded using a grant under this section, if—

''(A) the share of the cost of the project to be provided under this section does not exceed—

''(i) $100,000,000; or

''(ii) 50 percent of the total cost of the project;

''(B) the applicant requests the use of the warrants;

''(C) the applicant certifies that its existing public transportation system is in a state of good repair; and

''(D) the applicant meets any other requirements that the Secretary considers appropriate to carry out this subsection.

''(4) LETTERS OF INTENT AND EARLY SYSTEMS WORK AGREEMENTS.—In order to expedite a project under this subsection, the Secretary shall, to the maximum extent practicable, issue letters of intent and enter into early systems work agreements upon issuance of a record of decision for projects that receive an overall project rating of medium or better.

''(5) POLICY GUIDANCE.—The Secretary shall issue policy guidance regarding the review and evaluation process and criteria—

''(A) not later than 180 days after the date of enactment of the Federal Public Transportation Act of 2012; and

''(B) each time the Secretary makes significant changes to the process and criteria, but not less frequently than once every 2 years.

''(6) RULES.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue rules establishing an evaluation and rating process for—

''(A) new fixed guideway capital projects that is based on the results of project justification, policies and land use patterns that promote public transportation, and local financial commitment, as required under this subsection; and

''(B) core capacity improvement projects that is based on the results of the capacity needs of the corridor, project justification, and local financial commitment.

''(7) APPLICABILITY.—This subsection shall not apply to a project for which the Secretary issued a letter of intent, entered into a full funding grant agreement, or entered into a project construction agreement before the date of enactment of the Federal Public Transportation Act of 2012.

''(h) SMALL START PROJECTS.—

''(1) IN GENERAL.—A small start project shall be subject to the requirements of this subsection.

''(2) PROJECT DEVELOPMENT PHASE.—

''(A) ENTRANCE INTO PROJECT DEVELOPMENT PHASE.—A new small starts project shall enter into the project development phase when—

''(i) the applicant—

''(I) submits a letter to the Secretary describing the project and requesting entry into the project development phase; and

''(II) initiates activities required to be carried out under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the project; and

''(ii) the Secretary—

''(I) responds in writing to the applicant within 45 days whether the information provided is sufficient to enter into the project development phase, including, when necessary, a detailed description of any information deemed insufficient; and

''(II) provides concurrent notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of whether the small starts project is entering the project development phase.

''(B) ACTIVITIES DURING PROJECT DEVELOPMENT PHASE.—Concurrent with the analysis required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), each applicant shall develop sufficient information to enable the Secretary to make findings of project justification, policies and land use patterns that promote public transportation, and local financial commitment under this subsection.

''(3) SELECTION CRITERIA.—The Secretary may provide Federal assistance for a small start project under this subsection only if the Secretary determines that the project—

''(A) has been adopted as the locally preferred alternative as part of the metropolitan transportation plan required under section 5303;

''(B) is based on the results of an analysis of the benefits of the project as set forth in paragraph (4); and

''(C) is supported by an acceptable degree of local financial commitment.

''(4) EVALUATION OF BENEFITS AND FEDERAL INVESTMENT.—In making a determination for a small start project under paragraph (3)(B), the Secretary shall analyze, evaluate, and consider the following evaluation criteria for the project (as compared to a no-action alternative): mobility improvements, environmental benefits, congestion relief, economic development effects associated with the project, policies and land use patterns that support public transportation and cost-effectiveness as measured by cost per rider.

''(5) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—For purposes of paragraph (3)(C), the Secretary shall require that each proposed

local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

''(6) RATINGS.—In carrying out paragraphs (4) and (5) for a small start project, the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on an evaluation of the benefits of the project as compared to the Federal assistance to be provided and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by this subsection and shall give comparable, but not necessarily equal, numerical weight to the benefits that the project will bring to the community in calculating the overall project rating.

''(7) GRANTS AND EXPEDITED GRANT AGREEMENTS.—

''(A) IN GENERAL.—The Secretary, to the maximum extent practicable, shall provide Federal assistance under this subsection in a single grant. If the Secretary cannot provide such a single grant, the Secretary may execute an expedited grant agreement in order to include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

''(B) TERMS OF EXPEDITED GRANT AGREEMENTS.—In executing an expedited grant agreement under this subsection, the Secretary may include in the agreement terms similar to those established under subsection (k)(2).

''(C) NOTICE OF PROPOSED GRANTS AND EXPEDITED GRANT AGREEMENTS.—At least 10 days before making a grant award or entering into a grant agreement for a project under this subsection, the Secretary shall notify, in writing, the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate of the proposed grant or expedited grant agreement, as well as the evaluations and ratings for the project.

''(i) PROGRAMS OF INTERRELATED PROJECTS.—

''(1) PROJECT DEVELOPMENT PHASE.—A federally funded project in a program of interrelated projects shall advance through project development as provided in subsection (d) or (e), as applicable.

''(2) ENGINEERING PHASE.—A federally funded project in a program of interrelated projects may advance into the engineering phase upon completion of activities required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as demonstrated by a record of decision with respect to the project, a finding that the project has no significant impact, or a determination that the project is categorically excluded, only if the Secretary determines that—

''(A) the project is selected as the locally preferred alternative at the completion of the process required under the National Environmental Policy Act of 1969;

''(B) the project is adopted into the metropolitan transportation plan required under section 5303;

''(C) the program of interrelated projects involves projects that have a logical connectivity to one another;

''(D) the program of interrelated projects, when evaluated as a whole, meets the requirements of subsection (d)(2) or (e)(2), as applicable;

''(E) the program of interrelated projects is supported by a program implementation plan demonstrating that construction will begin on each of the projects in the program of interrelated projects within a reasonable time frame; and

''(F) the program of interrelated projects is supported by an acceptable degree of local financial commitment, as described in subsection (f).

''(3) PROJECT ADVANCEMENT AND RATINGS.—

''(A) PROJECT ADVANCEMENT.—A project receiving a grant under this section that is part of a program of interrelated projects may not advance from the project development phase to the engineering phase, or from the engineering phase to the construction phase, unless the Secretary determines that the program of interrelated projects meets the applicable requirements of this section and there is a reasonable likelihood that the program will continue to meet such requirements.

''(B) RATINGS.—

''(i) OVERALL RATING.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate a program of interrelated projects on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the criteria described in paragraph (2).

''(ii) INDIVIDUAL RATING FOR EACH CRITERION.—In rating a program of interrelated projects, the Secretary shall provide, in addition to the overall program rating, individual ratings for each of the criteria described in paragraph (2) and shall give comparable, but not necessarily equal, numerical weight to each such criterion in calculating the overall program rating.

''(iii) MEDIUM RATING NOT REQUIRED.—The Secretary shall not require that any single criterion described in paragraph (2) meet or exceed a 'medium' rating in order to advance the program of interrelated projects from one phase to another.

''(4) ANNUAL REVIEW.—

''(A) REVIEW REQUIRED.—The Secretary shall annually review the program implementation plan required under paragraph (2)(E) to determine whether the program of interrelated projects is adhering to its schedule.

''(B) EXTENSION OF TIME.—If a program of interrelated projects is not adhering to its schedule, the Secretary may, upon the request of the applicant, grant an extension of time if the applicant submits a reasonable plan that includes—

''(i) evidence of continued adequate funding; and

''(ii) an estimated time frame for completing the program of interrelated projects.

''(C) SATISFACTORY PROGRESS REQUIRED.—If the Secretary determines that a program of interrelated projects is not making satisfactory progress, no Federal funds shall be provided for a project within the program of interrelated projects.

''(5) FAILURE TO CARRY OUT PROGRAM OF INTERRELATED PROJECTS.—

''(A) REPAYMENT REQUIRED.—If an applicant does not carry out the program of interrelated projects within a reasonable time, for reasons within the control of the applicant, the applicant shall repay all Federal funds provided for the program, and any reasonable interest and penalty charges that the Secretary may establish.

''(B) CREDITING OF FUNDS RECEIVED.—Any funds received by the Government under this paragraph, other than interest and penalty charges, shall be credited to the appropriation account from which the funds were originally derived.

''(6) NON-FEDERAL FUNDS.—Any non-Federal funds committed to a project in a program of interrelated projects may be used to meet a non-Government share requirement for any other project in the program of interrelated projects, if the Government share of the cost of each project within the program of interrelated projects does not exceed 80 percent.

''(7) PRIORITY.—In making grants under this section, the Secretary may give priority to programs of interrelated projects for which the non-Government share of the cost of the projects included in the programs of interrelated projects exceeds the non-Government share required under subsection (l).

''(8) NON-GOVERNMENT PROJECTS.—Including a project not financed by the Government in a program of interrelated projects does not impose Government requirements that would not otherwise apply to the project.

''(j) PREVIOUSLY ISSUED LETTER OF INTENT OR FULL FUNDING GRANT AGREEMENT.—Subsections (d) and (e) shall not apply to projects for which the Secretary has issued a letter of intent, approved entry into final design, entered into a full funding grant agreement, or entered into a project construction grant agreement before the date of enactment of the Federal Public Transportation Act of 2012.

''(k) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—

''(1) LETTERS OF INTENT.—

''(A) AMOUNTS INTENDED TO BE OBLIGATED.—The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a new fixed guideway capital project or core capacity improvement project, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. When a letter is issued for a capital project under this section, the amount shall be sufficient to complete at least an operable segment.

''(B) TREATMENT.—The issuance of a letter under subparagraph (A) is deemed not to be an obligation under sections 1108(c), 1501, and 1502(a) of title 31 or an administrative commitment.

''(2) FULL FUNDING GRANT AGREEMENTS.—

''(A) IN GENERAL.—A new fixed guideway capital project or core capacity improvement project shall be carried out through a full funding grant agreement.

''(B) CRITERIA.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under subsection (d), (e), or (i), as applicable, with each grantee receiving assistance for a new fixed guideway capital project or core capacity improvement project that has been rated as high, medium-high, or medium, in accordance with subsection (g)(2)(A) or (i)(3)(B), as applicable.

''(C) TERMS.—A full funding grant agreement shall—

''(i) establish the terms of participation by the Government in a new fixed guideway capital project or core capacity improvement project;

''(ii) establish the maximum amount of Federal financial assistance for the project;

''(iii) include the period of time for completing the project, even if that period extends beyond the period of an authorization; and

''(iv) make timely and efficient management of the project easier according to the law of the United States.

''(D) SPECIAL FINANCIAL RULES.—

''(i) IN GENERAL.—A full funding grant agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law.

''(ii) STATEMENT OF CONTINGENT COMMITMENT.—The agreement shall state that the contingent commitment is not an obligation of the Government.

''(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(iv) COMPLETION OF OPERABLE SEGMENT.—The amount stipulated in an agreement under this paragraph for a new fixed guideway capital

project shall be sufficient to complete at least an operable segment.

''(E) BEFORE AND AFTER STUDY.—

''(i) IN GENERAL.—A full funding grant agreement under this paragraph shall require the applicant to conduct a study that—

''(I) describes and analyzes the impacts of the new fixed guideway capital project or core capacity improvement project on public transportation services and public transportation ridership;

''(II) evaluates the consistency of predicted and actual project characteristics and performance; and

''(III) identifies reasons for differences between predicted and actual outcomes.

''(ii) INFORMATION COLLECTION AND ANALYSIS PLAN.—

''(I) SUBMISSION OF PLAN.—Applicants seeking a full funding grant agreement under this paragraph shall submit a complete plan for the collection and analysis of information to identify the impacts of the new fixed guideway capital project or core capacity improvement project and the accuracy of the forecasts prepared during the development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

''(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

''(aa) collection of data on the current public transportation system regarding public transportation service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

''(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

''(cc) collection of data on the public transportation system 2 years after the opening of a new fixed guideway capital project or core capacity improvement project, including analogous information on public transportation service levels and ridership patterns and information on the as-built scope, capital, and financing costs of the project; and

''(dd) analysis of the consistency of predicted project characteristics with actual outcomes.

''(F) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant agreement under this paragraph, recipients shall have collected data on the current system, according to the plan required under subparagraph (E)(ii), before the beginning of construction of the proposed new fixed guideway capital project or core capacity improvement project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

''(3) EARLY SYSTEMS WORK AGREEMENTS.—

''(A) CONDITIONS.—The Secretary may enter into an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

''(i) a full funding grant agreement for the project will be made; and

''(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

''(B) CONTENTS.—

''(i) IN GENERAL.—An early systems work agreement under this paragraph obligates budget authority available under this chapter and title 23 and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier.

''(ii) CONTINGENT COMMITMENT.—An early systems work agreement may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law.

''(iii) PERIOD COVERED.—An early systems work agreement under this paragraph shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization.

''(iv) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out the early systems work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(v) FAILURE TO CARRY OUT PROJECT.—If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Federal grant funds awarded for the project from all Federal funding sources, for all project activities, facilities, and equipment, plus reasonable interest and penalty charges allowable by law or established by the Secretary in the early systems work agreement.

''(vi) CREDITING OF FUNDS RECEIVED.—Any funds received by the Government under this paragraph, other than interest and penalty charges, shall be credited to the appropriation account from which the funds were originally derived.

''(4) LIMITATION ON AMOUNTS.—

''(A) IN GENERAL.—The Secretary may enter into full funding grant agreements under this subsection for new fixed guideway capital projects and core capacity improvement projects that contain contingent commitments to incur obligations in such amounts as the Secretary determines are appropriate.

''(B) APPROPRIATION REQUIRED.—An obligation may be made under this subsection only when amounts are appropriated for the obligation.

''(5) NOTIFICATION TO CONGRESS.—At least 30 days before issuing a letter of intent, entering into a full funding grant agreement, or entering into an early systems work agreement under this section, the Secretary shall notify, in writing, the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

''(l) GOVERNMENT SHARE OF NET CAPITAL PROJECT COST.—

''(1) IN GENERAL.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net capital project cost. A grant for a fixed guideway project or small start project shall not exceed 80 percent of the net capital project cost. A grant for a core capacity project shall not exceed 80 percent of the net capital project cost of the incremental cost of increasing the capacity in the corridor.

''(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net capital project cost of a new fixed guideway capital project or core capacity improvement project evaluated under subsection (d), (e), or (i) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

''(3) MAXIMUM GOVERNMENT SHARE.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

''(A) the Secretary determines that the net capital project cost of the project is not more than 10 percent higher than the net capital project cost estimated at the time the project was approved for advancement into the engineering phase; and

''(B) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into the engineering phase.

''(4) REMAINDER OF NET CAPITAL PROJECT COST.—The remainder of the net capital project cost shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

''(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as authorizing the Secretary to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

''(6) SPECIAL RULE FOR ROLLING STOCK COSTS.—In addition to amounts allowed pursuant to paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts provided by the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

''(7) LIMITATION ON APPLICABILITY.—This subsection shall not apply to projects for which the Secretary entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2012.

''(8) SPECIAL RULE FOR FIXED GUIDEWAY BUS RAPID TRANSIT PROJECTS.—For up to three fixed-guideway bus rapid transit projects each fiscal year the Secretary shall—

''(A) establish a Government share of at least 80 percent; and

''(B) not lower the project's rating for degree of local financial commitment for purposes of subsections (d)(2)(A)(v) or (h)(3)(C) as a result of the Government share specified in this paragraph.

''(m) UNDERTAKING PROJECTS IN ADVANCE.—

''(1) IN GENERAL.—The Secretary may pay the Government share of the net capital project cost to a State or local governmental authority that carries out any part of a project described in this section without the aid of amounts of the Government and according to all applicable procedures and requirements if—

''(A) the State or local governmental authority applies for the payment;

''(B) the Secretary approves the payment; and

''(C) before the State or local governmental authority carries out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

''(2) FINANCING COSTS.—

''(A) IN GENERAL.—The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part.

''(B) LIMITATION ON AMOUNT OF INTEREST.—The amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing.

''(C) CERTIFICATION.—The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

''(n) AVAILABILITY OF AMOUNTS.—

''(1) IN GENERAL.—An amount made available or appropriated for a new fixed guideway capital project or core capacity improvement project shall remain available to that project for 5 fiscal years, including the fiscal year in which the amount is made available or appropriated. Any

amounts that are unobligated to the project at the end of the 5-fiscal-year period may be used by the Secretary for any purpose under this section.

''(2) USE OF DEOBLIGATED AMOUNTS.—An amount available under this section that is deobligated may be used for any purpose under this section.

''(o) REPORTS ON NEW FIXED GUIDEWAY AND CORE CAPACITY IMPROVEMENT PROJECTS.—

''(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that includes—

''(A) a proposal of allocations of amounts to be available to finance grants for projects under this section among applicants for these amounts;

''(B) evaluations and ratings, as required under subsections (d), (e), and (i), for each such project that is in project development, engineering, or has received a full funding grant agreement; and

''(C) recommendations of such projects for funding based on the evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 fiscal years based on information currently available to the Secretary.

''(2) REPORTS ON BEFORE AND AFTER STUDIES.—Not later than the first Monday in August of each year, the Secretary shall submit to the committees described in paragraph (1) a report containing a summary of the results of any studies conducted under subsection (k)(2)(E).

''(3) BIENNIAL GAO REVIEW.—The Comptroller General of the United States shall—

''(A) conduct a biennial review of—

''(i) the processes and procedures for evaluating, rating, and recommending new fixed guideway capital projects and core capacity improvement projects; and

''(ii) the Secretary's implementation of such processes and procedures; and

''(B) report to Congress on the results of such review by May 31 of each year.''.

(b) PILOT PROGRAM FOR EXPEDITED PROJECT DELIVERY.—

(1) DEFINITIONS.—In this subsection the following definitions shall apply:

(A) ELIGIBLE PROJECT.—The term ''eligible project'' means a new fixed guideway capital project or a core capacity improvement project, as those terms are defined in section 5309 of title 49, United States Code, as amended by this section, that has not entered into a full funding grant agreement with the Federal Transit Administration before the date of enactment of the Federal Public Transportation Act of 2012.

(B) PROGRAM.—The term ''program'' means the pilot program for expedited project delivery established under this subsection.

(C) RECIPIENT.—The term ''recipient'' means a recipient of funding under chapter 53 of title 49, United States Code.

(D) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

(2) ESTABLISHMENT.—The Secretary shall establish and implement a pilot program to demonstrate whether innovative project development and delivery methods or innovative financing arrangements can expedite project delivery for certain meritorious new fixed guideway capital projects and core capacity improvement projects.

(3) LIMITATION ON NUMBER OF PROJECTS.—The Secretary shall select 3 eligible projects to participate in the program, of which—

(A) at least 1 shall be an eligible project requesting more than $100,000,000 in Federal financial assistance under section 5309 of title 49, United States Code; and

(B) at least 1 shall be an eligible project requesting less than $100,000,000 in Federal financial assistance under section 5309 of title 49, United States Code.

(4) GOVERNMENT SHARE.—The Government share of the total cost of an eligible project that participates in the program may not exceed 50 percent.

(5) ELIGIBILITY.—A recipient that desires to participate in the program shall submit to the Secretary an application that contains, at a minimum—

(A) identification of an eligible project;

(B) a schedule and finance plan for the construction and operation of the eligible project;

(C) an analysis of the efficiencies of the proposed project development and delivery methods or innovative financing arrangement for the eligible project; and

(D) a certification that the recipient's existing public transportation system is in a state of good repair.

(6) SELECTION CRITERIA.—The Secretary may award a full funding grant agreement under this subsection if the Secretary determines that—

(A) the recipient has completed planning and the activities required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) the recipient has the necessary legal, financial, and technical capacity to carry out the eligible project.

(7) BEFORE AND AFTER STUDY AND REPORT.—

(A) STUDY REQUIRED.—A full funding grant agreement under this paragraph shall require a recipient to conduct a study that—

(i) describes and analyzes the impacts of the eligible project on public transportation services and public transportation ridership;

(ii) describes and analyzes the consistency of predicted and actual benefits and costs of the innovative project development and delivery methods or innovative financing for the eligible project; and

(iii) identifies reasons for any differences between predicted and actual outcomes for the eligible project.

(B) SUBMISSION OF REPORT.—Not later than 9 months after an eligible project selected to participate in the program begins revenue operations, the recipient shall submit to the Secretary a report on the results of the study under subparagraph (A).

SEC. 20009. MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES.

Section 5310 of title 49, United States Code, is amended to read as follows:

''§ 5310. Formula grants for the enhanced mobility of seniors and individuals with disabilities

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) RECIPIENT.—The term 'recipient' means a designated recipient or a State that receives a grant under this section directly.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a grant under this section indirectly through a recipient.

''(b) GENERAL AUTHORITY.—

''(1) GRANTS.—The Secretary may make grants under this section to recipients for—

''(A) public transportation projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable;

''(B) public transportation projects that exceed the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

''(C) public transportation projects that improve access to fixed route service and decrease reliance by individuals with disabilities on complementary paratransit; and

''(D) alternatives to public transportation that assist seniors and individuals with disabilities with transportation.

''(2) LIMITATIONS FOR CAPITAL PROJECTS.—

''(A) AMOUNT AVAILABLE.—The amount available for capital projects under paragraph (1)(A) shall be not less than 55 percent of the funds apportioned to the recipient under this section.

''(B) ALLOCATION TO SUBRECIPIENTS.—A recipient of a grant under paragraph (1)(A) may allocate the amounts provided under the grant to—

''(i) a private nonprofit organization; or

''(ii) a State or local governmental authority that—

''(I) is approved by a State to coordinate services for seniors and individuals with disabilities; or

''(II) certifies that there are no private nonprofit organizations readily available in the area to provide the services described in paragraph (1)(A).

''(3) ADMINISTRATIVE EXPENSES.—A recipient may use not more than 10 percent of the amounts apportioned to the recipient under this section to administer, plan, and provide technical assistance for a project funded under this section.

''(4) ELIGIBLE CAPITAL EXPENSES.—The acquisition of public transportation services is an eligible capital expense under this section.

''(5) COORDINATION.—

''(A) DEPARTMENT OF TRANSPORTATION.—To the maximum extent feasible, the Secretary shall coordinate activities under this section with related activities under other Federal departments and agencies.

''(B) OTHER FEDERAL AGENCIES AND NONPROFIT ORGANIZATIONS.—A State or local governmental authority or nonprofit organization that receives assistance from Government sources (other than the Department of Transportation) for nonemergency transportation services shall—

''(i) participate and coordinate with recipients of assistance under this chapter in the design and delivery of transportation services; and

''(ii) participate in the planning for the transportation services described in clause (i).

''(6) PROGRAM OF PROJECTS.—

''(A) IN GENERAL.—Amounts made available to carry out this section may be used for transportation projects to assist in providing transportation services for seniors and individuals with disabilities, if such transportation projects are included in a program of projects.

''(B) SUBMISSION.—A recipient shall annually submit a program of projects to the Secretary.

''(C) ASSURANCE.—The program of projects submitted under subparagraph (B) shall contain an assurance that the program provides for the maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other Government sources.

''(7) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—A public transportation service provider that receives assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals, if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

''(c) APPORTIONMENT AND TRANSFERS.—

''(1) FORMULA.—The Secretary shall apportion amounts made available to carry out this section as follows:

''(A) LARGE URBANIZED AREAS.—Sixty percent of the funds shall be apportioned among designated recipients for urbanized areas with a population of 200,000 or more individuals, as determined by the Bureau of the Census, in the ratio that—

''(i) the number of seniors and individuals with disabilities in each such urbanized area; bears to

''(ii) the number of seniors and individuals with disabilities in all such urbanized areas.

''(B) SMALL URBANIZED AREAS.—Twenty percent of the funds shall be apportioned among the States in the ratio that—

''(i) the number of seniors and individuals with disabilities in urbanized areas with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census, in each State; bears to

''(ii) the number of seniors and individuals with disabilities in urbanized areas with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census, in all States.

''(C) RURAL AREAS.—Twenty percent of the funds shall be apportioned among the States in the ratio that—

''(i) the number of seniors and individuals with disabilities in rural areas in each State; bears to

''(ii) the number of seniors and individuals with disabilities in rural areas in all States.

''(2) AREAS SERVED BY PROJECTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B)—

''(i) funds apportioned under paragraph (1)(A) shall be used for projects serving urbanized areas with a population of 200,000 or more individuals, as determined by the Bureau of the Census;

''(ii) funds apportioned under paragraph (1)(B) shall be used for projects serving urbanized areas with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census; and

''(iii) funds apportioned under paragraph (1)(C) shall be used for projects serving rural areas.

''(B) EXCEPTIONS.—A State may use funds apportioned to the State under subparagraph (B) or (C) of paragraph (1)—

''(i) for a project serving an area other than an area specified in subparagraph (A)(ii) or (A)(iii), as the case may be, if the Governor of the State certifies that all of the objectives of this section are being met in the area specified in subparagraph (A)(ii) or (A)(iii); or

''(ii) for a project anywhere in the State, if the State has established a statewide program for meeting the objectives of this section.

''(C) LIMITED TO ELIGIBLE PROJECTS.—Any funds transferred pursuant to subparagraph (B) shall be made available only for eligible projects selected under this section.

''(D) CONSULTATION.—A recipient may transfer an amount under subparagraph (B) only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area for which the amount was originally apportioned.

''(d) GOVERNMENT SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall be in an amount equal to 80 percent of the net capital costs of the project, as determined by the Secretary.

''(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed an amount equal to 50 percent of the net operating costs of the project, as determined by the Secretary.

''(3) REMAINDER OF NET COSTS.—The remainder of the net costs of a project carried out under this section—

''(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

''(B) may be derived from amounts appropriated or otherwise made available—

''(i) to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; or

''(ii) to carry out the Federal lands highways program under section 204 of title 23.

''(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B)(i), the prohibition under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) on the use of grant funds for matching requirements shall not apply to Federal or State funds to be used for transportation purposes.

''(e) GRANT REQUIREMENTS.—

''(1) IN GENERAL.—A grant under this section shall be subject to the same requirements as a grant under section 5307, to the extent the Secretary determines appropriate.

''(2) CERTIFICATION REQUIREMENTS.—

''(A) PROJECT SELECTION AND PLAN DEVELOPMENT.—Before receiving a grant under this section, each recipient shall certify that—

''(i) the projects selected by the recipient are included in a locally developed, coordinated public transit-human services transportation plan;

''(ii) the plan described in clause (i) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public; and

''(iii) to the maximum extent feasible, the services funded under this section will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services.

''(B) ALLOCATIONS TO SUBRECIPIENTS.—If a recipient allocates funds received under this section to subrecipients, the recipient shall certify that the funds are allocated on a fair and equitable basis.

''(f) COMPETITIVE PROCESS FOR GRANTS TO SUBRECIPIENTS.—

''(1) AREAWIDE SOLICITATIONS.—A recipient of funds apportioned under subsection (c)(1)(A) may conduct, in cooperation with the appropriate metropolitan planning organization, an areawide solicitation for applications for grants under this section.

''(2) STATEWIDE SOLICITATIONS.—A recipient of funds apportioned under subparagraph (B) or (C) of subsection (c)(1) may conduct a statewide solicitation for applications for grants under this section.

''(3) APPLICATION.—If the recipient elects to engage in a competitive process, a recipient or subrecipient seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient making the election an application in such form and in accordance with such requirements as the recipient making the election shall establish.

''(g) TRANSFERS OF FACILITIES AND EQUIPMENT.—A recipient may transfer a facility or equipment acquired using a grant under this section to any other recipient eligible to receive assistance under this chapter, if—

''(1) the recipient in possession of the facility or equipment consents to the transfer; and

''(2) the facility or equipment will continue to be used as required under this section.

''(h) PERFORMANCE MEASURES.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives making recommendations on the establishment of performance measures for grants under this section. Such report shall be developed in consultation with national nonprofit organizations that provide technical assistance and advocacy on issues related to transportation services for seniors and individuals with disabilities.

''(2) MEASURES.—The performance measures to be considered in the report under paragraph (1) shall require the collection of quantitative and qualitative information, as available, concerning—

''(A) modifications to the geographic coverage of transportation service, the quality of transportation service, or service times that increase the availability of transportation services for seniors and individuals with disabilities;

''(B) ridership;

''(C) accessibility improvements; and

''(D) other measures, as the Secretary determines is appropriate.''.

SEC. 20010. FORMULA GRANTS FOR RURAL AREAS.

Section 5311 of title 49, United States Code, is amended to read as follows:

''§ 5311. Formula grants for rural areas

''(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

''(1) RECIPIENT.—The term 'recipient' means a State or Indian tribe that receives a Federal transit program grant directly from the Government.

''(2) SUBRECIPIENT.—The term 'subrecipient' means a State or local governmental authority, a nonprofit organization, or an operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.

''(b) GENERAL AUTHORITY.—

''(1) GRANTS AUTHORIZED.—Except as provided by paragraph (2), the Secretary may award grants under this section to recipients located in rural areas for—

''(A) planning, provided that a grant under this section for planning activities shall be in addition to funding awarded to a State under section 5305 for planning activities that are directed specifically at the needs of rural areas in the State;

''(B) public transportation capital projects;

''(C) operating costs of equipment and facilities for use in public transportation;

''(D) job access and reverse commute projects; and

''(E) the acquisition of public transportation services, including service agreements with private providers of public transportation service.

''(2) STATE PROGRAM.—

''(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation service.

''(B) SUBMISSION TO SECRETARY.—Each State shall submit to the Secretary annually the program described in subparagraph (A).

''(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

''(i) the program provides a fair distribution of amounts in the State, including Indian reservations; and

''(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources.

''(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) IN GENERAL.—The Secretary shall carry out a rural transportation assistance program in rural areas.

''(B) GRANTS AND CONTRACTS.—In carrying out this paragraph, the Secretary may use not more than 2 percent of the amount made available under section 5338(a)(2)(E) to make grants and contracts for transportation research, technical assistance, training, and related support services in rural areas.

''(C) PROJECTS OF A NATIONAL SCOPE.—Not more than 15 percent of the amounts available under subparagraph (B) may be used by the Secretary to carry out competitively selected projects of a national scope, with the remaining balance provided to the States.

''(4) DATA COLLECTION.—Each recipient under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

''(A) total annual revenue;

''(B) sources of revenue;

''(C) total annual operating costs;

''(D) total annual capital costs;

''(E) fleet size and type, and related facilities;

''(F) vehicle revenue miles; and

''(G) ridership.

''(c) APPORTIONMENTS.—

''(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to section 5338(a)(2)(E) to carry out this paragraph, the following amounts shall be apportioned each fiscal year for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

''(A) $5,000,000 shall be distributed on a competitive basis by the Secretary.

''(B) $25,000,000 shall be apportioned as formula grants, as provided in subsection (j).

''(2) APPALACHIAN DEVELOPMENT PUBLIC TRANSPORTATION ASSISTANCE PROGRAM.—

''(A) DEFINITIONS.—In this paragraph—

''(i) the term 'Appalachian region' has the same meaning as in section 14102 of title 40; and

''(ii) the term 'eligible recipient' means a State that participates in a program established under subtitle IV of title 40.

''(B) IN GENERAL.—The Secretary shall carry out a public transportation assistance program in the Appalachian region.

''(C) APPORTIONMENT.—Of amounts made available or appropriated for each fiscal year under section 5338(a)(2)(E) to carry out this paragraph, the Secretary shall apportion funds to eligible recipients for any purpose eligible under this section, based on the guidelines established under section 9.5(b) of the Appalachian Regional Commission Code.

''(D) SPECIAL RULE.—An eligible recipient may use amounts that cannot be used for operating expenses under this paragraph for a highway project if—

''(i) that use is approved, in writing, by the eligible recipient after appropriate notice and an opportunity for comment and appeal are provided to affected public transportation providers; and

''(ii) the eligible recipient, in approving the use of amounts under this subparagraph, determines that the local transit needs are being addressed.

''(3) REMAINING AMOUNTS.—

''(A) IN GENERAL.—The amounts made available or appropriated for each fiscal year pursuant to section 5338(a)(2)(E) that are not apportioned under paragraph (1) or (2) shall be apportioned in accordance with this paragraph.

''(B) APPORTIONMENT BASED ON LAND AREA AND POPULATION IN NONURBANIZED AREAS.—

''(i) IN GENERAL.—83.15 percent of the amount described in subparagraph (A) shall be apportioned to the States in accordance with this subparagraph.

''(ii) LAND AREA.—

''(I) IN GENERAL.—Subject to subclause (II), each State shall receive an amount that is equal to 20 percent of the amount apportioned under clause (i), multiplied by the ratio of the land area in rural areas in that State and divided by the land area in all rural areas in the United States, as shown by the most recent decennial census of population.

''(II) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under subclause (I).

''(iii) POPULATION.—Each State shall receive an amount equal to 80 percent of the amount apportioned under clause (i), multiplied by the ratio of the population of rural areas in that State and divided by the population of all rural areas in the United States, as shown by the most recent decennial census of population.

''(C) APPORTIONMENT BASED ON LAND AREA, VEHICLE REVENUE MILES, AND LOW-INCOME INDIVIDUALS IN NONURBANIZED AREAS.—

''(i) IN GENERAL.—16.85 percent of the amount described in subparagraph (A) shall be apportioned to the States in accordance with this subparagraph.

''(ii) LAND AREA.—Subject to clause (v), each State shall receive an amount that is equal to 29.68 percent of the amount apportioned under clause (i), multiplied by the ratio of the land area in rural areas in that State and divided by the land area in all rural areas in the United States, as shown by the most recent decennial census of population.

''(iii) VEHICLE REVENUE MILES.—Subject to clause (v), each State shall receive an amount that is equal to 29.68 percent of the amount apportioned under clause (i), multiplied by the ratio of vehicle revenue miles in rural areas in that State and divided by the vehicle revenue miles in all rural areas in the United States, as determined by national transit database reporting.

''(iv) LOW-INCOME INDIVIDUALS.—Each State shall receive an amount that is equal to 40.64 percent of the amount apportioned under clause (i), multiplied by the ratio of low-income individuals in rural areas in that State and divided by the number of low-income individuals in all rural areas in the United States, as shown by the Bureau of the Census.

''(v) MAXIMUM APPORTIONMENT.—No State shall receive—

''(I) more than 5 percent of the amount apportioned under clause (ii); or

''(II) more than 5 percent of the amount apportioned under clause (iii).

''(d) USE FOR LOCAL TRANSPORTATION SERVICE.—A State may use an amount apportioned under this section for a project included in a program under subsection (b) of this section and eligible for assistance under this chapter if the project will provide local transportation service, as defined by the Secretary of Transportation, in a rural area.

''(e) USE FOR ADMINISTRATION, PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary may allow a State to use not more than 10 percent of the amount apportioned under this section to administer this section and provide technical assistance to a subrecipient, including project planning, program and management development, coordination of public transportation programs, and research the State considers appropriate to promote effective delivery of public transportation to a rural area.

''(f) INTERCITY BUS TRANSPORTATION.—

''(1) IN GENERAL.—A State shall expend at least 15 percent of the amount made available in each fiscal year to carry out a program to develop and support intercity bus transportation. Eligible activities under the program include—

''(A) planning and marketing for intercity bus transportation;

''(B) capital grants for intercity bus facilities;

''(C) joint-use facilities;

''(D) operating grants through purchase-of-service agreements, user-side subsidies, and demonstration projects; and

''(E) coordinating rural connections between small public transportation operations and intercity bus carriers.

''(2) CERTIFICATION.—A State does not have to comply with paragraph (1) of this subsection in a fiscal year in which the Governor of the State certifies to the Secretary, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being met adequately.

''(g) GOVERNMENT SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—

''(A) IN GENERAL.—Except as provided by subparagraph (B), a grant awarded under this section for a capital project or project administrative expenses shall be for 80 percent of the net costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive a Government share of the net costs in accordance with the formula under that section.

''(2) OPERATING ASSISTANCE.—

''(A) IN GENERAL.—Except as provided by subparagraph (B), a grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

''(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive a Government share of the net operating costs equal to 62.5 percent of the Government share provided for under paragraph (1)(B).

''(3) REMAINDER.—The remainder of net project costs—

''(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital;

''(B) may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation;

''(C) notwithstanding subparagraph (B), may be derived from amounts made available to carry out the Federal lands highway program established by section 204 of title 23; and

''(D) in the case of an intercity bus project that includes both feeder service and an unsubsidized segment of intercity bus service to which the feeder service connects, may be derived from the costs of a private operator for the unsubsidized segment of intercity bus service as an in-kind match for the operating costs of connecting rural intercity bus feeder service funded under subsection (f), if the private operator agrees in writing to the use of the costs of the private operator for the unsubsidized segment of intercity bus service as an in-kind match.

''(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

''(5) LIMITATION ON OPERATING ASSISTANCE.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

''(h) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the recipient currently having a facility or equipment acquired with assistance under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

''(i) RELATIONSHIP TO OTHER LAWS.—

''(1) IN GENERAL.—Section 5333(b) applies to this section if the Secretary of Labor utilizes a special warranty that provides a fair and equitable arrangement to protect the interests of employees.

''(2) RULE OF CONSTRUCTION.—This subsection does not affect or discharge a responsibility of the Secretary of Transportation under a law of the United States.

''(j) FORMULA GRANTS FOR PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—

''(1) APPORTIONMENT.—

''(A) IN GENERAL.—Of the amounts described in subsection (c)(1)(B)—

''(i) 50 percent of the total amount shall be apportioned so that each Indian tribe providing public transportation service shall receive an amount equal to the total amount apportioned under this clause multiplied by the ratio of the number of vehicle revenue miles provided by an Indian tribe divided by the total number of vehicle revenue miles provided by all Indian tribes, as reported to the Secretary;

''(ii) 25 percent of the total amount shall be apportioned equally among each Indian tribe providing at least 200,000 vehicle revenue miles of public transportation service annually, as reported to the Secretary; and

''(iii) 25 percent of the total amount shall be apportioned among each Indian tribe providing public transportation on tribal lands (as defined by the Bureau of the Census) on which more than 1,000 low-income individuals reside (as determined by the Bureau of the Census) so that each Indian tribe shall receive an amount equal to the total amount apportioned under this

clause multiplied by the ratio of the number of low-income individuals residing on an Indian tribe's lands divided by the total number of low-income individuals on tribal lands on which more than 1,000 low-income individuals reside.

''(B) LIMITATION.—No recipient shall receive more than $300,000 of the amounts apportioned under subparagraph (A)(iii) in a fiscal year.

''(C) REMAINING AMOUNTS.—Of the amounts made available under subparagraph (A)(iii), any amounts not apportioned under that subparagraph shall be allocated among Indian tribes receiving less than $300,000 in a fiscal year according to the formula specified in that clause.

''(D) LOW-INCOME INDIVIDUALS.—For purposes of subparagraph (A)(iii), the term 'low-income individual' means an individual whose family income is at or below 100 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section, for a family of the size involved.

''(2) NON-TRIBAL SERVICE PROVIDERS.—A recipient that is an Indian tribe may use funds apportioned under this subsection to finance public transportation services provided by a non-tribal provider of public transportation that connects residents of tribal lands with surrounding communities, improves access to employment or healthcare, or otherwise addresses the mobility needs of tribal members.''.

SEC. 20011. RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.

Section 5312 of title 49, United States Code, is amended to read as follows:

''§5312. Research, development, demonstration, and deployment projects

''(a) RESEARCH, DEVELOPMENT, DEMONSTRATION, AND DEPLOYMENT PROJECTS.—

''(1) IN GENERAL.—The Secretary may make grants and enter into contracts, cooperative agreements, and other agreements for research, development, demonstration, and deployment projects, and evaluation of research and technology of national significance to public transportation, that the Secretary determines will improve public transportation.

''(2) AGREEMENTS.—In order to carry out paragraph (1), the Secretary may make grants to and enter into contracts, cooperative agreements, and other agreements with—

''(A) departments, agencies, and instrumentalities of the Government, including Federal laboratories;

''(B) State and local governmental entities;

''(C) providers of public transportation;

''(D) private or non-profit organizations;

''(E) institutions of higher education; and

''(F) technical and community colleges.

''(3) APPLICATION.—

''(A) IN GENERAL.—To receive a grant, contract, cooperative agreement, or other agreement under this section, an entity described in paragraph (2) shall submit an application to the Secretary.

''(B) FORM AND CONTENTS.—An application under subparagraph (A) shall be in such form and contain such information as the Secretary may require, including—

''(i) a statement of purpose detailing the need being addressed;

''(ii) the short- and long-term goals of the project, including opportunities for future innovation and development, the potential for deployment, and benefits to riders and public transportation; and

''(iii) the short- and long-term funding requirements to complete the project and any future objectives of the project.

''(b) RESEARCH.—

''(1) IN GENERAL.—The Secretary may make a grant to or enter into a contract, cooperative agreement, or other agreement under this section with an entity described in subsection (a)(2) to carry out a public transportation research project that has as its ultimate goal the development and deployment of new and innovative ideas, practices, and approaches.

''(2) PROJECT ELIGIBILITY.—A public transportation research project that receives assistance under paragraph (1) shall focus on—

''(A) providing more effective and efficient public transportation service, including services to—

''(i) seniors;

''(ii) individuals with disabilities; and

''(iii) low-income individuals;

''(B) mobility management and improvements and travel management systems;

''(C) data and communication system advancements;

''(D) system capacity, including—

''(i) train control;

''(ii) capacity improvements; and

''(iii) performance management;

''(E) capital and operating efficiencies;

''(F) planning and forecasting modeling and simulation;

''(G) advanced vehicle design;

''(H) advancements in vehicle technology;

''(I) asset maintenance and repair systems advancement;

''(J) construction and project management;

''(K) alternative fuels;

''(L) the environment and energy efficiency;

''(M) safety improvements; or

''(N) any other area that the Secretary determines is important to advance the interests of public transportation.

''(c) INNOVATION AND DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary may make a grant to or enter into a contract, cooperative agreement, or other agreement under this section with an entity described in subsection (a)(2) to carry out a public transportation innovation and development project that seeks to improve public transportation systems nationwide in order to provide more efficient and effective delivery of public transportation services, including through technology and technological capacity improvements.

''(2) PROJECT ELIGIBILITY.—A public transportation innovation and development project that receives assistance under paragraph (1) shall focus on—

''(A) the development of public transportation research projects that received assistance under subsection (b) that the Secretary determines were successful;

''(B) planning and forecasting modeling and simulation;

''(C) capital and operating efficiencies;

''(D) advanced vehicle design;

''(E) advancements in vehicle technology;

''(F) the environment and energy efficiency;

''(G) system capacity, including train control and capacity improvements; or

''(H) any other area that the Secretary determines is important to advance the interests of public transportation.

''(d) DEMONSTRATION, DEPLOYMENT, AND EVALUATION.—

''(1) IN GENERAL.—The Secretary may, under terms and conditions that the Secretary prescribes, make a grant to or enter into a contract, cooperative agreement, or other agreement with an entity described in paragraph (2) to promote the early deployment and demonstration of innovation in public transportation that has broad applicability.

''(2) PARTICIPANTS.—An entity described in this paragraph is—

''(A) an entity described in subsection (a)(2); or

''(B) a consortium of entities described in subsection (a)(2), including a provider of public transportation, that will share the costs, risks, and rewards of early deployment and demonstration of innovation.

''(3) PROJECT ELIGIBILITY.—A project that receives assistance under paragraph (1) shall seek to build on successful research, innovation, and development efforts to facilitate—

''(A) the deployment of research and technology development resulting from private efforts or Federally funded efforts; and

''(B) the implementation of research and technology development to advance the interests of public transportation.

''(4) EVALUATION.—Not later than 2 years after the date on which a project receives assistance under paragraph (1), the Secretary shall conduct a comprehensive evaluation of the success or failure of the projects funded under this subsection and any plan for broad-based implementation of the innovation promoted by successful projects.

''(5) LOW OR NO EMISSION VEHICLE DEPLOYMENT.—

''(A) DEFINITIONS.—In this paragraph, the following definitions shall apply:

''(i) ELIGIBLE AREA.—The term 'eligible area' means an area that is—

''(I) designated as a nonattainment area for ozone or carbon monoxide under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

''(II) a maintenance area, as defined in section 5303, for ozone or carbon monoxide.

''(ii) ELIGIBLE PROJECT.—The term 'eligible project' means a project or program of projects in an eligible area for—

''(I) acquiring or leasing low or no emission vehicles;

''(II) constructing or leasing facilities and related equipment for low or no emission vehicles;

''(III) constructing new public transportation facilities to accommodate low or no emission vehicles; or

''(IV) rehabilitating or improving existing public transportation facilities to accommodate low or no emission vehicles.

''(iii) DIRECT CARBON EMISSIONS.—The term 'direct carbon emissions' means the quantity of direct greenhouse gas emissions from a vehicle, as determined by the Administrator of the Environmental Protection Agency.

''(iv) LOW OR NO EMISSION BUS.—The term 'low or no emission bus' means a bus that is a low or no emission vehicle.

''(v) LOW OR NO EMISSION VEHICLE.—The term 'low or no emission vehicle' means—

''(I) a passenger vehicle used to provide public transportation that the Administrator of the Environmental Protection Agency has certified sufficiently reduces energy consumption or reduces harmful emissions, including direct carbon emissions, when compared to a comparable standard vehicle; or

''(II) a zero emission bus used to provide public transportation.

''(vi) RECIPIENT.—The term 'recipient' means—

''(I) for an eligible area that is an urbanized area with a population of fewer than 200,000 individuals, as determined by the Bureau of the Census, the State in which the eligible area is located; and

''(II) for an eligible area not described in subparagraph (A), the designated recipient for the eligible area.

''(vii) ZERO EMISSION BUS.—The term 'zero emission bus' means a low or no emission bus that produces no carbon or particulate matter.

''(B) AUTHORITY.—The Secretary may make grants to recipients to finance eligible projects under this paragraph.

''(C) GRANT REQUIREMENTS.—

''(i) IN GENERAL.—A grant under this paragraph shall be subject to the requirements of section 5307.

''(ii) GOVERNMENT SHARE OF COSTS FOR CERTAIN PROJECTS.—Section 5323(j) applies to projects carried out under this paragraph, unless the grant recipient requests a lower grant percentage.

''(iii) COMBINATION OF FUNDING SOURCES.—

''(I) COMBINATION PERMITTED.—A project carried out under this paragraph may receive funding under section 5307, or any other provision of law.

''(II) GOVERNMENT SHARE.—Nothing in this clause may be construed to alter the Government share required under this section, section 5307, or any other provision of law.

''(D) MINIMUM AMOUNTS.—Of amounts made available by or appropriated under section 5338(b) in each fiscal year to carry out this paragraph—

''(i) not less than 65 percent shall be made available to fund eligible projects relating to low or no emission buses; and

''(ii) not less than 10 percent shall be made available for eligible projects relating to facilities and related equipment for low or no emission buses.

''(E) COMPETITIVE PROCESS.—The Secretary shall solicit grant applications and make grants for eligible projects on a competitive basis.

''(F) PRIORITY CONSIDERATION.—In making grants under this paragraph, the Secretary shall give priority to projects relating to low or no emission buses that make greater reductions in energy consumption and harmful emissions, including direct carbon emissions, than comparable standard buses or other low or no emission buses.

''(G) AVAILABILITY OF FUNDS.—Any amounts made available or appropriated to carry out this paragraph—

''(i) shall remain available to an eligible project for 2 years after the fiscal year for which the amount is made available or appropriated; and

''(ii) that remain unobligated at the end of the period described in clause (i) shall be added to the amount made available to an eligible project in the following fiscal year.

''(e) ANNUAL REPORT ON RESEARCH.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure, the Committee on Science, Space, and Technology, and the Committee on Appropriations of the House of Representatives a report that includes—

''(1) a description of each project that received assistance under this section during the preceding fiscal year;

''(2) an evaluation of each project described in paragraph (1), including any evaluation conducted under subsection (d)(4) for the preceding fiscal year; and

''(3) a proposal for allocations of amounts for assistance under this section for the subsequent fiscal year.

''(f) GOVERNMENT SHARE OF COSTS.—

''(1) IN GENERAL.—The Government share of the cost of a project carried out under this section shall not exceed 80 percent.

''(2) NON-GOVERNMENT SHARE.—The non-Government share of the cost of a project carried out under this section may be derived from in-kind contributions.

''(3) FINANCIAL BENEFIT.—If the Secretary determines that there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other agreement under this section, the Secretary shall establish a Government share of the costs of the project to be carried out under the grant, contract, cooperative agreement, or other agreement that is consistent with the benefit.''.

SEC. 20012. TECHNICAL ASSISTANCE AND STANDARDS DEVELOPMENT.

Section 5314 of title 49, United States Code, is amended to read as follows:

''§ 5314. Technical assistance and standards development

''(a) TECHNICAL ASSISTANCE AND STANDARDS DEVELOPMENT.—

''(1) IN GENERAL.—The Secretary may make grants and enter into contracts, cooperative agreements, and other agreements (including agreements with departments, agencies, and instrumentalities of the Government) to carry out activities that the Secretary determines will assist recipients of assistance under this chapter to—

''(A) more effectively and efficiently provide public transportation service;

''(B) administer funds received under this chapter in compliance with Federal law; and

''(C) improve public transportation.

''(2) ELIGIBLE ACTIVITIES.—The activities carried out under paragraph (1) may include—

''(A) technical assistance; and

''(B) the development of voluntary and consensus-based standards and best practices by the public transportation industry, including standards and best practices for safety, fare collection, Intelligent Transportation Systems, accessibility, procurement, security, asset management to maintain a state of good repair, operations, maintenance, vehicle propulsion, communications, and vehicle electronics.

''(b) TECHNICAL ASSISTANCE.—The Secretary, through a competitive bid process, may enter into contracts, cooperative agreements, and other agreements with national nonprofit organizations that have the appropriate demonstrated capacity to provide public transportation-related technical assistance under this section. The Secretary may enter into such contracts, cooperative agreements, and other agreements to assist providers of public transportation to—

''(1) comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) through technical assistance, demonstration programs, research, public education, and other activities related to complying with such Act;

''(2) comply with human services transportation coordination requirements and to enhance the coordination of Federal resources for human services transportation with those of the Department of Transportation through technical assistance, training, and support services related to complying with such requirements;

''(3) meet the transportation needs of elderly individuals;

''(4) increase transit ridership in coordination with metropolitan planning organizations and other entities through development around public transportation stations through technical assistance and the development of tools, guidance, and analysis related to market-based development around transit stations;

''(5) address transportation equity with regard to the effect that transportation planning, investment and operations have for low-income and minority individuals; and

''(6) any other technical assistance activity that the Secretary determines is necessary to advance the interests of public transportation.

''(c) ANNUAL REPORT ON TECHNICAL ASSISTANCE.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure, the Committee on Science, Space, and Technology, and the Committee on Appropriations of the House of Representatives a report that includes—

''(1) a description of each project that received assistance under this section during the preceding fiscal year;

''(2) an evaluation of the activities carried out by each organization that received assistance under this section during the preceding fiscal year; and

''(3) a proposal for allocations of amounts for assistance under this section for the subsequent fiscal year.

''(d) GOVERNMENT SHARE OF COSTS.—

''(1) IN GENERAL.—The Government share of the cost of an activity carried out using a grant under this section may not exceed 80 percent.

''(2) NON-GOVERNMENT SHARE.—The non-Government share of the cost of an activity carried out using a grant under this section may be derived from in-kind contributions.''.

SEC. 20013. PRIVATE SECTOR PARTICIPATION.

(a) IN GENERAL.—Section 5315 of title 49, United States Code, is amended to read as follows:

''§ 5315. Private sector participation

''(a) GENERAL PURPOSES.—In the interest of fulfilling the general purposes of this chapter under section 5301(b), the Secretary shall—

''(1) better coordinate public and private sector-provided public transportation services;

''(2) promote more effective utilization of private sector expertise, financing, and operational capacity to deliver costly and complex new fixed guideway capital projects; and

''(3) promote transparency and public understanding of public-private partnerships affecting public transportation.

''(b) ACTIONS TO PROMOTE BETTER COORDINATION BETWEEN PUBLIC AND PRIVATE SECTOR PROVIDERS OF PUBLIC TRANSPORTATION.—The Secretary shall—

''(1) provide technical assistance to recipients of Federal transit grant assistance, at the request of a recipient, on practices and methods to best utilize private providers of public transportation; and

''(2) educate recipients of Federal transit grant assistance on laws and regulations under this chapter that impact private providers of public transportation.

''(c) ACTIONS TO PROVIDE TECHNICAL ASSISTANCE FOR ALTERNATIVE PROJECT DELIVERY METHODS.—Upon request by a sponsor of a new fixed guideway capital project, the Secretary shall—

''(1) identify best practices for public-private partnerships models in the United States and in other countries;

''(2) develop standard public-private partnership transaction model contracts; and

''(3) perform financial assessments that include the calculation of public and private benefits of a proposed public-private partnership transaction.''.

(b) PUBLIC-PRIVATE PARTNERSHIP PROCEDURES AND APPROACHES.—

(1) IDENTIFY IMPEDIMENTS.—The Secretary shall—

(A) except as provided in paragraph (6), identify any provisions of chapter 53 of title 49, United States Code, and any regulations or practices thereunder, that impede greater use of public-private partnerships and private investment in public transportation capital projects; and

(B) develop and implement on a project basis procedures and approaches that—

(i) address such impediments in a manner similar to the Special Experimental Project Number 15 of the Federal Highway Administration (commonly referred to as ''SEP-15''); and

(ii) protect the public interest and any public investment in public transportation capital projects that involve public-private partnerships or private investment in public transportation capital projects.

(2) TRANSPARENCY.—The Secretary shall develop guidance to promote greater transparency and public access to public-private partnership agreements involving recipients of Federal assistance under chapter 53 of title 49, United States Code, including—

(A) any conflict of interest involving any party involved in the public-private partnership;

(B) tax and financing aspects related to a public-private partnership agreement;

(C) changes in the workforce and wages, benefits, or rules as a result of a public-private partnership;

(D) estimates of the revenue or savings the public-private partnership will produce for the private entity and public entity;

(E) any impacts on other developments and transportation modes as a result of non-compete clauses contained in public-private partnership agreements; and

(F) any other issues the Secretary believes will increase transparency of public-private partnership agreements and protect the public interest.

(3) ASSESSMENT.—In developing and implementing the guidance under paragraph (2), the Secretary shall encourage project sponsors to conduct assessments to determine whether use of a public-private partnership represents a better public and financial benefit than a similar transaction using public funding or public project delivery.

(4) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the status of the procedures, approaches, and guidance developed and implemented under paragraphs (1) and (2).

(5) RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue rules to carry out the procedures and approaches developed under paragraph (1).

(6) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to allow the Secretary to waive any requirement under—

(A) section 5333 of title 49, United States Code;

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(C) any other provision of Federal law.

(c) CONTRACTING OUT STUDY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a comprehensive report on the effect of contracting out public transportation operations and administrative functions on cost, availability and level of service, efficiency, and quality of service.

(2) CONSIDERATIONS.—In developing the report, the Comptroller General shall consider—

(A) the number of grant recipients that have contracted out services and the types of public transportation services that are performed under contract, including paratransit service, fixed route bus service, commuter rail operations, and administrative functions;

(B) the size of the populations served by such grant recipients;

(C) the basis for decisions regarding contracting out such services;

(D) comparative costs of providing service under contract to providing the same service through public transit agency employees, using to the greatest extent possible a standard cost allocation model;

(E) the extent of unionization among privately contracted employees;

(F) the impact to wages and benefits of employees when publicly provided public transportation services are contracted out to a private for-profit entity;

(G) the level of transparency and public access to agreements and contracts related to contracted out public transportation services;

(H) the extent of Federal law, regulations and guidance prohibiting any conflicts of interest for contractor employees and businesses;

(I) the extent to which grant recipients evaluate contracted out services before selecting them and the extent to which grant recipients conduct oversight of those services; and

(J) barriers to contracting out public transportation operations and administrative functions.

(d) GUIDANCE ON DOCUMENTING COMPLIANCE.—Not later than 1 year after the date of enactment of this Act, the Secretary shall publish in the Federal Register policy guidance regarding how to best document compliance by recipients of Federal assistance under chapter 53 of title 49, United States Code, with the requirements regarding private enterprise participation in public transportation planning and transportation improvement programs under sections 5303(i)(6), 5306(a), and 5307(c) of such title 49.

SEC. 20014. BUS TESTING FACILITIES.

Section 5318 of title 49, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) ACQUIRING NEW BUS MODELS.—

''(1) IN GENERAL.—Amounts appropriated or otherwise made available under this chapter may be obligated or expended to acquire a new bus model only if—

''(A) a bus of that model has been tested at a facility authorized under subsection (a); and

''(B) the bus tested under subparagraph (A) met—

''(i) performance standards for maintainability, reliability, performance (including braking performance), structural integrity, fuel economy, emissions, and noise, as established by the Secretary by rule; and

''(ii) the minimum safety performance standards established by the Secretary pursuant to section 5329(b).

''(2) BUS TEST 'PASS/FAIL' STANDARD.—Not later than 2 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule under subparagraph (B)(i). The final rule issued under paragraph (B)(i) shall include a bus model scoring system that results in a weighted, aggregate score that uses the testing categories under subsection (a) and considers the relative importance of each such testing category. The final rule issued under subparagraph (B)(i) shall establish a 'pass/fail' standard that uses the aggregate score described in the preceding sentence. Amounts appropriated or otherwise made available under this chapter may be obligated or expended to acquire a new bus model only if the new bus model has received a passing aggregate test score. The Secretary shall work with the bus testing facility, bus manufacturers, and transit agencies to develop the bus model scoring system under this paragraph. A passing aggregate test score under the rule issued under subparagraph (B)(i) indicates only that amounts appropriated or made available under this chapter may be obligated or expended to acquire a new bus model and shall not be interpreted as a warranty or guarantee that the new bus model will meet a purchaser's specific requirements.''.

SEC. 20015. HUMAN RESOURCES AND TRAINING.

Section 5322 of title 49, United States Code, is amended to read as follows:

''§ 5322. Human resources and training

''(a) IN GENERAL.—The Secretary may undertake, or make grants and contracts for, programs that address human resource needs as they apply to public transportation activities. A program may include—

''(1) an employment training program;

''(2) an outreach program to increase minority and female employment in public transportation activities;

''(3) research on public transportation personnel and training needs; and

''(4) training and assistance for minority business opportunities.

''(b) INNOVATIVE PUBLIC TRANSPORTATION WORKFORCE DEVELOPMENT PROGRAM.—

''(1) PROGRAM ESTABLISHED.—The Secretary shall establish a competitive grant program to assist the development of innovative activities eligible for assistance under subsection (a).

''(2) SELECTION OF RECIPIENTS.—To the maximum extent feasible, the Secretary shall select recipients that—

''(A) are geographically diverse;

''(B) address the workforce and human resources needs of large public transportation providers;

''(C) address the workforce and human resources needs of small public transportation providers;

''(D) address the workforce and human resources needs of urban public transportation providers;

''(E) address the workforce and human resources needs of rural public transportation providers;

''(F) advance training related to maintenance of alternative energy, energy efficiency, or zero emission vehicles and facilities used in public transportation;

''(G) target areas with high rates of unemployment; and

''(H) address current or projected workforce shortages in areas that require technical expertise.

''(c) GOVERNMENT'S SHARE OF COSTS.—The Government share of the cost of a project carried out using a grant under subsection (a) or (b) shall be 50 percent.

''(d) NATIONAL TRANSIT INSTITUTE.—

''(1) ESTABLISHMENT.—The Secretary shall establish a national transit institute and award grants to a public 4-year degree-granting institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), in order to carry out the duties of the institute.

''(2) DUTIES.—

''(A) IN GENERAL.—In cooperation with the Federal Transit Administration, State transportation departments, public transportation authorities, and national and international entities, the institute established under paragraph (1) shall develop and conduct training and educational programs for Federal, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid public transportation work.

''(B) TRAINING AND EDUCATIONAL PROGRAMS.—The training and educational programs developed under subparagraph (A) may include courses in recent developments, techniques, and procedures related to—

''(i) intermodal and public transportation planning;

''(ii) management;

''(iii) environmental factors;

''(iv) acquisition and joint use rights-of-way;

''(v) engineering and architectural design;

''(vi) procurement strategies for public transportation systems;

''(vii) turnkey approaches to delivering public transportation systems;

''(viii) new technologies;

''(ix) emission reduction technologies;

''(x) ways to make public transportation accessible to individuals with disabilities;

''(xi) construction, construction management, insurance, and risk management;

''(xii) maintenance;

''(xiii) contract administration;

''(xiv) inspection;

''(xv) innovative finance;

''(xvi) workplace safety; and

''(xvii) public transportation security.

''(3) PROVIDING EDUCATION AND TRAINING.—Education and training of Government, State, and local transportation employees under this subsection shall be provided—

''(A) by the Secretary at no cost to the States and local governments for subjects that are a Government program responsibility; or

''(B) when the education and training are paid under paragraph (4) of this subsection, by the State, with the approval of the Secretary, through grants and contracts with public and private agencies, other institutions, individuals, and the institute.

''(4) AVAILABILITY OF AMOUNTS.—Not more than .5 percent of the amounts made available for a fiscal year beginning after September 30, 1991, to a State or public transportation authority in the State to carry out sections 5307 and 5309 of this title is available for expenditure by the State and public transportation authorities in the State, with the approval of the Secretary, to pay not more than 80 percent of the cost of tuition and direct educational expenses related to educating and training State and local transportation employees under this subsection.

''(e) REPORT.—Not later than 2 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report concerning

the measurable outcomes and impacts of the programs funded under subsections (a) and (b).''.

SEC. 20016. GENERAL PROVISIONS.

Section 5323 of title 49, United States Code, is amended to read as follows:

''§ 5323. General provisions

''(a) INTERESTS IN PROPERTY.—

''(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

''(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

''(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

''(C) just compensation under State or local law will be paid to the company for its franchise or property.

''(2) LIMITATION.—A governmental authority may not use financial assistance of the United States Government to acquire land, equipment, or a facility used in public transportation from another governmental authority in the same geographic area.

''(b) RELOCATION AND REAL PROPERTY REQUIREMENTS.—The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) shall apply to financial assistance for capital projects under this chapter.

''(c) CONSIDERATION OF ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—

''(1) COOPERATION AND CONSULTATION.—The Secretary shall cooperate and consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency on each project that may have a substantial impact on the environment.

''(2) COMPLIANCE WITH NEPA.—The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply to financial assistance for capital projects under this chapter.

''(d) CONDITION ON CHARTER BUS TRANSPORTATION SERVICE.—

''(1) AGREEMENTS.—Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of public transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled public transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a governmental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

''(2) VIOLATIONS.—

''(A) INVESTIGATIONS.—On receiving a complaint about a violation of the agreement required under paragraph (1), the Secretary shall investigate and decide whether a violation has occurred.

''(B) ENFORCEMENT OF AGREEMENTS.—If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement.

''(C) ADDITIONAL REMEDIES.—In addition to any remedy specified in the agreement, the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the agreement.

''(e) BOND PROCEEDS ELIGIBLE FOR LOCAL SHARE.—

''(1) USE AS LOCAL MATCHING FUNDS.—Notwithstanding any other provision of law, a recipient of assistance under section 5307, 5309, or 5337 may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

''(2) MAINTENANCE OF EFFORT.—The Secretary shall approve of the use of the proceeds from the issuance of revenue bonds for the remainder of the net project cost only if the Secretary finds that the aggregate amount of financial support for public transportation in the urbanized area provided by the State and affected local governmental authorities during the next 3 fiscal years, as programmed in the State transportation improvement program under section 5304, is not less than the aggregate amount provided by the State and affected local governmental authorities in the urbanized area during the preceding 3 fiscal years.

''(3) DEBT SERVICE RESERVE.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient establishes pursuant to section 5302(3)(J) from amounts made available to the recipient under section 5309.

''(f) SCHOOLBUS TRANSPORTATION.—

''(1) AGREEMENTS.—Financial assistance under this chapter may be used for a capital project, or to operate public transportation equipment or a public transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

''(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system; and

''(B) unless a private schoolbus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates.

''(2) VIOLATIONS.—If the Secretary finds that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate.

''(g) BUYING BUSES UNDER OTHER LAWS.—Subsections (d) and (f) of this section apply to financial assistance to buy a bus under sections 133 and 142 of title 23.

''(h) GRANT AND LOAN PROHIBITIONS.—A grant or loan may not be used to—

''(1) pay ordinary governmental or nonproject operating expenses; or

''(2) support a procurement that uses an exclusionary or discriminatory specification.

''(i) GOVERNMENT SHARE OF COSTS FOR CERTAIN PROJECTS.—

''(1) ACQUIRING VEHICLES AND VEHICLE-RELATED EQUIPMENT OR FACILITIES.—

''(A) VEHICLES.—A grant for a project to be assisted under this chapter that involves acquiring vehicles for purposes of complying with or maintaining compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or the Clean Air Act is for 85 percent of the net project cost.

''(B) VEHICLE-RELATED EQUIPMENT OR FACILITIES.—A grant for a project to be assisted under this chapter that involves acquiring vehicle-related equipment or facilities required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying with or maintaining compliance with the Clean Air Act, is for 90 percent of the net project cost of such equipment or facilities attributable to compliance with those Acts. The Secretary shall have discretion to determine, through practicable administrative procedures, the costs of such equipment or facilities attributable to compliance with those Acts.

''(2) COSTS INCURRED BY PROVIDERS OF PUBLIC TRANSPORTATION BY VANPOOL.—

''(A) LOCAL MATCHING SHARE.—The local matching share provided by a recipient of assistance for a capital project under this chapter may include any amounts expended by a provider of public transportation by vanpool for the acquisition of rolling stock to be used by such provider in the recipient's service area, excluding any amounts the provider may have received in Federal, State, or local government assistance for such acquisition.

''(B) USE OF REVENUES.—A private provider of public transportation by vanpool may use revenues it receives in the provision of public transportation service in the service area of a recipient of assistance under this chapter that are in excess of the provider's operating costs for the purpose of acquiring rolling stock, if the private provider enters into a legally binding agreement with the recipient that requires the provider to use the rolling stock in the recipient's service area.

''(C) DEFINITIONS.—In this paragraph, the following definitions apply:

''(i) PRIVATE PROVIDER OF PUBLIC TRANSPORTATION BY VANPOOL.—The term 'private provider of public transportation by vanpool' means a private entity providing vanpool services in the service area of a recipient of assistance under this chapter using a commuter highway vehicle or vanpool vehicle.

''(ii) COMMUTER HIGHWAY VEHICLE; VANPOOL VEHICLE.—The term 'commuter highway vehicle or vanpool vehicle' means any vehicle—

''(I) the seating capacity of which is at least 6 adults (not including the driver); and

''(II) at least 80 percent of the mileage use of which can be reasonably expected to be for the purposes of transporting commuters in connection with travel between their residences and their place of employment.

''(j) BUY AMERICA.—

''(1) IN GENERAL.—The Secretary may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

''(2) WAIVER.—The Secretary may waive paragraph (1) of this subsection if the Secretary finds that—

''(A) applying paragraph (1) would be inconsistent with the public interest;

''(B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

''(C) when procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—

''(i) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock; and

''(ii) final assembly of the rolling stock has occurred in the United States; or

''(D) including domestic material will increase the cost of the overall project by more than 25 percent.

''(3) WRITTEN WAIVER DETERMINATION AND ANNUAL REPORT.—

''(A) WRITTEN DETERMINATION.—Before issuing a waiver under paragraph (2), the Secretary shall—

''(i) publish in the Federal Register and make publicly available in an easily identifiable location on the website of the Department of Transportation a detailed written explanation of the waiver determination; and

''(ii) provide the public with a reasonable period of time for notice and comment.

''(B) ANNUAL REPORT.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, and annually thereafter, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report listing any waiver issued under paragraph (2) during the preceding year.

''(4) LABOR COSTS FOR FINAL ASSEMBLY.—In this subsection, labor costs involved in final assembly are not included in calculating the cost of components.

''(5) WAIVER PROHIBITED.—The Secretary may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

''(A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

''(B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

''(6) PENALTY FOR MISLABELING AND MISREPRESENTATION.—A person is ineligible under subpart 9.4 of the Federal Acquisition Regulation, or any successor thereto, to receive a contract or subcontract made with amounts authorized under the Federal Public Transportation Act of 2012 if a court or department, agency, or instrumentality of the Government decides the person intentionally—

''(A) affixed a 'Made in America' label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or

''(B) represented that goods described in subparagraph (A) of this paragraph were produced in the United States.

''(7) STATE REQUIREMENTS.—The Secretary may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

''(8) OPPORTUNITY TO CORRECT INADVERTENT ERROR.—The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

''(9) ADMINISTRATIVE REVIEW.—A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5.

''(k) PARTICIPATION OF GOVERNMENTAL AGENCIES IN DESIGN AND DELIVERY OF TRANSPORTATION SERVICES.—Governmental agencies and nonprofit organizations that receive assistance from Government sources (other than the Department of Transportation) for nonemergency transportation services shall—

''(1) participate and coordinate with recipients of assistance under this chapter in the design and delivery of transportation services; and

''(2) be included in the planning for those services.

''(l) RELATIONSHIP TO OTHER LAWS.—

''(1) FRAUD AND FALSE STATEMENTS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal public transportation program.

''(2) POLITICAL ACTIVITIES OF NONSUPERVISORY EMPLOYEES.—The provision of assistance under this chapter shall not be construed to require the application of chapter 15 of title 5 to any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to whom such chapter does not otherwise apply.

''(m) PREAWARD AND POSTDELIVERY REVIEW OF ROLLING STOCK PURCHASES.—The Secretary shall prescribe regulations requiring a preaward and postdelivery review of a grant under this chapter to buy rolling stock to ensure compliance with Government motor vehicle safety requirements, subsection (j) of this section, and bid specifications requirements of grant recipients under this chapter. Under this subsection, independent inspections and review are required, and a manufacturer certification is not sufficient. Rolling stock procurements of 20 vehicles or fewer made for the purpose of serving rural areas and urbanized areas with populations of 200,000 or fewer shall be subject to the same requirements as established for procurements of 10 or fewer buses under the post-delivery purchaser's requirements certification process under section 663.37(c) of title 49, Code of Federal Regulations.

''(n) SUBMISSION OF CERTIFICATIONS.—A certification required under this chapter and any additional certification or assurance required by law or regulation to be submitted to the Secretary may be consolidated into a single document to be submitted annually as part of a grant application under this chapter. The Secretary shall publish annually a list of all certifications required under this chapter with the publication required under section 5336(d)(2).

''(o) GRANT REQUIREMENTS.—The grant requirements under sections 5307, 5309, and 5337 apply to any project under this chapter that receives any assistance or other financing under chapter 6 (other than section 609) of title 23.

''(p) ALTERNATIVE FUELING FACILITIES.—A recipient of assistance under this chapter may allow the incidental use of federally funded alternative fueling facilities and equipment by nontransit public entities and private entities if—

''(1) the incidental use does not interfere with the recipient's public transportation operations;

''(2) all costs related to the incidental use are fully recaptured by the recipient from the nontransit public entity or private entity;

''(3) the recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

''(4) private entities pay all applicable excise taxes on fuel.

''(q) CORRIDOR PRESERVATION.—

''(1) IN GENERAL.—The Secretary may assist a recipient in acquiring right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

''(2) ENVIRONMENTAL REVIEWS.—Right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

''(r) REASONABLE ACCESS TO PUBLIC TRANSPORTATION FACILITIES.—A recipient of assistance under this chapter may not deny reasonable access for a private intercity or charter transportation operator to federally funded public transportation facilities, including intermodal facilities, park and ride lots, and bus-only highway lanes. In determining reasonable access, capacity requirements of the recipient of assistance and the extent to which access would be detrimental to existing public transportation services must be considered.''.

SEC. 20017. PUBLIC TRANSPORTATION EMERGENCY RELIEF PROGRAM.

(a) IN GENERAL.—Section 5324 of title 49, United States Code, is amended to read as follows:

''§ 5324. Public transportation emergency relief program

''(a) DEFINITION.—In this section the following definitions shall apply:

''(1) ELIGIBLE OPERATING COSTS.—The term 'eligible operating costs' means costs relating to—

''(A) evacuation services;

''(B) rescue operations;

''(C) temporary public transportation service; or

''(D) reestablishing, expanding, or relocating public transportation route service before, during, or after an emergency.

''(2) EMERGENCY.—The term 'emergency' means a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which—

''(A) the Governor of a State has declared an emergency and the Secretary has concurred; or

''(B) the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

''(b) GENERAL AUTHORITY.—The Secretary may make grants and enter into contracts and other agreements (including agreements with departments, agencies, and instrumentalities of the Government) for—

''(1) capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system operating in the United States or on an Indian reservation that the Secretary determines is in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency; and

''(2) eligible operating costs of public transportation equipment and facilities in an area directly affected by an emergency during—

''(A) the 1-year period beginning on the date of a declaration described in subsection (a)(2); or

''(B) if the Secretary determines there is a compelling need, the 2-year period beginning on the date of a declaration described in subsection (a)(2).

''(c) COORDINATION OF EMERGENCY FUNDS.—

''(1) USE OF FUNDS.—Funds appropriated to carry out this section shall be in addition to any other funds available under this chapter.

''(2) NO EFFECT ON OTHER GOVERNMENT ACTIVITY.—The provision of funds under this section shall not affect the ability of any other agency of the Government, including the Federal Emergency Management Agency, or a State agency, a local governmental entity, organization, or person, to provide any other funds otherwise authorized by law.

''(3) NOTIFICATION.—The Secretary shall notify the Secretary of Homeland Security of the purpose and amount of any grant made or contract or other agreement entered into under this section.

''(d) GRANT REQUIREMENTS.—A grant awarded under this section or under section 5307 or 5311 that is made to address an emergency defined under subsection (a)(2) shall be—

''(1) subject to the terms and conditions the Secretary determines are necessary; and

''(2) made only for expenses that are not reimbursed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

''(e) GOVERNMENT SHARE OF COSTS.—

''(1) CAPITAL PROJECTS AND OPERATING ASSISTANCE.—A grant, contract, or other agreement for a capital project or eligible operating costs under this section shall be, at the option of the recipient, for not more than 80 percent of the net project cost, as determined by the Secretary.

''(2) NON-FEDERAL SHARE.—The remainder of the net project cost may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

''(3) WAIVER.—The Secretary may waive, in whole or part, the non-Federal share required under—

''(A) paragraph (2); or

''(B) section 5307 or 5311, in the case of a grant made available under section 5307 or 5311, respectively, to address an emergency.''.

(b) MEMORANDUM OF AGREEMENT.—

(1) PURPOSES.—The purposes of this subsection are—

(A) to improve coordination between the Department of Transportation and the Department of Homeland Security; and

(B) to expedite the provision of Federal assistance for public transportation systems for activities relating to a major disaster or emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) (referred to in this subsection as a ''major disaster or emergency'').

(2) AGREEMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall enter into a memorandum of agreement to coordinate the roles and responsibilities of the Department of Transportation and the Department of Homeland Security in providing assistance for public transportation, including the provision of public transportation services and the repair and restoration of public transportation systems in areas for which the President has declared a major disaster or emergency.

(3) CONTENTS OF AGREEMENT.—The memorandum of agreement required under paragraph (2) shall—

(A) provide for improved coordination and expeditious use of public transportation, as appropriate, in response to and recovery from a major disaster or emergency;

(B) establish procedures to address—

(i) issues that have contributed to delays in the reimbursement of eligible transportation-related expenses relating to a major disaster or emergency;

(ii) any challenges identified in the review under paragraph (4); and

(iii) the coordination of assistance for public transportation provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and section 5324 of title 49, United States Code, as amended by this Act, as appropriate; and

(C) provide for the development and distribution of clear guidelines for State, local, and tribal governments, including public transportation systems, relating to—

(i) assistance available for public transportation systems for activities relating to a major disaster or emergency—

(I) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;

(II) under section 5324 of title 49, United States Code, as amended by this Act; and

(III) from other sources, including other Federal agencies; and

(ii) reimbursement procedures that speed the process of—

(I) applying for assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and section 5324 of title 49, United States Code, as amended by this Act; and

(II) distributing assistance for public transportation systems under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and section 5324 of title 49, United States Code, as amended by this Act.

(4) AFTER ACTION REVIEW.—Before entering into a memorandum of agreement under paragraph (2), the Secretary of Transportation and the Secretary of Homeland Security (acting through the Administrator of the Federal Emergency Management Agency), in consultation with State, local, and tribal governments (including public transportation systems) that have experienced a major disaster or emergency, shall review after action reports relating to major disasters, emergencies, and exercises, to identify areas where coordination between the Department of Transportation and the Department of Homeland Security and the provision of public transportation services should be improved.

(5) FACTORS FOR DECLARATIONS OF MAJOR DISASTERS AND EMERGENCIES.—The Administrator of the Federal Emergency Management Agency shall make available to State, local, and tribal governments, including public transportation systems, a description of the factors that the President considers in declaring a major disaster or emergency, including any pre-disaster emergency declaration policies.

(6) BRIEFINGS.—

(A) INITIAL BRIEFING.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall jointly brief the Committee on Banking, Housing, and Urban Affairs and the Committee on Homeland Security and Governmental Affairs of the Senate on the memorandum of agreement required under paragraph (2).

(B) QUARTERLY BRIEFINGS.—Each quarter of the 1-year period beginning on the date on which the Secretary of Transportation and the Secretary of Homeland Security enter into the memorandum of agreement required under paragraph (2), the Secretary of Transportation and the Secretary of Homeland Security shall jointly brief the Committee on Banking, Housing, and Urban Affairs and the Committee on Homeland Security and Governmental Affairs of the Senate on the implementation of the memorandum of agreement.

SEC. 20018. CONTRACT REQUIREMENTS.

Section 5325 of title 49, United States Code, is amended—

(1) in subsection (e), by striking paragraph (1) and inserting the following:

''(1) CONTRACTS.—A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for—

''(A) not more than 5 years after the date of the original contract for bus procurements; and

''(B) not more than 7 years after the date of the original contract for rail procurements, provided that such option does not allow for significant changes or alterations to the rolling stock.''.

(2) in subsection (h), by striking ''Federal Public Transportation Act of 2005'' and inserting ''Federal Public Transportation Act of 2012'';

(3) in subsection (j)(2)(C), by striking '', including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2)''; and

(4) by adding at the end the following:

''(k) VETERANS EMPLOYMENT.—Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.''.

SEC. 20019. TRANSIT ASSET MANAGEMENT.

Section 5326 of title 49, United States Code, is amended to read as follows:

''§ 5326. Transit asset management

''(a) DEFINITIONS.—In this section the following definitions shall apply:

''(1) CAPITAL ASSET.—The term 'capital asset' includes equipment, rolling stock, infrastructure, and facilities for use in public transportation and owned or leased by a recipient or subrecipient of Federal financial assistance under this chapter.

''(2) TRANSIT ASSET MANAGEMENT PLAN.—The term 'transit asset management plan' means a plan developed by a recipient of funding under this chapter that—

''(A) includes, at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization; and

''(B) the recipient certifies complies with the rule issued under this section.

''(3) TRANSIT ASSET MANAGEMENT SYSTEM.—The term 'transit asset management system' means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively throughout the life cycle of such assets.

''(b) TRANSIT ASSET MANAGEMENT SYSTEM.—The Secretary shall establish and implement a national transit asset management system, which shall include—

''(1) a definition of the term 'state of good repair' that includes objective standards for measuring the condition of capital assets of recipients, including equipment, rolling stock, infrastructure, and facilities;

''(2) a requirement that recipients and subrecipients of Federal financial assistance under this chapter develop a transit asset management plan;

''(3) a requirement that each designated recipient of Federal financial assistance under this chapter report on the condition of the system of the recipient and provide a description of any change in condition since the last report;

''(4) an analytical process or decision support tool for use by public transportation systems that—

''(A) allows for the estimation of capital investment needs of such systems over time; and

''(B) assists with asset investment prioritization by such systems; and

''(5) technical assistance to recipients of Federal financial assistance under this chapter.

''(c) PERFORMANCE MEASURES AND TARGETS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to establish performance measures based on the state of good repair standards established under subsection (b)(1).

''(2) TARGETS.—Not later than 3 months after the date on which the Secretary issues a final rule under paragraph (1), and each fiscal year thereafter, each recipient of Federal financial assistance under this chapter shall establish performance targets in relation to the performance measures established by the Secretary.

''(3) REPORTS.—Each designated recipient of Federal financial assistance under this chapter shall submit to the Secretary an annual report that describes—

''(A) the progress of the recipient during the fiscal year to which the report relates toward meeting the performance targets established under paragraph (2) for that fiscal year; and

''(B) the performance targets established by the recipient for the subsequent fiscal year.

''(d) RULEMAKING.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a final rule to implement the transit asset management system described in subsection (b).''.

SEC. 20020. PROJECT MANAGEMENT OVERSIGHT.

Section 5327 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''United States'' and all that follows through ''Secretary of Transportation'' and inserting the following: ''Federal financial assistance for a major capital project for public transportation under this chapter or any other provision of Federal law, a recipient must prepare a project management plan approved by the Secretary and carry out the project in accordance with the project management plan''; and

(B) in paragraph (12), by striking ''each month'' and inserting ''quarterly'';

(2) by striking subsections (c), (d), and (f);

(3) by inserting after subsection (b) the following:

''(c) ACCESS TO SITES AND RECORDS.—Each recipient of Federal financial assistance for public transportation under this chapter or any other provision of Federal law shall provide the Secretary and a contractor the Secretary chooses under section 5338(i) with access to the construction sites and records of the recipient when reasonably necessary.'';

(4) by redesignating subsection (e) as subsection (d); and

(5) in subsection (d), as so redesignated—

(A) in paragraph (1), by striking ''subsection (c) of this section'' and inserting ''section 5338(i)''; and

(B) in paragraph (2)—

(i) by striking ''preliminary engineering stage'' and inserting ''project development phase''; and

(ii) by striking ''another stage'' and inserting ''another phase''.

SEC. 20021. PUBLIC TRANSPORTATION SAFETY.

(a) PUBLIC TRANSPORTATION SAFETY PROGRAM.—Section 5329 of title 49, United States Code, is amended to read as follows:

''§ 5329. Public transportation safety program

''(a) DEFINITION.—In this section, the term 'recipient' means a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under this chapter.

''(b) NATIONAL PUBLIC TRANSPORTATION SAFETY PLAN.—

''(1) IN GENERAL.—The Secretary shall create and implement a national public transportation safety plan to improve the safety of all public transportation systems that receive funding under this chapter.

''(2) CONTENTS OF PLAN.—The national public transportation safety plan under paragraph (1) shall include—

''(A) safety performance criteria for all modes of public transportation;

''(B) the definition of the term 'state of good repair' established under section 5326(b);

''(C) minimum safety performance standards for public transportation vehicles used in revenue operations that—

''(i) do not apply to rolling stock otherwise regulated by the Secretary or any other Federal agency; and

''(ii) to the extent practicable, take into consideration—

''(I) relevant recommendations of the National Transportation Safety Board; and

''(II) recommendations of, and best practices standards developed by, the public transportation industry; and

''(D) a public transportation safety certification training program, as described in subsection (c).

''(c) PUBLIC TRANSPORTATION SAFETY CERTIFICATION TRAINING PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish a public transportation safety certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems and employees of public transportation agencies directly responsible for safety oversight.

''(2) INTERIM PROVISIONS.—Not later than 90 days after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall establish interim provisions for the certification and training of the personnel described in paragraph (1), which shall be in effect until the effective date of the final rule issued by the Secretary to implement this subsection.

''(d) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN.—

''(1) IN GENERAL.—Effective 1 year after the effective date of a final rule issued by the Secretary to carry out this subsection, each recipient or State, as described in paragraph (3), shall certify that the recipient or State has established a comprehensive agency safety plan that includes, at a minimum—

''(A) a requirement that the board of directors (or equivalent entity) of the recipient approve the agency safety plan and any updates to the agency safety plan;

''(B) methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the recipient;

''(C) strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;

''(D) a process and timeline for conducting an annual review and update of the safety plan of the recipient;

''(E) performance targets based on the safety performance criteria and state of good repair standards established under subparagraphs (A) and (B), respectively, of subsection (b)(2);

''(F) assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the recipient; and

''(G) a comprehensive staff training program for the operations personnel and personnel directly responsible for safety of the recipient that includes—

''(i) the completion of a safety training program; and

''(ii) continuing safety education and training.

''(2) INTERIM AGENCY SAFETY PLAN.—A system safety plan developed pursuant to part 659 of title 49, Code of Federal Regulations, as in effect on the date of enactment of the Federal Public Transportation Act of 2012, shall remain in effect until such time as this subsection takes effect.

''(3) PUBLIC TRANSPORTATION AGENCY SAFETY PLAN DRAFTING AND CERTIFICATION.—

''(A) SECTION 5311.—For a recipient receiving assistance under section 5311, a State safety plan may be drafted and certified by the recipient or a State.

''(B) SECTION 5307.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall issue a rule designating recipients of assistance under section 5307 that are small public transportation providers or systems that may have their State safety plans drafted or certified by a State.

''(e) STATE SAFETY OVERSIGHT PROGRAM.—

''(1) APPLICABILITY.—This subsection applies only to eligible States.

''(2) DEFINITION.—In this subsection, the term 'eligible State' means a State that has—

''(A) a rail fixed guideway public transportation system within the jurisdiction of the State that is not subject to regulation by the Federal Railroad Administration; or

''(B) a rail fixed guideway public transportation system in the engineering or construction phase of development within the jurisdiction of the State that will not be subject to regulation by the Federal Railroad Administration.

''(3) IN GENERAL.—In order to obligate funds apportioned under section 5338 to carry out this chapter, effective 3 years after the date on which a final rule under this subsection becomes effective, an eligible State shall have in effect a State safety oversight program approved by the Secretary under which the State—

''(A) assumes responsibility for overseeing rail fixed guideway public transportation safety;

''(B) adopts and enforces Federal and relevant State laws on rail fixed guideway public transportation safety;

''(C) establishes a State safety oversight agency;

''(D) determines, in consultation with the Secretary, an appropriate staffing level for the State safety oversight agency that is commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the eligible State;

''(E) requires that employees and other designated personnel of the eligible State safety oversight agency who are responsible for rail fixed guideway public transportation safety oversight are qualified to perform such functions through appropriate training, including successful completion of the public transportation safety certification training program established under subsection (c); and

''(F) prohibits any public transportation agency from providing funds to the State safety oversight agency or an entity designated by the eligible State as the State safety oversight agency under paragraph (4).

''(4) STATE SAFETY OVERSIGHT AGENCY.—

''(A) IN GENERAL.—Each State safety oversight program shall establish a State safety oversight agency that—

''(i) is financially and legally independent from any public transportation entity that the State safety oversight agency oversees;

''(ii) does not directly provide public transportation services in an area with a rail fixed guideway public transportation system subject to the requirements of this section;

''(iii) does not employ any individual who is also responsible for the administration of rail fixed guideway public transportation programs subject to the requirements of this section;

''(iv) has the authority to review, approve, oversee, and enforce the implementation by the rail fixed guideway public transportation agency of the public transportation agency safety plan required under subsection (d);

''(v) has investigative and enforcement authority with respect to the safety of rail fixed guideway public transportation systems of the eligible State;

''(vi) audits, at least once triennially, the compliance of the rail fixed guideway public transportation systems in the eligible State subject to this subsection with the public transportation agency safety plan required under subsection (d); and

''(vii) provides, at least once annually, a status report on the safety of the rail fixed guideway public transportation systems the State safety oversight agency oversees to—

''(I) the Federal Transit Administration;

''(II) the Governor of the eligible State; and

''(III) the board of directors, or equivalent entity, of any rail fixed guideway public transportation system that the State safety oversight agency oversees.

''(B) WAIVER.—At the request of an eligible State, the Secretary may waive clauses (i) and (iii) of subparagraph (A) for eligible States with 1 or more rail fixed guideway systems in revenue operations, design, or construction, that—

''(i) have fewer than 1,000,000 combined actual and projected rail fixed guideway revenue miles per year; or

''(ii) provide fewer than 10,000,000 combined actual and projected unlinked passenger trips per year.

''(5) PROGRAMS FOR MULTI-STATE RAIL FIXED GUIDEWAY PUBLIC TRANSPORTATION SYSTEMS.—An eligible State that has within the jurisdiction of the eligible State a rail fixed guideway public transportation system that operates in more than 1 eligible State shall—

''(A) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, ensure uniform safety standards and enforcement procedures that shall be in compliance with this section, and establish and implement a State safety oversight program approved by the Secretary; or

''(B) jointly with all other eligible States in which the rail fixed guideway public transportation system operates, designate an entity having characteristics consistent with the characteristics described in paragraph (3) to carry out the State safety oversight program approved by the Secretary.

''(6) GRANTS.—

''(A) IN GENERAL.—The Secretary shall make grants to eligible States to develop or carry out State safety oversight programs under this subsection. Grant funds may be used for program operational and administrative expenses, including employee training activities.

''(B) APPORTIONMENT.—

''(i) FORMULA.—The amount made available for State safety oversight under section 5336(h) shall be apportioned among eligible States under a formula to be established by the Secretary. Such formula shall take into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail fixed guideway systems not subject to regulation by the Federal Railroad Administration within each eligible State.

''(ii) ADMINISTRATIVE REQUIREMENTS.—Grant funds apportioned to States under this paragraph shall be subject to uniform administrative requirements for grants and cooperative agreements to State and local governments under part 18 of title 49, Code of Federal Regulations, and shall be subject to the requirements of this chapter as the Secretary determines appropriate.

''(C) GOVERNMENT SHARE.—

''(i) IN GENERAL.—The Government share of the reasonable cost of a State safety oversight program developed or carried out using a grant under this paragraph shall be 80 percent.

''(ii) IN-KIND CONTRIBUTIONS.—Any calculation of the non-Government share of a State safety oversight program shall include in-kind contributions by an eligible State.

''(iii) NON-GOVERNMENT SHARE.—The non-Government share of the cost of a State safety oversight program developed or carried out using a grant under this paragraph may not be met by—

''(I) any Federal funds;

''(II) any funds received from a public transportation agency; or

''(III) any revenues earned by a public transportation agency.

''(iv) SAFETY TRAINING PROGRAM.—Recipients of funds made available to carry out sections 5307 and 5311 may use not more than 0.5 percent of their formula funds to pay not more than 80 percent of the cost of participation in the public transportation safety certification training program established under subsection (c), by an employee of a State safety oversight agency or a recipient who is directly responsible for safety oversight.

''(7) CERTIFICATION PROCESS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall determine whether or not each State safety oversight program meets the requirements of this subsection and the State safety oversight program is adequate to promote the purposes of this section.

''(B) ISSUANCE OF CERTIFICATIONS AND DENIALS.—The Secretary shall issue a certification to each eligible State that the Secretary determines under subparagraph (A) adequately meets the requirements of this subsection, and shall issue a denial of certification to each eligible State that the Secretary determines under subparagraph (A) does not adequately meet the requirements of this subsection.

''(C) DISAPPROVAL.—If the Secretary determines that a State safety oversight program does not meet the requirements of this subsection and denies certification, the Secretary shall transmit to the eligible State a written explanation and allow the eligible State to modify and resubmit the State safety oversight program for approval.

''(D) FAILURE TO CORRECT.—If the Secretary determines that a modification by an eligible State of the State safety oversight program is not sufficient to certify the program, the Secretary—

''(i) shall notify the Governor of the eligible State of such denial of certification and failure to adequately modify the program, and shall request that the Governor take all possible actions to correct deficiencies in the program to ensure the certification of the program; and

''(ii) may—

''(I) withhold funds available under paragraph (6) in an amount determined by the Secretary;

''(II) withhold not more than 5 percent of the amount required to be appropriated for use in a State or urbanized area in the State under section 5307 of this title, until the State safety oversight program has been certified; or

''(III) require fixed guideway public transportation systems under such State safety oversight program to provide up to 100 percent of Federal assistance made available under this chapter only for safety-related improvements on such systems, until the State safety oversight program has been certified.

''(8) EVALUATION OF PROGRAM AND ANNUAL REPORT.—The Secretary shall continually evaluate the implementation of a State safety oversight program by a State safety oversight agency, and shall submit on or before July 1 of each year to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on—

''(A) the amount of funds apportioned to each eligible State; and

''(B) the certification status of each State safety oversight program, including what steps a State program that has been denied certification must take in order to be certified.

''(9) FEDERAL OVERSIGHT.—The Secretary shall—

''(A) oversee the implementation of each State safety oversight program under this subsection;

''(B) audit the operations of each State safety oversight agency at least once triennially; and

''(C) issue rules to carry out this subsection.

''(f) AUTHORITY OF SECRETARY.—In carrying out this section, the Secretary may—

''(1) conduct inspections, investigations, audits, examinations, and testing of the equipment, facilities, rolling stock, and operations of the public transportation system of a recipient;

''(2) make reports and issue directives with respect to the safety of the public transportation system of a recipient;

''(3) in conjunction with an accident investigation or an investigation into a pattern or practice of conduct that negatively affects public safety, issue a subpoena to, and take the deposition of, any employee of a recipient or a State safety oversight agency, if—

''(A) before the issuance of the subpoena, the Secretary requests a determination by the Attorney General of the United States as to whether the subpoena will interfere with an ongoing criminal investigation; and

''(B) the Attorney General—

''(i) determines that the subpoena will not interfere with an ongoing criminal investigation; or

''(ii) fails to make a determination under clause (i) before the date that is 30 days after the date on which the Secretary makes a request under subparagraph (A);

''(4) require the production of documents by, and prescribe recordkeeping and reporting requirements for, a recipient or a State safety oversight agency;

''(5) investigate public transportation accidents and incidents and provide guidance to recipients regarding prevention of accidents and incidents;

''(6) at reasonable times and in a reasonable manner, enter and inspect equipment, facilities, rolling stock, operations, and relevant records of the public transportation system of a recipient; and

''(7) issue rules to carry out this section.

''(g) ENFORCEMENT ACTIONS.—

''(1) TYPES OF ENFORCEMENT ACTIONS.—The Secretary may take enforcement action against an eligible State, as defined in subsection (e), that does not comply with Federal law with respect to the safety of the public transportation system, including—

''(A) issuing directives;

''(B) requiring more frequent oversight of the recipient by a State safety oversight agency or the Secretary;

''(C) imposing more frequent reporting requirements; and

''(D) requiring that any Federal financial assistance provided under this chapter be spent on correcting safety deficiencies identified by the Secretary or the State safety oversight agency before such funds are spent on other projects.

''(2) USE OR WITHHOLDING OF FUNDS.—

''(A) IN GENERAL.—The Secretary may require the use of funds in accordance with paragraph (1)(D) only if the Secretary finds that a recipient is engaged in a pattern or practice of serious safety violations or has otherwise refused to comply with Federal law relating to the safety of the public transportation system.

''(B) NOTICE.—Before withholding funds from a recipient, the Secretary shall provide to the recipient—

''(i) written notice of a violation and the amount proposed to be withheld; and

''(ii) a reasonable period of time within which the recipient may address the violation or propose and initiate an alternative means of compliance that the Secretary determines is acceptable.

''(h) COST-BENEFIT ANALYSIS.—

''(1) ANALYSIS REQUIRED.—In carrying out this section, the Secretary shall take into consideration the costs and benefits of each action the Secretary proposes to take under this section.

''(2) WAIVER.—The Secretary may waive the requirement under this subsection if the Secretary determines that such a waiver is in the public interest.

''(i) CONSULTATION BY THE SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall consult with the Secretary of Transportation before the Secretary of Homeland Security issues a rule or order that the Secretary of Transportation determines affects the safety of public transportation design, construction, or operations.

''(j) ACTIONS UNDER STATE LAW.—

''(1) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with—

''(A) a Federal standard of care established by a regulation or order issued by the Secretary under this section; or

''(B) its own program, rule, or standard that it created pursuant to a rule or order issued by the Secretary.

''(2) EFFECTIVE DATE.—This subsection shall apply to any cause of action under State law arising from an event or activity occurring on or after the date of enactment of the Federal Public Transportation Act of 2012.

''(3) JURISDICTION.—Nothing in this section shall be construed to create a cause of action under Federal law on behalf of an injured party or confer Federal question jurisdiction for a State law cause of action.

''(k) NATIONAL PUBLIC TRANSPORTATION SAFETY REPORT.—Not later than 3 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

''(1) analyzes public transportation safety trends among the States and documents the

most effective safety programs implemented using grants under this section; and

''(2) describes the effect on public transportation safety of activities carried out using grants under this section.''.

(b) BUS SAFETY STUDY.—

(1) DEFINITION.—In this subsection, the term ''highway route'' means a route where 50 percent or more of the route is on roads having a speed limit of more than 45 miles per hour.

(2) STUDY.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) examines the safety of public transportation buses that travel on highway routes;

(B) examines laws and regulations that apply to commercial over-the-road buses; and

(C) makes recommendations as to whether additional safety measures should be required for public transportation buses that travel on highway routes.

SEC. 20022. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

Section 5331 of title 49, United States Code, is amended by striking subsection (g) and inserting the following:

''(g) CONDITIONS ON FEDERAL ASSISTANCE.—

''(1) INELIGIBILITY FOR ASSISTANCE.—A person that receives funds under this chapter is not eligible for financial assistance under section 5307, 5309, or 5311 of this title if the person is required, under regulations the Secretary prescribes under this section, to establish a program of alcohol and controlled substances testing and does not establish the program in accordance with this section.

''(2) ADDITIONAL REMEDIES.—If the Secretary determines that a person that receives funds under this chapter is not in compliance with regulations prescribed under this section, the Secretary may bar the person from receiving Federal transit assistance in an amount the Secretary considers appropriate.''.

SEC. 20023. NONDISCRIMINATION.

(a) AMENDMENTS.—Section 5332 of title 49, United States Code, is amended—

(1) in subsection (b)—

(A) by striking ''creed'' and inserting ''religion''; and

(B) by inserting ''disability,'' after ''sex,''; and

(2) in subsection (d)(3), by striking ''and'' and inserting ''or''.

(b) EVALUATION AND REPORT.—

(1) EVALUATION.—The Comptroller General of the United States shall evaluate the progress and effectiveness of the Federal Transit Administration in assisting recipients of assistance under chapter 53 of title 49, United States Code, to comply with section 5332(b) of title 49, including—

(A) by reviewing discrimination complaints, reports, and other relevant information collected or prepared by the Federal Transit Administration or recipients of assistance from the Federal Transit Administration pursuant to any applicable civil rights statute, regulation, or other requirement; and

(B) by reviewing the process that the Federal Transit Administration uses to resolve discrimination complaints filed by members of the public.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report concerning the evaluation under paragraph (1) that includes—

(A) a description of the ability of the Federal Transit Administration to address discrimination and foster equal opportunities in federally funded public transportation projects, programs, and activities;

(B) recommendations for improvements if the Comptroller General determines that improvements are necessary; and

(C) information upon which the evaluation under paragraph (1) is based.

SEC. 20024. ADMINISTRATIVE PROVISIONS.

Section 5334 of title 49, United States Code, is amended—

(1) in subsection (a)(1), by striking ''under sections 5307 and 5309–5311 of this title'' and inserting ''that receives Federal financial assistance under this chapter'';

(2) in subsection (b)(1)—

(A) by inserting after ''emergency,'' the following: ''or for purposes of establishing and enforcing a program to improve the safety of public transportation systems in the United States as described in section 5329,''; and

(B) by striking ''chapter, nor may the Secretary'' and inserting ''chapter. The Secretary may not'';

(3) in subsection (c)(4), by striking ''section (except subsection (i)) and sections 5318(e), 5323(a)(2), 5325(a), 5325(b), and 5325(f)'' and inserting ''subsection'';

(4) in subsection (h)(3), by striking ''another'' and inserting ''any other'';

(5) in subsection (i)(1), by striking ''title 23 shall'' and inserting ''title 23 may'';

(6) by striking subsection (j); and

(7) by redesignating subsections (k) and (l) as subsections (j) and (k), respectively.

SEC. 20025. NATIONAL TRANSIT DATABASE.

(a) AMENDMENTS.—Section 5335 of title 49, United States Code, is amended—

(1) in subsection (a), by striking ''public transportation financial and operating information'' and inserting ''public transportation financial, operating, and asset condition information''; and

(2) by adding at the end the following:

''(c) DATA REQUIRED TO BE REPORTED.—The recipient of a grant under this chapter shall report to the Secretary, for inclusion in the National Transit Database, any information relating to a transit asset inventory or condition assessment conducted by the recipient.''.

(b) DATA ACCURACY AND RELIABILITY.—The Secretary shall—

(1) develop and implement appropriate internal control activities to ensure that public transportation safety incident data is reported accurately and reliably by public transportation systems and State safety oversight agencies to the State Safety Oversight Rail Accident Database; and

(2) report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives within 1 year of enactment of the Federal Public Transportation Act of 2012 on the steps taken to improve the accuracy and reliability of public transportation safety incident data reported to the State Safety Oversight Rail Accident Database.

SEC. 20026. APPORTIONMENT OF APPROPRIATIONS FOR FORMULA GRANTS.

Section 5336 of title 49, United States Code, is amended to read as follows:

''§ 5336. Apportionment of appropriations for formula grants

''(a) BASED ON URBANIZED AREA POPULATION.—Of the amount apportioned under subsection (h)(4) to carry out section 5307—

''(1) 9.32 percent shall be apportioned each fiscal year only in urbanized areas with a population of less than 200,000 so that each of those areas is entitled to receive an amount equal to—

''(A) 50 percent of the total amount apportioned multiplied by a ratio equal to the population of the area divided by the total population of all urbanized areas with populations of less than 200,000 as shown in the most recent decennial census; and

''(B) 50 percent of the total amount apportioned multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary, of the number of inhabitants in each square mile; and

''(2) 90.68 percent shall be apportioned each fiscal year only in urbanized areas with populations of at least 200,000 as provided in subsections (b) and (c) of this section.

''(b) BASED ON FIXED GUIDEWAY VEHICLE REVENUE MILES, DIRECTIONAL ROUTE MILES, AND PASSENGER MILES.—(1) In this subsection, 'fixed guideway vehicle revenue miles' and 'fixed guideway directional route miles' include passenger ferry operations directly or under contract by the designated recipient.

''(2) Of the amount apportioned under subsection (a)(2) of this section, 33.29 percent shall be apportioned as follows:

''(A) 95.61 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

''(i) 60 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway vehicle revenue miles attributable to the area, as established by the Secretary, divided by the total number of all fixed guideway vehicle revenue miles attributable to all areas; and

''(ii) 40 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway directional route miles attributable to the area, established by the Secretary, divided by the total number of all fixed guideway directional route miles attributable to all areas.

An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least .75 percent of the total amount apportioned under this subparagraph.

''(B) 4.39 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

''(i) the number of fixed guideway vehicle passenger miles traveled multiplied by the number of fixed guideway vehicle passenger miles traveled for each dollar of operating cost in an area; divided by

''(ii) the total number of fixed guideway vehicle passenger miles traveled multiplied by the total number of fixed guideway vehicle passenger miles traveled for each dollar of operating cost in all areas.

An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least .75 percent of the total amount apportioned under this subparagraph.

''(C) Under subparagraph (A) of this paragraph, fixed guideway vehicle revenue or directional route miles, and passengers served on those miles, in an urbanized area with a population of less than 200,000, where the miles and passengers served otherwise would be attributable to an urbanized area with a population of at least 1,000,000 in an adjacent State, are attributable to the governmental authority in the State in which the urbanized area with a population of less than 200,000 is located. The authority is deemed an urbanized area with a population of at least 200,000 if the authority makes a contract for the service.

''(D) A recipient's apportionment under subparagraph (A)(i) of this paragraph may not be reduced if the recipient, after satisfying the Secretary that energy or operating efficiencies would be achieved, reduces vehicle revenue miles but provides the same frequency of revenue service to the same number of riders.

''(E) For purposes of subparagraph (A) and section 5337(c)(3), the Secretary shall deem to be attributable to an urbanized area not less than 22.27 percent of the fixed guideway vehicle revenue miles or fixed guideway directional route

miles in the public transportation system of a recipient that are located outside the urbanized area for which the recipient receives funds, in addition to the fixed guideway vehicle revenue miles or fixed guideway directional route miles of the recipient that are located inside the urbanized area.

''(c) BASED ON BUS VEHICLE REVENUE MILES AND PASSENGER MILES.—Of the amount apportioned under subsection (a)(2) of this section, 66.71 percent shall be apportioned as follows:

''(1) 90.8 percent of the total amount apportioned under this subsection shall be apportioned as follows:

''(A) 73.39 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 1,000,000 is entitled to receive an amount equal to—

''(i) 50 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus vehicle revenue miles operated in or directly serving the urbanized area divided by the total bus vehicle revenue miles attributable to all areas;

''(ii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown in the most recent decennial census; and

''(iii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary, of the number of inhabitants in each square mile.

''(B) 26.61 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 200,000 but not more than 999,999 is entitled to receive an amount equal to—

''(i) 50 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus vehicle revenue miles operated in or directly serving the urbanized area divided by the total bus vehicle revenue miles attributable to all areas;

''(ii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the most recent decennial census; and

''(iii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary, of the number of inhabitants in each square mile.

''(2) 9.2 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

''(A) the number of bus passenger miles traveled multiplied by the number of bus passenger miles traveled for each dollar of operating cost in an area; divided by

''(B) the total number of bus passenger miles traveled multiplied by the total number of bus passenger miles traveled for each dollar of operating cost in all areas.

''(d) DATE OF APPORTIONMENT.—The Secretary shall—

''(1) apportion amounts appropriated under section 5338(a)(2)(C) of this title to carry out section 5307 of this title not later than the 10th day after the date the amounts are appropriated or October 1 of the fiscal year for which the amounts are appropriated, whichever is later; and

''(2) publish apportionments of the amounts, including amounts attributable to each urbanized area with a population of more than 50,000 and amounts attributable to each State of a multistate urbanized area, on the apportionment date.

''(e) AMOUNTS NOT APPORTIONED TO DESIGNATED RECIPIENTS.—The Governor of a State may expend in an urbanized area with a population of less than 200,000 an amount apportioned under this section that is not apportioned to a designated recipient, as defined in section 5302(4).

''(f) TRANSFERS OF APPORTIONMENTS.—(1) The Governor of a State may transfer any part of the State's apportionment under subsection (a)(1) of this section to supplement amounts apportioned to the State under section 5311(c)(3). The Governor may make a transfer only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was apportioned under this section.

''(2) The Governor of a State may transfer any part of the State's apportionment under section 5311(c)(3) to supplement amounts apportioned to the State under subsection (a)(1) of this section.

''(3) The Governor of a State may use throughout the State amounts of a State's apportionment remaining available for obligation at the beginning of the 90-day period before the period of the availability of the amounts expires.

''(4) A designated recipient for an urbanized area with a population of at least 200,000 may transfer a part of its apportionment under this section to the Governor of a State. The Governor shall distribute the transferred amounts to urbanized areas under this section.

''(5) Capital and operating assistance limitations applicable to the original apportionment apply to amounts transferred under this subsection.

''(g) PERIOD OF AVAILABILITY TO RECIPIENTS.—An amount apportioned under this section may be obligated by the recipient for 5 years after the fiscal year in which the amount is apportioned. Not later than 30 days after the end of the 5-year period, an amount that is not obligated at the end of that period shall be added to the amount that may be apportioned under this section in the next fiscal year.

''(h) APPORTIONMENTS.—Of the amounts made available for each fiscal year under section 5338(a)(2)(C)—

''(1) $30,000,000 shall be set aside to carry out section 5307(h);

''(2) 3.07 percent shall be apportioned to urbanized areas in accordance with subsection (j);

''(3) of amounts not apportioned under paragraphs (1) and (2), 1.5 percent shall be apportioned to urbanized areas with populations of less than 200,000 in accordance with subsection (i);

''(4) 0.5 percent shall be apportioned to eligible States for State safety oversight program grants in accordance with section 5329(e)(6); and

''(5) any amount not apportioned under paragraphs (1), (2), (3), and (4) shall be apportioned to urbanized areas in accordance with subsections (a) through (c).

''(i) SMALL TRANSIT INTENSIVE CITIES FORMULA.—

''(1) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) ELIGIBLE AREA.—The term 'eligible area' means an urbanized area with a population of less than 200,000 that meets or exceeds in one or more performance categories the industry average for all urbanized areas with a population of at least 200,000 but not more than 999,999, as determined by the Secretary in accordance with subsection (c)(2).

''(B) PERFORMANCE CATEGORY.—The term 'performance category' means each of the following:

''(i) Passenger miles traveled per vehicle revenue mile.

''(ii) Passenger miles traveled per vehicle revenue hour.

''(iii) Vehicle revenue miles per capita.

''(iv) Vehicle revenue hours per capita.

''(v) Passenger miles traveled per capita.

''(vi) Passengers per capita.

''(2) APPORTIONMENT.—

''(A) APPORTIONMENT FORMULA.—The amount to be apportioned under subsection (h)(3) shall be apportioned among eligible areas in the ratio that—

''(i) the number of performance categories for which each eligible area meets or exceeds the industry average in urbanized areas with a population of at least 200,000 but not more than 999,999; bears to

''(ii) the aggregate number of performance categories for which all eligible areas meet or exceed the industry average in urbanized areas with a population of at least 200,000 but not more than 999,999.

''(B) DATA USED IN FORMULA.—The Secretary shall calculate apportionments under this subsection for a fiscal year using data from the national transit database used to calculate apportionments for that fiscal year under this section.

''(j) APPORTIONMENT FORMULA.—The amounts apportioned under subsection (h)(2) shall be apportioned among urbanized areas as follows:

''(1) 75 percent of the funds shall be apportioned among designated recipients for urbanized areas with a population of 200,000 or more in the ratio that—

''(A) the number of eligible low-income individuals in each such urbanized area; bears to

''(B) the number of eligible low-income individuals in all such urbanized areas.

''(2) 25 percent of the funds shall be apportioned among designated recipients for urbanized areas with a population of less than 200,000 in the ratio that—

''(A) the number of eligible low-income individuals in each such urbanized area; bears to

''(B) the number of eligible low-income individuals in all such urbanized areas.''.

SEC. 20027. STATE OF GOOD REPAIR GRANTS.

Section 5337 of title 49, United States Code, is amended to read as follows:

''§ 5337. State of good repair grants

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) FIXED GUIDEWAY.—The term 'fixed guideway' means a public transportation facility—

''(A) using and occupying a separate right-of-way for the exclusive use of public transportation;

''(B) using rail;

''(C) using a fixed catenary system;

''(D) for a passenger ferry system; or

''(E) for a bus rapid transit system.

''(2) STATE.—The term 'State' means the 50 States, the District of Columbia, and Puerto Rico.

''(3) STATE OF GOOD REPAIR.—The term 'state of good repair' has the meaning given that term by the Secretary, by rule, under section 5326(b).

''(4) TRANSIT ASSET MANAGEMENT PLAN.—The term 'transit asset management plan' means a plan developed by a recipient of funding under this chapter that—

''(A) includes, at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization; and

''(B) the recipient certifies that the recipient complies with the rule issued under section 5326(d).

''(b) GENERAL AUTHORITY.—

''(1) ELIGIBLE PROJECTS.—The Secretary may make grants under this section to assist State and local governmental authorities in financing capital projects to maintain public transportation systems in a state of good repair, including projects to replace and rehabilitate—

''(A) rolling stock;

''(B) track;

''(C) line equipment and structures;

''(D) signals and communications;

''(E) power equipment and substations;

''(F) passenger stations and terminals;

''(G) security equipment and systems;

''(H) maintenance facilities and equipment;

''(I) operational support equipment, including computer hardware and software;

''(J) development and implementation of a transit asset management plan; and

''(K) other replacement and rehabilitation projects the Secretary determines appropriate.

''(2) INCLUSION IN PLAN.—A recipient shall include a project carried out under paragraph (1) in the transit asset management plan of the recipient upon completion of the plan.

''(c) HIGH INTENSITY FIXED GUIDEWAY STATE OF GOOD REPAIR FORMULA.—

''(1) IN GENERAL.—Of the amount authorized or made available under section 5338(a)(2)(I), 97.15 percent shall be apportioned to recipients in accordance with this subsection.

''(2) AREA SHARE.—

''(A) IN GENERAL.—50 percent of the amount described in paragraph (1) shall be apportioned for fixed guideway systems in accordance with this paragraph.

''(B) SHARE.—A recipient shall receive an amount equal to the amount described in subparagraph (A), multiplied by the amount the recipient would have received under this section, as in effect for fiscal year 2011, if the amount had been calculated in accordance with section 5336(b)(1) and using the definition of the term 'fixed guideway' under subsection (a) of this section, as such sections are in effect on the day after the date of enactment of the Federal Public Transportation Act of 2012, and divided by the total amount apportioned for all areas under this section for fiscal year 2011.

''(C) RECIPIENT.—For purposes of this paragraph, the term 'recipient' means an entity that received funding under this section, as in effect for fiscal year 2011.

''(3) VEHICLE REVENUE MILES AND DIRECTIONAL ROUTE MILES.—

''(A) IN GENERAL.—50 percent of the amount described in paragraph (1) shall be apportioned to recipients in accordance with this paragraph.

''(B) VEHICLE REVENUE MILES.—A recipient in an urbanized area shall receive an amount equal to 60 percent of the amount described in subparagraph (A), multiplied by the number of fixed guideway vehicle revenue miles attributable to the urbanized area, as established by the Secretary, divided by the total number of all fixed guideway vehicle revenue miles attributable to all urbanized areas.

''(C) DIRECTIONAL ROUTE MILES.—A recipient in an urbanized area shall receive an amount equal to 40 percent of the amount described in subparagraph (A), multiplied by the number of fixed guideway directional route miles attributable to the urbanized area, as established by the Secretary, divided by the total number of all fixed guideway directional route miles attributable to all urbanized areas.

''(4) LIMITATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the share of the total amount apportioned under this subsection that is apportioned to an area under this subsection shall not decrease by more than 0.25 percentage points compared to the share apportioned to the area under this subsection in the previous fiscal year.

''(B) SPECIAL RULE FOR FISCAL YEAR 2013.—In fiscal year 2013, the share of the total amount apportioned under this subsection that is apportioned to an area under this subsection shall not decrease by more than 0.25 percentage points compared to the share that would have been apportioned to the area under this section, as in effect for fiscal year 2011, if the share had been calculated using the definition of the term 'fixed guideway' under subsection (a) of this section, as in effect on the day after the date of enactment of the Federal Public Transportation Act of 2012.

''(5) USE OF FUNDS.—Amounts made available under this subsection shall be available for the exclusive use of fixed guideway projects.

''(6) RECEIVING APPORTIONMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), for an area with a fixed guideway system, the amounts provided under this subsection shall be apportioned to the designated recipient for the urbanized area in which the system operates.

''(B) EXCEPTION.—An area described in the amendment made by section 3028(a) of the Transportation Equity Act for the 21st Century (Public Law 105–178; 112 Stat. 366) shall receive an individual apportionment under this subsection.

''(7) APPORTIONMENT REQUIREMENTS.—For purposes of determining the number of fixed guideway vehicle revenue miles or fixed guideway directional route miles attributable to an urbanized area for a fiscal year under this subsection, only segments of fixed guideway systems placed in revenue service not later than 7 years before the first day of the fiscal year shall be deemed to be attributable to an urbanized area.

''(d) HIGH INTENSITY MOTORBUS STATE OF GOOD REPAIR.—

''(1) DEFINITION.—For purposes of this subsection, the term 'high intensity motorbus' means public transportation that is provided on a facility with access for other high-occupancy vehicles.

''(2) APPORTIONMENT.—Of the amount authorized or made available under section 5338(a)(2)(I), 2.85 percent shall be apportioned to urbanized areas for high intensity motorbus state of good repair in accordance with this subsection.

''(3) VEHICLE REVENUE MILES AND DIRECTIONAL ROUTE MILES.—

''(A) IN GENERAL.—The amount described in paragraph (2) shall be apportioned to each area in accordance with this paragraph.

''(B) VEHICLE REVENUE MILES.—Each area shall receive an amount equal to 60 percent of the amount described in subparagraph (A), multiplied by the number of high intensity motorbus vehicle revenue miles attributable to the area, as established by the Secretary, divided by the total number of all high intensity motorbus vehicle revenue miles attributable to all areas.

''(C) DIRECTIONAL ROUTE MILES.—Each area shall receive an amount equal to 40 percent of the amount described in subparagraph (A), multiplied by the number of high intensity motorbus directional route miles attributable to the area, as established by the Secretary, divided by the total number of all high intensity motorbus directional route miles attributable to all areas.

''(4) APPORTIONMENT REQUIREMENTS.—For purposes of determining the number of high intensity motorbus vehicle revenue miles or high intensity motorbus directional route miles attributable to an urbanized area for a fiscal year under this subsection, only segments of high intensity motorbus systems placed in revenue service not later than 7 years before the first day of the fiscal year shall be deemed to be attributable to an urbanized area.''.

SEC. 20028. AUTHORIZATIONS.

Section 5338 of title 49, United States Code, is amended to read as follows:

''§5338. Authorizations

''(a) FORMULA GRANTS.—

''(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5305, 5307, 5310, 5311, 5318, 5322(d), 5335, 5337, 5339, and 5340, and section 20005(b) of the Federal Public Transportation Act of 2012, $8,478,000,000 for fiscal year 2013 and $8,595,000,000 for fiscal year 2014.

''(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1)—

''(A) $126,900,000 for fiscal year 2013 and $128,800,000 for fiscal year 2014 shall be available to carry out section 5305;

''(B) $10,000,000 for each of fiscal years 2013 and 2014 shall be available to carry out section 20005(b) of the Federal Public Transportation Act of 2012;

''(C) $4,397,950,000 for fiscal year 2013 and $4,458,650,000 for fiscal year 2014 shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307;

''(D) $254,800,000 for fiscal year 2013 and $258,300,000 for fiscal year 2014 shall be available to provide financial assistance for services for the enhanced mobility of seniors and individuals with disabilities under section 5310;

''(E) $599,500,000 for fiscal year 2013 and $607,800,000 for fiscal year 2014 shall be available to provide financial assistance for rural areas under section 5311, of which not less than $30,000,000 for fiscal year 2013 and $30,000,000 for fiscal year 2014 shall be available to carry out section 5311(c)(1) and $20,000,000 for fiscal year 2013 and $20,000,000 for fiscal year 2014 shall be available to carry out section 5311(c)(2);

''(F) $3,000,000 for each of fiscal years 2013 and 2014 shall be available for bus testing under section 5318;

''(G) $5,000,000 for each of fiscal years 2013 and 2014 shall be available for the national transit institute under section 5322(d);

''(H) $3,850,000 for each of fiscal years 2013 and 2014 shall be available to carry out section 5335;

''(I) $2,136,300,000 for fiscal year 2013 and $2,165,900,000 for fiscal year 2014 shall be available to carry out section 5337;

''(J) $422,000,000 for fiscal year 2013 and $427,800,000 for fiscal year 2014 shall be available for the bus and bus facilities program under section 5339; and

''(K) $518,700,000 for fiscal year 2013 and $525,900,000 for fiscal year 2014 shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and rural areas under section 5311.

''(b) RESEARCH, DEVELOPMENT DEMONSTRATION AND DEPLOYMENT PROJECTS.—There are authorized to be appropriated to carry out section 5312, $70,000,000 for fiscal year 2013 and $70,000,000 for fiscal year 2014.

''(c) TRANSIT COOPERATIVE RESEARCH PROGRAM.—There are authorized to be appropriated to carry out section 5313, $7,000,000 for fiscal year 2013 and $7,000,000 for fiscal year 2014.

''(d) TECHNICAL ASSISTANCE AND STANDARDS DEVELOPMENT.—There are authorized to be appropriated to carry out section 5314, $7,000,000 for fiscal year 2013 and $7,000,000 for fiscal year 2014.

''(e) HUMAN RESOURCES AND TRAINING.—There are authorized to be appropriated to carry out subsections (a), (b), (c), and (e) of section 5322, $5,000,000 for fiscal year 2013 and $5,000,000 for fiscal year 2014.

''(f) EMERGENCY RELIEF PROGRAM.—There are authorized to be appropriated such sums as are necessary to carry out section 5324.

''(g) CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309, $1,907,000,000 for fiscal year 2013 and $1,907,000,000 for fiscal year 2014.

''(h) ADMINISTRATION.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out section 5334, $104,000,000 for fiscal year 2013 and $104,000,000 for fiscal year 2014.

''(2) SECTION 5329.—Of the amounts authorized to be appropriated under paragraph (1), not less than $5,000,000 shall be available to carry out section 5329.

''(3) SECTION 5326.—Of the amounts made available under paragraph (2), not less than $1,000,000 shall be available to carry out section 5326.

''(i) OVERSIGHT.—

''(1) IN GENERAL.—Of the amounts made available to carry out this chapter for a fiscal year, the Secretary may use not more than the following amounts for the activities described in paragraph (2):

''(A) 0.5 percent of amounts made available to carry out section 5305.

''(B) 0.75 percent of amounts made available to carry out section 5307.

''(C) 1 percent of amounts made available to carry out section 5309.

''(D) 1 percent of amounts made available to carry out section 601 of the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110–432; 126 Stat. 4968).

''(E) 0.5 percent of amounts made available to carry out section 5310.

''(F) 0.5 percent of amounts made available to carry out section 5311.

''(G) 0.75 percent of amounts made available to carry out section 5337(c).

''(2) ACTIVITIES.—The activities described in this paragraph are as follows:

''(A) Activities to oversee the construction of a major capital project.

''(B) Activities to review and audit the safety and security, procurement, management, and financial compliance of a recipient or subrecipient of funds under this chapter.

''(C) Activities to provide technical assistance generally, and to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section.

''(3) GOVERNMENT SHARE OF COSTS.—The Government shall pay the entire cost of carrying out a contract under this subsection.

''(4) AVAILABILITY OF CERTAIN FUNDS.—Funds made available under paragraph (1)(C) shall be made available to the Secretary before allocating the funds appropriated to carry out any project under a full funding grant agreement.

''(j) GRANTS AS CONTRACTUAL OBLIGATIONS.—

''(1) GRANTS FINANCED FROM HIGHWAY TRUST FUND.—A grant or contract that is approved by the Secretary and financed with amounts made available from the Mass Transit Account of the Highway Trust Fund pursuant to this section is a contractual obligation of the Government to pay the Government share of the cost of the project.

''(2) GRANTS FINANCED FROM GENERAL FUND.—A grant or contract that is approved by the Secretary and financed with amounts appropriated in advance from the General Fund of the Treasury pursuant to this section is a contractual obligation of the Government to pay the Government share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

''(k) AVAILABILITY OF AMOUNTS.—Amounts made available by or appropriated under this section shall remain available until expended.''.

SEC. 20029. BUS AND BUS FACILITIES FORMULA GRANTS.

(a) IN GENERAL.—Section 5339 of title 49, United States Code, is amended to read as follows:

''§ 5339. Bus and bus facilities formula grants

''(a) GENERAL AUTHORITY.—The Secretary may make grants under this section to assist eligible recipients described in subsection (c)(1) in financing capital projects—

''(1) to replace, rehabilitate, and purchase buses and related equipment; and

''(2) to construct bus-related facilities.

''(b) GRANT REQUIREMENTS.—The requirements of section 5307 apply to recipients of grants made under this section.

''(c) ELIGIBLE RECIPIENTS AND SUBRECIPIENTS.—

''(1) RECIPIENTS.—Eligible recipients under this section are designated recipients that operate fixed route bus service or that allocate funding to fixed route bus operators.

''(2) SUBRECIPIENTS.—A designated recipient that receives a grant under this section may allocate amounts of the grant to subrecipients that are public agencies or private nonprofit organizations engaged in public transportation.

''(d) DISTRIBUTION OF GRANT FUNDS.—Funds allocated under section 5338(a)(2)(J) shall be distributed as follows:

''(1) NATIONAL DISTRIBUTION.—$65,500,000 shall be allocated to all States and territories, with each State receiving $1,250,000 and each territory receiving $500,000.

''(2) DISTRIBUTION USING POPULATION AND SERVICE FACTORS.—The remainder of the funds not otherwise distributed under paragraph (1) shall be allocated pursuant to the formula set forth in section 5336 other than subsection (b).

''(e) TRANSFERS OF APPORTIONMENTS.—

''(1) TRANSFER FLEXIBILITY FOR NATIONAL DISTRIBUTION FUNDS.—The Governor of a State may transfer any part of the State's apportionment under subsection (d)(1) to supplement amounts apportioned to the State under section 5311(c) of this title or amounts apportioned to urbanized areas under subsections (a) and (c) of section 5336 of this title.

''(2) TRANSFER FLEXIBILITY FOR POPULATION AND SERVICE FACTORS FUNDS.—The Governor of a State may expend in an urbanized area with a population of less than 200,000 any amounts apportioned under subsection (d)(2) that are not allocated to designated recipients in urbanized areas with a population of 200,000 or more.

''(f) GOVERNMENT'S SHARE OF COSTS.—

''(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall be for 80 percent of the net capital costs of the project. A recipient of a grant under this section may provide additional local matching amounts.

''(2) REMAINING COSTS.—The remainder of the net project cost shall be provided—

''(A) in cash from non-Government sources other than revenues from providing public transportation services;

''(B) from revenues derived from the sale of advertising and concessions;

''(C) from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital; or

''(D) from amounts received under a service agreement with a State or local social service agency or private social service organization.

''(g) PERIOD OF AVAILABILITY TO RECIPIENTS.—Amounts made available under this section may be obligated by a recipient for 3 years after the fiscal year in which the amount is apportioned. Not later than 30 days after the end of the 3-year period described in the preceding sentence, any amount that is not obligated on the last day of that period shall be added to the amount that may be apportioned under this section in the next fiscal year.

''(h) DEFINITIONS.—For purposes of this section:

''(1) The term 'State' means a State of the United States.

''(2) The term 'territory' means the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands.''.

SEC. 20030. TECHNICAL AND CONFORMING AMENDMENTS.

(a) SECTION 5305.—Section 5305 of title 49, United States Code, is amended—

(1) in subsection (e)(1)(A), by striking ''sections 5304, 5306, 5315, and 5322'' and inserting ''section 5304 and 5306'';

(2) in subsection (f)—

(A) in the heading, by striking ''GOVERNMENT'S'' and inserting ''GOVERNMENT''; and

(B) by striking ''Government's'' and inserting ''Government''; and

(3) in subsection (g), by striking ''section 5338(c) for fiscal years 2005 through 2012'' and inserting ''section 5338(a)(2)(A) for a fiscal year''.

(b) SECTION 5313.—Section 5313(a) of title 49, United States Code, is amended—

(1) in the first sentence, by striking ''subsections (a)(5)(C)(iii) and (d)(1) of section 5338'' and inserting section ''5338(c)''; and

(2) in the second sentence, by striking ''of Transportation''.

(c) SECTION 5319.—Section 5319 of title 49, United States Code, is amended, in the second sentence—

(1) by striking ''sections 5307(e), 5309(h), and 5311(g) of this title'' and inserting ''sections 5307(d), 5309(l), and 5311(g)''; and

(2) by striking ''of the United States'' and inserting ''made by the''.

(d) SECTION 5325.—Section 5325(b)(2)(A) of title 49, United States Code, is amended by striking ''title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation)'' and inserting ''the Federal Acquisition Regulation, or any successor thereto''.

(e) SECTION 5330.—Effective 3 years after the effective date of the final rules issued by the Secretary of Transportation under section 5329(e) of title 49, United States Code, as amended by this division, section 5330 of title 49, United States Code, is repealed.

(f) SECTION 5331.—Section 5331 of title 49, United States Code, is amended by striking ''Secretary of Transportation'' each place that term appears and inserting ''Secretary''.

(g) SECTION 5332.—Section 5332(c)(1) of title 49, United States Code, is amended by striking ''of Transportation''.

(h) SECTION 5333.—Section 5333(a) of title 49, United States Code, is amended by striking ''sections 3141–3144'' and inserting ''sections 3141 through 3144''.

(i) SECTION 5334.—Section 5334 of title 49, United States Code, is amended—

(1) in subsection (c)—

(A) by striking ''Secretary of Transportation'' each place that term appears and inserting ''Secretary''; and

(B) in paragraph (1), by striking ''Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate'' and inserting ''Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives'';

(2) in subsection (d), by striking ''of Transportation'';

(3) in subsection (e), by striking ''of Transportation'';

(4) in subsection (f), by striking ''of Transportation'';

(5) in subsection (g), in the matter preceding paragraph (1)—

(A) by striking ''of Transportation''; and

(B) by striking ''subsection (a)(3) or (4) of this section'' and inserting ''paragraph (3) or (4) of subsection (a)'';

(6) in subsection (h)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking ''of Transportation''; and

(B) in paragraph (2), by striking ''of this section'';

(7) in subsection (i)(1), by striking ''of Transportation''; and

(8) in subsection (j), as so redesignated by section 20025 of this division, by striking ''Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate and Committees on Transportation and Infrastructure and Appropriations of the House of Representatives'' and inserting ''Committee on Banking, Housing, and Urban Affairs and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives''.

(j) SECTION 5335.—Section 5335(a) of title 49, United States Code, is amended by striking ''of Transportation''.

(k) ANALYSIS.—The analysis for chapter 53 of title 49, United States Code, is amended to read as follows:

''Sec.
''5301. Policies and purposes.
''5302. Definitions.
''5303. Metropolitan transportation planning.
''5304. Statewide and nonmetropolitan transportation planning.
''5305. Planning programs.
''5306. Private enterprise participation in metropolitan planning and transportation improvement programs and relationship to other limitations.
''5307. Urbanized area formula grants.
''[5308. Repealed.]
''5309. Fixed guideway capital investment grants.

''5310. Formula grants for the enhanced mobility of seniors and individuals with disabilities.
''5311. Formula grants for rural areas.
''5312. Research, development, demonstration, and deployment projects.
''5313. Transit cooperative research program.
''5314. Technical assistance and standards development.
''5315. Private sector participation.
''[5316. Repealed.]
''[5317. Repealed.]
''5318. Bus testing facility.
''5319. Bicycle facilities.
''[5320. Repealed.]
''5321. Crime prevention and security.
''5322. Human resources and training.
''5323. General provisions.
''5324. Public transportation emergency relief program.
''5325. Contract requirements.
''5326. Transit asset management.
''5327. Project management oversight.
''[5328. Repealed.]
''5329. Public transportation safety program.
''5330. State safety oversight.
''5331. Alcohol and controlled substances testing.
''5332. Nondiscrimination.
''5333. Labor standards.
''5334. Administrative provisions.
''5335. National transit database.
''5336. Apportionment of appropriations for formula grants.
''5337. State of good repair grants.
''5338. Authorizations.
''5339. Bus and bus facilities formula grants.
''5340. Apportionments based on growing States and high density States formula factors.''.

DIVISION C—TRANSPORTATION SAFETY AND SURFACE TRANSPORTATION POLICY

TITLE I—MOTOR VEHICLE AND HIGHWAY SAFETY IMPROVEMENT ACT OF 2012

SEC. 31001. SHORT TITLE.

This title may be cited as the ''Motor Vehicle and Highway Safety Improvement Act of 2012'' or ''Mariah's Act''.

SEC. 31002. DEFINITION.

In this title, the term ''Secretary'' means the Secretary of Transportation.

Subtitle A—Highway Safety

SEC. 31101. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) HIGHWAY SAFETY PROGRAMS.—For carrying out section 402 of title 23, United States Code—

(A) $235,000,000 for fiscal year 2013; and

(B) $235,000,000 for fiscal year 2014.

(2) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—For carrying out section 403 of title 23, United States Code—

(A) $110,500,000 for fiscal year 2013; and

(B) $113,500,000 for fiscal year 2014.

(3) NATIONAL PRIORITY SAFETY PROGRAMS.—For carrying out section 405 of title 23, United States Code—

(A) $265,000,000 for fiscal year 2013; and

(B) $272,000,000 for fiscal year 2014.

(4) NATIONAL DRIVER REGISTER.—For the National Highway Traffic Safety Administration to carry out chapter 303 of title 49, United States Code—

(A) $5,000,000 for fiscal year 2013; and

(B) $5,000,000 for fiscal year 2014.

(5) HIGH VISIBILITY ENFORCEMENT PROGRAM.—For carrying out section 2009 of SAFETEA–LU (23 U.S.C. 402 note)—

(A) $29,000,000 for fiscal year 2013; and

(B) $29,000,000 for fiscal year 2014.

(6) ADMINISTRATIVE EXPENSES.—For administrative and related operating expenses of the National Highway Traffic Safety Administration in carrying out chapter 4 of title 23, United States Code, and this subtitle—

(A) $25,500,000 for fiscal year 2013; and

(B) $25,500,000 for fiscal year 2014.

(b) PROHIBITION ON OTHER USES.—Except as otherwise provided in chapter 4 of title 23, United States Code, in this subtitle, and in the amendments made by this subtitle, the amounts made available from the Highway Trust Fund (other than the Mass Transit Account) for a program under such chapter—

(1) shall only be used to carry out such program; and

(2) may not be used by States or local governments for construction purposes.

(c) APPLICABILITY OF TITLE 23.—Except as otherwise provided in chapter 4 of title 23, United States Code, and in this subtitle, amounts made available under subsection (a) for fiscal years 2013 and 2014 shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

(d) REGULATORY AUTHORITY.—Grants awarded under this subtitle shall be in accordance with regulations issued by the Secretary.

(e) STATE MATCHING REQUIREMENTS.—If a grant awarded under this subtitle requires a State to share in the cost, the aggregate of all expenditures for highway safety activities made during any fiscal year by the State and its political subdivisions (exclusive of Federal funds) for carrying out the grant (other than planning and administration) shall be available for the purpose of crediting the State during such fiscal year for the non-Federal share of the cost of any project under this subtitle (other than planning or administration) without regard to whether such expenditures were actually made in connection with such project.

(f) GRANT APPLICATION AND DEADLINE.—To receive a grant under this subtitle, a State shall submit an application, and the Secretary shall establish a single deadline for such applications to enable the award of grants early in the next fiscal year.

SEC. 31102. HIGHWAY SAFETY PROGRAMS.

(a) PROGRAMS INCLUDED.—Section 402(a) of title 23, United States Code, is amended to read as follows:

''(a) PROGRAM REQUIRED.—

''(1) IN GENERAL.—Each State shall have a highway safety program, approved by the Secretary, that is designed to reduce traffic accidents and the resulting deaths, injuries, and property damage.

''(2) UNIFORM GUIDELINES.—Programs required under paragraph (1) shall comply with uniform guidelines, promulgated by the Secretary and expressed in terms of performance criteria, that—

''(A) include programs—

''(i) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits;

''(ii) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles;

''(iii) to reduce injuries and deaths resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance;

''(iv) to prevent accidents and reduce injuries and deaths resulting from accidents involving motor vehicles and motorcycles;

''(v) to reduce injuries and deaths resulting from accidents involving school buses;

''(vi) to reduce accidents resulting from unsafe driving behavior (including aggressive or fatigued driving and distracted driving arising from the use of electronic devices in vehicles); and

''(vii) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures;

''(B) improve driver performance, including—

''(i) driver education;

''(ii) driver testing to determine proficiency to operate motor vehicles; and

''(iii) driver examinations (physical, mental, and driver licensing);

''(C) improve pedestrian performance and bicycle safety;

''(D) include provisions for—

''(i) an effective record system of accidents (including resulting injuries and deaths);

''(ii) accident investigations to determine the probable causes of accidents, injuries, and deaths;

''(iii) vehicle registration, operation, and inspection; and

''(iv) emergency services; and

''(E) to the extent determined appropriate by the Secretary, are applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.''.

(b) ADMINISTRATION OF STATE PROGRAMS.—Section 402(b) of title 23, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking ''and'' at the end;

(B) by redesignating subparagraph (E) as subparagraph (F);

(C) by inserting after subparagraph (D) the following:

''(E) beginning on the first day of the first fiscal year after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012 in which a State submits its highway safety plan under subsection (f), provide for a data-driven traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents, to the satisfaction of the Secretary;''; and

(D) in subparagraph (F), as redesignated—

(i) in clause (i), by inserting ''and high-visibility law enforcement mobilizations coordinated by the Secretary'' after ''mobilizations'';

(ii) in clause (iii), by striking ''and'' at the end;

(iii) in clause (iv), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(v) ensuring that the State will coordinate its highway safety plan, data collection, and information systems with the State strategic highway safety plan (as defined in section 148(a)).''; and

(2) by striking paragraph (3).

(c) APPROVED HIGHWAY SAFETY PROGRAMS.—Section 402(c) of title 23, United States Code, is amended—

(1) by striking ''(c) Funds authorized'' and inserting the following:

''(c) USE OF FUNDS.—

''(1) IN GENERAL.—Funds authorized'';

(2) by striking ''Such funds'' and inserting the following:

''(2) APPORTIONMENT.—Except for amounts identified in section 403(f), funds described in paragraph (1)'';

(3) by striking ''The Secretary shall not'' and all that follows through ''subsection, a highway safety program'' and inserting ''A highway safety program'';

(4) by inserting ''A State may use the funds apportioned under this section, in cooperation with neighboring States, for highway safety programs or related projects that may confer benefits on such neighboring States.'' after ''in every State.'';

(5) by striking ''50 per centum'' and inserting ''20 percent''; and

(6) by striking ''The Secretary shall promptly'' and all that follows and inserting the following:

''(3) REAPPORTIONMENT.—The Secretary shall promptly apportion the funds withheld from a State's apportionment to the State if the Secretary approves the State's highway safety program or determines that the State has begun implementing an approved program, as appropriate, not later than July 31st of the fiscal year for which the funds were withheld. If the Secretary determines that the State did not correct

its failure within such period, the Secretary shall reapportion the withheld funds to the other States in accordance with the formula specified in paragraph (2) not later than the last day of the fiscal year.

''(4) AUTOMATED TRAFFIC ENFORCEMENT SYSTEMS.—

''(A) PROHIBITION.—A State may not expend funds apportioned to that State under this section to carry out a program to purchase, operate, or maintain an automated traffic enforcement system.

''(B) AUTOMATED TRAFFIC ENFORCEMENT SYSTEM DEFINED.—In this paragraph, the term 'automated traffic enforcement system' means any camera which captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a traffic citation, or other enforcement action at the time of the violation.''.

(d) USE OF HIGHWAY SAFETY PROGRAM FUNDS.—Section 402(g) of title 23, United States Code, is amended to read as follows:

''(g) SAVINGS PROVISION.—

''(1) IN GENERAL.—Except as provided under paragraph (2), nothing in this section may be construed to authorize the appropriation or expenditure of funds for—

''(A) highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into guidelines); or

''(B) any purpose for which funds are authorized under section 403.

''(2) DEMONSTRATION PROJECTS.—A State may use funds made available to carry out this section to assist in demonstration projects carried out by the Secretary under section 403.''.

(e) IN GENERAL.—Section 402 of title 23, United States Code, is amended—

(1) by striking subsections (k) and (m);

(2) by redesignating subsections (i) and (j) as subsections (h) and (i), respectively; and

(3) by redesignating subsection (l) as subsection (j).

(f) HIGHWAY SAFETY PLAN AND REPORTING REQUIREMENTS.—Section 402 of title 23, United States Code, as amended by this section, is further amended by adding at the end the following:

''(k) HIGHWAY SAFETY PLAN AND REPORTING REQUIREMENTS.—

''(1) IN GENERAL.—With respect to fiscal year 2014, and each fiscal year thereafter, the Secretary shall require each State, as a condition of the approval of the State's highway safety program for that fiscal year, to develop and submit to the Secretary for approval a highway safety plan that complies with the requirements under this subsection.

''(2) TIMING.—Each State shall submit to the Secretary the highway safety plan not later than July 1st of the fiscal year preceding the fiscal year to which the plan applies.

''(3) CONTENTS.—State highway safety plans submitted under paragraph (1) shall include—

''(A) performance measures required by the Secretary or otherwise necessary to support additional State safety goals, including—

''(i) documentation of current safety levels for each performance measure;

''(ii) quantifiable annual performance targets for each performance measure; and

''(iii) a justification for each performance target, that explains why each target is appropriate and evidence-based;

''(B) a strategy for programming funds apportioned to the State under this section on projects and activities that will allow the State to meet the performance targets described in subparagraph (A);

''(C) data and data analysis supporting the effectiveness of proposed countermeasures;

''(D) a description of any Federal, State, local, or private funds that the State plans to use, in addition to funds apportioned to the State under this section, to carry out the strategy described in subparagraph (B);

''(E) for the fiscal year preceding the fiscal year to which the plan applies, a report on the State's success in meeting State safety goals and performance targets set forth in the previous year's highway safety plan; and

''(F) an application for any additional grants available to the State under this chapter.

''(4) PERFORMANCE MEASURES.—For the first highway safety plan submitted under this subsection, the performance measures required by the Secretary under paragraph (2)(A) shall be limited to those developed by the National Highway Traffic Safety Administration and the Governor's Highway Safety Association and described in the report, 'Traffic Safety Performance Measures for States and Federal Agencies' (DOT HS 811 025). For subsequent highway safety plans, the Secretary shall coordinate with the Governor's Highway Safety Association in making revisions to the set of required performance measures.

''(5) REVIEW OF HIGHWAY SAFETY PLANS.—

''(A) IN GENERAL.—Not later than 60 days after the date on which a State's highway safety plan is received by the Secretary, the Secretary shall review and approve or disapprove the plan.

''(B) APPROVALS AND DISAPPROVALS.—

''(i) APPROVALS.—The Secretary shall approve a State's highway safety plan if the Secretary determines that—

''(I) the plan and the performance targets contained in the plan are evidence-based and supported by data; and

''(II) the plan, once implemented, will allow the State to meet the State's performance targets.

''(ii) DISAPPROVALS.—The Secretary shall disapprove a State's highway safety plan if the Secretary determines that—

''(I) the plan and the performance targets contained in the plan are not evidence-based or supported by data; or

''(II) the plan does not provide for programming of funding in a manner sufficient to allow the State to meet the State's performance targets.

''(C) ACTIONS UPON DISAPPROVAL.—If the Secretary disapproves a State's highway safety plan, the Secretary shall—

''(i) inform the State of the reasons for such disapproval; and

''(ii) require the State to resubmit the plan with any modifications that the Secretary determines to be necessary.

''(D) REVIEW OF RESUBMITTED PLANS.—If the Secretary requires a State to resubmit a highway safety plan, with modifications, the Secretary shall review and approve or disapprove the modified plan not later than 30 days after the date on which the Secretary receives such plan.

''(E) PUBLIC NOTICE.—A State shall make the State's highway safety plan, and decisions of the Secretary concerning approval or disapproval of a revised plan, available to the public.''.

(g) TEEN TRAFFIC SAFETY PROGRAM.—Section 402 of title 23, United States Code, as amended by this section, is further amended by adding at the end the following:

''(m) TEEN TRAFFIC SAFETY.—

''(1) IN GENERAL.—Subject to the requirements of a State's highway safety plan, as approved by the Secretary under subsection (k), a State may use a portion of the amounts received under this section to implement statewide efforts to improve traffic safety for teen drivers.

''(2) USE OF FUNDS.—Statewide efforts under paragraph (1)—

''(A) shall include peer-to-peer education and prevention strategies in schools and communities designed to—

''(i) increase safety belt use;

''(ii) reduce speeding;

''(iii) reduce impaired and distracted driving;

''(iv) reduce underage drinking; and

''(v) reduce other behaviors by teen drivers that lead to injuries and fatalities; and

''(B) may include—

''(i) working with student-led groups and school advisors to plan and implement teen traffic safety programs;

''(ii) providing subgrants to schools throughout the State to support the establishment and expansion of student groups focused on teen traffic safety;

''(iii) providing support, training, and technical assistance to establish and expand school and community safety programs for teen drivers;

''(iv) creating statewide or regional websites to publicize and circulate information on teen safety programs;

''(v) conducting outreach and providing educational resources for parents;

''(vi) establishing State or regional advisory councils comprised of teen drivers to provide input and recommendations to the governor and the governor's safety representative on issues related to the safety of teen drivers;

''(vii) collaborating with law enforcement; and

''(viii) establishing partnerships and promoting coordination among community stakeholders, including public, not-for-profit, and for profit entities.''.

(h) BIENNIAL REPORT TO CONGRESS.—Section 402 of title 23, United States Code, as amended by this section, is further amended by adding at the end the following:

''(n) BIENNIAL REPORT TO CONGRESS.—Not later than October 1, 2015, and biennially thereafter, the Secretary shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that contains—

''(1) an evaluation of each State's performance with respect to the State's highway safety plan under subsection (k) and performance targets set by the States in such plans; and

''(2) such recommendations as the Secretary may have for improvements to activities carried out under subsection (k).''.

SEC. 31103. HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.

Section 403 of title 23, United States Code, is amended—

(1) by striking subsections (a) through (f) and inserting the following:

''(a) DEFINED TERM.—In this section, the term 'Federal laboratory' includes—

''(1) a government-owned, government-operated laboratory; and

''(2) a government-owned, contractor-operated laboratory.

''(b) GENERAL AUTHORITY.—

''(1) RESEARCH AND DEVELOPMENT ACTIVITIES.—The Secretary may conduct research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information needed to carry out this section, with respect to—

''(A) all aspects of highway and traffic safety systems and conditions relating to—

''(i) vehicle, highway, driver, passenger, motorcyclist, bicyclist, and pedestrian characteristics;

''(ii) accident causation and investigations;

''(iii) communications; and

''(iv) emergency medical services, including the transportation of the injured;

''(B) human behavioral factors and their effect on highway and traffic safety, including—

''(i) driver education;

''(ii) impaired driving; and

''(iii) distracted driving;

''(C) an evaluation of the effectiveness of countermeasures to increase highway and traffic safety, including occupant protection and alcohol- and drug-impaired driving technologies and initiatives;

''(D) the development of technologies to detect drug impaired drivers;

''(E) research on, evaluations of, and identification of best practices related to driver education programs (including driver education

curricula, instructor training and certification, program administration, and delivery mechanisms) and make recommendations for harmonizing driver education and multistage graduated licensing systems; and

''(F) the effect of State laws on any aspects, activities, or programs described in subparagraphs (A) through (E).

''(2) COOPERATION, GRANTS, AND CONTRACTS.—The Secretary may carry out this section—

''(A) independently;

''(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories;

''(C) by entering into contracts, cooperative agreements, and other transactions with the National Academy of Sciences, any Federal laboratory, State or local agency, authority, association, institution, or person (as defined in chapter 1 of title 1); or

''(D) by making grants to the National Academy of Sciences, any Federal laboratory, State or local agency, authority, association, institution, or person (as defined in chapter 1 of title 1).

''(c) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

''(1) IN GENERAL.—To encourage innovative solutions to highway safety problems, stimulate voluntary improvements in highway safety, and stimulate the marketing of new highway safety related technology by private industry, the Secretary is authorized to carry out, on a cost-shared basis, collaborative research and development with—

''(A) non-Federal entities, including State and local governments, colleges, universities, corporations, partnerships, sole proprietorships, organizations, and trade associations that are incorporated or established under the laws of any State or the United States; and

''(B) Federal laboratories.

''(2) AGREEMENTS.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)) in which the Secretary provides not more than 50 percent of the cost of any research or development project under this subsection.

''(3) USE OF TECHNOLOGY.—The research, development, or use of any technology pursuant to an agreement under this subsection, including the terms under which technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

''(d) TITLE TO EQUIPMENT.—In furtherance of the purposes set forth in section 402, the Secretary may vest title to equipment purchased for demonstration projects with funds authorized under this section to State or local agencies on such terms and conditions as the Secretary determines to be appropriate.

''(e) PROHIBITION ON CERTAIN DISCLOSURES.—Any report of the National Highway Traffic Safety Administration, or of any officer, employee, or contractor of the National Highway Traffic Safety Administration, relating to any highway traffic accident or the investigation of such accident conducted pursuant to this chapter or chapter 301 may only be made available to the public in a manner that does not identify individuals.

''(f) COOPERATIVE RESEARCH AND EVALUATION.—

''(1) ESTABLISHMENT AND FUNDING.—Notwithstanding the apportionment formula set forth in section 402(c)(2), $2,500,000 of the total amount available for apportionment to the States for highway safety programs under subsection 402(c) in each fiscal year shall be available for expenditure by the Secretary, acting through the Administrator of the National Highway Traffic Safety Administration, for a cooperative research and evaluation program to research and evaluate priority highway safety countermeasures.

''(2) ADMINISTRATION.—The program established under paragraph (1)—

''(A) shall be administered by the Administrator of the National Highway Traffic Safety Administration; and

''(B) shall be jointly managed by the Governors Highway Safety Association and the National Highway Traffic Safety Administration.''; and

(2) by adding at the end the following:

''(h) IN-VEHICLE ALCOHOL DETECTION DEVICE RESEARCH.—

''(1) IN GENERAL.—The Administrator of the National Highway Traffic Safety Administration may carry out a collaborative research effort under chapter 301 of title 49 on in-vehicle technology to prevent alcohol-impaired driving.

''(2) FUNDING.—Funds provided under section 405 may be made to be used by the Secretary to conduct the research described in paragraph (1).

''(3) PRIVACY PROTECTION.—If the Administrator utilizes the authority under paragraph (1), the Administrator shall not develop requirements for any device or means of technology to be installed in an automobile intended for retail sale that records a driver's blood alcohol concentration.

''(4) REPORTS.—If the Administrator conducts the research authorized under paragraph (1), the Administrator shall submit an annual report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and Committee on Science, Space, and Technology of the House of Representatives that—

''(A) describes the progress made in carrying out the collaborative research effort; and

''(B) includes an accounting for the use of Federal funds obligated or expended in carrying out that effort.

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

''(A) ALCOHOL-IMPAIRED DRIVING.—The term 'alcohol-impaired driving' means the operation of a motor vehicle (as defined in section 30102(a)(6) of title 49) by an individual whose blood alcohol content is at or above the legal limit.

''(B) LEGAL LIMIT.—The term 'legal limit' means a blood alcohol concentration of 0.08 percent or greater (as set forth in section 163(a)) or such other percentage limitation as may be established by applicable Federal, State, or local law.''.

SEC. 31104. NATIONAL DRIVER REGISTER.

Section 30302(b) of title 49, United States Code, is amended by adding at the end the following: ''The Secretary shall make continual improvements to modernize the Register's data processing system.''.

SEC. 31105. NATIONAL PRIORITY SAFETY PROGRAMS.

(a) IN GENERAL.—Section 405 of title 23, United States Code, is amended to read as follows:

''§ 405. National priority safety programs

''(a) GENERAL AUTHORITY.—Subject to the requirements of this section, the Secretary of Transportation shall manage programs to address national priorities for reducing highway deaths and injuries. Funds shall be allocated according to the priorities set forth in paragraphs (1) and (2).

''(1) GRANTS TO STATES.—

''(A) OCCUPANT PROTECTION.—16 percent of the funds provided under this section in each fiscal year shall be allocated among States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles (as described in subsection (b)).

''(B) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—14.5 percent of the funds provided under this section in each fiscal year shall be allocated among States that meet the requirements of the State traffic safety information system improvements (as described in subsection (c)).

''(C) IMPAIRED DRIVING COUNTERMEASURES.—52.5 percent of the funds provided under this section in each fiscal year shall be allocated among States that meet the requirements of the impaired driving countermeasures (as described in subsection (d)).

''(D) DISTRACTED DRIVING.—8.5 percent of the funds provided under this section in each fiscal year shall be allocated among States that adopt and implement effective laws to reduce distracted driving (as described in subsection (e)).

''(E) MOTORCYCLIST SAFETY.—1.5 percent of the funds provided under this section in each fiscal year shall be allocated among States that implement motorcyclist safety programs (as described in subsection (f)).

''(F) STATE GRADUATED DRIVER LICENSING LAWS.—5 percent of the funds provided under this section in each fiscal year shall be allocated among States that adopt and implement graduated driver licensing laws (as described in subsection (g)).

''(G) TRANSFERS.—Notwithstanding subparagraphs (A) through (F), the Secretary may reallocate, before the last day of any fiscal year, any amounts remaining available to carry out any of the activities described in subsections (b) through (g) to increase the amount made available to carry out any of the other activities described in such subsections, or the amount made available under section 402, in order to ensure, to the maximum extent possible, that all such amounts are obligated during such fiscal year.

''(H) MAINTENANCE OF EFFORT.—

''(i) REQUIREMENTS.—No grant may be made to a State in any fiscal year under subsection (b), (c), or (d) unless the State enters into such agreements with the Secretary as the Secretary may require to ensure that the State will maintain its aggregate expenditures from all State and local sources for programs described in those sections at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012.

''(ii) WAIVER.—Upon the request of a State, the Secretary may waive or modify the requirements under clause (i) for not more than 1 fiscal year if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances.

''(2) OTHER PRIORITY PROGRAMS.—Funds provided under this section in each fiscal year may be used for research into technology to prevent alcohol-impaired driving (as described in subsection 403(h)).

''(b) OCCUPANT PROTECTION GRANTS.—

''(1) GENERAL AUTHORITY.—Subject to the requirements under this subsection, the Secretary of Transportation shall award grants to States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

''(2) FEDERAL SHARE.—The Federal share of the costs of activities funded using amounts from grants awarded under this subsection may not exceed 80 percent for each fiscal year for which a State receives a grant.

''(3) ELIGIBILITY.—

''(A) HIGH SEAT BELT USE RATE.—A State with an observed seat belt use rate of 90 percent or higher, based on the most recent data from a survey that conforms with national criteria established by the National Highway Traffic Safety Administration, shall be eligible for a grant in a fiscal year if the State—

''(i) submits an occupant protection plan during the first fiscal year;

''(ii) participates in the Click It or Ticket national mobilization;

''(iii) has an active network of child restraint inspection stations; and

''(iv) has a plan to recruit, train, and maintain a sufficient number of child passenger safety technicians.

''(B) LOWER SEAT BELT USE RATE.—A State with an observed seat belt use rate below 90 percent, based on the most recent data from a survey that conforms with national criteria established by the National Highway Traffic Safety Administration, shall be eligible for a grant in a fiscal year if—

''(i) the State meets all of the requirements under clauses (i) through (iv) of subparagraph (A); and

''(ii) the Secretary determines that the State meets at least 3 of the following criteria:

''(I) The State conducts sustained (on-going and periodic) seat belt enforcement at a defined level of participation during the year.

''(II) The State has enacted and enforces a primary enforcement seat belt use law.

''(III) The State has implemented countermeasure programs for high-risk populations, such as drivers on rural roadways, unrestrained nighttime drivers, or teenage drivers.

''(IV) The State has enacted and enforces occupant protection laws requiring front and rear occupant protection use by all occupants in an age-appropriate restraint.

''(V) The State has implemented a comprehensive occupant protection program in which the State has—

''(aa) conducted a program assessment;

''(bb) developed a statewide strategic plan;

''(cc) designated an occupant protection coordinator; and

''(dd) established a statewide occupant protection task force.

''(VI) The State—

''(aa) completed an assessment of its occupant protection program during the 3-year period preceding the grant year; or

''(bb) will conduct such an assessment during the first year of the grant.

''(4) USE OF GRANT AMOUNTS.—

''(A) IN GENERAL.—Grant funds received pursuant to this subsection may be used to—

''(i) carry out a program to support high-visibility enforcement mobilizations, including paid media that emphasizes publicity for the program, and law enforcement;

''(ii) carry out a program to train occupant protection safety professionals, police officers, fire and emergency medical personnel, educators, and parents concerning all aspects of the use of child restraints and occupant protection;

''(iii) carry out a program to educate the public concerning the proper use and installation of child restraints, including related equipment and information systems;

''(iv) carry out a program to provide community child passenger safety services, including programs about proper seating positions for children and how to reduce the improper use of child restraints;

''(v) purchase and distribute child restraints to low-income families, provided that not more than 5 percent of the funds received in a fiscal year are used for such purpose; and

''(vi) establish and maintain information systems containing data concerning occupant protection, including the collection and administration of child passenger safety and occupant protection surveys.

''(B) HIGH SEAT BELT USE RATE.—A State that is eligible for funds under paragraph (3)(A) may use up to 75 percent of such funds for any project or activity eligible for funding under section 402.

''(5) GRANT AMOUNT.—The allocation of grant funds to a State under this subsection for a fiscal year shall be in proportion to the State's apportionment under section 402 for fiscal year 2009.

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

''(A) CHILD RESTRAINT.—The term 'child restraint' means any device (including child safety seat, booster seat, harness, and excepting seat belts) that is—

''(i) designed for use in a motor vehicle to restrain, seat, or position children who weigh 65 pounds (30 kilograms) or less; and

''(ii) certified to the Federal motor vehicle safety standard prescribed by the National Highway Traffic Safety Administration for child restraints.

''(B) SEAT BELT.—The term 'seat belt' means—

''(i) with respect to open-body motor vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt; and

''(ii) with respect to other motor vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.

''(c) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—

''(1) GENERAL AUTHORITY.—Subject to the requirements under this subsection, the Secretary of Transportation shall award grants to States to support the development and implementation of effective State programs that—

''(A) improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the State safety data that is needed to identify priorities for Federal, State, and local highway and traffic safety programs;

''(B) evaluate the effectiveness of efforts to make such improvements;

''(C) link the State data systems, including traffic records, with other data systems within the State, such as systems that contain medical, roadway, and economic data;

''(D) improve the compatibility and interoperability of the data systems of the State with national data systems and data systems of other States; and

''(E) enhance the ability of the Secretary to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

''(2) FEDERAL SHARE.—The Federal share of the cost of adopting and implementing in a fiscal year a State program described in this subsection may not exceed 80 percent.

''(3) ELIGIBILITY.—A State is not eligible for a grant under this subsection in a fiscal year unless the State demonstrates, to the satisfaction of the Secretary, that the State—

''(A) has a functioning traffic records coordinating committee (referred to in this paragraph as 'TRCC') that meets at least 3 times each year;

''(B) has designated a TRCC coordinator;

''(C) has established a State traffic record strategic plan that has been approved by the TRCC and describes specific quantifiable and measurable improvements anticipated in the State's core safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle databases;

''(D) has demonstrated quantitative progress in relation to the significant data program attribute of—

''(i) accuracy;

''(ii) completeness;

''(iii) timeliness;

''(iv) uniformity;

''(v) accessibility; or

''(vi) integration of a core highway safety database; and

''(E) has certified to the Secretary that an assessment of the State's highway safety data and traffic records system was conducted or updated during the preceding 5 years.

''(4) USE OF GRANT AMOUNTS.—Grant funds received by a State under this subsection shall be used for making data program improvements to core highway safety databases related to quantifiable, measurable progress in any of the 6 significant data program attributes set forth in paragraph (3)(D).

''(5) GRANT AMOUNT.—The allocation of grant funds to a State under this subsection for a fiscal year shall be in proportion to the State's apportionment under section 402 for fiscal year 2009.

''(d) IMPAIRED DRIVING COUNTERMEASURES.—

''(1) IN GENERAL.—Subject to the requirements under this subsection, the Secretary of Transportation shall award grants to States that adopt and implement—

''(A) effective programs to reduce driving under the influence of alcohol, drugs, or the combination of alcohol and drugs; or

''(B) alcohol-ignition interlock laws.

''(2) FEDERAL SHARE.—The Federal share of the costs of activities funded using amounts from grants under this subsection may not exceed 80 percent in any fiscal year in which the State receives a grant.

''(3) ELIGIBILITY.—

''(A) LOW-RANGE STATES.—Low-range States shall be eligible for a grant under this subsection.

''(B) MID-RANGE STATES.—A mid-range State shall be eligible for a grant under this subsection if—

''(i) a statewide impaired driving task force in the State developed a statewide plan during the most recent 3 calendar years to address the problem of impaired driving; or

''(ii) the State will convene a statewide impaired driving task force to develop such a plan during the first year of the grant.

''(C) HIGH-RANGE STATES.—A high-range State shall be eligible for a grant under this subsection if the State—

''(i)(I) conducted an assessment of the State's impaired driving program during the most recent 3 calendar years; or

''(II) will conduct such an assessment during the first year of the grant;

''(ii) convenes, during the first year of the grant, a statewide impaired driving task force to develop a statewide plan that—

''(I) addresses any recommendations from the assessment conducted under clause (i);

''(II) includes a detailed plan for spending any grant funds provided under this subsection; and

''(III) describes how such spending supports the statewide program; and

''(iii)(I) submits the statewide plan to the National Highway Traffic Safety Administration during the first year of the grant for the agency's review and approval;

''(II) annually updates the statewide plan in each subsequent year of the grant; and

''(III) submits each updated statewide plan for the agency's review and comment.

''(4) USE OF GRANT AMOUNTS.—

''(A) REQUIRED PROGRAMS.—High-range States shall use grant funds for—

''(i) high visibility enforcement efforts; and

''(ii) any of the activities described in subparagraph (B) if—

''(I) the activity is described in the statewide plan; and

''(II) the Secretary approves the use of funding for such activity.

''(B) AUTHORIZED PROGRAMS.—Medium-range and low-range States may use grant funds for—

''(i) any of the purposes described in subparagraph (A);

''(ii) hiring a full-time or part-time impaired driving coordinator of the State's activities to address the enforcement and adjudication of laws regarding driving while impaired by alcohol;

''(iii) court support of high visibility enforcement efforts, training and education of criminal justice professionals (including law enforcement, prosecutors, judges, and probation officers) to assist such professionals in handling impaired driving cases, hiring traffic safety resource prosecutors, hiring judicial outreach liaisons, and establishing driving while intoxicated courts;

''(iv) alcohol ignition interlock programs;

''(v) improving blood-alcohol concentration testing and reporting;

''(vi) paid and earned media in support of high visibility enforcement efforts, and conducting standardized field sobriety training, advanced roadside impaired driving evaluation training, and drug recognition expert training for law enforcement, and equipment and related expenditures used in connection with impaired driving enforcement in accordance with criteria

established by the National Highway Traffic Safety Administration;

''(vii) training on the use of alcohol screening and brief intervention;

''(viii) developing impaired driving information systems; and

''(ix) costs associated with a 24-7 sobriety program.

''(C) OTHER PROGRAMS.—Low-range States may use grant funds for any expenditure designed to reduce impaired driving based on problem identification. Medium and high-range States may use funds for such expenditures upon approval by the Secretary.

''(5) GRANT AMOUNT.—Subject to paragraph (6), the allocation of grant funds to a State under this section for a fiscal year shall be in proportion to the State's apportionment under section 402(c) for fiscal year 2009.

''(6) GRANTS TO STATES THAT ADOPT AND ENFORCE MANDATORY ALCOHOL-IGNITION INTERLOCK LAWS.—

''(A) IN GENERAL.—The Secretary shall make a separate grant under this subsection to each State that adopts and is enforcing a mandatory alcohol-ignition interlock law for all individuals convicted of driving under the influence of alcohol or of driving while intoxicated.

''(B) USE OF FUNDS.—Grants authorized under subparagraph (A) may be used by recipient States for any eligible activities under this subsection or section 402.

''(C) ALLOCATION.—Amounts made available under this paragraph shall be allocated among States described in subparagraph (A) on the basis of the apportionment formula set forth in section 402(c).

''(D) FUNDING.—Not more than 15 percent of the amounts made available to carry out this subsection in a fiscal year shall be made available by the Secretary for making grants under this paragraph.

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

''(A) 24-7 SOBRIETY PROGRAM.—The term '24-7 sobriety program' means a State law or program that authorizes a State court or a State agency, as a condition of sentence, probation, parole, or work permit, to—

''(i) require an individual who plead guilty or was convicted of driving under the influence of alcohol or drugs to totally abstain from alcohol or drugs for a period of time; and

''(ii) require the individual to be subject to testing for alcohol or drugs—

''(I) at least twice per day;

''(II) by continuous transdermal alcohol monitoring via an electronic monitoring device; or

''(III) by an alternate method with the concurrence of the Secretary.

''(B) AVERAGE IMPAIRED DRIVING FATALITY RATE.—The term 'average impaired driving fatality rate' means the number of fatalities in motor vehicle crashes involving a driver with a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled, based on the most recently reported 3 calendar years of final data from the Fatality Analysis Reporting System, as calculated in accordance with regulations prescribed by the Administrator of the National Highway Traffic Safety Administration.

''(C) HIGH-RANGE STATE.—The term 'high-range State' means a State that has an average impaired driving fatality rate of 0.60 or higher.

''(D) LOW-RANGE STATE.—The term 'low-range State' means a State that has an average impaired driving fatality rate of 0.30 or lower.

''(E) MID-RANGE STATE.—The term 'mid-range State' means a State that has an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60.

''(e) DISTRACTED DRIVING GRANTS.—

''(1) IN GENERAL.—The Secretary shall award a grant under this subsection to any State that enacts and enforces a statute that meets the requirements set forth in paragraphs (2) and (3).

''(2) PROHIBITION ON TEXTING WHILE DRIVING.—A State statute meets the requirements set forth in this paragraph if the statute—

''(A) prohibits drivers from texting through a personal wireless communications device while driving;

''(B) makes violation of the statute a primary offense; and

''(C) establishes—

''(i) a minimum fine for a first violation of the statute; and

''(ii) increased fines for repeat violations.

''(3) PROHIBITION ON YOUTH CELL PHONE USE WHILE DRIVING.—A State statute meets the requirements set forth in this paragraph if the statute—

''(A) prohibits a driver who is younger than 18 years of age from using a personal wireless communications device while driving;

''(B) makes violation of the statute a primary offense;

''(C) requires distracted driving issues to be tested as part of the State driver's license examination; and

''(D) establishes—

''(i) a minimum fine for a first violation of the statute; and

''(ii) increased fines for repeat violations.

''(4) PERMITTED EXCEPTIONS.—A statute that meets the requirements set forth in paragraphs (2) and (3) may provide exceptions for—

''(A) a driver who uses a personal wireless communications device to contact emergency services;

''(B) emergency services personnel who use a personal wireless communications device while—

''(i) operating an emergency services vehicle; and

''(ii) engaged in the performance of their duties as emergency services personnel; and

''(C) an individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to section 31152 of title 49.

''(5) USE OF GRANT FUNDS.—Of the amounts received by a State under this subsection—

''(A) at least 50 percent shall be used—

''(i) to educate the public through advertising containing information about the dangers of texting or using a cell phone while driving;

''(ii) for traffic signs that notify drivers about the distracted driving law of the State; or

''(iii) for law enforcement costs related to the enforcement of the distracted driving law; and

''(B) up to 50 percent may be used for any eligible project or activity under section 402.

''(6) ADDITIONAL GRANTS.—In the first fiscal year that grants are awarded under this subsection, the Secretary may use up to 25 percent of the amounts available for grants under this subsection to award grants to States that—

''(A) enacted statutes before the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012, which meet the requirements set forth in subparagraphs (A) and (B) of paragraph (2); and

''(B) are otherwise ineligible for a grant under this subsection.

''(7) ALLOCATION TO SUPPORT STATE DISTRACTED DRIVING LAWS.—Of the amounts available under this subsection in a fiscal year for distracted driving grants, the Secretary may expend up to $5,000,000 for the development and placement of broadcast media to support the enforcement of State distracted driving laws.

''(8) DISTRACTED DRIVING STUDY.—

''(A) IN GENERAL.—The Secretary shall conduct a study of all forms of distracted driving.

''(B) COMPONENTS.—The study conducted under subparagraph (A) shall—

''(i) examine the effect of distractions other than the use of personal wireless communications on motor vehicle safety;

''(ii) identify metrics to determine the nature and scope of the distracted driving problem;

''(iii) identify the most effective methods to enhance education and awareness; and

''(iv) identify the most effective method of reducing deaths and injuries caused by all forms of distracted driving.

''(C) REPORT.—Not later than 1 year after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012, the Secretary shall submit a report containing the results of the study conducted under this paragraph to—

''(i) the Committee on Commerce, Science, and Transportation of the Senate; and

''(ii) the Committee on Transportation and Infrastructure of the House of Representatives.

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

''(A) DRIVING.—The term 'driving'—

''(i) means operating a motor vehicle on a public road, including operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise; and

''(ii) does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

''(B) PERSONAL WIRELESS COMMUNICATIONS DEVICE.—The term 'personal wireless communications device'—

''(i) means a device through which personal wireless services (as defined in section 332(c)(7)(C)(i) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)(C)(i))) are transmitted; and

''(ii) does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes.

''(C) PRIMARY OFFENSE.—The term 'primary offense' means an offense for which a law enforcement officer may stop a vehicle solely for the purpose of issuing a citation in the absence of evidence of another offense.

''(D) PUBLIC ROAD.—The term 'public road' has the meaning given such term in section 402(c).

''(E) TEXTING.—The term 'texting' means reading from or manually entering data into a personal wireless communications device, including doing so for the purpose of SMS texting, e-mailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication.

''(f) MOTORCYCLIST SAFETY.—

''(1) GRANTS AUTHORIZED.—Subject to the requirements under this subsection, the Secretary shall award grants to States that adopt and implement effective programs to reduce the number of single- and multi-vehicle crashes involving motorcyclists.

''(2) ALLOCATION.—The amount of a grant awarded to a State for a fiscal year under this subsection may not exceed 25 percent of the amount apportioned to the State for fiscal year 2003 under section 402.

''(3) GRANT ELIGIBILITY.—A State becomes eligible for a grant under this subsection by adopting or demonstrating to the satisfaction of the Secretary, at least 2 of the following criteria:

''(A) MOTORCYCLE RIDER TRAINING COURSES.—An effective motorcycle rider training course that is offered throughout the State, which—

''(i) provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists; and

''(ii) may include innovative training opportunities to meet unique regional needs.

''(B) MOTORCYCLISTS AWARENESS PROGRAM.—An effective statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists.

''(C) REDUCTION OF FATALITIES AND CRASHES INVOLVING MOTORCYCLES.—A reduction for the preceding calendar year in the number of motorcycle fatalities and the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 motorcycle registrations).

''(D) IMPAIRED DRIVING PROGRAM.—Implementation of a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation.

''(E) REDUCTION OF FATALITIES AND ACCIDENTS INVOLVING IMPAIRED MOTORCYCLISTS.—A reduction for the preceding calendar year in the number of fatalities and the rate of reported crashes

involving alcohol- or drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations).

''(F) FEES COLLECTED FROM MOTORCYCLISTS.—All fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs will be used for motorcycle training and safety purposes.

''(4) ELIGIBLE USES.—

''(A) IN GENERAL.—A State may use funds from a grant under this subsection only for motorcyclist safety training and motorcyclist awareness programs, including—

''(i) improvements to motorcyclist safety training curricula;

''(ii) improvements in program delivery of motorcycle training to both urban and rural areas, including—

''(I) procurement or repair of practice motorcycles;

''(II) instructional materials;

''(III) mobile training units; and

''(IV) leasing or purchasing facilities for closed-course motorcycle skill training;

''(iii) measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and

''(iv) public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, such as the 'share-the-road' safety messages developed under subsection (g).

''(B) SUBALLOCATIONS OF FUNDS.—An agency of a State that receives a grant under this subsection may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out this subsection.

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

''(A) MOTORCYCLIST AWARENESS.—The term 'motorcyclist awareness' means individual or collective awareness of—

''(i) the presence of motorcycles on or near roadways; and

''(ii) safe driving practices that avoid injury to motorcyclists.

''(B) MOTORCYCLIST AWARENESS PROGRAM.—The term 'motorcyclist awareness program' means an informational or public awareness program designed to enhance motorcyclist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the governor of the State.

''(C) MOTORCYCLIST SAFETY TRAINING.—The term 'motorcyclist safety training' means a formal program of instruction that is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the governor of the State.

''(D) STATE.—The term 'State' has the meaning given such term in section 101(a) of title 23, United States Code.

''(g) STATE GRADUATED DRIVER LICENSING INCENTIVE GRANT.—

''(1) GRANTS AUTHORIZED.—Subject to the requirements under this subsection, the Secretary shall award grants to States that adopt and implement graduated driver licensing laws in accordance with the requirements set forth in paragraph (2).

''(2) MINIMUM REQUIREMENTS.—

''(A) IN GENERAL.—A State meets the requirements set forth in this paragraph if the State has a graduated driver licensing law that requires novice drivers younger than 21 years of age to comply with the 2-stage licensing process described in subparagraph (B) before receiving an unrestricted driver's license.

''(B) LICENSING PROCESS.—A State is in compliance with the 2-stage licensing process described in this subparagraph if the State's driver's license laws include—

''(i) a learner's permit stage that—

''(I) is at least 6 months in duration;

''(II) prohibits the driver from using a cellular telephone or any communications device in a nonemergency situation; and

''(III) remains in effect until the driver—

''(aa) reaches 16 years of age and enters the intermediate stage; or

''(bb) reaches 18 years of age;

''(ii) an intermediate stage that—

''(I) commences immediately after the expiration of the learner's permit stage;

''(II) is at least 6 months in duration;

''(III) prohibits the driver from using a cellular telephone or any communications device in a nonemergency situation;

''(IV) restricts driving at night;

''(V) prohibits the driver from operating a motor vehicle with more than 1 nonfamilial passenger younger than 21 years of age unless a licensed driver who is at least 21 years of age is in the motor vehicle; and

''(VI) remains in effect until the driver reaches 18 years of age; and

''(iii) any other requirement prescribed by the Secretary of Transportation, including—

''(I) in the learner's permit stage—

''(aa) at least 40 hours of behind-the-wheel training with a licensed driver who is at least 21 years of age;

''(bb) a driver training course; and

''(cc) a requirement that the driver be accompanied and supervised by a licensed driver, who is at least 21 years of age, at all times while such driver is operating a motor vehicle; and

''(II) in the learner's permit or intermediate stage, a requirement, in addition to any other penalties imposed by State law, that the grant of an unrestricted driver's license be automatically delayed for any individual who, during the learner's permit or intermediate stage, is convicted of a driving-related offense, including—

''(aa) driving while intoxicated;

''(bb) misrepresentation of his or her true age;

''(cc) reckless driving;

''(dd) driving without wearing a seat belt;

''(ee) speeding; or

''(ff) any other driving-related offense, as determined by the Secretary.

''(3) RULEMAKING.—

''(A) IN GENERAL.—The Secretary shall promulgate regulations necessary to implement the requirements set forth in paragraph (2), in accordance with the notice and comment provisions under section 553 of title 5.

''(B) EXCEPTION.—A State that otherwise meets the minimum requirements set forth in paragraph (2) shall be deemed by the Secretary to be in compliance with the requirement set forth in paragraph (2) if the State enacted a law before January 1, 2011, establishing a class of license that permits licensees or applicants younger than 18 years of age to drive a motor vehicle—

''(i) in connection with work performed on, or for the operation of, a farm owned by family members who are directly related to the applicant or licensee; or

''(ii) if demonstrable hardship would result from the denial of a license to the licensees or applicants.

''(4) ALLOCATION.—Grant funds allocated to a State under this subsection for a fiscal year shall be in proportion to a State's apportionment under section 402 for such fiscal year.

''(5) USE OF FUNDS.—Of the grant funds received by a State under this subsection—

''(A) at least 25 percent shall be used for—

''(i) enforcing a 2-stage licensing process that complies with paragraph (2);

''(ii) training for law enforcement personnel and other relevant State agency personnel relating to the enforcement described in clause (i);

''(iii) publishing relevant educational materials that pertain directly or indirectly to the State graduated driver licensing law;

''(iv) carrying out other administrative activities that the Secretary considers relevant to the State's 2-stage licensing process; and

''(v) carrying out a teen traffic safety program described in section 402(m); and

''(B) up to 75 percent may be used for any eligible project or activity under section 402.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 4 of title 23, United States Code, is amended by striking the item relating to section 405 and inserting the following:

''405. National priority safety programs.''.

SEC. 31106. HIGH VISIBILITY ENFORCEMENT PROGRAM.

Section 2009 of SAFETEA–LU (23 U.S.C. 402 note) is amended—

(1) in subsection (a)—

(A) by striking ''at least 2'' and inserting ''at least 3''; and

(B) by striking ''years 2006 through 2012.'' and inserting ''fiscal years 2013 and 2014. The Administrator may also initiate and support additional campaigns in each of fiscal years 2013 and 2014 for the purposes specified in subsection (b).'';

(2) in subsection (b), by striking ''either or both'' and inserting ''outcomes related to at least 1'';

(3) in subsection (c), by inserting ''and Internet-based outreach'' after ''print media advertising'';

(4) in subsection (e), by striking ''subsections (a), (c), and (f)'' and inserting ''subsection (c)'';

(5) by striking subsection (f); and

(6) by redesignating subsection (g) as subsection (f).

SEC. 31107. AGENCY ACCOUNTABILITY.

Section 412 of title 23, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

''(a) TRIENNIAL STATE MANAGEMENT REVIEWS.—

''(1) IN GENERAL.—Except as provided under paragraph (2), the Secretary shall conduct a review of each State highway safety program at least once every 3 years.

''(2) EXCEPTIONS.—The Secretary may conduct reviews of the highway safety programs of the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands as often as the Secretary determines to be appropriate.

''(3) COMPONENTS.—Reviews under this subsection shall include—

''(A) a management evaluation of all grant programs funded under this chapter;

''(B) an assessment of State data collection and evaluation relating to performance measures established by the Secretary;

''(C) a comparison of State efforts under subparagraphs (A) and (B) to best practices and programs that have been evaluated for effectiveness; and

''(D) the development of recommendations on how each State could—

''(i) improve the management and oversight of its grant activities; and

''(ii) provide a management and oversight plan for such grant programs.''; and

(2) by striking subsection (f).

SEC. 31108. EMERGENCY MEDICAL SERVICES.

Section 10202 of Public Law 109–59 (42 U.S.C. 300d–4), is amended by adding at the end the following:

''(b) NATIONAL EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL.—

''(1) ESTABLISHMENT.—The Secretary of Transportation, in coordination with the Secretary of Health and Human Services and the Secretary of Homeland Security, shall establish a National Emergency Medical Services Advisory Council (referred to in this subsection as the 'Advisory Council').

''(2) MEMBERSHIP.—The Advisory Council shall be composed of 25 members, who—

''(A) shall be appointed by the Secretary of Transportation; and

''(B) shall collectively be representative of all sectors of the emergency medical services community.

''(3) PURPOSES.—The purposes of the Advisory Council are to advise and consult with—

''(A) the Federal Interagency Committee on Emergency Medical Services on matters relating to emergency medical services issues; and

''(B) the Secretary of Transportation on matters relating to emergency medical services issues affecting the Department of Transportation.

''(4) ADMINISTRATION.—The Administrator of the National Highway Traffic Safety Administration shall provide administrative support to the Advisory Council, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

''(5) LEADERSHIP.—The members of the Advisory Council shall annually select a chairperson of the Advisory Council.

''(6) MEETINGS.—The Advisory Council shall meet as frequently as is determined necessary by the chairperson of the Advisory Council.

''(7) ANNUAL REPORTS.—The Advisory Council shall prepare an annual report to the Secretary of Transportation regarding the Advisory Council's actions and recommendations.''.

SEC. 31109. REPEAL OF PROGRAMS.

(a) GENERAL PROVISION.—A repeal made by this section shall not affect amounts apportioned or allocated before the effective date of such repeal, provided that such apportioned or allocated funds continue to be subject to the requirements to which such funds were subject under the repealed section as in effect on the day before the date of the repeal.

(b) SAFETY BELT PERFORMANCE GRANTS.—Section 406 of title 23, United States Code, and the item relating to section 406 in the analysis for chapter 4 of title 23, United States Code, are repealed.

(c) INNOVATIVE PROJECT GRANTS.—Section 407 of title 23, United States Code, and the item relating to section 407 in the analysis for chapter 4, are repealed.

(d) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—Section 408 of title 23, United States Code, and the item relating to section 408 in the analysis for chapter 4, are repealed.

(e) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES.—Section 410 of title 23, United States Code, and the item relating to section 410 in the analysis for chapter 4, are repealed.

(f) STATE HIGHWAY SAFETY DATA IMPROVEMENTS.—Section 411 of title 23, United States Code, and the item relating to section 411 in the analysis for chapter 4, are repealed.

(g) MOTORCYCLIST SAFETY.—Section 2010 of SAFETEA-LU (23 U.S.C. 402 note), and the item relating to section 2010 in the table of contents under section 1(b) of such Act, are repealed.

(h) CHILD SAFETY AND CHILD BOOSTER SEAT INCENTIVE GRANTS.—Section 2011 of SAFETEA-LU (23 U.S.C. 405 note), and the item relating to section 2011 in the table of contents under section 1(b) of that Act, are repealed.

(i) DRUG-IMPAIRED DRIVING ENFORCEMENT.—Section 2013 of SAFETEA-LU (23 U.S.C. 403 note), and the item relating to section 2013 in the table of contents under section 1(b) of that Act, are repealed.

(j) FIRST RESPONDER VEHICLE SAFETY PROGRAM.—Section 2014 of SAFETEA-LU (23 U.S.C. 402 note), and the item relating to section 2014 in the table of contents under section 1(b) of that Act, are repealed.

(k) RURAL STATE EMERGENCY MEDICAL SERVICES OPTIMIZATION PILOT PROGRAM.—Section 2016 of SAFETEA-LU (119 Stat. 1541), and the item relating to section 2016 in the table of contents under section 1(b) of that Act, are repealed.

(l) OLDER DRIVER SAFETY; LAW ENFORCEMENT TRAINING.—Section 2017 of SAFETEA-LU (119 Stat. 1541), and the item relating to section 2017 in the table of contents under section 1(b) of that Act, are repealed.

Subtitle B—Enhanced Safety Authorities

SEC. 31201. DEFINITION OF MOTOR VEHICLE EQUIPMENT.

Section 30102(a)(7)(C) of title 49, United States Code, is amended to read as follows:

''(C) any device or an article or apparel, including a motorcycle helmet and excluding medicine or eyeglasses prescribed by a licensed practitioner, that—

''(i) is not a system, part, or component of a motor vehicle; and

''(ii) is manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding users of motor vehicles against risk of accident, injury, or death.''.

SEC. 31202. PERMIT REMINDER SYSTEM FOR NONUSE OF SAFETY BELTS.

(a) IN GENERAL.—Chapter 301 of title 49, United States Code, is amended—

(1) in section 30122, by striking subsection (d); and

(2) by amending section 30124 to read as follows:

''§30124. Nonuse of safety belts

''A motor vehicle safety standard prescribed under this chapter may not require a manufacturer to comply with the standard by using a safety belt interlock designed to prevent starting or operating a motor vehicle if an occupant is not using a safety belt.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 301 of title 49, United States Code, is amended by striking the item relating to section 30124 and inserting the following:

''Sec. 30124. Nonuse of safety belts.''.

SEC. 31203. CIVIL PENALTIES.

(a) IN GENERAL.—Section 30165 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''30123(d)'' and inserting ''30123(a)''; and

(ii) by striking ''$15,000,000'' and inserting ''$35,000,000''; and

(B) in paragraph (3), by striking ''$15,000,000'' and inserting ''$35,000,000''; and

(2) by amending subsection (c) to read as follows:

''(c) RELEVANT FACTORS IN DETERMINING AMOUNT OF PENALTY OR COMPROMISE.—In determining the amount of a civil penalty or compromise under this section, the Secretary of Transportation shall consider the nature, circumstances, extent, and gravity of the violation. Such determination shall include, as appropriate—

''(1) the nature of the defect or noncompliance;

''(2) knowledge by the person charged of its obligations under this chapter;

''(3) the severity of the risk of injury;

''(4) the occurrence or absence of injury;

''(5) the number of motor vehicles or items of motor vehicle equipment distributed with the defect or noncompliance;

''(6) actions taken by the person charged to identify, investigate, or mitigate the condition;

''(7) the appropriateness of such penalty in relation to the size of the business of the person charged, including the potential for undue adverse economic impacts;

''(8) whether the person has been assessed civil penalties under this section during the most recent 5 years; and

''(9) other appropriate factors.''.

(b) CIVIL PENALTY CRITERIA.—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a final rule, in accordance with the procedures of section 553 of title 5, United States Code, which provides an interpretation of the penalty factors described in section 30165(c) of title 49, United States Code.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date that is the earlier of the date on which final regulations are issued under subsection (b) or 1 year after the date of enactment of this Act.

SEC. 31204. MOTOR VEHICLE SAFETY RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—Chapter 301 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER V—MOTOR VEHICLE SAFETY RESEARCH AND DEVELOPMENT

''§30181. Policy

''The Secretary of Transportation shall conduct research, development, and testing on any area or aspect of motor vehicle safety necessary to carry out this chapter.

''§30182. Powers and duties

''(a) IN GENERAL.—The Secretary of Transportation shall—

''(1) conduct motor vehicle safety research, development, and testing programs and activities, including activities related to new and emerging technologies that impact or may impact motor vehicle safety;

''(2) collect and analyze all types of motor vehicle and highway safety data and related information to determine the relationship between motor vehicle or motor vehicle equipment performance characteristics and—

''(A) accidents involving motor vehicles; and

''(B) deaths or personal injuries resulting from those accidents.

''(b) ACTIVITIES.—In carrying out a program under this section, the Secretary of Transportation may—

''(1) promote, support, and advance the education and training of motor vehicle safety staff of the National Highway Traffic Safety Administration in motor vehicle safety research programs and activities, including using program funds for planning, implementing, conducting, and presenting results of program activities, and for related expenses;

''(2) obtain experimental and other motor vehicles and motor vehicle equipment for research or testing;

''(3)(A) use any test motor vehicles and motor vehicle equipment suitable for continued use, as determined by the Secretary to assist in carrying out this chapter or any other chapter of this title; or

''(B) sell or otherwise dispose of test motor vehicles and motor vehicle equipment and use the resulting proceeds to carry out this chapter;

''(4) award grants to States and local governments, interstate authorities, and nonprofit institutions; and

''(5) enter into cooperative agreements, collaborative research, or contracts with Federal agencies, interstate authorities, State and local governments, other public entities, private organizations and persons, nonprofit institutions, colleges and universities, consumer advocacy groups, corporations, partnerships, sole proprietorships, trade associations, Federal laboratories (including government-owned, government-operated laboratories and government-owned, contractor-operated laboratories), and research organizations.

''(c) USE OF PUBLIC AGENCIES.—In carrying out this subchapter, the Secretary shall avoid duplication by using the services, research, and testing facilities of public agencies, as appropriate.

''(d) FACILITIES.—The Secretary may plan, design, and construct a new facility or modify an existing facility to conduct research, development, and testing in traffic safety, highway safety, and motor vehicle safety. An expenditure of more than $1,500,000 for planning, design, or construction may be made only if 60 days prior notice of the planning, design, or construction is provided to the Committees on Science, Space, and Technology and Transportation and Infrastructure of the House of Representatives and the Committees on Commerce, Science, and Transportation and Environment and Public Works of the Senate. The notice shall include—

''(1) a brief description of the facility being planned, designed, or constructed;

''(2) the location of the facility;

''(3) an estimate of the maximum cost of the facility;

''(4) a statement identifying private and public agencies that will use the facility and the contribution each agency will make to the cost of the facility; and

''(5) a justification of the need for the facility.

''(e) INCREASING COSTS OF APPROVED FACILITIES.—The estimated maximum cost of a facility noticed under subsection (d) may be increased by an amount equal to the percentage increase in construction costs from the date the notice is submitted to Congress. However, the increase in the cost of the facility may not be more than 10 percent of the estimated maximum cost included in the notice. The Secretary shall decide what increase in construction costs has occurred.

''(f) AVAILABILITY OF INFORMATION, PATENTS, AND DEVELOPMENTS.—When the United States Government makes more than a minimal contribution to a research or development activity under this chapter, the Secretary shall include in the arrangement for the activity a provision to ensure that all information, patents, and developments related to the activity are available to the public. The owner of a background patent may not be deprived of a right under the patent.

''§ 30183. Prohibition on certain disclosures.

''Any report of the National Highway Traffic Safety Administration, or of any officer, employee, or contractor of the National Highway Traffic Safety Administration, relating to any highway traffic accident or the investigation of such accident conducted pursuant to this chapter or section 403 of title 23, may be made available to the public only in a manner that does not identify individuals.''.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENT OF CHAPTER ANALYSIS.—The chapter analysis for chapter 301 of title 49, United States Code, is amended by adding at the end the following:

''SUBCHAPTER V—MOTOR VEHICLE SAFETY RESEARCH AND DEVELOPMENT

''30181. Policy.
''30182. Powers and duties.
''30183. Prohibition on certain disclosures.''.

(2) DELETION OF REDUNDANT MATERIAL.—Chapter 301 of title 49, United States Code, is amended—

(A) in the chapter analysis, by striking the item relating to section 30168; and

(B) by striking section 30168.

SEC. 31205. ODOMETER REQUIREMENTS.

(a) DEFINITION.—Section 32702(5) of title 49, United States Code, is amended by inserting ''or system of components'' after ''instrument''.

(b) ELECTRONIC DISCLOSURES OF ODOMETER INFORMATION.—Section 32705 of title 49, United States Code, is amended by adding at the end the following:

''(g) ELECTRONIC DISCLOSURES.—Not later than 18 months after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012, in carrying out this section, the Secretary shall prescribe regulations permitting any written disclosures or notices and related matters to be provided electronically.''.

SEC. 31206. INCREASED PENALTIES AND DAMAGES FOR ODOMETER FRAUD.

Chapter 327 of title 49, United States Code, is amended—

(1) in section 32709(a)(1)—

(A) by striking ''$2,000'' and inserting ''$10,000''; and

(B) by striking ''$100,000'' and inserting ''$1,000,000''; and

(2) in section 32710(a), by striking ''$1,500'' and inserting ''$10,000''.

SEC. 31207. EXTEND PROHIBITIONS ON IMPORTING NONCOMPLIANT VEHICLES AND EQUIPMENT TO DEFECTIVE VEHICLES AND EQUIPMENT.

Section 30112 of title 49, United States Code, is amended—

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

''(3) Except as provided in this section, section 30114, subsections (i) and (j) of section 30120, and subchapter III, a person may not sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States any motor vehicle or motor vehicle equipment if the vehicle or equipment contains a defect related to motor vehicle safety about which notice was given under section 30118(c) or an order was issued under section 30118(b). Nothing in this paragraph may be construed to prohibit the importation of a new motor vehicle that receives a required recall remedy before being sold to a consumer in the United States.''; and

(2) in subsection (b)(2)—

(A) in subparagraph (A), by striking ''or'' at the end;

(B) in subparagraph (B), by adding ''or'' at the end; and

(C) by adding at the end the following:

''(C) having no reason to know, despite exercising reasonable care, that a motor vehicle or motor vehicle equipment contains a defect related to motor vehicle safety about which notice was given under section 30118(c) or an order was issued under section 30118(b);''.

SEC. 31208. CONDITIONS ON IMPORTATION OF VEHICLES AND EQUIPMENT.

Chapter 301 of title 49, United States Code, is amended—

(1) in the chapter analysis, by striking the item relating to section 30164 and inserting the following:

''30164. Service of process; conditions on importation of vehicles and equipment.'';

and

(2) in section 30164—

(A) in the section heading, by adding ''; **CONDITIONS ON IMPORTATION OF VEHICLES AND EQUIPMENT**'' at the end; and

(B) by adding at the end the following:

''(c) IDENTIFYING INFORMATION.—A manufacturer (including an importer) offering a motor vehicle or motor vehicle equipment for import shall provide, upon request, such information that is necessary to identify and track the products as the Secretary, by rule, may specify, including—

''(1) the product by name and the manufacturer's address; and

''(2) each retailer or distributor to which the manufacturer directly supplied motor vehicles or motor vehicle equipment over which the Secretary has jurisdiction under this chapter.

''(d) REGULATIONS ON THE IMPORT OF A MOTOR VEHICLE.—The Secretary may issue regulations that—

''(1) condition the import of a motor vehicle or motor vehicle equipment on the manufacturer's compliance with—

''(A) the requirements under this section;

''(B) paragraph (1) or (3) of section 30112(a) with respect to such motor vehicle or motor vehicle equipment;

''(C) the provision of reports and records required to be maintained with respect to such motor vehicle or motor vehicle equipment under this chapter;

''(D) a request for inspection of premises, vehicle, or equipment under section 30166;

''(E) an order or voluntary agreement to remedy such vehicle or equipment; or

''(F) any rules implementing the requirements described in this subsection;

''(2) provide an opportunity for the manufacturer to present information before the Secretary's determination as to whether the manufacturer's imports should be restricted; and

''(3) establish a process by which a manufacturer may petition for reinstatement of its ability to import motor vehicles or motor vehicle equipment.

''(e) EXCEPTION.—The requirements of subsections (c) and (d) shall not apply to original manufacturers (or wholly owned subsidiaries) of motor vehicles that, prior to the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012—

''(1) have imported motor vehicles into the United States that are certified to comply with all applicable Federal motor vehicle safety standards;

''(2) have submitted to the Secretary appropriate manufacturer identification information under part 566 of title 49, Code of Federal Regulations; and

''(3) if applicable, have identified a current agent for service of process in accordance with part 551 of title 49, Code of Federal Regulations.

''(f) RULEMAKING.—In issuing regulations under this section, the Secretary shall seek to reduce duplicative requirements by coordinating with the Department of Homeland Security.''.

SEC. 31209. PORT INSPECTIONS; SAMPLES FOR EXAMINATION OR TESTING.

Section 30166(c) of title 49, United States Code, is amended—

(1) in paragraph (2), by striking ''and'' at the end;

(2) in paragraph (3)—

(A) in subparagraph (A), by inserting ''(including at United States ports of entry)'' after ''held for introduction in interstate commerce''; and

(B) in subparagraph (D), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(4) shall enter into a memorandum of understanding with the Secretary of Homeland Security for inspections and sampling of motor vehicle equipment being offered for import to determine compliance with this chapter or a regulation or order issued under this chapter.''.

Subtitle C—Transparency and Accountability

SEC. 31301. PUBLIC AVAILABILITY OF RECALL INFORMATION.

(a) VEHICLE RECALL INFORMATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall require that motor vehicle safety recall information—

(1) be available to the public on the Internet;

(2) be searchable by vehicle make and model and vehicle identification number;

(3) be in a format that preserves consumer privacy; and

(4) includes information about each recall that has not been completed for each vehicle.

(b) RULEMAKING.—The Secretary may initiate a rulemaking proceeding to require each manufacturer to provide the information described in subsection (a), with respect to that manufacturer's motor vehicles, on a publicly accessible Internet website. Any rules promulgated under this subsection—

(1) shall limit the information that must be made available under this section to include only those recalls issued not more than 15 years prior to the date of enactment of this Act;

(2) may require information under paragraph (1) to be provided to a dealer or an owner of a vehicle at no charge; and

(3) shall permit a manufacturer a reasonable period of time after receiving information from a dealer with respect to a vehicle to update the information about the vehicle on the publicly accessible Internet website.

(c) PROMOTION OF PUBLIC AWARENESS.—The Secretary, in consultation with the heads of other relevant agencies, shall promote consumer awareness of the information made available to the public pursuant to this section.

SEC. 31302. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION OUTREACH TO MANUFACTURER, DEALER, AND MECHANIC PERSONNEL.

The Secretary shall publicize the means for contacting the National Highway Traffic Safety Administration in a manner that targets mechanics, passenger motor vehicle dealership personnel, and manufacturer personnel.

SEC. 31303. PUBLIC AVAILABILITY OF COMMUNICATIONS TO DEALERS.

(a) INTERNET ACCESSIBILITY.—Section 30166(f) of title 49, United States Code, is amended—

(1) by striking ''A manufacturer shall give the Secretary of Transportation'' and inserting the following:

''(1) IN GENERAL.—A manufacturer shall give the Secretary of Transportation, and the Secretary shall make available on a publicly accessible Internet website,''; and

(2) by adding at the end the following:

''(2) INDEX.—Communications required to be submitted to the Secretary under this subsection shall be accompanied by an index to each communication, that—

''(A) identifies the make, model, and model year of the affected vehicles;

''(B) includes a concise summary of the subject matter of the communication; and

''(C) shall be made available by the Secretary to the public on the Internet in a searchable format.''.

SEC. 31304. CORPORATE RESPONSIBILITY FOR NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION REPORTS.

(a) IN GENERAL.—Section 30166 of title 49, United States Code, is amended by adding at the end the following:

''(o) CORPORATE RESPONSIBILITY FOR REPORTS.—

''(1) IN GENERAL.—The Secretary may promulgate rules requiring a senior official responsible for safety in any company submitting information to the Secretary in response to a request for information in a safety defect or compliance investigation under this chapter to certify that—

''(A) the signing official has reviewed the submission; and

''(B) based on the official's knowledge, the submission does not—

''(i) contain any untrue statement of a material fact; or

''(ii) omit to state a material fact necessary in order to make the statements made not misleading, in light of the circumstances under which such statements were made.

''(2) NOTICE.—The certification requirements of this section shall be clearly stated on any request for information under paragraph (1).''.

(b) CIVIL PENALTY.—Section 30165(a) of title 49, United States Code, is amended—

(1) in paragraph (3), by striking ''A person'' and inserting ''Except as provided in paragraph (4), a person''; and

(2) by adding at the end the following:

''(4) FALSE OR MISLEADING REPORTS.—A person who knowingly and willfully submits materially false or misleading information to the Secretary, after certifying the same information as accurate under the certification process established pursuant to section 30166(o), shall be subject to a civil penalty of not more than $5,000 per day. The maximum penalty under this paragraph for a related series of daily violations is $1,000,000.''.

SEC. 31305. PASSENGER MOTOR VEHICLE INFORMATION PROGRAM.

(a) DEFINITION.—Section 32301 of title 49, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(2) by inserting before paragraph (2), as redesignated, the following:

''(1) 'crash avoidance' means preventing or mitigating a crash;''; and

(3) in paragraph (2), as redesignated, by striking the period at the end and inserting ''; and''.

(b) INFORMATION INCLUDED.—Section 32302(a) of title 49, United States Code, is amended—

(1) in paragraph (2), by inserting '', crash avoidance, and any other areas the Secretary determines will improve the safety of passenger motor vehicles'' after ''crashworthiness''; and

(2) by striking paragraph (4).

SEC. 31306. PROMOTION OF VEHICLE DEFECT REPORTING.

Section 32302 of title 49, United States Code, is amended by adding at the end the following:

''(d) MOTOR VEHICLE DEFECT REPORTING INFORMATION.—

''(1) RULEMAKING REQUIRED.—Not later than 1 year after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012, the Secretary shall prescribe regulations that require passenger motor vehicle manufacturers—

''(A) to affix, in the glove compartment or in another readily accessible location on the vehicle, a sticker, decal, or other device that provides, in simple and understandable language, information about how to submit a safety-related motor vehicle defect complaint to the National Highway Traffic Safety Administration;

''(B) to prominently print the information described in subparagraph (A) within the owner's manual; and

''(C) to not place such information on the label required under section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

''(2) APPLICATION.—The requirements under paragraph (1) shall apply to passenger motor vehicles manufactured in any model year beginning more than 1 year after the date on which a final rule is published under paragraph (1).''.

SEC. 31307. WHISTLEBLOWER PROTECTIONS FOR MOTOR VEHICLE MANUFACTURERS, PART SUPPLIERS, AND DEALERSHIP EMPLOYEES.

(a) IN GENERAL.—Subchapter IV of chapter 301 of title 49, United States Code, is amended by adding at the end the following:

''§30171. Protection of employees providing motor vehicle safety information

''(a) DISCRIMINATION AGAINST EMPLOYEES OF MANUFACTURERS, PART SUPPLIERS, AND DEALERSHIPS.—No motor vehicle manufacturer, part supplier, or dealership may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

''(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter;

''(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter;

''(3) testified or is about to testify in such a proceeding;

''(4) assisted or participated or is about to assist or participate in such a proceeding; or

''(5) objected to, or refused to participate in, any activity that the employee reasonably believed to be in violation of any provision of chapter 301 of this title, or any order, rule, regulation, standard, or ban under such provision.

''(b) COMPLAINT PROCEDURE.—

''(1) FILING AND NOTIFICATION.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may file (or have any person file on his or her behalf), not later than 180 days after the date on which such violation occurs, a complaint with the Secretary of Labor (hereinafter in this section referred to as the 'Secretary') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

''(2) INVESTIGATION; PRELIMINARY ORDER.—

''(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

''(B) REQUIREMENTS.—

''(i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (5) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

''(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

''(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (5) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

''(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

''(3) FINAL ORDER.—

''(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

''(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

''(i) to take affirmative action to abate the violation;

''(ii) to reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

''(iii) to provide compensatory damages to the complainant.

''(C) ATTORNEYS' FEES.—If such an order is issued under this paragraph, the Secretary, at

the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, bringing the complaint upon which the order was issued.

''(D) FRIVOLOUS COMPLAINTS.—If the Secretary determines that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorney's fee not exceeding $1,000.

''(E) DE NOVO REVIEW.—With respect to a complaint under paragraph (1), if the Secretary has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to the action, be tried by the court with a jury. The action shall be governed by the same legal burdens of proof specified in paragraph (2)(B) for review by the Secretary.

''(4) REVIEW.—

''(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review shall be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

''(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

''(5) ENFORCEMENT OF ORDER BY SECRETARY.—Whenever any person fails to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory damages.

''(6) ENFORCEMENT OF ORDER BY PARTIES.—

''(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

''(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

''(c) MANDAMUS.—Any nondiscretionary duty imposed under this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

''(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of a motor vehicle manufacturer, part supplier, or dealership who, acting without direction from such motor vehicle manufacturer, part supplier, or dealership (or such person's agent), deliberately causes a violation of any requirement relating to motor vehicle safety under this chapter.''.

(b) GOVERNMENT ACCOUNTABILITY OFFICE REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study of the whistleblower protections established by law with respect to this program, and update its study of other such programs administered by the Secretary of Transportation; and

(2) submit to Congress a report of the results of the study under paragraph (1), including—

(A) an identification of the differences between the provisions applicable to different programs, the number of claims brought pursuant to each provision, and the outcome of each claim; and

(B) any recommendations for program changes that the Comptroller General considers appropriate based on the study under paragraph (1).

(c) CONFORMING AMENDMENT.—The table of sections for chapter 301 of title 49, United States Code, is amended by inserting after the item relating to section 30170 the following:

''30171. Protection of employees providing motor vehicle safety information.''.

SEC. 31308. ANTI-REVOLVING DOOR.

(a) STUDY OF DEPARTMENT OF TRANSPORTATION POLICIES ON OFFICIAL COMMUNICATION WITH FORMER MOTOR VEHICLE SAFETY ISSUE EMPLOYEES.—Not later than 1 year after the date of enactment of this Act, the Inspector General of the Department of Transportation shall—

(1) review the Department of Transportation's policies and procedures applicable to official communication with former employees concerning motor vehicle safety compliance matters for which they had responsibility during the last 12 months of their tenure at the Department, including any limitations on the ability of such employees to submit comments, or otherwise communicate directly with the Department, on motor vehicle safety issues; and

(2) submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives that contains the Inspector General's findings, conclusions, and recommendations for strengthening those policies and procedures to minimize the risk of undue influence without compromising the ability of the Department to employ and retain highly qualified individuals for such responsibilities.

(b) POST-EMPLOYMENT POLICY STUDY.—

(1) IN GENERAL.—The Inspector General of the Department of Transportation shall conduct a study of the Department's policies relating to post-employment restrictions on employees who perform functions related to transportation safety.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Inspector General shall submit a report containing the results of the study conducted under paragraph (1) to—

(A) the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Committee on Energy and Commerce of the House of Representatives; and

(C) the Secretary of Transportation.

(3) USE OF RESULTS.—The Secretary of Transportation shall review the results of the study conducted under paragraph (1) and take whatever action the Secretary determines to be appropriate.

SEC. 31309. STUDY OF CRASH DATA COLLECTION.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding the quality of data collected through the National Automotive Sampling System, including the Special Crash Investigations Program.

(b) REVIEW.—The Administrator of the National Highway Traffic Safety Administration (referred to in this section as the ''Administration'') shall conduct a comprehensive review of the data elements collected from each crash to determine if additional data should be collected. The review under this subsection shall include input from interested parties, including suppliers, automakers, safety advocates, the medical community, and research organizations.

(c) CONTENTS.—The report issued under this section shall include—

(1) the analysis and conclusions the Administration can reach from the amount of motor vehicle crash data collected in a given year;

(2) the additional analysis and conclusions the Administration could reach if more crash investigations were conducted each year;

(3) the number of investigations per year that would allow for optimal data analysis and crash information;

(4) the results of the comprehensive review conducted pursuant to subsection (b);

(5) the incremental costs of collecting and analyzing additional data, as well as data from additional crashes;

(6) the potential for obtaining private funding for all or a portion of the costs under paragraph (5);

(7) the potential for recovering any additional costs from high volume users of the data, while continuing to make the data available to the general public free of charge;

(8) the advantages or disadvantages of expanding collection of non-crash data instead of crash data;

(9) recommendations for improvements to the Administration's data collection program; and

(10) the resources needed by the Administration to implement such recommendations.

SEC. 31310. UPDATE MEANS OF PROVIDING NOTIFICATION; IMPROVING EFFICACY OF RECALLS.

(a) UPDATE OF MEANS OF PROVIDING NOTIFICATION.—Section 30119(d) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking ''by first class mail'' and inserting ''in the manner prescribed by the Secretary, by regulation'';

(2) in paragraph (2)—

(A) by striking ''(except a tire) shall be sent by first class mail'' and inserting ''shall be sent in the manner prescribed by the Secretary, by regulation,''; and

(B) by striking the second sentence;

(3) in paragraph (3)—

(A) by striking the first sentence;

(B) by inserting ''to the notification required under paragraphs (1) and (2)'' after ''addition''; and

(C) by inserting ''by the manufacturer'' after ''given''; and

(4) in paragraph (4), by striking ''by certified mail or quicker means if available'' and inserting ''in the manner prescribed by the Secretary, by regulation''.

(b) IMPROVING EFFICACY OF RECALLS.—Section 30119(e) of title 49, United States Code, is amended—

(1) in the subsection heading, by striking ''SECOND'' and inserting ''ADDITIONAL'';

(2) by striking ''If the Secretary'' and inserting the following:

''(1) SECOND NOTIFICATION.—If the Secretary'';

and

(3) by adding at the end the following:

''(2) ADDITIONAL NOTIFICATIONS.—If the Secretary determines, after taking into account the severity of the defect or noncompliance, that the second notification by a manufacturer does not result in an adequate number of motor vehicles or items of replacement equipment being returned for remedy, the Secretary may order the manufacturer—

''(A)(i) to send additional notifications in the manner prescribed by the Secretary, by regulation; or

''(ii) to take additional steps to locate and notify each person registered under State law as

the owner or lessee or the most recent purchaser or lessee, as appropriate; and

''(B) to emphasize the magnitude of the safety risk caused by the defect or noncompliance in such notification.''.

SEC. 31311. EXPANDING CHOICES OF REMEDY AVAILABLE TO MANUFACTURERS OF REPLACEMENT EQUIPMENT.

Section 30120 of title 49, United States Code, is amended—

(1) in subsection (a)(1), by amending subparagraph (B) to read as follows:

''(B) if replacement equipment, by repairing the equipment, replacing the equipment with identical or reasonably equivalent equipment, or by refunding the purchase price.'';

(2) in the heading of subsection (i), by adding ''OF NEW VEHICLES OR EQUIPMENT'' at the end; and

(3) in the heading of subsection (j), by striking ''REPLACED'' and inserting ''REPLACEMENT''.

SEC. 31312. RECALL OBLIGATIONS AND BANKRUPTCY OF MANUFACTURER.

(a) IN GENERAL.—Chapter 301 of title 49, United States Code, is amended by inserting the following after section 30120:

''§ 30120A. Recall obligations and bankruptcy of a manufacturer

''A manufacturer's filing of a petition in bankruptcy under chapter 11 of title 11, does not negate the manufacturer's duty to comply with section 30112 or sections 30115 through 30120 of this title. In any bankruptcy proceeding, the manufacturer's obligations under such sections shall be treated as a claim of the United States Government against such manufacturer, subject to subchapter II of chapter 37 of title 31, United States Code, and given priority pursuant to section 3713(a)(1)(A) of such chapter, notwithstanding section 3713(a)(2), to ensure that consumers are adequately protected from any safety defect or noncompliance determined to exist in the manufacturer's products. This section shall apply equally to actions of a manufacturer taken before or after the filing of a petition in bankruptcy.''.

(b) CONFORMING AMENDMENT.—The chapter analysis of chapter 301 of title 49, United States Code, is amended by inserting after the item relating to section 30120 the following:

''30120A. Recall obligations and bankruptcy of a manufacturer.''.

SEC. 31313. REPEAL OF INSURANCE REPORTS AND INFORMATION PROVISION.

Chapter 331 of title 49, United States Code, is amended—

(1) in the chapter analysis, by striking the item relating to section 33112; and

(2) by striking section 33112.

SEC. 31314. MONRONEY STICKER TO PERMIT ADDITIONAL SAFETY RATING CATEGORIES.

Section 3(g)(2) of the Automobile Information Disclosure Act (15 U.S.C. 1232(g)(2)), is amended by inserting ''safety rating categories that may include'' after ''refers to''.

Subtitle D—Vehicle Electronics and Safety Standards

SEC. 31401. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION ELECTRONICS, SOFTWARE, AND ENGINEERING EXPERTISE.

(a) COUNCIL FOR VEHICLE ELECTRONICS, VEHICLE SOFTWARE, AND EMERGING TECHNOLOGIES.—

(1) IN GENERAL.—The Secretary shall establish, within the National Highway Traffic Safety Administration, a Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies (referred to in this section as the ''Council'') to build, integrate, and aggregate the Administration's expertise in passenger motor vehicle electronics and other new and emerging technologies.

(2) IMPLEMENTATION OF ROADMAP.—The Council shall research the inclusion of emerging lightweight plastic and composite technologies in motor vehicles to increase fuel efficiency, lower emissions, meet fuel economy standards, and enhance passenger motor vehicle safety through continued utilization of the Administration's Plastic and Composite Intensive Vehicle Safety Roadmap (Report No. DOT HS 810 863).

(3) INTRA-AGENCY COORDINATION.—The Council shall coordinate with all components of the Administration responsible for vehicle safety, including research and development, rulemaking, and defects investigation.

(b) HONORS RECRUITMENT PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish, within the National Highway Traffic Safety Administration, an honors program for engineering students, computer science students, and other students interested in vehicle safety that will enable such students to train with engineers and other safety officials for careers in vehicle safety.

(2) STIPEND.—The Secretary is authorized to provide a stipend to any student during the student's participation in the program established under paragraph (1).

(c) ASSESSMENT.—The Council, in consultation with affected stakeholders, shall periodically assess the implications of emerging safety technologies in passenger motor vehicles, including the effect of such technologies on consumers, product availability, and cost.

SEC. 31402. ELECTRONIC SYSTEMS PERFORMANCE.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall complete an examination of the need for safety standards with regard to electronic systems in passenger motor vehicles. In conducting this examination, the Secretary shall—

(1) consider the electronic components, the interaction of electronic components, the security needs for those electronic systems to prevent unauthorized access, and the effect of surrounding environments on the electronic systems; and

(2) allow for public comment.

(b) REPORT.—Upon completion of the examination under subsection (a), the Secretary shall submit a report on the highest priority areas for safety with regard to the electronic systems to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

Subtitle E—Child Safety Standards

SEC. 31501. CHILD SAFETY SEATS.

(a) SIDE IMPACT CRASHES.—Not later than 2 years after the date of enactment of this Act, the Secretary shall issue a final rule amending Federal Motor Vehicle Safety Standard Number 213 to improve the protection of children seated in child restraint systems during side impact crashes.

(b) FRONTAL IMPACT TEST PARAMETERS.—

(1) COMMENCEMENT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall commence a rulemaking proceeding to amend the standard seat assembly specifications under Federal Motor Vehicle Safety Standard Number 213 to better simulate a single representative motor vehicle rear seat.

(2) FINAL RULE.—Not later than 4 years after the date of enactment of this Act, the Secretary shall issue a final rule pursuant to paragraph (1).

SEC. 31502. CHILD RESTRAINT ANCHORAGE SYSTEMS.

(a) INITIATION OF RULEMAKING PROCEEDING.—Not later than 1 year after the date of enactment of this Act, the Secretary shall initiate a rulemaking proceeding to amend Federal Motor Vehicle Safety Standard Number 225 (relating to child restraint anchorage systems) to improve the ease of use for lower anchorages and tethers in all rear seat seating positions if such anchorages and tethers are feasible.

(b) FINAL RULE.—

(1) IN GENERAL.—Except as provided under paragraph (2) and section 31505, the Secretary shall issue a final rule under subsection (a) not later than 3 years after the date of enactment of this Act.

(2) REPORT.—If the Secretary determines that an amendment to the standard referred to in subsection (a) does not meet the requirements and considerations set forth in subsections (a) and (b) of section 30111 of title 49, United States Code, the Secretary shall submit a report describing the reasons for not prescribing such a standard to—

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Energy and Commerce of the House of Representatives.

SEC. 31503. REAR SEAT BELT REMINDERS.

(a) INITIATION OF RULEMAKING PROCEEDING.—Not later than 2 years after the date of enactment of this Act, the Secretary shall initiate a rulemaking proceeding to amend Federal Motor Vehicle Safety Standard Number 208 (relating to occupant crash protection) to provide a safety belt use warning system for designated seating positions in the rear seat.

(b) FINAL RULE.—

(1) IN GENERAL.—Except as provided under paragraph (2) and section 31505, the Secretary shall issue a final rule under subsection (a) not later than 3 years after the date of enactment of this Act.

(2) REPORT.—If the Secretary determines that an amendment to the standard referred to in subsection (a) does not meet the requirements and considerations set forth in subsections (a) and (b) of section 30111 of title 49, United States Code, the Secretary shall submit a report describing the reasons for not prescribing such a standard to—

(A) the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Energy and Commerce of the House of Representatives.

SEC. 31504. UNATTENDED PASSENGER REMINDERS.

(a) SAFETY RESEARCH INITIATIVE.—The Secretary may initiate research into effective ways to minimize the risk of hyperthermia or hypothermia to children or other unattended passengers in rear seating positions.

(b) RESEARCH AREAS.—In carrying out subsection (a), the Secretary may conduct research into the potential viability of—

(1) vehicle technology to provide an alert that a child or unattended passenger remains in a rear seating position after the vehicle motor is disengaged; or

(2) public awareness campaigns to educate drivers on the risks of leaving a child or unattended passenger in a vehicle after the vehicle motor is disengaged; or

(3) other ways to mitigate risk.

(c) COORDINATION WITH OTHER AGENCIES.—The Secretary may collaborate with other Federal agencies in conducting the research under this section.

SEC. 31505. NEW DEADLINE.

If the Secretary determines that any deadline for issuing a final rule under this Act cannot be met, the Secretary shall—

(1) provide the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives with an explanation for why such deadline cannot be met; and

(2) establish a new deadline for that rule.

Subtitle F—Improved Daytime and Nighttime Visibility of Agricultural Equipment

SEC. 31601. RULEMAKING ON VISIBILITY OF AGRICULTURAL EQUIPMENT.

(a) DEFINITIONS.—In this section:

(1) AGRICULTURAL EQUIPMENT.—The term ''agricultural equipment'' has the meaning given the term ''agricultural field equipment'' in ASABE Standard 390.4, entitled ''Definitions and Classifications of Agricultural Field Equipment'', which was published in January 2005 by

the American Society of Agriculture and Biological Engineers, or any successor standard.

(2) PUBLIC ROAD.—The term ''public road'' has the meaning given the term in section 101(a)(27) of title 23, United States Code.

(b) RULEMAKING.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of Transportation, after consultation with representatives of the American Society of Agricultural and Biological Engineers and appropriate Federal agencies, and with other appropriate persons, shall promulgate a rule to improve the daytime and nighttime visibility of agricultural equipment that may be operated on a public road.

(2) MINIMUM STANDARDS.—The rule promulgated pursuant to this subsection shall—

(A) establish minimum lighting and marking standards for applicable agricultural equipment manufactured at least 1 year after the date on which such rule is promulgated; and

(B) provide for the methods, materials, specifications, and equipment to be employed to comply with such standards, which shall be equivalent to ASABE Standard 279.14, entitled ''Lighting and Marking of Agricultural Equipment on Highways'', which was published in July 2008 by the American Society of Agricultural and Biological Engineers, or any successor standard.

(c) REVIEW.—Not less frequently than once every 5 years, the Secretary of Transportation shall—

(1) review the standards established pursuant to subsection (b); and

(2) revise such standards to reflect the revision of ASABE Standard 279 that is in effect at the time of such review.

(d) LIMITATIONS.—

(1) COMPLIANCE WITH SUCCESSOR STANDARDS.—Any rule promulgated pursuant to this section may not prohibit the operation on public roads of agricultural equipment that is equipped in accordance with any adopted revision of ASABE Standard 279 that is later than the revision of such standard that was referenced during the promulgation of the rule.

(2) NO RETROFITTING REQUIRED.—Any rule promulgated pursuant to this section may not require the retrofitting of agricultural equipment that was manufactured before the date on which the lighting and marking standards are enforceable under subsection (b)(2)(A).

(3) NO EFFECT ON ADDITIONAL MATERIALS AND EQUIPMENT.—Any rule promulgated pursuant to this section may not prohibit the operation on public roads of agricultural equipment that is equipped with materials or equipment that are in addition to the minimum materials and equipment specified in the standard upon which such rule is based.

TITLE II—COMMERCIAL MOTOR VEHICLE SAFETY ENHANCEMENT ACT OF 2012

SEC. 32001. SHORT TITLE.

This title may be cited as the ''Commercial Motor Vehicle Safety Enhancement Act of 2012''.

SEC. 32002. REFERENCES TO TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

Subtitle A—Commercial Motor Vehicle Registration

SEC. 32101. REGISTRATION OF MOTOR CARRIERS.

(a) REGISTRATION REQUIREMENTS.—Section 13902(a)(1) is amended to read as follows:

''(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary of Transportation shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier only if the Secretary determines that the person—

''(A) is willing and able to comply with—

''(i) this part and the applicable regulations of the Secretary and the Board;

''(ii) any safety regulations imposed by the Secretary;

''(iii) the duties of employers and employees established by the Secretary under section 31135;

''(iv) the safety fitness requirements established by the Secretary under section 31144;

''(v) the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations (or successor regulations), for transportation provided by an over-the-road bus; and

''(vi) the minimum financial responsibility requirements established by the Secretary under sections 13906, 31138, and 31139;

''(B) has been issued a USDOT number under section 31134;

''(C) has disclosed any relationship involving common ownership, common management, common control, or common familial relationship between that person and any other motor carrier, freight forwarder, or broker, or any other applicant for motor carrier, freight forwarder, or broker registration, if the relationship occurred in the 3-year period preceding the date of the filing of the application for registration; and

''(D) after the Secretary establishes a written proficiency examination pursuant to section 32101(b) of the Commercial Motor Vehicle Safety Enhancement Act of 2012, has passed the written proficiency examination.''.

(b) WRITTEN PROFICIENCY EXAMINATION.—

Not later than 18 months after the date of enactment of this Act, the Secretary shall establish through a rulemaking a written proficiency examination for applicant motor carriers pursuant to section 13902(a)(1)(D) of title 49, United States Code. The written proficiency examination shall test a person's knowledge of applicable safety regulations, standards, and orders of the Federal government.

(c) CONFORMING AMENDMENT.—Section 210(b) of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31144 note) is amended—

(1) by inserting '', commercial regulations, and provisions of subpart H of part 37 of title 49, Code of Federal Regulations, or successor regulations'' after ''applicable safety regulations''; and

(2) by striking ''consider the establishment of'' and inserting ''establish''.

(d) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Section 229(a)(1) of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31136 note) is amended to read as follows:

''(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary under sections 31136 and 31502 regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply during planting and harvest periods, as determined by each State, to—

''(A) drivers transporting agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;

''(B) drivers transporting farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or

''(C) drivers transporting farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.''.

SEC. 32102. SAFETY FITNESS OF NEW OPERATORS.

(a) SAFETY REVIEWS OF NEW OPERATORS.—Section 31144(g)(1) is amended to read as follows:

''(1) SAFETY REVIEW.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), the Secretary shall require, by regulation, each owner and each operator granted new registration under section 13902 or 31134 to undergo a safety review not later than 12 months after the owner or operator, as the case may be, begins operations under such registration.

''(B) PROVIDERS OF MOTORCOACH SERVICES.—The Secretary shall require, by regulation, each owner and each operator granted new registration to transport passengers under section 13902 or 31134 to undergo a safety review not later than 120 days after the owner or operator, as the case may be, begins operations under such registration.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 1 year after the date of enactment of this Act.

SEC. 32103. REINCARNATED CARRIERS.

(a) EFFECTIVE PERIODS OF REGISTRATION.—

(1) SUSPENSIONS, AMENDMENTS, AND REVOCATIONS.—Section 13905(d) is amended—

(A) by redesignating paragraph (2) as paragraph (4);

(B) by striking paragraph (1) and inserting the following:

''(1) APPLICATIONS.—On application of the registrant, the Secretary may amend or revoke a registration.

''(2) COMPLAINTS AND ACTIONS ON SECRETARY'S OWN INITIATIVE.—On complaint or on the Secretary's own initiative and after notice and an opportunity for a proceeding, the Secretary may—

''(A) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with—

''(i) this part;

''(ii) an applicable regulation or order of the Secretary or the Board, including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations (or successor regulations), for transportation provided by an over-the-road bus; or

''(iii) a condition of its registration;

''(B) withhold, suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for failure—

''(i) to pay a civil penalty imposed under chapter 5, 51, 149, or 311;

''(ii) to arrange and abide by an acceptable payment plan for such civil penalty, not later than 90 days after the date specified by order of the Secretary for the payment of such penalty; or

''(iii) for failure to obey a subpoena issued by the Secretary;

''(C) withhold, suspend, amend, or revoke any part of a registration of a motor carrier, broker, or freight forwarder following a determination by the Secretary that the motor carrier, broker, or freight forwarder failed to disclose, in its application for registration, a material fact relevant to its willingness and ability to comply with—

''(i) this part;

''(ii) an applicable regulation or order of the Secretary or the Board; or

''(iii) a condition of its registration; or

''(D) withhold, suspend, amend, or revoke any part of a registration of a motor carrier, broker, or freight forwarder if the Secretary finds that—

''(i) the motor carrier, broker, or freight forwarder does not disclose any relationship through common ownership, common management, common control, or common familial relationship to any other motor carrier, broker, or freight forwarder, or any other applicant for motor carrier, broker, or freight forwarder registration that the Secretary determines is or was unwilling or unable to comply with the relevant requirements listed in section 13902, 13903, or 13904

''(3) LIMITATION.—Paragraph (2)(B) shall not apply to a person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11 of title 11.''; and

(C) in paragraph (4), as redesignated by section 32103(a)(1)(A) of this Act, by striking ''paragraph (1)(B)'' and inserting ''paragraph (2)(B)''.

(2) PROCEDURE.—Section 13905(e) is amended by inserting ''or if the Secretary determines that the registrant failed to disclose a material fact in an application for registration in accordance with subsection (d)(2)(C),'' after ''registrant,''.

(b) INFORMATION SYSTEMS.—Section 31106(a)(3) is amended—

(1) in subparagraph (F), by striking ''and'' at the end;

(2) in subparagraph (G), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(H) determine whether a person or employer is or was related, through common ownership, common management, common control, or common familial relationship, to any other person, employer, or any other applicant for registration under section 13902 or 31134.''.

SEC. 32104. FINANCIAL RESPONSIBILITY REQUIREMENTS.

Not later than 6 months after the date of enactment of this Act, and every 4 years thereafter, the Secretary shall—

(1) issue a report on the appropriateness of—

(A) the current minimum financial responsibility requirements under sections 31138 and 31139 of title 49, United States Code; and

(B) the current bond and insurance requirements under sections 13904(f), 13903, and 13906 of title 49, United States Code; and

(2) submit the report issued under paragraph (1) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 32105. USDOT NUMBER REGISTRATION REQUIREMENT.

(a) IN GENERAL.—Chapter 311 is amended by inserting after section 31133 the following:

''§ 31134. Requirement for registration and USDOT number

''(a) IN GENERAL.—Upon application, and subject to subsections (b) and (c), the Secretary shall register an employer or person subject to the safety jurisdiction of this subchapter. An employer or person may operate a commercial motor vehicle in interstate commerce only if the employer or person is registered by the Secretary under this section and receives a USDOT number. Nothing in this section shall preclude registration by the Secretary of an employer or person not engaged in interstate commerce. An employer or person subject to jurisdiction under subchapter I of chapter 135 of this title shall apply for commercial registration under section 13902 of this title.

''(b) WITHHOLDING REGISTRATION.—The Secretary shall register an employer or person under subsection (a) only if the Secretary determines that—

''(1) the employer or person seeking registration is willing and able to comply with the requirements of this subchapter and the regulations prescribed thereunder and chapter 51 and the regulations prescribed thereunder;

''(2)(A) during the 3-year period before the date of the filing of the application, the employer or person is not or was not related through common ownership, common management, common control, or common familial relationship to any other person or applicant for registration subject to this subchapter who, during such 3-year period, is or was unfit, unwilling, or unable to comply with the requirements listed in subsection (b)(1); or

''(B) the employer or person has disclosed to the Secretary any relationship involving common ownership, common management, common control, or common familial relationship to any other person or applicant for registration subject to this subchapter.

''(c) REVOCATION OR SUSPENSION OF REGISTRATION.—The Secretary shall revoke the registration of an employer or person issued under subsection (a) after notice and an opportunity for a proceeding, or suspend the registration after giving notice of the suspension to the employer or person, if the Secretary determines that—

''(1) the employer's or person's authority to operate pursuant to chapter 139 of this title is subject to revocation or suspension under sections 13905(d)(1) or 13905(f) of this title;

''(2) the employer or person has knowingly failed to comply with the requirements listed in subsection (b)(1);

''(3) the employer or person has not disclosed any relationship through common ownership, common management, common control, or common familial relationship to any other person or applicant for registration subject to this subchapter that the Secretary determines is or was unfit, unwilling, or unable to comply with the requirements listed in subsection (b)(1);

''(4) the employer or person refused to submit to the safety review required by section 31144(g) of this title.

''(d) PERIODIC REGISTRATION UPDATE.—The Secretary may require an employer to update a registration under this section not later than 30 days after a change in the employer's address, other contact information, officers, process agent, or other essential information, as determined by the Secretary.

''(e) STATE AUTHORITY.—Nothing in this section shall be construed as affecting the authority of a State to issue a Department of Transportation number under State law to a person operating in intrastate commerce.''.

(b) CONFORMING AMENDMENT.—The analysis of chapter 311 is amended by inserting after the item relating to section 31133 the following:

''31134. Requirement for registration and USDOT number.''.

SEC. 32106. REGISTRATION FEE SYSTEM.

Section 13908(d)(1) is amended by striking ''but shall not exceed $300''.

SEC. 32107. REGISTRATION UPDATE.

(a) MOTOR CARRIER UPDATE.—Section 13902 is amended by adding at the end the following:

''(h) UPDATE OF REGISTRATION.—

''(1) IN GENERAL.—The Secretary shall require a registrant to update its registration under this section not later than 30 days after a change in the registrant's address, other contact information, officers, process agent, or other essential information, as determined by the Secretary.

''(2) MOTOR CARRIERS OF PASSENGERS.—In addition to the requirements of paragraph (1), the Secretary shall require a motor carrier of passengers to update its registration information, including numbers of vehicles, annual mileage, and individuals responsible for compliance with Federal safety regulations quarterly for the first 2 years after being issued a registration under this section.''.

(b) FREIGHT FORWARDER UPDATE.—Section 13903 is amended by adding at the end the following:

''(c) UPDATE OF REGISTRATION.—The Secretary shall require a freight forwarder to update its registration under this section not later than 30 days after a change in the freight forwarder's address, other contact information, officers, process agent, or other essential information, as determined by the Secretary.''.

(c) BROKER UPDATE.—Section 13904 is amended by adding at the end the following:

''(e) UPDATE OF REGISTRATION.—The Secretary shall require a broker to update its registration under this section not later than 30 days after a change in the broker's address, other contact information, officers, process agent, or other essential information, as determined by the Secretary.''.

SEC. 32108. INCREASED PENALTIES FOR OPERATING WITHOUT REGISTRATION.

(a) PENALTIES.—Section 14901(a) is amended—

(1) by striking ''$500'' and inserting ''$1,000'';

(2) by striking ''who is not registered under this part to provide transportation of passengers,'';

(3) by striking ''with respect to providing transportation of passengers,'' and inserting ''or section 13902(c) of this title,''; and

(4) by striking ''$2,000 for each violation and each additional day the violation continues'' and inserting ''$10,000 for each violation, or $25,000 for each violation relating to providing transportation of passengers''.

(b) TRANSPORTATION OF HAZARDOUS WASTES.—Section 14901(b) is amended by striking ''not to exceed $20,000'' and inserting ''not less than $20,000, but not to exceed $40,000''.

SEC. 32109. REVOCATION OF REGISTRATION FOR IMMINENT HAZARD.

Section 13905(f)(2) is amended to read as follows:

''(2) IMMINENT HAZARD TO PUBLIC HEALTH.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary shall revoke the registration of a motor carrier if the Secretary finds that the carrier is or was conducting unsafe operations that are or were an imminent hazard to public health or property.''.

SEC. 32110. REVOCATION OF REGISTRATION AND OTHER PENALTIES FOR FAILURE TO RESPOND TO SUBPOENA.

Section 525 is amended—

(1) by striking ''subpenas'' in the section heading and inserting ''subpoenas'';

(2) by striking ''subpena'' and inserting ''subpoena'';

(3) by striking ''$100'' and inserting ''$1,000'';

(4) by striking ''$5,000'' and inserting ''$10,000''; and

(5) by adding at the end the following:

''The Secretary may withhold, suspend, amend, or revoke any part of the registration of a person required to register under chapter 139 for failing to obey a subpoena or requirement of the Secretary under this chapter to appear and testify or produce records.''.

SEC. 32111. FLEETWIDE OUT OF SERVICE ORDER FOR OPERATING WITHOUT REQUIRED REGISTRATION.

Section 13902(e)(1) is amended—

(1) by striking ''motor vehicle'' and inserting ''motor carrier'' after ''the Secretary determines that a''; and

(2) by striking ''order the vehicle'' and inserting ''order the motor carrier operations'' after ''the Secretary may''.

SEC. 32112. MOTOR CARRIER AND OFFICER PATTERNS OF SAFETY VIOLATIONS.

Section 31135 is amended—

(1) by striking subsection (b) and inserting the following:

''(b) NONCOMPLIANCE.—

''(1) MOTOR CARRIERS.—Two or more motor carriers, employers, or persons shall not use common ownership, common management, common control, or common familial relationship to enable any or all such motor carriers, employers, or persons to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with regulations prescribed under this subchapter or an order of the Secretary issued under this subchapter.

''(2) PATTERN.—If the Secretary finds that a motor carrier, employer, or person engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations prescribed under this subchapter, the Secretary—

''(A) may withhold, suspend, amend, or revoke any part of the motor carrier's, employer's, or person's registration in accordance with section 13905 or 31134; and

''(B) shall take into account such non-compliance for purposes of determining civil penalty amounts under section 521(b)(2)(D).

''(3) OFFICERS.—If the Secretary finds, after notice and an opportunity for proceeding, that an officer of a motor carrier, employer, or owner or operator has engaged in a pattern or practice of, or assisted a motor carrier, employer, or owner or operator in avoiding compliance, or masking or otherwise concealing noncompliance, while serving as an officer or such motor

carrier, employer, or owner or operator, the Secretary may suspend, amend, or revoke any part of a registration granted to the officer individually under section 13902 or 31134.''.

Subtitle B—Commercial Motor Vehicle Safety

SEC. 32201. CRASHWORTHINESS STANDARDS.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall conduct a comprehensive analysis on the need for crashworthiness standards on property-carrying commercial motor vehicles with a gross vehicle weight rating or gross vehicle weight of at least 26,001 pounds involved in interstate commerce, including an evaluation of the need for roof strength, pillar strength, air bags, and other occupant protections standards, and frontal and back wall standards.

(b) REPORT.—Not later than 90 days after completing the comprehensive analysis under subsection (a), the Secretary shall report the results of the analysis and any recommendations to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 32202. CANADIAN SAFETY RATING RECIPROCITY.

Section 31144 is amended by adding at the end the following:

''(h) RECOGNITION OF CANADIAN MOTOR CARRIER SAFETY FITNESS DETERMINATIONS.—

''(1) If an authorized agency of the Canadian federal government or a Canadian Territorial or Provincial government determines, by applying the procedure and standards prescribed by the Secretary under subsection (b) or pursuant to an agreement under paragraph (2), that a Canadian employer is unfit and prohibits the employer from operating a commercial motor vehicle in Canada or any Canadian Province, the Secretary may prohibit the employer from operating such vehicle in interstate and foreign commerce until the authorized Canadian agency determines that the employer is fit.

''(2) The Secretary may consult and participate in negotiations with authorized officials of the Canadian federal government or a Canadian Territorial or Provincial government, as necessary, to provide reciprocal recognition of each country's motor carrier safety fitness determinations. An agreement shall provide, to the maximum extent practicable, that each country will follow the procedure and standards prescribed by the Secretary under subsection (b) in making motor carrier safety fitness determinations.''.

SEC. 32203. STATE REPORTING OF FOREIGN COMMERCIAL DRIVER CONVICTIONS.

(a) DEFINITION OF FOREIGN COMMERCIAL DRIVER.—Section 31301 is amended—

(1) by redesignating paragraphs (10) through (14) as paragraphs (11) through (15), respectively; and

(2) by inserting after paragraph (9) the following:

''(10) 'foreign commercial driver' means an individual licensed to operate a commercial motor vehicle by an authority outside the United States, or a citizen of a foreign country who operates a commercial motor vehicle in the United States.''.

(b) STATE REPORTING OF CONVICTIONS.—Section 31311(a) is amended by adding after paragraph (21) the following:

''(22) The State shall report a conviction of a foreign commercial driver by that State to the Federal Convictions and Withdrawal Database, or another information system designated by the Secretary to record the convictions. A report shall include—

''(A) for a driver holding a foreign commercial driver's license—

''(i) each conviction relating to the operation of a commercial motor vehicle; and

''(ii) each conviction relating to the operation of a non-commercial motor vehicle; and

''(B) for an unlicensed driver or a driver holding a foreign non-commercial driver's license, each conviction relating to the operation of a commercial motor vehicle.''.

SEC. 32204. AUTHORITY TO DISQUALIFY FOREIGN COMMERCIAL DRIVERS.

Section 31310 is amended by adding at the end the following:

''(k) FOREIGN COMMERCIAL DRIVERS.—A foreign commercial driver shall be subject to disqualification under this section.''.

SEC. 32205. REVOCATION OF FOREIGN MOTOR CARRIER OPERATING AUTHORITY FOR FAILURE TO PAY CIVIL PENALTIES.

Section 13905(d)(2), as amended by section 32103(a) of this Act, is amended by inserting ''foreign motor carrier, foreign motor private carrier,'' after ''registration of a motor carrier,'' each place it appears.

SEC. 32206. RENTAL TRUCK ACCIDENT STUDY.

(a) DEFINITIONS.—In this section:

(1) RENTAL TRUCK.—The term ''rental truck'' means a motor vehicle with a gross vehicle weight rating of between 10,000 and 26,000 pounds that is made available for rental by a rental truck company.

(2) RENTAL TRUCK COMPANY.—The term ''rental truck company'' means a person or company that is in the business of renting or leasing rental trucks to the public or for private use.

(b) STUDY.—

(1) IN GENERAL.—The Secretary shall conduct a study of the safety of rental trucks during the 7-year period ending on December 31, 2011.

(2) REQUIREMENTS.—The study conducted under paragraph (1) shall—

(A) evaluate available data on the number of crashes, fatalities, and injuries involving rental trucks and the cause of such crashes, utilizing police accident reports and other sources;

(B) estimate the property damage and costs resulting from a subset of crashes involving rental truck operations, which the Secretary believes adequately reflect all crashes involving rental trucks;

(C) analyze State and local laws regulating rental truck companies, including safety and inspection requirements;

(D) assess the rental truck maintenance programs of a selection of small, medium, and large rental truck companies, as selected by the Secretary, including the frequency of rental truck maintenance inspections, and compare such programs with inspection requirements for passenger vehicles and commercial motor vehicles;

(E) include any other information available regarding the safety of rental trucks; and

(F) review any other information that the Secretary determines to be appropriate.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that contains—

(1) the findings of the study conducted pursuant to subsection (b); and

(2) any recommendations for legislation that the Secretary determines to be appropriate.

Subtitle C—Driver Safety

SEC. 32301. HOURS OF SERVICE STUDY AND ELECTRONIC LOGGING DEVICES.

(a) HOURS OF SERVICE STUDY.—

(1) FIELD STUDY.—

(A) IN GENERAL.—Not later than March 31, 2013, the Secretary shall complete a field study on the efficacy of the restart rule published on December 27, 2011 (in this section referred to as the ''2011 restart rule''), applicable to operators of commercial motor vehicles of property subject to maximum driving time requirements of the Secretary.

(B) REQUIREMENT.—The field study shall expand upon the results of the laboratory-based study relating to commercial motor vehicle driver fatigue sponsored by the Federal Motor Carrier Safety Administration presented in the report of December 2010 titled ''Investigation into Motor Carrier Practices to Achieve Optimal Commercial Motor Vehicle Driver Performance: Phase I''.

(C) CRITERIA.—In conducting the field study, the Secretary shall ensure that—

(i) the methodology for the field study is consistent, to the maximum extent possible, with the laboratory-based study methodology;

(ii) the data collected is representative of the drivers and motor carriers regulated by the hours of service regulations, including those drivers and carriers affected by the maximum driving time requirements;

(iii) the analysis is statistically valid; and

(iv) the field study follows the plan for the ''Scheduling and Fatigue Recovery Project'' developed by the Federal Motor Carrier Safety Administration.

(D) REPORT TO CONGRESS.—Not later than September 30, 2013, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report detailing the results of the field study.

(b) GENERAL AUTHORITY.—Section 31137 is amended—

(1) by amending the section heading to read as follows:

''§ 31137. Electronic logging devices and brake maintenance regulations'';

(2) by redesignating subsection (b) as subsection (g); and

(3) by amending (a) to read as follows:

''(a) USE OF ELECTRONIC LOGGING DEVICES.—Not later than 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, the Secretary of Transportation shall prescribe regulations—

''(1) requiring a commercial motor vehicle involved in interstate commerce and operated by a driver subject to the hours of service and the record of duty status requirements under part 395 of title 49, Code of Federal Regulations, be equipped with an electronic logging device to improve compliance by an operator of a vehicle with hours of service regulations prescribed by the Secretary; and

''(2) ensuring that an electronic logging device is not used to harass a vehicle operator.

''(b) ELECTRONIC LOGGING DEVICE REQUIREMENTS.—

''(1) IN GENERAL.—The regulations prescribed under subsection (a) shall—

''(A) require an electronic logging device—

''(i) to accurately record commercial driver hours of service;

''(ii) to record the location of a commercial motor vehicle;

''(iii) to be tamper resistant; and

''(iv) to be synchronized to the operation of the vehicle engine or be capable of recognizing when the vehicle is being operated;

''(B) allow law enforcement to access the data contained in the device during a roadside inspection; and

''(C) apply to a commercial motor vehicle beginning on the date that is 2 years after the date that the regulations are published as a final rule.

''(2) PERFORMANCE AND DESIGN STANDARDS.—The regulations prescribed under subsection (a) shall establish performance standards—

''(A) defining a standardized user interface to aid vehicle operator compliance and law enforcement review;

''(B) establishing a secure process for standardized—

''(i) and unique vehicle operator identification;

''(ii) data access;

''(iii) data transfer for vehicle operators between motor vehicles;

''(iv) data storage for a motor carrier; and

''(v) data transfer and transportability for law enforcement officials;

''(C) establishing a standard security level for an electronic logging device and related components to be tamper resistant by using a methodology endorsed by a nationally recognized standards organization; and

''(D) identifying each driver subject to the hours of service and record of duty status requirements under part 395 of title 49, Code of Federal Regulations.

''(c) CERTIFICATION CRITERIA.—

''(1) IN GENERAL.—The regulations prescribed by the Secretary under this section shall establish the criteria and a process for the certification of electronic logging devices to ensure that the device meets the performance requirements under this section.

''(2) EFFECT OF NONCERTIFICATION.—Electronic logging devices that are not certified in accordance with the certification process referred to in paragraph (1) shall not be acceptable evidence of hours of service and record of duty status requirements under part 395 of title 49, Code of Federal Regulations.

''(d) ADDITIONAL CONSIDERATIONS.—The Secretary, in prescribing the regulations described in subsection (a), shall consider how such regulations may—

''(1) reduce or eliminate requirements for drivers and motor carriers to retain supporting documentation associated with paper-based records of duty status if—

''(A) data contained in an electronic logging device supplants such documentation; and

''(B) using such data without paper-based records does not diminish the Secretary's ability to audit and review compliance with the Secretary's hours of service regulations; and

''(2) include such measures as the Secretary determines are necessary to protect the privacy of each individual whose personal data is contained in an electronic logging device.

''(e) USE OF DATA.—

''(1) IN GENERAL.—The Secretary may utilize information contained in an electronic logging device only to enforce the Secretary's motor carrier safety and related regulations, including record-of-duty status regulations.

''(2) MEASURES TO PRESERVE CONFIDENTIALITY OF PERSONAL DATA.—The Secretary shall institute appropriate measures to preserve the confidentiality of any personal data contained in an electronic logging device and disclosed in the course of an action taken by the Secretary or by law enforcement officials to enforce the regulations referred to in paragraph (1).

''(3) ENFORCEMENT.—The Secretary shall institute appropriate measures to ensure any information collected by electronic logging devices is used by enforcement personnel only for the purpose of determining compliance with hours of service requirements.

''(f) DEFINITIONS.—In this section:

''(1) ELECTRONIC LOGGING DEVICE.—The term 'electronic logging device' means an electronic device that—

''(A) is capable of recording a driver's hours of service and duty status accurately and automatically; and

''(B) meets the requirements established by the Secretary through regulation.

''(2) TAMPER RESISTANT.—The term 'tamper resistant' means resistant to allowing any individual to cause an electronic device to record the incorrect date, time, and location for changes to on-duty driving status of a commercial motor vehicle operator under part 395 of title 49, Code of Federal Regulations, or to subsequently alter the record created by that device.''.

(c) CIVIL PENALTIES.—Section 30165(a)(1) is amended by striking ''or 30141 through 30147'' and inserting ''30141 through 30147, or 31137''.

(d) CONFORMING AMENDMENT.—The analysis for chapter 311 is amended by striking the item relating to section 31137 and inserting the following:

''31137. Electronic logging devices and brake maintenance regulations.''.

SEC. 32302. DRIVER MEDICAL QUALIFICATIONS.

(a) DEADLINE FOR ESTABLISHMENT OF NATIONAL REGISTRY OF MEDICAL EXAMINERS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish a national registry of medical examiners in accordance with section 31149(d)(1) of title 49, United States Code.

(b) EXAMINATION REQUIREMENT FOR NATIONAL REGISTRY OF MEDICAL EXAMINERS.—Section 31149(c)(1)(D) is amended to read as follows:

''(D) not later than 1 year after enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, develop requirements for a medical examiner to be listed in the national registry under this section, including—

''(i) the completion of specific courses and materials;

''(ii) certification, including, at a minimum, self-certification, if the Secretary determines that self-certification is necessary for sufficient participation in the national registry, to verify that a medical examiner completed specific training, including refresher courses, that the Secretary determines necessary to be listed in the national registry;

''(iii) an examination that requires a passing grade; and

''(iv) demonstration of a medical examiner's willingness to meet the reporting requirements established by the Secretary;''.

(c) ADDITIONAL OVERSIGHT OF LICENSING AUTHORITIES.—

(1) IN GENERAL.—Section 31149(c)(1) is amended—

(A) by amending subparagraph (E) to read as follows:

''(E) require medical examiners to transmit electronically, on a monthly basis, the name of the applicant, a numerical identifier, and additional information contained on the medical examiner's certificate for any completed medical examination report required under section 391.43 of title 49, Code of Federal Regulations, to the chief medical examiner;'';

(B) in subparagraph (F), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(G) annually review the implementation of commercial driver's license requirements by not fewer than 10 States to assess the accuracy, validity, and timeliness of—

''(i) the submission of physical examination reports and medical certificates to State licensing agencies; and

''(ii) the processing of the submissions by State licensing agencies.''.

(2) INTERNAL OVERSIGHT POLICY.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall establish an oversight policy and procedure to carry out section 31149(c)(1)(G) of title 49, United States Code, as added by section 32302(c)(1) of this Act.

(B) EFFECTIVE DATE.—The amendments made by section 32303(c)(1) of this Act shall take effect on the date the oversight policies and procedures are established pursuant to subparagraph (A).

(d) ELECTRONIC FILING OF MEDICAL EXAMINATION CERTIFICATES.—Section 31311(a), as amended by sections 32203(b) and 32305(b) of this Act, is amended by adding at the end the following:

''(25) Not later than 5 years after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, the State shall establish and maintain, as part of its driver information system, the capability to receive an electronic copy of a medical examiner's certificate, from a certified medical examiner, for each holder of a commercial driver's license issued by the State who operates or intends to operate in interstate commerce.''.

(e) FUNDING.—The Secretary is authorized to utilize funds provided under section 4101(c)(1) of SAFETEA-LU (119 Stat. 1715) to support development of costs of the information technology needed to carry out section 31311(a)(25) of title 49, United States Code.

SEC. 32303. COMMERCIAL DRIVER'S LICENSE NOTIFICATION SYSTEM.

(a) IN GENERAL.—Section 31304 is amended—

(1) by striking ''An employer'' and inserting the following:

''(a) IN GENERAL.—An employer''; and

(2) by adding at the end the following:

''(b) DRIVER VIOLATION RECORDS.—

''(1) PERIODIC REVIEW.—Except as provided in paragraph (3), an employer shall ascertain the driving record of each driver it employs—

''(A) by making an inquiry at least once every 12 months to the appropriate State agency in which the driver held or holds a commercial driver's license or permit during such time period;

''(B) by receiving occurrence-based reports of changes in the status of a driver's record from 1 or more driver record notification systems that meet minimum standards issued by the Secretary; or

''(C) by a combination of inquiries to States and reports from driver record notification systems.

''(2) RECORD KEEPING.—A copy of the reports received under paragraph (1) shall be maintained in the driver's qualification file.

''(3) EXCEPTIONS TO RECORD REVIEW REQUIREMENT.—Paragraph (1) shall not apply to a driver employed by an employer who, in any 7-day period, is employed or used as a driver by more than 1 employer—

''(A) if the employer obtains the driver's identification number, type, and issuing State of the driver's commercial motor vehicle license; or

''(B) if the information described in subparagraph (A) is furnished by another employer and the employer that regularly employs the driver meets the other requirements under this section.

''(4) DRIVER RECORD NOTIFICATION SYSTEM DEFINED.—In this section, the term 'driver record notification system' means a system that automatically furnishes an employer with a report, generated by the appropriate agency of a State, on the change in the status of an employee's driver's license due to a conviction for a moving violation, a failure to appear, an accident, driver's license suspension, driver's license revocation, or any other action taken against the driving privilege.''.

(b) STANDARDS FOR DRIVER RECORD NOTIFICATION SYSTEMS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue minimum standards for driver notification systems, including standards for the accuracy, consistency, and completeness of the information provided.

(c) PLAN FOR NATIONAL NOTIFICATION SYSTEM.—

(1) DEVELOPMENT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall develop recommendations and a plan for the development and implementation of a national driver record notification system, including—

(A) an assessment of the merits of achieving a national system by expanding the Commercial Driver's License Information System; and

(B) an estimate of the fees that an employer will be charged to offset the operating costs of the national system.

(2) SUBMISSION TO CONGRESS.—Not later than 90 days after the recommendations and plan are developed under paragraph (1), the Secretary shall submit a report on the recommendations and plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 32304. COMMERCIAL MOTOR VEHICLE OPERATOR TRAINING.

(a) IN GENERAL.—Section 31305 is amended by adding at the end the following:

''(c) STANDARDS FOR TRAINING.—Not later than 1 year after the date of enactment of the

Commercial Motor Vehicle Safety Enhancement Act of 2012, the Secretary shall issue final regulations establishing minimum entry-level training requirements for an individual operating a commercial motor vehicle—

''(1) addressing the knowledge and skills that—

''(A) are necessary for an individual operating a commercial motor vehicle to safely operate a commercial motor vehicle; and

''(B) must be acquired before obtaining a commercial driver's license for the first time or upgrading from one class of commercial driver's license to another class;

''(2) addressing the specific training needs of a commercial motor vehicle operator seeking passenger or hazardous materials endorsements;

''(3) requiring effective instruction to acquire the knowledge, skills, and training referred to in paragraphs (1) and (2), including classroom and behind-the-wheel instruction;

''(4) requiring certification that an individual operating a commercial motor vehicle meets the requirements established by the Secretary; and

''(5) requiring a training provider (including a public or private driving school, motor carrier, or owner or operator of a commercial motor vehicle) that offers training that results in the issuance of a certification to an individual under paragraph (4) to demonstrate that the training meets the requirements of the regulations, through a process established by the Secretary.''.

(b) COMMERCIAL DRIVER'S LICENSE UNIFORM STANDARDS.—Section 31308(1) is amended to read as follows:

''(1) an individual issued a commercial driver's license—

''(A) pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the Secretary under section 31305(a); and

''(B) present certification of completion of driver training that meets the requirements established by the Secretary under section 31305(c);''.

(c) CONFORMING AMENDMENT.—The section heading for section 31305 is amended to read as follows:

''§ 31305. General driver fitness, testing, and training''.

(d) CONFORMING AMENDMENT.—The analysis for chapter 313 is amended by striking the item relating to section 31305 and inserting the following:

''31305. General driver fitness, testing, and training.''.

SEC. 32305. COMMERCIAL DRIVER'S LICENSE PROGRAM.

(a) IN GENERAL.—Section 31309 is amended—

(1) in subsection (e)(4), by amending subparagraph (A) to read as follows:

''(A) IN GENERAL.—The plan shall specify—

''(i) a date by which all States shall be operating commercial driver's license information systems that are compatible with the modernized information system under this section; and

''(ii) that States must use the systems to receive and submit conviction and disqualification data.''; and

(2) in subsection (f), by striking ''use'' and inserting ''use, subject to section 31313(a),''.

(b) REQUIREMENTS FOR STATE PARTICIPATION.—Section 31311 is amended—

(1) in subsection (a), as amended by section 32203(b) of this Act—

(A) in paragraph (5), by striking ''At least'' and all that follows through ''regulation),'' and inserting: ''Not later than the time period prescribed by the Secretary by regulation,''; and

(B) by adding at the end the following:

''(23) Not later than 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, the State shall implement a system and practices for the exclusive electronic exchange of driver history record information on the system the Secretary maintains under section 31309, including the posting of convictions, withdrawals, and disqualifications.

''(24) Before renewing or issuing a commercial driver's license to an individual, the State shall request information pertaining to the individual from the drug and alcohol clearinghouse maintained under section 31306a.''; and

(2) by adding at the end the following:

''(d) STATE COMMERCIAL DRIVER'S LICENSE PROGRAM PLAN.—

''(1) IN GENERAL.—A State shall submit a plan to the Secretary for complying with the requirements under this section during the period beginning on the date the plan is submitted and ending on September 30, 2016.

''(2) CONTENTS.—A plan submitted by a State under paragraph (1) shall identify—

''(A) the actions that the State will take to address any deficiencies in the State's commercial driver's license program, as identified by the Secretary in the most recent audit of the program; and

''(B) other actions that the State will take to comply with the requirements under subsection (a).

''(3) PRIORITY.—

''(A) IMPLEMENTATION SCHEDULE.—A plan submitted by a State under paragraph (1) shall include a schedule for the implementation of the actions identified under paragraph (2). In establishing the schedule, the State shall prioritize actions to address any deficiencies highlighted by the Secretary as critical in the most recent audit of the program.

''(B) DEADLINE FOR COMPLIANCE WITH REQUIREMENTS.—A plan submitted by a State under paragraph (1) shall include assurances that the State will take the necessary actions to comply with the requirements of subsection (a) not later than September 30, 2015.

''(4) APPROVAL AND DISAPPROVAL.—The Secretary shall—

''(A) review each plan submitted under paragraph (1);

''(B)(i) approve a plan if the Secretary determines that the plan meets the requirements under this subsection and promotes the goals of this chapter; and

''(ii) disapprove a plan that the Secretary determines does not meet the requirements or does not promote the goals.

''(5) MODIFICATION OF DISAPPROVED PLANS.—If the Secretary disapproves a plan under paragraph (4), the Secretary shall—

''(A) provide a written explanation of the disapproval to the State; and

''(B) allow the State to modify the plan and resubmit it for approval.

''(6) PLAN UPDATES.—The Secretary may require a State to review and update a plan, as appropriate.

''(e) ANNUAL COMPARISON OF STATE LEVELS OF COMPLIANCE.—The Secretary shall annually—

''(1) compare the relative levels of compliance by States with the requirements under subsection (a); and

''(2) make the results of the comparison available to the public.''.

SEC. 32306. COMMERCIAL MOTOR VEHICLE DRIVER INFORMATION SYSTEMS.

Section 31106(c) is amended—

(1) by striking the heading and inserting ''(1) IN GENERAL.'';

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D); and

(3) by adding at the end the following:

''(2) ACCESS TO RECORDS.—The Secretary may require a State, as a condition of an award of grant money under this section, to provide the Secretary access to all State licensing status and driver history records via an electronic information system, subject to section 2721 of title 18.''.

SEC. 32307. EMPLOYER RESPONSIBILITIES.

Section 31304, as amended by section 32303 of this Act, is amended in subsection (a)—

(1) by striking ''knowingly''; and

(2) by striking ''in which'' and inserting ''that the employer knows or should reasonably know that''.

SEC. 32308. PROGRAM TO ASSIST VETERANS TO ACQUIRE COMMERCIAL DRIVER'S LICENSES.

(a) STUDY.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary, in coordination with the Secretary of Defense, and in consultation with the States and other relevant stakeholders, shall commence a study to assess Federal and State regulatory, economic, and administrative challenges faced by members and former members of the Armed Forces, who received safety training and operated qualifying motor vehicles during their service, in obtaining commercial driver's licenses (as defined in section 31301(3) of title 49, United States Code).

(2) REQUIREMENTS.—The study under this subsection shall—

(A) identify written and behind-the-wheel safety training, qualification standards, knowledge and skills tests, or other operating experience members of the Armed Forces must meet that satisfy the minimum standards prescribed by the Secretary of Transportation for the operation of commercial motor vehicles under section 31305 of title 49, United States Code;

(B) compare the alcohol and controlled substances testing requirements for members of the Armed Forces with those required for holders of a commercial driver's license;

(C) evaluate the cause of delays in reviewing applications for commercial driver's licenses of members and former members of the Armed Forces;

(D) identify duplicative application costs;

(E) identify residency, domicile, training and testing requirements, and other safety or health assessments that affect or delay the issuance of commercial driver's licenses to members and former members of the Armed Forces; and

(F) include other factors that the Secretary determines to be appropriate to meet the requirements of the study.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the commencement of the study under subsection (a), the Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Financial Services of the House of Representatives that contains the findings and recommendations from the study.

(2) ELEMENTS.—The report under paragraph (1) shall include—

(A) findings related to the study requirements under subsection (a)(2);

(B) recommendations for the Federal and State legislative, regulatory, and administrative actions necessary to address challenges identified in subparagraph (A); and

(C) a plan to implement the recommendations for which the Secretary has authority.

(c) IMPLEMENTATION.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Defense and in cooperation with the States, shall implement the recommendations identified in subsection (b) and establish accelerated licensing procedures to assist veterans to acquire commercial driver's licenses.

(d) ACCELERATED LICENSING PROCEDURES.—The procedures established under subsection (a) shall be designed to be applicable to any veteran who—

(1) is attempting to acquire a commercial driver's license; and

(2) obtained, during military service, documented driving experience that, in the determination of the Secretary, makes the use of accelerated licensing procedures appropriate.

(e) DEFINITIONS.—In this section:

(1) COMMERCIAL DRIVER'S LICENSE.—The term ''commercial driver's license'' has the meaning

given that term in section 31301 of title 49, United States Code.

(2) STATE.—The term ''State'' has the meaning given that term in section 31301 of title 49, United States Code.

(3) VETERAN.—The term ''veteran'' has the meaning given that term in section 101 of title 38, United States Code.

Subtitle D—Safe Roads Act of 2012

SEC. 32401. SHORT TITLE.

This subtitle may be cited as the ''Safe Roads Act of 2012''.

SEC. 32402. NATIONAL CLEARINGHOUSE FOR CONTROLLED SUBSTANCE AND ALCOHOL TEST RESULTS OF COMMERCIAL MOTOR VEHICLE OPERATORS.

(a) IN GENERAL.—Chapter 313 is amended—

(1) in section 31306(a), by inserting ''and section 31306a'' after ''this section''; and

(2) by inserting after section 31306 the following:

''§ 31306a. National clearinghouse for controlled substance and alcohol test results of commercial motor vehicle operators

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Safe Roads Act of 2012, the Secretary of Transportation shall establish, operate, and maintain a national clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators.

''(2) PURPOSES.—The purposes of the clearinghouse shall be—

''(A) to improve compliance with the Department of Transportation's alcohol and controlled substances testing program applicable to commercial motor vehicle operators; and

''(B) to enhance the safety of our United States roadways by reducing accident and injuries involving the misuse of alcohol or use of controlled substances by operators of commercial motor vehicles.

''(3) CONTENTS.—The clearinghouse shall function as a repository for records relating to the positive test results and test refusals of commercial motor vehicle operators and violations by such operators of prohibitions set forth in subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).

''(4) ELECTRONIC EXCHANGE OF RECORDS.—The Secretary shall ensure that records can be electronically submitted to, and requested from, the clearinghouse by authorized users.

''(5) AUTHORIZED OPERATOR.—The Secretary may authorize a qualified private entity to operate and maintain the clearinghouse and to collect fees on behalf of the Secretary under subsection (e). The entity shall operate and maintain the clearinghouse and permit access to driver information and records from the clearinghouse in accordance with this section.

''(b) DESIGN OF CLEARINGHOUSE.—

''(1) USE OF FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION RECOMMENDATIONS.—In establishing the clearinghouse, the Secretary shall consider—

''(A) the findings and recommendations contained in the Federal Motor Carrier Safety Administration's March 2004 report to Congress required under section 226 of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31306 note); and

''(B) the findings and recommendations contained in the Government Accountability Office's May 2008 report to Congress entitled 'Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them off the Road.'.

''(2) DEVELOPMENT OF SECURE PROCESSES.—In establishing the clearinghouse, the Secretary shall develop a secure process for—

''(A) administering and managing the clearinghouse in compliance with applicable Federal security standards;

''(B) registering and authenticating authorized users of the clearinghouse;

''(C) registering and authenticating persons required to report to the clearinghouse under subsection (g);

''(D) preventing the unauthorized access of information from the clearinghouse;

''(E) storing and transmitting data;

''(F) persons required to report to the clearinghouse under subsection (g) to timely and accurately submit electronic data to the clearinghouse;

''(G) generating timely and accurate reports from the clearinghouse in response to requests for information by authorized users; and

''(H) updating an individual's record upon completion of the return-to-duty process described in title 49, Code of Federal Regulations.

''(3) EMPLOYER ALERT OF POSITIVE TEST RESULT.—In establishing the clearinghouse, the Secretary shall develop a secure method for electronically notifying an employer of each additional positive test result or other noncompliance—

''(A) for an employee, that is entered into the clearinghouse during the 7-day period immediately following an employer's inquiry about the employee; and

''(B) for an employee who is listed as having multiple employers.

''(4) ARCHIVE CAPABILITY.—In establishing the clearinghouse, the Secretary shall develop a process for archiving all clearinghouse records for the purposes of auditing and evaluating the timeliness, accuracy, and completeness of data in the clearinghouse.

''(5) FUTURE NEEDS.—

''(A) INTEROPERABILITY WITH OTHER DATA SYSTEMS.—In establishing the clearinghouse, the Secretary shall consider—

''(i) the existing data systems containing regulatory and safety data for commercial motor vehicle operators;

''(ii) the efficacy of using or combining clearinghouse data with 1 or more of such systems; and

''(iii) the potential interoperability of the clearinghouse with such systems.

''(B) SPECIFIC CONSIDERATIONS.—In carrying out subparagraph (A), the Secretary shall determine—

''(i) the clearinghouse's capability for interoperability with—

''(I) the National Driver Register established under section 30302;

''(II) the Commercial Driver's License Information System established under section 31309;

''(III) the Motor Carrier Management Information System for preemployment screening services under section 31150; and

''(IV) other data systems, as appropriate; and

''(ii) any change to the administration of the current testing program, such as forms, that is necessary to collect data for the clearinghouse.

''(c) STANDARD FORMATS.—The Secretary shall develop standard formats to be used—

''(1) by an authorized user of the clearinghouse to—

''(A) request a record from the clearinghouse; and

''(B) obtain the consent of an individual who is the subject of a request from the clearinghouse, if applicable; and

''(2) to notify an individual that a positive alcohol or controlled substances test result, refusing to test, and a violation of any of the prohibitions under subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations), will be reported to the clearinghouse.

''(d) PRIVACY.—A release of information from the clearinghouse shall—

''(1) comply with applicable Federal privacy laws, including the fair information practices under the Privacy Act of 1974 (5 U.S.C. 552a);

''(2) comply with applicable sections of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); and

''(3) not be made to any person or entity unless expressly authorized or required by law.

''(e) FEES.—

''(1) AUTHORITY TO COLLECT FEES.—Except as provided under paragraph (3), the Secretary may collect a reasonable, customary, and nominal fee from an authorized user of the clearinghouse for a request for information from the clearinghouse.

''(2) USE OF FEES.—Fees collected under this subsection shall be used for the operation and maintenance of the clearinghouse.

''(3) LIMITATION.—The Secretary may not collect a fee from an individual requesting information from the clearinghouse that pertains to the record of that individual.

''(f) EMPLOYER REQUIREMENTS.—

''(1) DETERMINATION CONCERNING USE OF CLEARINGHOUSE.—The Secretary shall determine if an employer is authorized to use the clearinghouse to meet the alcohol and controlled substances testing requirements under title 49, Code of Federal Regulations.

''(2) APPLICABILITY OF EXISTING REQUIREMENTS.—Each employer and service agent shall continue to comply with the alcohol and controlled substances testing requirements under title 49, Code of Federal Regulations.

''(3) EMPLOYMENT PROHIBITIONS.—After the clearinghouse is established under subsection (a), at a date determined to be appropriate by the Secretary and published in the Federal Register, an employer shall utilize the clearinghouse to determine whether any employment prohibitions exist and shall not hire an individual to operate a commercial motor vehicle unless the employer determines that the individual, during the preceding 3-year period—

''(A) if tested for the use of alcohol and controlled substances, as required under title 49, Code of Federal Regulations—

''(i) did not test positive for the use of alcohol or controlled substances in violation of the regulations; or

''(ii) tested positive for the use of alcohol or controlled substances and completed the required return-to-duty process under title 49, Code of Federal Regulations;

''(B)(i) did not refuse to take an alcohol or controlled substance test under title 49, Code of Federal Regulations; or

''(ii) refused to take an alcohol or controlled substance test and completed the required return-to-duty process under title 49, Code of Federal Regulations; and

''(C) did not violate any other provision of subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).

''(4) ANNUAL REVIEW.—After the clearinghouse is established under subsection (a), at a date determined to be appropriate by the Secretary and published in the Federal Register, an employer shall request and review a commercial motor vehicle operator's record from the clearinghouse annually for as long as the commercial motor vehicle operator is under the employ of the employer.

''(g) REPORTING OF RECORDS.—

''(1) IN GENERAL.—Beginning 30 days after the date that the clearinghouse is established under subsection (a), a medical review officer, employer, service agent, and other appropriate person, as determined by the Secretary, shall promptly submit to the Secretary any record generated after the clearinghouse is initiated of an individual who—

''(A) refuses to take an alcohol or controlled substances test required under title 49, Code of Federal Regulations;

''(B) tests positive for alcohol or a controlled substance in violation of the regulations; or

''(C) violates any other provision of subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).

''(2) INCLUSION OF RECORDS IN CLEARINGHOUSE.—The Secretary shall include in the clearinghouse the records of positive test results and test refusals received under paragraph (1).

''(3) MODIFICATIONS AND DELETIONS.—If the Secretary determines that a record contained in the clearinghouse is not accurate, the Secretary shall modify or delete the record, as appropriate.

''(4) NOTIFICATION.—The Secretary shall expeditiously notify an individual, unless such notification would be duplicative, when—

''(A) a record relating to the individual is received by the clearinghouse;

''(B) a record in the clearinghouse relating to the individual is modified or deleted, and include in the notification the reason for the modification or deletion; or

''(C) a record in the clearinghouse relating to the individual is released to an employer and specify the reason for the release.

''(5) DATA QUALITY AND SECURITY STANDARDS FOR REPORTING AND RELEASING.—The Secretary may establish additional requirements, as appropriate, to ensure that—

''(A) the submission of records to the clearinghouse is timely and accurate;

''(B) the release of data from the clearinghouse is timely, accurate, and released to the appropriate authorized user under this section; and

''(C) an individual with a record in the clearinghouse has a cause of action for any inappropriate use of information included in the clearinghouse.

''(6) RETENTION OF RECORDS.—The Secretary shall—

''(A) retain a record submitted to the clearinghouse for a 5-year period beginning on the date the record is submitted;

''(B) remove the record from the clearinghouse at the end of the 5-year period, unless the individual fails to meet a return-to-duty or follow-up requirement under title 49, Code of Federal Regulations; and

''(C) retain a record after the end of the 5-year period in a separate location for archiving and auditing purposes.

''(h) AUTHORIZED USERS.—

''(1) EMPLOYERS.—The Secretary shall establish a process for an employer, or an employer's designated agent, to request and receive an individual's record from the clearinghouse.

''(A) CONSENT.—An employer may not access an individual's record from the clearinghouse unless the employer—

''(i) obtains the prior written or electronic consent of the individual for access to the record; and

''(ii) submits proof of the individual's consent to the Secretary.

''(B) ACCESS TO RECORDS.—After receiving a request from an employer for an individual's record under subparagraph (A), the Secretary shall grant access to the individual's record to the employer as expeditiously as practicable.

''(C) RETENTION OF RECORD REQUESTS.—The Secretary shall require an employer to retain for a 3-year period—

''(i) a record of each request made by the employer for records from the clearinghouse; and

''(ii) the information received pursuant to the request.

''(D) USE OF RECORDS.—An employer may use an individual's record received from the clearinghouse only to assess and evaluate whether a prohibition applies with respect to the individual to operate a commercial motor vehicle for the employer.

''(E) PROTECTION OF PRIVACY OF INDIVIDUALS.—An employer that receives an individual's record from the clearinghouse under subparagraph (B) shall—

''(i) protect the privacy of the individual and the confidentiality of the record; and

''(ii) ensure that information contained in the record is not divulged to a person or entity that is not directly involved in assessing and evaluating whether a prohibition applies with respect to the individual to operate a commercial motor vehicle for the employer.

''(2) STATE LICENSING AUTHORITIES.—The Secretary shall establish a process for the chief commercial driver's licensing official of a State to request and receive an individual's record from the clearinghouse if the individual is applying for a commercial driver's license from the State.

''(A) CONSENT.—The Secretary may grant access to an individual's record in the clearinghouse under this paragraph without the prior written or electronic consent of the individual. An individual who holds a commercial driver's license shall be deemed to consent to such access by obtaining a commercial driver's license.

''(B) PROTECTION OF PRIVACY OF INDIVIDUALS.—A chief commercial driver's licensing official of a State that receives an individual's record from the clearinghouse under this paragraph shall—

''(i) protect the privacy of the individual and the confidentiality of the record; and

''(ii) ensure that the information in the record is not divulged to any person that is not directly involved in assessing and evaluating the qualifications of the individual to operate a commercial motor vehicle.

''(i) NATIONAL TRANSPORTATION SAFETY BOARD.—The Secretary shall establish a process for the National Transportation Safety Board to request and receive an individual's record from the clearinghouse if the individual is involved in an accident that is under investigation by the National Transportation Safety Board.

''(j) ACCESS TO CLEARINGHOUSE BY INDIVIDUALS.—

''(1) IN GENERAL.—The Secretary shall establish a process for an individual to request and receive information from the clearinghouse—

''(A) to determine whether the clearinghouse contains a record pertaining to the individual;

''(B) to verify the accuracy of a record;

''(C) to update an individual's record, including completing the return-to-duty process described in title 49, Code of Federal Regulations; and

''(D) to determine whether the clearinghouse received requests for the individual's information.

''(2) DISPUTE PROCEDURE.—The Secretary shall establish a procedure, including an appeal process, for an individual to dispute and remedy an administrative error in the individual's record.

''(k) PENALTIES.—

''(1) IN GENERAL.—An employer, employee, medical review officer, or service agent who violates any provision of this section shall be subject to civil penalties under section 521(b)(2)(C) and criminal penalties under section 521(b)(6)(B), and any other applicable civil and criminal penalties, as determined by the Secretary.

''(2) VIOLATION OF PRIVACY.—The Secretary shall establish civil and criminal penalties, consistent with paragraph (1), for an authorized user who violates paragraph (1) or (2) of subsection (h).

''(l) COMPATIBILITY OF STATE AND LOCAL LAWS.—

''(1) PREEMPTION.—Except as provided under paragraph (2), any law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe related to a commercial driver's license holder subject to alcohol or controlled substance testing under title 49, Code of Federal Regulations, that is inconsistent with this section or a regulation issued pursuant to this section is preempted.

''(2) APPLICABILITY.—The preemption under paragraph (1) shall include—

''(A) the reporting of valid positive results from alcohol screening tests and drug tests;

''(B) the refusal to provide a specimen for an alcohol screening test or drug test; and

''(C) other violations of subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).

''(3) EXCEPTION.—A law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe shall not be preempted under this subsection to the extent it relates to an action taken with respect to a commercial motor vehicle operator's commercial driver's license or driving record as a result of the driver's—

''(A) verified positive alcohol or drug test result;

''(B) refusal to provide a specimen for the test; or

''(C) other violations of subpart B of part 382 of title 49, Code of Federal Regulations (or any subsequent corresponding regulations).

''(m) DEFINITIONS.—In this section—

''(1) AUTHORIZED USER.—The term 'authorized user' means an employer, State licensing authority, or other person granted access to the clearinghouse under subsection (h).

''(2) CHIEF COMMERCIAL DRIVER'S LICENSING OFFICIAL.—The term 'chief commercial driver's licensing official' means the official in a State who is authorized to—

''(A) maintain a record about commercial driver's licenses issued by the State; and

''(B) take action on commercial driver's licenses issued by the State.

''(3) CLEARINGHOUSE.—The term 'clearinghouse' means the clearinghouse established under subsection (a).

''(4) COMMERCIAL MOTOR VEHICLE OPERATOR.—The term 'commercial motor vehicle operator' means an individual who—

''(A) possesses a valid commercial driver's license issued in accordance with section 31308; and

''(B) is subject to controlled substances and alcohol testing under title 49, Code of Federal Regulations.

''(5) EMPLOYER.—The term 'employer' means a person or entity employing, or seeking to employ, 1 or more employees (including an individual who is self-employed) to be commercial motor vehicle operators.

''(6) MEDICAL REVIEW OFFICER.—The term 'medical review officer' means a licensed physician who is responsible for—

''(A) receiving and reviewing a laboratory result generated under the testing program;

''(B) evaluating a medical explanation for a controlled substances test under title 49, Code of Federal Regulations; and

''(C) interpreting the results of a controlled substances test.

''(7) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

''(8) SERVICE AGENT.—The term 'service agent' means a person or entity, other than an employee of the employer, who provides services to employers or employees under the testing program.

''(9) TESTING PROGRAM.—The term 'testing program' means the alcohol and controlled substances testing program required under title 49, Code of Federal Regulations.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 313 is amended by inserting after the item relating to section 31306 the following:

''31306a. National clearinghouse for positive controlled substance and alcohol test results of commercial motor vehicle operators.''.

Subtitle E—Enforcement

SEC. 32501. INSPECTION DEMAND AND DISPLAY OF CREDENTIALS.

(a) SAFETY INVESTIGATIONS.—Section 504(c) is amended—

(1) by inserting '', or an employee of the recipient of a grant issued under section 31102 of this title'' after ''a contractor''; and

(2) by inserting '', in person or in writing'' after ''proper credentials''.

(b) CIVIL PENALTY.—Section 521(b)(2)(E) is amended—

(1) by redesignating subparagraph (E) as subparagraph (E)(i); and

(2) by adding at the end the following:

''(ii) PLACE OUT OF SERVICE.—The Secretary may by regulation adopt procedures for placing

out of service the commercial motor vehicle of a foreign-domiciled motor carrier that fails to promptly allow the Secretary to inspect and copy a record or inspect equipment, land, buildings, or other property.''.

(c) HAZARDOUS MATERIALS INVESTIGATIONS.—Section 5121(c)(2) is amended by inserting '', in person or in writing,'' after ''proper credentials''.

(d) COMMERCIAL INVESTIGATIONS.—Section 14122(b) is amended by inserting '', in person or in writing'' after ''proper credentials''.

SEC. 32502. OUT OF SERVICE PENALTY FOR DENIAL OF ACCESS TO RECORDS.

Section 521(b)(2)(E) is amended—

(1) by inserting after ''$10,000.'' the following: ''In the case of a motor carrier, the Secretary may also place the violator's motor carrier operations out of service.''; and

(2) by striking ''such penalty'' after ''It shall be a defense to'' and inserting ''a penalty''.

SEC. 32503. PENALTIES FOR VIOLATION OF OPERATION OUT OF SERVICE ORDERS.

Section 521(b)(2) is amended by adding at the end the following:

''(F) PENALTY FOR VIOLATIONS RELATING TO OUT OF SERVICE ORDERS.—A motor carrier or employer (as defined in section 31132) that operates a commercial motor vehicle in commerce in violation of a prohibition on transportation under section 31144(c) of this title or an imminent hazard out of service order issued under subsection (b)(5) of this section or section 5121(d) of this title shall be liable for a civil penalty not to exceed $25,000.''.

SEC. 32504. IMPOUNDMENT AND IMMOBILIZATION OF COMMERCIAL MOTOR VEHICLES FOR IMMINENT HAZARD.

Section 521(b) is amended by adding at the end the following:

''(15) IMPOUNDMENT OF COMMERCIAL MOTOR VEHICLES.—

''(A) ENFORCEMENT OF IMMINENT HAZARD OUT-OF-SERVICE ORDERS.—

''(i) The Secretary, or an authorized State official carrying out motor carrier safety enforcement activities under section 31102, may enforce an imminent hazard out-of-service order issued under chapters 5, 51, 131 through 149, 311, 313, or 315 of this title, or a regulation promulgated thereunder, by towing and impounding a commercial motor vehicle until the order is rescinded.

''(ii) Enforcement shall not unreasonably interfere with the ability of a shipper, carrier, broker, or other party to arrange for the alternative transportation of any cargo or passenger being transported at the time the commercial motor vehicle is immobilized. In the case of a commercial motor vehicle transporting passengers, the Secretary or authorized State official shall provide reasonable, temporary, and secure shelter and accommodations for passengers in transit.

''(iii) The Secretary's designee or an authorized State official carrying out motor carrier safety enforcement activities under section 31102, shall immediately notify the owner of a commercial motor vehicle of the impoundment and the opportunity for review of the impoundment. A review shall be provided in accordance with section 554 of title 5, except that the review shall occur not later than 10 days after the impoundment.

''(B) ISSUANCE OF REGULATIONS.—The Secretary shall promulgate regulations on the use of impoundment or immobilization of commercial motor vehicles as a means of enforcing additional out-of-service orders issued under chapters 5, 51, 131 through 149, 311, 313, or 315 of this title, or a regulation promulgated thereunder. Regulations promulgated under this subparagraph shall include consideration of public safety, the protection of passengers and cargo, inconvenience to passengers, and the security of the commercial motor vehicle.

''(C) DEFINITION.—In this paragraph, the term 'impoundment' or 'impounding' means the seizing and taking into custody of a commercial motor vehicle or the immobilizing of a commercial motor vehicle through the attachment of a locking device or other mechanical or electronic means.''.

SEC. 32505. INCREASED PENALTIES FOR EVASION OF REGULATIONS.

(a) PENALTIES.—Section 524 is amended—

(1) by striking ''knowingly and willfully'';

(2) by inserting after ''this chapter'' the following: '', chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title, or a regulation issued under any of those provisions,'';

(3) by striking ''$200 but not more than $500'' and inserting ''$2,000 but not more than $5,000''; and

(4) by striking ''$250 but not more than $2,000'' and inserting ''$2,500 but not more than $7,500''.

(b) EVASION OF REGULATION.—Section 14906 is amended—

(1) by striking ''$200'' and inserting ''at least $2,000'';

(2) by striking ''$250'' and inserting ''$5,000''; and

(3) by inserting after ''a subsequent violation'' the following:

'', and may be subject to criminal penalties''.

SEC. 32506. VIOLATIONS RELATING TO COMMERCIAL MOTOR VEHICLE SAFETY REGULATION AND OPERATORS.

Section 521(b)(2)(D) is amended by striking ''ability to pay,''.

SEC. 32507. EMERGENCY DISQUALIFICATION FOR IMMINENT HAZARD.

Section 31310(f) is amended—

(1) in paragraph (1) by inserting ''section 521 or'' before ''section 5102''; and

(2) in paragraph (2) by inserting ''section 521 or'' before ''section 5102''.

SEC. 32508. DISCLOSURE TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

Section 31106(e) is amended—

(1) by redesignating subsection (e) as subsection (e)(1); and

(2) by inserting at the end the following:

''(2) IN GENERAL.—Notwithstanding any prohibition on disclosure of information in section 31105(h) or 31143(b) of this title or section 552a of title 5, the Secretary may disclose information maintained by the Secretary pursuant to chapters 51, 135, 311, or 313 of this title to appropriate personnel of a State agency or instrumentality authorized to carry out State commercial motor vehicle safety activities and commercial driver's license laws, or appropriate personnel of a local law enforcement agency, in accordance with standards, conditions, and procedures as determined by the Secretary. Disclosure under this section shall not operate as a waiver by the Secretary of any applicable privilege against disclosure under common law or as a basis for compelling disclosure under section 552 of title 5.''.

SEC. 32509. GRADE CROSSING SAFETY REGULATIONS.

Section 112(2) of the Hazardous Materials Transportation Authorization Act of 1994 (Public Law 103–311) is amended by striking ''315 of such title (relating to motor carrier safety)'' and inserting ''311 of such title (relating to commercial motor vehicle safety)''.

Subtitle F—Compliance, Safety, Accountability

SEC. 32601. MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 31102(b) is amended—

(1) by amending the heading to read as follows:

''(b) MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.—'';

(2) by redesignating paragraphs (1) through (3) as (2) through (4), respectively;

(3) by inserting before paragraph (2), as redesignated, the following:

''(1) PROGRAM GOAL.—The goal of the Motor Carrier Safety Assistance Program is to ensure that the Secretary, States, local government agencies, and other political jurisdictions work in partnership to establish programs to improve motor carrier, commercial motor vehicle, and driver safety to support a safe and efficient surface transportation system by—

''(A) making targeted investments to promote safe commercial motor vehicle transportation, including transportation of passengers and hazardous materials;

''(B) investing in activities likely to generate maximum reductions in the number and severity of commercial motor vehicle crashes and fatalities resulting from such crashes;

''(C) adopting and enforcing effective motor carrier, commercial motor vehicle, and driver safety regulations and practices consistent with Federal requirements; and

''(D) assessing and improving statewide performance by setting program goals and meeting performance standards, measures, and benchmarks.'';

(4) in paragraph (2), as redesignated—

(A) by striking ''make a declaration of'' in subparagraph (I) and inserting ''demonstrate'';

(B) by amending subparagraph (M) to read as follows:

''(M) ensures participation in appropriate Federal Motor Carrier Safety Administration systems and other information systems by all appropriate jurisdictions receiving Motor Carrier Safety Assistance Program funding;'';

(C) in subparagraph (Q), by inserting ''and dedicated sufficient resources to'' between ''established'' and ''a program'';

(D) in subparagraph (W), by striking ''and'' after the semicolon;

(E) in subparagraph (X), by striking the period and inserting ''; and''; and

(F) by adding after subparagraph (X) the following:

''(Y) ensures that the State will transmit to its roadside inspectors the notice of each Federal exemption granted pursuant to section 31315(b) and provided to the State by the Secretary, including the name of the person granted the exemption and any terms and conditions that apply to the exemption.''; and

(5) by amending paragraph (4), as redesignated, to read as follows:

''(4) MAINTENANCE OF EFFORT.—

''(A) IN GENERAL.—A plan submitted by a State under paragraph (2) shall provide that the total expenditure of amounts of the lead State agency responsible for implementing the plan will be maintained at a level at least equal to the average level of that expenditure for fiscal years 2004 and 2005.

''(B) AVERAGE LEVEL OF STATE EXPENDITURES.—In estimating the average level of State expenditure under subparagraph (A), the Secretary—

''(i) may allow the State to exclude State expenditures for Government-sponsored demonstration or pilot programs; and

''(ii) shall require the State to exclude State matching amounts used to receive Government financing under this subsection.

''(C) WAIVER.—Upon the request of a State, the Secretary may waive or modify the requirements of this paragraph for 1 fiscal year, if the Secretary determines that a waiver is equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a serious decline in the financial resources of the State motor carrier safety assistance program agency.''.

SEC. 32602. PERFORMANCE AND REGISTRATION INFORMATION SYSTEMS MANAGEMENT PROGRAM.

Section 31106(b) is amended by amending paragraph (3)(C) to read as follows:

''(C) establish and implement a process—

''(i) to cancel the motor vehicle registration and seize the registration plates of a vehicle when an employer is found liable under section

31310(i)(2)(C) for knowingly allowing or requiring an employee to operate such a commercial motor vehicle in violation of an out-of-service order; and

''(ii) to reinstate the vehicle registration or return the registration plates of the commercial motor vehicle, subject to sanctions under clause (i), if the Secretary permits such carrier to resume operations after the date of issuance of such order.''.

SEC. 32603. AUTHORIZATION OF APPROPRIATIONS.

(a) MOTOR CARRIER SAFETY GRANTS.—Section 31104(a) is amended—

(1) by striking ''and'' at the end of paragraph (7);

(2) by striking paragraph (8); and

(3) by inserting after paragraph (7) the following:

''(8) $215,000,000 for fiscal year 2013; and

''(9) $218,000,000 for fiscal year 2014.''.

(b) ADMINISTRATIVE EXPENSES.—Section 31104(i)(1) is amended—

(1) by striking ''and'' at the end of subparagraph (G); and

(2) by striking subparagraph (H); and

(3) by inserting after subparagraph (G) the following:

''(H) $251,000,000 for fiscal year 2013; and

''(I) $259,000,000 for fiscal year 2014.''.

(c) GRANT PROGRAMS.—Section 4101(c) of SAFETEA-LU (119 Stat. 1715) is amended to read as follows:

''(c) GRANT PROGRAMS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) the following sums for the following Federal Motor Carrier Safety Administration programs:

''(1) COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENT GRANTS.—For commercial driver's license program improvement grants under section 31313 of title 49, United States Code $30,000,000 for each of fiscal years 2013 and 2014.

''(2) BORDER ENFORCEMENT GRANTS.—For border enforcement grants under section 31107 of such title $32,000,000 for each of fiscal years 2013 and 2014.

''(3) PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT GRANT PROGRAM.—For the performance and registration information system management grant program under section 31109 of such title $5,000,000 for each of fiscal years 2013 and 2014.

''(4) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT.—For carrying out the commercial vehicle information systems and networks deployment program under section 4126 of this Act, $25,000,000 for each of fiscal years 2013 and 2014.

''(5) SAFETY DATA IMPROVEMENT GRANTS.—For safety data improvement grants under section 4128 of this Act, $3,000,000 for each of fiscal years 2013 and 2014.''.

(d) HIGH-PRIORITY ACTIVITIES.—Section 31104(k)(2) is amended by striking ''2011 and $11,250,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2014''.

(e) NEW ENTRANT AUDITS.—Section 31144(g)(5)(B) is amended to read as follows:

''(B) SET ASIDE.—The Secretary shall set aside from amounts made available by section 31104(a) up to $32,000,000 per fiscal year for audits of new entrant motor carriers conducted pursuant to this paragraph.''.

(f) OUTREACH AND EDUCATION.—Section 4127(e) of SAFETEA-LU (119 Stat. 1741) is amended to read as follows:

''(e) FUNDING.—From amounts made available under section 31104(i) of title 49, United States Code, the Secretary shall make available $4,000,000 to the Federal Motor Carrier Safety Administration for each of fiscal years 2013 and 2014 to carry out this section (other than subsection (f)).''.

(g) GRANT PROGRAM FOR COMMERCIAL MOTOR VEHICLE OPERATORS.—Section 4134(c) of SAFETEA-LU (49 U.S.C. 31301 note) is amended by striking ''2011 and $750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2014''.

(h) BORDER ENFORCEMENT GRANTS.—Section 31107 is amended—

(1) by striking subsection (b); and

(2) redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(i) ADMINISTRATION OF GRANT PROGRAMS.—The Secretary is authorized to identify and implement processes to reduce the administrative burden on the States and the Department of Transportation concerning the application and management of the grant programs authorized under chapter 311 and chapter 313 of title 49, United States Code.

SEC. 32604. GRANTS FOR COMMERCIAL DRIVER'S LICENSE PROGRAM IMPLEMENTATION.

(a) GRANTS FOR COMMERCIAL DRIVER'S LICENSE PROGRAM IMPLEMENTATION.—Section 31313(a) is amended to read as follows:

''(a) COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENT GRANTS.—

''(1) PROGRAM GOAL.—The Secretary of Transportation may make a grant to a State in a fiscal year—

''(A) to comply with the requirements of section 31311;

''(B) in the case of a State that is making a good faith effort toward substantial compliance with the requirements of this section and section 31311, to improve its implementation of its commercial driver's license program, including expenses—

''(i) for computer hardware and software;

''(ii) for publications, testing, personnel, training, and quality control;

''(iii) for commercial driver's license program coordinators;

''(iv) to implement or maintain a system to notify an employer of an operator of a commercial motor vehicle of the suspension or revocation of the operator's commercial driver's license consistent with the standards developed under section 32303(b) of the Commercial Motor Vehicle Safety Enhancement Act of 2012.

''(2) PROHIBITIONS.—A State may not use grant funds under this subsection to rent, lease, or buy land or buildings.''.

(b) CONFORMING AMENDMENT.—

*(1) The heading for section 31313 is amended by striking ''**improvements**'' and inserting ''**implementation**''.*

(2) The analysis of chapter 313 is amended by striking the item relating to section 31313 and inserting the following:

''31313. Grants for commercial driver's license program implementation.''.

SEC. 32605. COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.

Not later than 6 months after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that includes—

(1) established time frames and milestones for resuming the Commercial Vehicle Information Systems and Networks Program; and

(2) a strategic workforce plan for its grants management office to ensure that it has determined the skills and competencies that are critical to achieving its mission goals.

Subtitle G—Motorcoach Enhanced Safety Act of 2012

SEC. 32701. SHORT TITLE.

This subtitle may be cited as the ''Motorcoach Enhanced Safety Act of 2012''.

SEC. 32702. DEFINITIONS.

In this subtitle:

(1) ADVANCED GLAZING.—The term ''advanced glazing'' means glazing installed in a portal on the side or the roof of a motorcoach that is designed to be highly resistant to partial or complete occupant ejection in all types of motor vehicle crashes.

(2) BUS.—The term ''bus'' has the meaning given the term in section 571.3(b) of title 49, Code of Federal Regulations (as in effect on the day before the date of enactment of this Act).

(3) COMMERCIAL MOTOR VEHICLE.—Except as otherwise specified, the term ''commercial motor vehicle'' has the meaning given the term in section 31132(1) of title 49, United States Code.

(4) DIRECT TIRE PRESSURE MONITORING SYSTEM.—The term ''direct tire pressure monitoring system'' means a tire pressure monitoring system that is capable of directly detecting when the air pressure level in any tire is significantly under-inflated and providing the driver a low tire pressure warning as to which specific tire is significantly under-inflated.

(5) MOTOR CARRIER.—The term ''motor carrier'' means—

(A) a motor carrier (as defined in section 13102(14) of title 49, United States Code); or

(B) a motor private carrier (as defined in section 13102(15) of that title).

(6) MOTORCOACH.—The term ''motorcoach'' has the meaning given the term ''over-the-road bus'' in section 3038(a)(3) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note), but does not include—

(A) a bus used in public transportation provided by, or on behalf of, a public transportation agency; or

(B) a school bus, including a multifunction school activity bus.

(7) MOTORCOACH SERVICES.—The term ''motorcoach services'' means passenger transportation by motorcoach for compensation.

(8) MULTIFUNCTION SCHOOL ACTIVITY BUS.—The term ''multifunction school activity bus'' has the meaning given the term in section 571.3(b) of title 49, Code of Federal Regulations (as in effect on the day before the date of enactment of this Act).

(9) PORTAL.—The term ''portal'' means any opening on the front, side, rear, or roof of a motorcoach that could, in the event of a crash involving the motorcoach, permit the partial or complete ejection of any occupant from the motorcoach, including a young child.

(10) PROVIDER OF MOTORCOACH SERVICES.—The term ''provider of motorcoach services'' means a motor carrier that provides passenger transportation services with a motorcoach, including per-trip compensation and contracted or chartered compensation.

(11) PUBLIC TRANSPORTATION.—The term ''public transportation'' has the meaning given the term in section 5302 of title 49, United States Code.

(12) SAFETY BELT.—The term ''safety belt'' has the meaning given the term in section 153(i)(4)(B) of title 23, United States Code.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

SEC. 32703. REGULATIONS FOR IMPROVED OCCUPANT PROTECTION, PASSENGER EVACUATION, AND CRASH AVOIDANCE.

(a) REGULATIONS REQUIRED WITHIN 1 YEAR.—Not later than 1 year after the date of enactment of this Act, the Secretary shall prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.

(b) REGULATIONS REQUIRED WITHIN 2 YEARS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall prescribe regulations that address the following commercial motor vehicle standards, if the Secretary determines that such standards meet the requirements and considerations set forth in subsections (a) and (b) of section 30111 of title 49, United States Code:

(1) ROOF STRENGTH AND CRUSH RESISTANCE.—The Secretary shall establish improved roof and roof support standards for motorcoaches that substantially improve the resistance of motorcoach roofs to deformation and intrusion to prevent serious occupant injury in rollover crashes involving motorcoaches.

(2) ANTI-EJECTION SAFETY COUNTERMEASURES.—The Secretary shall consider requiring advanced glazing standards for each motorcoach portal and shall consider other portal improvements to prevent partial and complete ejection of motorcoach passengers, including children. In prescribing such standards, the Secretary shall consider the impact of such standards on the use of motorcoach portals as a means of emergency egress.

(3) ROLLOVER CRASH AVOIDANCE.—The Secretary shall consider requiring motorcoaches to be equipped with stability enhancing technology, such as electronic stability control and torque vectoring, to reduce the number and frequency of rollover crashes among motorcoaches.

(c) COMMERCIAL MOTOR VEHICLE TIRE PRESSURE MONITORING SYSTEMS.—Not later than 3 years after the date of enactment of this Act, the Secretary shall prescribe the following commercial vehicle regulation:

(1) IN GENERAL.—The Secretary shall consider requiring motorcoaches to be equipped with direct tire pressure monitoring systems that warn the operator of a commercial motor vehicle when any tire exhibits a level of air pressure that is below a specified level of air pressure established by the Secretary, if the Secretary determines that such standards meet the requirements and considerations set forth in subsections (a) and (b) of section 30111 of title 49, United States Code.

(2) PERFORMANCE REQUIREMENTS.—In any standard adopted under paragraph (1), the Secretary shall include performance requirements to meet the objectives identified in paragraph (1) of this subsection.

(d) TIRE PERFORMANCE STANDARD.—Not later than 3 years after the date of enactment of this Act, the Secretary shall consider—

(1) issuing a rule to upgrade performance standards for tires used on motorcoaches, including an enhanced endurance test and a new high-speed performance test; or

(2) if the Secretary determines that a standard does not meet the requirements and considerations set forth in subsections (a) and (b) of section 30111 of title 49, United States Code, submit a report that describes the reasons for not prescribing such a standard to—

(A) the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Committee on Transportation and Infrastructure of the House of Representatives; and

(C) the Committee on Energy and Commerce of the House of Representatives.

(e) APPLICATION OF REGULATIONS.—

(1) NEW MOTORCOACHES.—Any regulation prescribed in accordance with subsection (a), (b), (c), or (d) shall—

(A) apply to all motorcoaches manufactured more than 3 years after the date on which the regulation is published as a final rule;

(B) take into account the impact to seating capacity of changes to size and weight of motorcoaches and the ability to comply with State and Federal size and weight requirements; and

(C) be based on the best available science.

(2) RETROFIT ASSESSMENT FOR EXISTING MOTORCOACHES.—

(A) IN GENERAL.—The Secretary may assess the feasibility, benefits, and costs with respect to the application of any requirement established under subsection (a) or (b)(2) to motorcoaches manufactured before the date on which the requirement applies to new motorcoaches under paragraph (1).

(B) REPORT.—The Secretary shall submit a report on the assessment to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives not later than 2 years after the date of enactment of this Act.

SEC. 32704. FIRE PREVENTION AND MITIGATION.

(a) RESEARCH AND TESTING.—The Secretary shall conduct research and testing to determine the most prevalent causes of motorcoach fires and the best methods to prevent such fires and to mitigate the effect of such fires, both inside and outside the motorcoach. Such research and testing shall consider flammability of exterior components, smoke suppression, prevention of and resistance to wheel well fires, automatic fire suppression, passenger evacuation, causation and prevention of motorcoach fires, and improved fire extinguishers.

(b) STANDARDS.—Not later than 3 years after the date of enactment of this Act, the Secretary may issue fire prevention and mitigation standards for motorcoaches, based on the results of the Secretary's research and testing, taking into account highway size and weight restrictions applicable to motorcoaches, if the Secretary determines that such standards meet the requirements and considerations set forth in subsections (a) and (b) of section 30111 of title 49, United States Code.

SEC. 32705. OCCUPANT PROTECTION, COLLISION AVOIDANCE, FIRE CAUSATION, AND FIRE EXTINGUISHER RESEARCH AND TESTING.

(a) SAFETY RESEARCH INITIATIVES.—Not later than 3 years after the date of enactment of this Act, the Secretary shall complete the following research and testing:

(1) INTERIOR IMPACT PROTECTION.—The Secretary shall research and test enhanced occupant impact protection technologies for motorcoach interiors to reduce serious injuries for all passengers of motorcoaches.

(2) COMPARTMENTALIZATION SAFETY COUNTERMEASURES.—The Secretary shall research and test enhanced compartmentalization safety countermeasures for motorcoaches, including enhanced seating designs.

(3) COLLISION AVOIDANCE SYSTEMS.—The Secretary shall research and test forward and lateral crash warning systems applications for motorcoaches.

(b) RULEMAKING.—Not later than 2 years after the completion of each research and testing initiative required under subsection (a), the Secretary shall issue final motor vehicle safety standards if the Secretary determines that such standards meet the requirements and considerations set forth in subsections (a) and (b) of section 30111 of title 49, United States Code.

SEC. 32706. CONCURRENCE OF RESEARCH AND RULEMAKING.

(a) REQUIREMENTS.—To the extent feasible, the Secretary shall ensure that research programs are carried out concurrently, and in a manner that concurrently assesses results, potential countermeasures, costs, and benefits.

(b) AUTHORITY TO COMBINE RULEMAKINGS.—When considering each of the rulemaking provisions, the Secretary may initiate a single rulemaking proceeding encompassing all aspects or may combine the rulemakings as the Secretary deems appropriate.

(c) CONSIDERATIONS.—If the Secretary undertakes separate rulemaking proceedings, the Secretary shall—

(1) consider whether each added aspect of rulemaking may contribute to addressing the safety need determined to require rulemaking;

(2) consider the benefits obtained through the safety belts rulemaking in section 32703(a); and

(3) avoid duplicative benefits, costs, and countermeasures.

SEC. 32707. IMPROVED OVERSIGHT OF MOTORCOACH SERVICE PROVIDERS.

(a) SAFETY REVIEWS.—Section 31144, as amended by section 32202 of this Act, is amended by adding at the end the following:

''(i) PERIODIC SAFETY REVIEWS OF OWNERS AND OPERATORS OF INTERSTATE FOR-HIRE COMMERCIAL MOTOR VEHICLES DESIGNED OR USED TO TRANSPORT PASSENGERS.—

''(1) SAFETY REVIEW.—

''(A) IN GENERAL.—The Secretary shall—

''(i) determine the safety fitness of each motor carrier of passengers who the Secretary registers under section 13902 or 31134 through a simple and understandable rating system that allows passengers to compare the safety performance of each such motor carrier; and

''(ii) assign a safety fitness rating to each such motor carrier.

''(B) APPLICABILITY.—Subparagraph (A) shall apply—

''(i) to any provider of motorcoach services registered with the Administration after the date of enactment of the Motorcoach Enhanced Safety Act of 2012 beginning not later than 2 years after the date of such registration; and

''(ii) to any provider of motorcoach services registered with the Administration on or before the date of enactment of that Act beginning not later than 3 years after the date of enactment of that Act.

''(2) PERIODIC REVIEW.—The Secretary shall establish, by regulation, a process for monitoring the safety performance of each motor carrier of passengers on a regular basis following the assignment of a safety fitness rating, including progressive intervention to correct unsafe practices.

''(3) ENFORCEMENT STRIKE FORCES.—In addition to the enhanced monitoring and enforcement actions required under paragraph (2), the Secretary may organize special enforcement strike forces targeting motor carriers of passengers.

''(4) PERIODIC UPDATE OF SAFETY FITNESS RATING.—In conducting the safety reviews required under this subsection, the Secretary shall—

''(A) reassess the safety fitness rating of each motor carrier of passengers not less frequently than once every 3 years; and

''(B) annually assess the safety fitness of certain motor carriers of passengers that serve primarily urban areas with high passenger loads.''.

(b) DISCLOSURE OF SAFETY PERFORMANCE RATINGS OF MOTORCOACH SERVICES AND OPERATIONS.—

(1) DEFINITIONS.—In this subsection:

(A) MOTORCOACH.—

(i) IN GENERAL.—Except as provided in clause (ii), the term ''motorcoach'' has the meaning given the term ''over-the-road bus'' in section 3038(a)(3) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

(ii) EXCLUSIONS.—The term ''motorcoach'' does not include—

(I) a bus used in public transportation that is provided by a State or local government; or

(II) a school bus (as defined in section 30125(a)(1) of title 49, United States Code), including a multifunction school activity bus.

(B) MOTORCOACH SERVICES AND OPERATIONS.—The term ''motorcoach services and operations'' means passenger transportation by a motorcoach for compensation.

(2) REQUIREMENTS FOR THE DISCLOSURE OF SAFETY PERFORMANCE RATINGS OF MOTORCOACH SERVICES AND OPERATIONS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish, through notice and opportunity for public to comment, requirements to improve the accessibility to the public of safety rating information of motorcoach services and operations.

(B) DISPLAY.—In establishing the requirements under subparagraph (A), the Secretary shall consider requirements for each motor carrier that owns or leases 1 or more motorcoaches that transport passengers subject to the Secretary's jurisdiction under section 13501 of title 49, United States Code, to prominently display safety fitness information pursuant to section 31144 of title 49, United States Code—

(i) in each terminal of departure;

(ii) in the motorcoach and visible from a position exterior to the vehicle at the point of departure, if the motorcoach does not depart from a terminal; and

(iii) at all points of sale for such motorcoach services and operations.

SEC. 32708. REPORT ON FEASIBILITY, BENEFITS, AND COSTS OF ESTABLISHING A SYSTEM OF CERTIFICATION OF TRAINING PROGRAMS.

Not later than 2 years after the date of enactment of this Act, the Secretary of Transportation shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that describes the feasibility, benefits, and costs of establishing a system of certification of public and private schools and of motor carriers and motorcoach operators that provide motorcoach driver training.

SEC. 32709. COMMERCIAL DRIVER'S LICENSE PASSENGER ENDORSEMENT REQUIREMENTS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of Transportation shall review and assess the current knowledge and skill testing requirements for a commercial driver's license passenger endorsement to determine what improvements to the knowledge test, the examination of driving skills, and the application of such requirements are necessary to ensure the safe operation of commercial motor vehicles designed or used to transport passengers.

(b) REPORT.—Not later than 120 days after completion of the review and assessment under subsection (a), the Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate—

(1) a report on the review and assessment conducted under subsection (a);

(2) a plan to implement any changes to the knowledge and skills tests; and

(3) a timeframe by which the Secretary will implement the changes.

SEC. 32710. SAFETY INSPECTION PROGRAM FOR COMMERCIAL MOTOR VEHICLES OF PASSENGERS.

Not later than 3 years after the date of enactment of this Act, the Secretary of Transportation shall complete a rulemaking proceeding to consider requiring States to establish a program for annual inspections of commercial motor vehicles designed or used to transport passengers, including an assessment of—

(1) the risks associated with improperly maintained or inspected commercial motor vehicles designed or used to transport passengers;

(2) the effectiveness of existing Federal standards for the inspection of such vehicles in—

(A) mitigating the risks described in paragraph (1); and

(B) ensuring the safe and proper operation condition of such vehicles; and

(3) the costs and benefits of a mandatory inspection program.

SEC. 32711. REGULATIONS.

Any standard or regulation prescribed or modified pursuant to the Motorcoach Enhanced Safety Act of 2012 shall be prescribed or modified in accordance with section 553 of title 5, United States Code.

Subtitle H—Safe Highways and Infrastructure Preservation

SEC. 32801. COMPREHENSIVE TRUCK SIZE AND WEIGHT LIMITS STUDY.

(a) TRUCK SIZE AND WEIGHT LIMITS STUDY.—Not later than 45 days after the date of enactment of this Act, the Secretary, in consultation with each relevant State and other applicable Federal agencies, shall commence a comprehensive truck size and weight limits study. The study shall—

(1) provide data on accident frequency and evaluate factors related to accident risk of vehicles that operate with size and weight limits that are in excess of the Federal law and regulations in each State that allows vehicles to operate with size and weight limits that are in excess of the Federal law and regulations, or to operate under a Federal exemption or grandfather right, in comparison to vehicles that do not operate in excess of Federal law and regulations (other than vehicles with exemptions or grandfather rights);

(2) evaluate the impacts to the infrastructure in each State that allows a vehicle to operate with size and weight limits that are in excess of the Federal law and regulations, or to operate under a Federal exemption or grandfather right, in comparison to vehicles that do not operate in excess of Federal law and regulations (other than vehicles with exemptions or grandfather rights), including—

(A) the cost and benefits of the impacts in dollars;

(B) the percentage of trucks operating in excess of the Federal size and weight limits; and

(C) the ability of each State to recover the cost for the impacts, or the benefits incurred;

(3) evaluate the frequency of violations in excess of the Federal size and weight law and regulations, the cost of the enforcement of the law and regulations, and the effectiveness of the enforcement methods;

(4) assess the impacts that vehicles that operate with size and weight limits in excess of the Federal law and regulations, or that operate under a Federal exemption or grandfather right, in comparison to vehicles that do not operate in excess of Federal law and regulations (other than vehicles with exemptions or grandfather rights), have on bridges, including the impacts resulting from the number of bridge loadings;

(5) compare and contrast the potential safety and infrastructure impacts of the current Federal law and regulations regarding truck size and weight limits in relation to—

(A) six-axle and other alternative configurations of tractor-trailers; and

(B) where available, safety records of foreign nations with truck size and weight limits and tractor-trailer configurations that differ from the Federal law and regulations; and

(6) estimate—

(A) the extent to which freight would likely be diverted from other surface transportation modes to principal arterial routes and National Highway System intermodal connectors if alternative truck configuration is allowed to operate and the effect that any such diversion would have on other modes of transportation;

(B) the effect that any such diversion would have on public safety, infrastructure, cost responsibilities, fuel efficiency, freight transportation costs, and the environment;

(C) the effect on the transportation network of the United States that allowing alternative truck configuration to operate would have; and

(D) whether allowing alternative truck configuration to operate would result in an increase or decrease in the total number of trucks operating on principal arterial routes and National Highway System intermodal connectors; and

(7) identify all Federal rules and regulations impacted by changes in truck size and weight limits.

(b) REPORT.—Not later than 2 years after the date that the study is commenced under subsection (a), the Secretary shall submit a final report on the study, including all findings and recommendations, to the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

SEC. 32802. COMPILATION OF EXISTING STATE TRUCK SIZE AND WEIGHT LIMIT LAWS.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the States, shall begin to compile—

(1) a list for each State, as applicable, that describes each route of the National Highway System that allows a vehicle to operate in excess of the Federal truck size and weight limits that—

(A) was authorized under State law on or before the date of enactment of this Act; and

(B) was in actual and lawful operation on a regular or periodic basis (including seasonal operations) on or before the date of enactment of this Act;

(2) a list for each State, as applicable, that describes—

(A) the size and weight limitations applicable to each segment of the National Highway System in that State as listed under paragraph (1);

(B) each combination that exceeds the Interstate weight limit, but that the Department of Transportation, other Federal agency, or a State agency has determined on or before the date of enactment of this Act, could be or could have been lawfully operated in the State; and

(C) each combination that exceeds the Interstate weight limit, but that the Secretary determines could have been lawfully operated on a non-Interstate segment of the National Highway System in the State on or before the date of enactment of this Act; and

(3) a list of each State law that designates or allows designation of size and weight limitations in excess of Federal law and regulations on routes of the National Highway System, including nondivisible loads.

(b) SPECIFICATIONS.—The Secretary, in consultation with the States, shall specify whether the determinations under paragraphs (1) and (2) of subsection (a) were made by the Department of Transportation, other Federal agency, or a State agency.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a final report of the compilation under subsection (a) to the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

Subtitle I—Miscellaneous

PART I—MISCELLANEOUS

SEC. 32911. PROHIBITION OF COERCION.

Section 31136(a) is amended by—

(1) striking ''and'' at the end of paragraph (3);

(2) striking the period at the end of paragraph (4) and inserting ''; and''; and

(3) adding after subsection (4) the following:

''(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title.''.

SEC. 32912. MOTOR CARRIER SAFETY ADVISORY COMMITTEE.

Section 4144(d) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (49 U.S.C. 31100 note), is amended by striking ''June 30, 2012'' and inserting ''September 30, 2013''.

SEC. 32913. WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS.

(a) EXEMPTION STANDARDS.—Section 31315(b)(4) is amended—

(1) in subparagraph (A), by inserting ''(or, in the case of a request for an exemption from the physical qualification standards for commercial motor vehicle drivers, post on a web site established by the Secretary to implement the requirements of section 31149)'' after ''Federal Register'';

(2) by amending subparagraph (B) to read as follows:

''(B) UPON GRANTING A REQUEST.—Upon granting a request and before the effective date of the exemption, the Secretary shall publish in the Federal Register (or, in the case of an exemption from the physical qualification standards for commercial motor vehicle drivers, post on a web site established by the Secretary to implement the requirements of section 31149) the name of the person granted the exemption, the

provisions from which the person is exempt, the effective period, and the terms and conditions of the exemption.''; and

(3) in subparagraph (C), by inserting ''(or, in the case of a request for an exemption from the physical qualification standards for commercial motor vehicle drivers, post on a web site established by the Secretary to implement the requirements of section 31149)'' after ''Federal Register''.

(b) PROVIDING NOTICE OF EXEMPTIONS TO STATE PERSONNEL.—Section 31315(b)(7) is amended to read as follows:

''(7) NOTIFICATION OF STATE COMPLIANCE AND ENFORCEMENT PERSONNEL.—Before the effective date of an exemption, the Secretary shall notify a State safety compliance and enforcement agency, and require the agency to notify the State's roadside inspectors, that a person will be operating pursuant to an exemption and the terms and conditions that apply to the exemption.''.

(c) PILOT PROGRAMS.—Section 31315(c)(1) is amended by striking ''in the Federal Register''.

(d) REPORT TO CONGRESS.—Section 31315 is amended by adding after subsection (d) the following:

''(e) REPORT TO CONGRESS.—The Secretary shall submit an annual report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives listing the waivers, exemptions, and pilot programs granted under this section, and any impacts on safety.

''(f) WEB SITE.—The Secretary shall ensure that the Federal Motor Carrier Safety Administration web site includes a link to the web site established by the Secretary to implement the requirements under sections 31149 and 31315. The link shall be in a clear and conspicuous location on the home page of the Federal Motor Carrier Safety Administration web site and be easily accessible to the public.''.

SEC. 32914. REGISTRATION REQUIREMENTS.

(a) REQUIREMENTS FOR REGISTRATION.—Section 13901 is amended to read as follows:

''§ 13901. Requirements for registration

''(a) IN GENERAL.—A person may provide transportation as a motor carrier subject to jurisdiction under subchapter I of chapter 135 or service as a freight forwarder subject to jurisdiction under subchapter III of such chapter, or service as a broker for transportation subject to jurisdiction under subchapter I of such chapter only if the person is registered under this chapter to provide such transportation or service.

''(b) REGISTRATION NUMBERS.—

''(1) IN GENERAL.—If the Secretary registers a person under this chapter to provide transportation or service, including as a motor carrier, freight forwarder, or broker, the Secretary shall issue a distinctive registration number to the person for each such authority to provide transportation or service for which the person is registered.

''(2) TRANSPORTATION OR SERVICE TYPE INDICATOR.—A number issued under paragraph (1) shall include an indicator of the type of transportation or service for which the registration number is issued, including whether the registration number is issued for registration of a motor carrier, freight forwarder, or broker.

''(c) SPECIFICATION OF AUTHORITY.—For each agreement to provide transportation or service for which registration is required under this chapter, the registrant shall specify, in writing, the authority under which the person is providing such transportation or service.''.

(b) AVAILABILITY OF INFORMATION.—

(1) IN GENERAL.—Chapter 139 is amended by adding at the end the following:

''§ 13909. Availability of information

''The Secretary shall make information relating to registration and financial security required by this chapter publicly available on the Internet, including—

''(1) the names and business addresses of the principals of each entity holding such registration;

''(2) the status of such registration; and

''(3) the electronic address of the entity's surety provider for the submission of claims.''.

(2) CONFORMING AMENDMENT.—The analysis for chapter 139 is amended by adding at the end the following:

''13909. Availability of information.''.

SEC. 32915. ADDITIONAL MOTOR CARRIER REGISTRATION REQUIREMENTS.

Section 13902, as amended by sections 32101 and 32107(a) of this Act, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting ''using self-propelled vehicles the motor carrier owns, rents, or leases'' after ''motor carrier''; and

(B) by adding at the end the following:

''(6) SEPARATE REGISTRATION REQUIRED.—A motor carrier may not broker transportation services unless the motor carrier has registered as a broker under this chapter.''; and

(2) by inserting after subsection (h) the following:

''(i) REGISTRATION AS FREIGHT FORWARDER OR BROKER REQUIRED.—A motor carrier registered under this chapter—

''(1) may only provide transportation of property with—

''(A) self-propelled motor vehicles owned or leased by the motor carrier; or

''(B) interchanges under regulations issued by the Secretary if the originating carrier—

''(i) physically transports the cargo at some point; and

''(ii) retains liability for the cargo and for payment of interchanged carriers; and

''(2) may not arrange transportation described in paragraph (1) unless the motor carrier has obtained a separate registration as a freight forwarder or broker for transportation under section 13903 or 13904, as applicable.''.

SEC. 32916. REGISTRATION OF FREIGHT FORWARDERS AND BROKERS.

(a) REGISTRATION OF FREIGHT FORWARDERS.—Section 13903, as amended by section 32107(b) of this Act, is amended—

(1) in subsection (a)—

(A) by striking ''finds that the person is fit'' and inserting the following: ''determines that the person—

''(1) has sufficient experience to qualify the person to act as a freight forwarder; and

''(2) is fit''; and

(B) by striking ''and the Board'';

(2) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively;

(3) by inserting after subsection (a) the following:

''(b) DURATION.—A registration issued under subsection (a) shall only remain in effect while the freight forwarder is in compliance with section 13906(c).

''(c) EXPERIENCE OR TRAINING REQUIREMENT.—Each freight forwarder shall employ, as an officer, an individual who—

''(1) has at least 3 years of relevant experience; or

''(2) provides the Secretary with satisfactory evidence of the individual's knowledge of related rules, regulations, and industry practices.''; and

(4) by amending subsection (d), as redesignated, to read as follows:

''(d) REGISTRATION AS MOTOR CARRIER REQUIRED.—

''(1) IN GENERAL.—A freight forwarder may not provide transportation as a motor carrier unless the freight forwarder has registered separately under this chapter to provide transportation as a motor carrier.''.

(b) REGISTRATION OF BROKERS.—Section 13904, as amended by section 32107(c) of this Act, is amended—

(1) in subsection (a), by striking ''finds that the person is fit'' and inserting the following: ''determines that the person—

''(1) has sufficient experience to qualify the person to act as a broker for transportation; and

''(2) is fit'';

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (d), (e), (f), and (g) respectively;

(3) by inserting after subsection (a) the following:

''(b) DURATION.—A registration issued under subsection (a) shall only remain in effect while the broker for transportation is in compliance with section 13906(b).

''(c) EXPERIENCE OR TRAINING REQUIREMENTS.—Each broker shall employ, as an officer, an individual who—

''(1) has at least 3 years of relevant experience; or

''(2) provides the Secretary with satisfactory evidence of the individual's knowledge of related rules, regulations, and industry practices.'';

(4) by amending subsection (d), as redesignated, to read as follows:

''(d) REGISTRATION AS MOTOR CARRIER REQUIRED.—

''(1) IN GENERAL.—A broker for transportation may not provide transportation as a motor carrier unless the broker has registered separately under this chapter to provide transportation as a motor carrier.

''(2) LIMITATION.—This subsection does not apply to a motor carrier registered under this chapter or to an employee or agent of the motor carrier to the extent the transportation is to be provided entirely by the motor carrier, with other registered motor carriers, or with rail or water carriers.''; and

(5) by amending subsection (e), as redesignated, to read as follows:

''(e) REGULATION TO PROTECT MOTOR CARRIERS AND SHIPPERS.—Regulations of the Secretary applicable to brokers registered under this section shall provide for the protection of motor carriers and shippers by motor vehicle.''.

SEC. 32917. EFFECTIVE PERIODS OF REGISTRATION.

Section 13905(c) is amended to read as follows:

''(c) EFFECTIVE PERIOD.—

''(1) IN GENERAL.—Except as otherwise provided in this part, each registration issued under section 13902, 13903, or 13904—

''(A) shall be effective beginning on the date specified by the Secretary; and

''(B) shall remain in effect for such period as the Secretary determines appropriate by regulation.

''(2) REISSUANCE OF REGISTRATION.—

''(A) REQUIREMENT.—Not later than 4 years after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, the Secretary shall require a freight forwarder or broker to renew its registration issued under this chapter.

''(B) EFFECTIVE PERIOD.—Each registration renewal under subparagraph (A)—

''(i) shall expire not later than 5 years after the date of such renewal; and

''(ii) may be further renewed as provided under this chapter.''.

SEC. 32918. FINANCIAL SECURITY OF BROKERS AND FREIGHT FORWARDERS.

(a) IN GENERAL.—Section 13906 is amended by striking subsections (b) and (c) and inserting the following:

''(b) BROKER FINANCIAL SECURITY REQUIREMENTS.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—The Secretary may register a person as a broker under section 13904 only if the person files with the Secretary a surety bond, proof of trust fund, or other financial security, or a combination thereof, in a form and amount, and from a provider, determined by the Secretary to be adequate to ensure financial responsibility.

''(B) USE OF A GROUP SURETY BOND, TRUST FUND, OR OTHER SURETY.—In implementing the

standards established by subparagraph (A), the Secretary may authorize the use of a group surety bond, trust fund, or other financial security, or a combination thereof, that meets the requirements of this subsection.

''(C) PROOF OF TRUST OR OTHER FINANCIAL SECURITY.—For purposes of subparagraph (A), a trust fund or other financial security may be acceptable to the Secretary only if the trust fund or other financial security consists of assets readily available to pay claims without resort to personal guarantees or collection of pledged accounts receivable.

''(2) SCOPE OF FINANCIAL RESPONSIBILITY.—

''(A) PAYMENT OF CLAIMS.—A surety bond, trust fund, or other financial security obtained under paragraph (1) shall be available to pay any claim against a broker arising from its failure to pay freight charges under its contracts, agreements, or arrangements for transportation subject to jurisdiction under chapter 135 if—

''(i) subject to the review by the surety provider, the broker consents to the payment;

''(ii) in any case in which the broker does not respond to adequate notice to address the validity of the claim, the surety provider determines that the claim is valid; or

''(iii) the claim is not resolved within a reasonable period of time following a reasonable attempt by the claimant to resolve the claim under clauses (i) and (ii), and the claim is reduced to a judgment against the broker.

''(B) RESPONSE OF SURETY PROVIDERS TO CLAIMS.—If a surety provider receives notice of a claim described in subparagraph (A), the surety provider shall—

''(i) respond to the claim on or before the 30th day following the date on which the notice was received; and

''(ii) in the case of a denial, set forth in writing for the claimant the grounds for the denial.

''(C) COSTS AND ATTORNEY'S FEES.—In any action against a surety provider to recover on a claim described in subparagraph (A), the prevailing party shall be entitled to recover its reasonable costs and attorney's fees.

''(3) MINIMUM FINANCIAL SECURITY.—Each broker subject to the requirements of this section shall provide financial security of $75,000 for purposes of this subsection, regardless of the number of branch offices or sales agents of the broker.

''(4) CANCELLATION NOTICE.—If a financial security required under this subsection is canceled—

''(A) the holder of the financial security shall provide electronic notification to the Secretary of the cancellation not later than 30 days before the effective date of the cancellation; and

''(B) the Secretary shall immediately post such notification on the public Internet Website of the Department of Transportation.

''(5) SUSPENSION.—The Secretary shall immediately suspend the registration of a broker issued under this chapter if the available financial security of that person falls below the amount required under this subsection.

''(6) PAYMENT OF CLAIMS IN CASES OF FINANCIAL FAILURE OR INSOLVENCY.—If a broker registered under this chapter experiences financial failure or insolvency, the surety provider of the broker shall—

''(A) submit a notice to cancel the financial security to the Administrator in accordance with paragraph (4);

''(B) publicly advertise for claims for 60 days beginning on the date of publication by the Secretary of the notice to cancel the financial security; and

''(C) pay, not later than 30 days after the expiration of the 60-day period for submission of claims—

''(i) all uncontested claims received during such period; or

''(ii) a pro rata share of such claims if the total amount of such claims exceeds the financial security available.

''(7) PENALTIES.—

''(A) CIVIL ACTIONS.—Either the Secretary or the Attorney General of the United States may bring a civil action in an appropriate district court of the United States to enforce the requirements of this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

''(B) CIVIL PENALTIES.—If the Secretary determines, after notice and opportunity for a hearing, that a surety provider of a broker registered under this chapter has violated the requirements of this subsection or a regulation prescribed under this subsection, the surety provider shall be liable to the United States for a civil penalty in an amount not to exceed $10,000.

''(C) ELIGIBILITY.—If the Secretary determines, after notice and opportunity for a hearing, that a surety provider of a broker registered under this chapter has violated the requirements of this subsection or a regulation prescribed under this subsection, the surety provider shall be ineligible to provider broker financial security for 3 years.

''(8) DEDUCTION OF COSTS PROHIBITED.—The amount of the financial security required under this subsection may not be reduced by deducting attorney's fees or administrative costs.

''(c) FREIGHT FORWARDER FINANCIAL SECURITY REQUIREMENTS.—

''(1) REQUIREMENTS.—

''(A) IN GENERAL.—The Secretary may register a person as a freight forwarder under section 13903 only if the person files with the Secretary a surety bond, proof of trust fund, other financial security, or a combination of such instruments, in a form and amount, and from a provider, determined by the Secretary to be adequate to ensure financial responsibility.

''(B) USE OF A GROUP SURETY BOND, TRUST FUND, OR OTHER FINANCIAL SECURITY.—In implementing the standards established under subparagraph (A), the Secretary may authorize the use of a group surety bond, trust fund, other financial security, or a combination of such instruments, that meets the requirements of this subsection.

''(C) SURETY BONDS.—A surety bond obtained under this section may only be obtained from a bonding company that has been approved by the Secretary of the Treasury.

''(D) PROOF OF TRUST OR OTHER FINANCIAL SECURITY.—For purposes of subparagraph (A), a trust fund or other financial security may not be accepted by the Secretary unless the trust fund or other financial security consists of assets readily available to pay claims without resort to personal guarantees or collection of pledged accounts receivable.

''(2) SCOPE OF FINANCIAL RESPONSIBILITY.—

''(A) PAYMENT OF CLAIMS.—A surety bond, trust fund, or other financial security obtained under paragraph (1) shall be available to pay any claim against a freight forwarder arising from its failure to pay freight charges under its contracts, agreements, or arrangements for transportation subject to jurisdiction under chapter 135 if—

''(i) subject to the review by the surety provider, the freight forwarder consents to the payment;

''(ii) in the case the freight forwarder does not respond to adequate notice to address the validity of the claim, the surety provider determines the claim is valid; or

''(iii) the claim—

''(I) is not resolved within a reasonable period of time following a reasonable attempt by the claimant to resolve the claim under clauses (i) and (ii); and

''(II) is reduced to a judgment against the freight forwarder.

''(B) RESPONSE OF SURETY PROVIDERS TO CLAIMS.—If a surety provider receives notice of a claim described in subparagraph (A), the surety provider shall—

''(i) respond to the claim on or before the 30th day following receipt of the notice; and

''(ii) in the case of a denial, set forth in writing for the claimant the grounds for the denial.

''(C) COSTS AND ATTORNEY'S FEES.—In any action against a surety provider to recover on a claim described in subparagraph (A), the prevailing party shall be entitled to recover its reasonable costs and attorney's fees.

''(3) FREIGHT FORWARDER INSURANCE.—

''(A) IN GENERAL.—The Secretary may register a person as a freight forwarder under section 13903 only if the person files with the Secretary a surety bond, insurance policy, or other type of financial security that meets standards prescribed by the Secretary.

''(B) LIABILITY INSURANCE.—A financial security filed by a freight forwarder under subparagraph (A) shall be sufficient to pay an amount, not to exceed the amount of the financial security, for each final judgment against the freight forwarder for bodily injury to, or death of, an individual, or loss of, or damage to, property (other than property referred to in subparagraph (C)), resulting from the negligent operation, maintenance, or use of motor vehicles by, or under the direction and control of, the freight forwarder while providing transfer, collection, or delivery service under this part.

''(C) CARGO INSURANCE.—The Secretary may require a registered freight forwarder to file with the Secretary a surety bond, insurance policy, or other type of financial security approved by the Secretary, that will pay an amount, not to exceed the amount of the financial security, for loss of, or damage to, property for which the freight forwarder provides service.

''(4) MINIMUM FINANCIAL SECURITY.—Each freight forwarder subject to the requirements of this section shall provide financial security of $75,000, regardless of the number of branch offices or sales agents of the freight forwarder.

''(5) CANCELLATION NOTICE.—If a financial security required under this subsection is canceled—

''(A) the holder of the financial security shall provide electronic notification to the Secretary of the cancellation not later than 30 days before the effective date of the cancellation; and

''(B) the Secretary shall immediately post such notification on the public Internet web site of the Department of Transportation.

''(6) SUSPENSION.—The Secretary shall immediately suspend the registration of a freight forwarder issued under this chapter if its available financial security falls below the amount required under this subsection.

''(7) PAYMENT OF CLAIMS IN CASES OF FINANCIAL FAILURE OR INSOLVENCY.—If a freight forwarder registered under this chapter experiences financial failure or insolvency, the surety provider of the freight forwarder shall—

''(A) submit a notice to cancel the financial security to the Administrator in accordance with paragraph (5);

''(B) publicly advertise for claims for 60 days beginning on the date of publication by the Secretary of the notice to cancel the financial security; and

''(C) pay, not later than 30 days after the expiration of the 60-day period for submission of claims—

''(i) all uncontested claims received during such period; or

''(ii) a pro rata share of such claims if the total amount of such claims exceeds the financial security available.

''(8) PENALTIES.—

''(A) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce the requirements of this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

''(B) CIVIL PENALTIES.—If the Secretary determines, after notice and opportunity for a hearing, that a surety provider of a freight forwarder registered under this chapter has violated the requirements of this subsection or a

regulation prescribed under this subsection, the surety provider shall be liable to the United States for a civil penalty in an amount not to exceed $10,000.

''(C) ELIGIBILITY.—If the Secretary determines, after notice and opportunity for a hearing, that a surety provider of a freight forwarder registered under this chapter has violated the requirements of this subsection or a regulation prescribed under this subsection, the surety provider shall be ineligible to provide freight forwarder financial security for 3 years

''(9) DEDUCTION OF COSTS PROHIBITED.—The amount of the financial security required under this subsection may not be reduced by deducting attorney's fees or administrative costs.''.

(b) RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue regulations to implement and enforce the requirements under subsections (b) and (c) of section 13906 of title 49, United States Code, as amended by subsection (a).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date that is 1 year after the date of enactment of this Act.

SEC. 32919. UNLAWFUL BROKERAGE ACTIVITIES.

(a) IN GENERAL.—Chapter 149 is amended by adding at the end the following:

''SEC. 14916. UNLAWFUL BROKERAGE ACTIVITIES.

''(a) PROHIBITED ACTIVITIES.—A person may provide interstate brokerage services as a broker only if that person—

''(1) is registered under, and in compliance with, section 13904; and

''(2) has satisfied the financial security requirements under section 13906.

''(b) EXCEPTIONS.—Subsection (a) shall not apply to—

''(1) a non-vessel-operating common carrier (as defined in section 40102 of title 46) or an ocean freight forwarder (as defined in section 40102 of title 46) when arranging for inland transportation as part of an international through movement involving ocean transportation between the United States and a foreign port;

''(2) a customs broker licensed in accordance with section 111.2 of title 19, Code of Federal Regulations, only to the extent that the customs broker is engaging in a movement under a customs bond or in a transaction involving customs business, as defined by section 111.1 of title 19, Code of Federal Regulations; or

''(3) an indirect air carrier holding a Standard Security Program approved by the Transportation Security Administration, only to the extent that the indirect air carrier is engaging in the activities as an air carrier as defined in section 40102(2) or in the activities defined in section 40102(3).

''(c) CIVIL PENALTIES AND PRIVATE CAUSE OF ACTION.—Any person who knowingly authorizes, consents to, or permits, directly or indirectly, either alone or in conjunction with any other person, a violation of subsection (a) is liable—

''(1) to the United States Government for a civil penalty in an amount not to exceed $10,000 for each violation; and

''(2) to the injured party for all valid claims incurred without regard to amount.

''(d) LIABLE PARTIES.—The liability for civil penalties and for claims under this section for unauthorized brokering shall apply, jointly and severally—

''(1) to any corporate entity or partnership involved; and

''(2) to the individual officers, directors, and principals of such entities.''.

(b) CLERICAL AMENDMENT.—The analysis for chapter 149 is amended by adding at the end the following:

''14916. Unlawful brokerage activities.''.

PART II—HOUSEHOLD GOODS TRANSPORTATION

SEC. 32921. ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS MOTOR CARRIERS.

(a) Section 13902(a)(2) is amended—

(1) in subparagraph (B), by striking ''section 13702(c);'' and inserting ''section 13702(c); and'';

(2) by amending subparagraph (C) to read as follows:

''(C) demonstrates, before being registered, through successful completion of a proficiency examination established by the Secretary, knowledge and intent to comply with applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage.''; and

(3) by striking subparagraph (D).

(b) COMPLIANCE REVIEWS OF NEW HOUSEHOLD GOODS MOTOR CARRIERS.—Section 31144(g), as amended by section 32102 of this Act, is amended by adding at the end the following:

''(6) ADDITIONAL REQUIREMENTS FOR HOUSEHOLD GOODS MOTOR CARRIERS.—(A) In addition to the requirements of this subsection, the Secretary shall require, by regulation, each registered household goods motor carrier to undergo a consumer protection standards review not later than 18 months after the household goods motor carrier begins operations under such authority.

''(B) ELEMENTS.—In the regulations issued pursuant to subparagraph (A), the Secretary shall establish the elements of the consumer protections standards review, including basic management controls. In establishing the elements, the Secretary shall consider the effects on small businesses and shall consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

SEC. 32922. FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS.

(a) INJUNCTIVE RELIEF.—Section 14704(a)(1) is amended by striking ''and 14103'' and inserting '', 14103, and 14915(c)''.

(b) CIVIL PENALTIES.—Section 14915(a)(1) is amended by adding at the end the following:

''The United States may assign all or a portion of the civil penalty to an aggrieved shipper. The Secretary of Transportation shall establish criteria upon which such assignments shall be made. The Secretary may order, after notice and an opportunity for a proceeding, that a person found holding a household goods shipment hostage return the goods to an aggrieved shipper.''.

SEC. 32923. SETTLEMENT AUTHORITY.

(a) SETTLEMENT OF GENERAL CIVIL PENALTIES.—Section 14901 is amended by adding at the end the following:

''(h) SETTLEMENT OF HOUSEHOLD GOODS CIVIL PENALTIES.—Nothing in this section shall be construed to prohibit the Secretary from accepting partial payment of a civil penalty as part of a settlement agreement in the public interest, or from holding imposition of any part of a civil penalty in abeyance.''.

(b) SETTLEMENT OF HOUSEHOLD GOODS CIVIL PENALTIES.—Section 14915(a) is amended by adding at the end the following:

''(4) SETTLEMENT AUTHORITY.—Nothing in this section shall be construed as prohibiting the Secretary from accepting partial payment of a civil penalty as part of a settlement agreement in the public interest, or from holding imposition of any part of a civil penalty in abeyance.''.

PART III—TECHNICAL AMENDMENTS

SEC. 32931. UPDATE OF OBSOLETE TEXT.

(a) Section 31137(g), as redesignated by section 32301 of this Act, is amended by striking ''Not later than December 1, 1990, the Secretary shall prescribe'' and inserting ''The Secretary shall maintain''.

(b) Section 31151(a) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) IN GENERAL.—The Secretary of Transportation shall maintain a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.''; and

(2) by striking paragraph (4).

(c) Section 31307(b) is amended by striking ''Not later than December 18, 1994, the Secretary shall prescribe'' and inserting ''The Secretary shall maintain''.

(d) Section 31310(g)(1) is amended by striking ''Not later than 1 year after the date of enactment of this Act, the'' and inserting ''The''.

SEC. 32932. CORRECTION OF INTERSTATE COMMERCE COMMISSION REFERENCES.

(a) SAFETY INFORMATION AND INTERVENTION IN INTERSTATE COMMERCE COMMISSION PROCEEDINGS.—Chapter 3 is amended—

(1) by repealing section 307;

(2) in the analysis, by striking the item relating to section 307;

(3) in section 333(d)(1)(C), by striking ''Interstate Commerce Commission'' and inserting ''Surface Transportation Board''; and

(4) in section 333(e)—

(A) by striking ''Interstate Commerce Commission'' and inserting ''Surface Transportation Board''; and

(B) by striking ''Commission'' and inserting ''Board''.

(b) FILING AND PROCEDURE FOR APPLICATION TO ABANDON OR DISCONTINUE.—Section 10903(b)(2) is amended by striking ''24706(c) of this title'' and inserting ''24706(c) of this title before May 31, 1998''.

(c) TECHNICAL AMENDMENTS TO PART C OF SUBTITLE V.—

(1) Section 24307(b)(3) is amended by striking ''Interstate Commerce Commission'' and inserting ''Surface Transportation Board''.

(2) Section 24311 is amended—

(A) by striking ''Interstate Commerce Commission'' and inserting ''Surface Transportation Board'';

(B) by striking ''Commission'' each place it appears and inserting ''Board''; and

(C) by striking ''Commission's'' and inserting ''Board's''.

(3) Section 24902 is amended—

(A) by striking ''Interstate Commerce Commission'' each place it appears and inserting ''Surface Transportation Board''; and

(B) by striking ''Commission'' each place it appears and inserting ''Board''.

(4) Section 24904 is amended—

(A) by striking ''Interstate Commerce Commission'' and inserting ''Surface Transportation Board''; and

(B) by striking ''Commission'' each place it appears and inserting ''Board''.

SEC. 32933. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 13905(f)(1)(A) is amended by striking ''section 13904(c)'' and inserting ''section 13904(e)'';

(b) Section 14504a(c)(1) is amended—

(1) in subparagraph (C), by striking ''sections'' and inserting ''section''; and

(2) in subparagraph (D)(ii)(II) by striking the period at the end and inserting ''; and''.

(c) Section 31103(a) is amended by striking ''section 31102(b)(1)(E)'' and inserting ''section 31102(b)(2)(E)''.

(d) Section 31103(b) is amended by striking ''authorized by section 31104(f)(2)''.

(e) Section 31309(b)(2) is amended by striking ''31308(2)'' and inserting ''31308(3)''.

SEC. 32934. EXEMPTIONS FROM REQUIREMENTS FOR COVERED FARM VEHICLES.

(a) FEDERAL REQUIREMENTS.—A covered farm vehicle, including the individual operating that vehicle, shall be exempt from the following:

(1) Any requirement relating to commercial driver's licenses established under chapter 313 of title 49, United States Code.

(2) Any requirement relating to drug-testing established under chapter 313 of title 49, United States Code.

(3) Any requirement relating to medical certificates established under—

(A) subchapter III of chapter 311 of title 49, United States Code; or

(B) chapter 313 of title 49, United States Code.

(4) Any requirement relating to hours of service established under—

(A) subchapter III of chapter 311 of title 49, United States Code; or

(B) chapter 315 of title 49, United States Code.

(5) Any requirement relating to vehicle inspection, repair, and maintenance established under—

(A) subchapter III of chapter 311 of title 49, United States Code; or

(B) chapter 315 of title 49, United States Code.

(b) STATE REQUIREMENTS.—

(1) IN GENERAL.—Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from any State requirement relating to the operation of that vehicle.

(2) EXCEPTION.—Paragraph (1) does not apply with respect to a covered farm vehicle transporting hazardous materials that require a placard.

(c) COVERED FARM VEHICLE DEFINED.—

(1) IN GENERAL.—In this section, the term ''covered farm vehicle'' means a motor vehicle (including an articulated motor vehicle)—

(A) that—

(i) is traveling in the State in which the vehicle is registered or another State;

(ii) is operated by—

(I) a farm owner or operator;

(II) a ranch owner or operator; or

(III) an employee or family member of an individual specified in subclause (I) or (II);

(iii) is transporting to or from a farm or ranch—

(I) agricultural commodities;

(II) livestock; or

(III) machinery or supplies;

(iv) except as provided in paragraph (2), is not used in the operations of a for-hire motor carrier; and

(v) is equipped with a special license plate or other designation by the State in which the vehicle is registered to allow for identification of the vehicle as a farm vehicle by law enforcement personnel; and

(B) that has a gross vehicle weight rating or gross vehicle weight, whichever is greater, that is—

(i) 26,001 pounds or less; or

(ii) greater than 26,001 pounds and traveling within the State or within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

(2) INCLUSION.—In this section, the term ''covered farm vehicle'' includes a motor vehicle that meets the requirements of paragraph (1) (other than paragraph (1)(A)(iv)) and—

(A) is operated pursuant to a crop share farm lease agreement;

(B) is owned by a tenant with respect to that agreement; and

(C) is transporting the landlord's portion of the crops under that agreement.

(d) SAFETY STUDY.—The Secretary of Transportation shall conduct a study of the exemption required by subsection (a) as follows:

(1) Data and analysis of covered farm vehicles shall include—

(A) the number of vehicles that are operated subject to each of the regulatory exemptions permitted under subsection (a);

(B) the number of drivers that operate covered farm vehicles subject to each of the regulatory exemptions permitted under subsection (a);

(C) the number of crashes involving covered farm vehicles;

(D) the number of occupants and non-occupants injured in crashes involving covered farm vehicles;

(E) the number of fatalities of occupants and non-occupants killed in crashes involving farm vehicles;

(F) crash investigations and accident reconstruction investigations of all fatalities in crashes involving covered farm vehicles;

(G) overall operating mileage of covered farm vehicles;

(H) numbers of covered farm vehicles that operate in neighboring States; and

(I) any other data the Secretary deems necessary to analyze and include.

(2) A listing of State regulations issued and maintained in each State that are identical to the Federal regulations that are subject to exemption in subsection (a).

(3) The Secretary shall report the findings of the study to the appropriate committees of Congress not later than 18 months after the date of enactment of this Act.

(e) CONSTRUCTION.—Nothing in this section shall be construed as authority for the Secretary of Transportation to prescribe regulations.

TITLE III—HAZARDOUS MATERIALS TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2012

SEC. 33001. SHORT TITLE.

This title may be cited as the ''Hazardous Materials Transportation Safety Improvement Act of 2012''.

SEC. 33002. DEFINITION.

In this title, the term ''Secretary'' means the Secretary of Transportation.

SEC. 33003. REFERENCES TO TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 33004. TRAINING FOR EMERGENCY RESPONDERS.

(a) TRAINING CURRICULUM.—Section 5115 is amended—

(1) in subsection (b)(1)(B), by striking ''basic'';

(2) in subsection (b)(2), by striking ''basic''; and

(3) in subsection (c), by striking ''basic''.

(b) OPERATIONS LEVEL TRAINING.—Section 5116 is amended—

(1) in subsection (b)(1), by adding at the end the following: ''To the extent that a grant is used to train emergency responders, the State or Indian tribe shall provide written certification to the Secretary that the emergency responders who receive training under the grant will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association standards for competence of responders to accidents and incidents involving hazardous materials.'';

(2) in subsection (j)—

(A) in paragraph (1), by striking ''funds'' and all that follows through ''fighting fires for'' and inserting ''funds and through a competitive process, make a grant or make grants to national nonprofit fire service organizations for'';

(B) in paragraph (3)(A), by striking ''train'' and inserting ''provide training, including portable training, for'';

(C) in paragraph (4)—

(i) by striking ''train'' and inserting ''provide training, including portable training, for''; and

(ii) by inserting ''comply with Federal regulations and national consensus standards for hazardous materials response and'' after ''training course shall'';

(D) by redesignating paragraph (5) as paragraph (8); and

(E) by inserting after paragraph (4) the following:

''(5) The Secretary may not award a grant to an organization under this subsection unless the organization ensures that emergency responders who receive training under the grant will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association standards for competence of responders to accidents and incidents involving hazardous materials.

''(6) Notwithstanding paragraphs (1) and (3), to the extent determined appropriate by the Secretary, a grant awarded by the Secretary to an organization under this subsection to conduct hazardous material response training programs may be used to train individuals with responsibility to respond to accidents and incidents involving hazardous material.

''(7) For the purposes of this subsection, the term 'portable training' means live, instructor-led training provided by certified fire service instructors that can be offered in any suitable setting, rather than specific designated facilities. Under this training delivery model, instructors travel to locations convenient to students and utilize local facilities and resources.''; and

(3) in subsection (k)—

(A) by striking ''annually'' and inserting ''an annual report'';

(B) by inserting ''the report'' after ''make available'';

(C) by striking ''information'' and inserting ''. The report submitted under this subsection shall include information''; and

(D) by striking ''The report shall identify'' and all that follows and inserting the following: ''The report submitted under this subsection shall identify the ultimate recipients of such grants and include—

''(A) a detailed accounting and description of each grant expenditure by each grant recipient, including the amount of, and purpose for, each expenditure;

''(B) the number of persons trained under the grant program, by training level;

''(C) an evaluation of the efficacy of such planning and training programs; and

''(D) any recommendations the Secretary may have for improving such grant programs.''.

SEC. 33005. PAPERLESS HAZARD COMMUNICATIONS PILOT PROGRAM.

(a) IN GENERAL.—The Secretary may conduct pilot projects to evaluate the feasibility and effectiveness of using paperless hazard communications systems. At least 1 of the pilot projects under this section shall take place in a rural area.

(b) REQUIREMENTS.—In conducting pilot projects under this section, the Secretary—

(1) may not waive the requirements under section 5110 of title 49, United States Code; and

(2) shall consult with organizations representing—

(A) fire services personnel;

(B) law enforcement and other appropriate enforcement personnel;

(C) other emergency response providers;

(D) persons who offer hazardous material for transportation;

(E) persons who transport hazardous material by air, highway, rail, and water; and

(F) employees of persons who transport or offer for transportation hazardous material by air, highway, rail, and water.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall—

(1) prepare a report on the results of the pilot projects carried out under this section, including—

(A) a detailed description of the pilot projects;

(B) an evaluation of each pilot project, including an evaluation of the performance of each paperless hazard communications system in such project;

(C) an assessment of the safety and security impact of using paperless hazard communications systems, including any impact on the public, emergency response, law enforcement, and the conduct of inspections and investigations;

(D) an analysis of the associated benefits and costs of using the paperless hazard communications systems for each mode of transportation; and

(E) a recommendation that incorporates the information gathered in subparagraphs (A), (B), (C), and (D) on whether paperless hazard communications systems should be permanently incorporated into the Federal hazardous material transportation safety program under chapter 51 of title 49, United States Code; and

(2) submit a final report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that contains the results of the pilot projects carried out under this section, including the matters described in paragraph (1).

(d) PAPERLESS HAZARD COMMUNICATIONS SYSTEM DEFINED.—In this section, the term ''paperless hazard communications system'' means the use of advanced communications methods, such as wireless communications devices, to convey hazard information between all parties in the transportation chain, including emergency responders and law enforcement personnel. The format of communication may be equivalent to that used by the carrier.

SEC. 33006. IMPROVING DATA COLLECTION, ANALYSIS, AND REPORTING.

(a) ASSESSMENT.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the United States Coast Guard, as appropriate, shall conduct an assessment to improve the collection, analysis, reporting, and use of data related to accidents and incidents involving the transportation of hazardous material.

(2) REVIEW.—The assessment conducted under this subsection shall review the methods used by the Pipeline and Hazardous Materials Safety Administration (referred to in this section as the ''Administration'') for collecting, analyzing, and reporting accidents and incidents involving the transportation of hazardous material, including the adequacy of—

(A) information requested on the accident and incident reporting forms required to be submitted to the Administration;

(B) methods used by the Administration to verify that the information provided on such forms is accurate and complete;

(C) accident and incident reporting requirements, including whether such requirements should be expanded to include shippers and consignees of hazardous materials;

(D) resources of the Administration related to data collection, analysis, and reporting, including staff and information technology; and

(E) the database used by the Administration for recording and reporting such accidents and incidents, including the ability of users to adequately search the database and find information.

(b) DEVELOPMENT OF ACTION PLAN.—Not later than 9 months after the date of enactment of this Act, the Secretary shall develop an action plan and timeline for improving the collection, analysis, reporting, and use of data by the Administration, including revising the database of the Administration, as appropriate.

(c) SUBMISSION TO CONGRESS.—Not later than 15 days after the completion of the action plan and timeline under subsection (c), the Secretary shall submit the action plan and timeline to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(d) REPORTING REQUIREMENTS.—Section 5125(b)(1)(D) is amended by inserting ''and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident'' before the period at the end.

SEC. 33007. HAZARDOUS MATERIAL TECHNICAL ASSESSMENT, RESEARCH AND DEVELOPMENT, AND ANALYSIS PROGRAM.

(a) IN GENERAL.—Chapter 51 is amended by inserting after section 5117 the following:

''§ 5118. Hazardous material technical assessment, research and development, and analysis program

''(a) RISK REDUCTION.—

''(1) PROGRAM AUTHORIZED.—The Secretary of Transportation may develop and implement a hazardous material technical assessment, research and development, and analysis program for the purpose of—

''(A) reducing the risks associated with the transportation of hazardous material; and

''(B) identifying and evaluating new technologies to facilitate the safe, secure, and efficient transportation of hazardous material.

''(2) COORDINATION.—In developing the program under paragraph (1), the Secretary shall—

''(A) utilize information gathered from other modal administrations with similar programs; and

''(B) coordinate with other modal administrations, as appropriate.

''(b) COOPERATION.—In carrying out subsection (a), the Secretary shall work cooperatively with regulated and other entities, including shippers, carriers, emergency responders, State and local officials, and academic institutions.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 51 is amended by inserting after the item relating to section 5117 the following:

''5118. Hazardous material technical assessment, research and development, and analysis program.''.

SEC. 33008. HAZARDOUS MATERIAL ENFORCEMENT TRAINING.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall develop uniform performance standards for training hazardous material inspectors and investigators on—

(1) how to collect, analyze, and publish findings from inspections and investigations of accidents or incidents involving the transportation of hazardous material; and

(2) how to identify noncompliance with regulations issued under chapter 51 of title 49, United States Code, and take appropriate enforcement action.

(b) STANDARDS AND GUIDELINES.—The Secretary may develop—

(1) guidelines for hazardous material inspector and investigator qualifications;

(2) best practices and standards for hazardous material inspector and investigator training programs; and

(3) standard protocols to coordinate investigation efforts among Federal, State, and local jurisdictions on accidents or incidents involving the transportation of hazardous material.

(c) AVAILABILITY.—The standards, protocols, and guidelines established under this section—

(1) shall be mandatory for—

(A) the Department of Transportation's multimodal personnel conducting hazardous material enforcement inspections or investigations; and

(B) State employees who conduct federally funded compliance reviews, inspections, or investigations; and

(2) shall be made available to Federal, State, and local hazardous material safety enforcement personnel.

SEC. 33009. INSPECTIONS.

(a) NOTICE OF ENFORCEMENT MEASURES.—Section 5121(c)(1) is amended—

(1) in subparagraph (E), by striking ''and'' at the end;

(2) in subparagraph (F), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(G) shall provide to the affected offeror, carrier, packaging manufacturer or tester, or other person responsible for the package reasonable notice of—

''(i) his or her decision to exercise his or her authority under paragraph (1);

''(ii) any findings made; and

''(iii) any actions being taken as a result of a finding of noncompliance.''.

(b) REGULATIONS.—

(1) MATTERS TO BE ADDRESSED.—Section 5121(e) is amended by adding at the end the following:

''(3) MATTERS TO BE ADDRESSED.—The regulations issued under this subsection shall address—

''(A) the safe and expeditious resumption of transportation of perishable hazardous material, including radiopharmaceuticals and other medical products, that may require timely delivery due to life-threatening situations;

''(B) the means by which—

''(i) noncompliant packages that present an imminent hazard are placed out-of-service until the condition is corrected; and

''(ii) noncompliant packages that do not present a hazard are moved to their final destination;

''(C) appropriate training and equipment for inspectors; and

''(D) the proper closure of packaging in accordance with the hazardous material regulations.''.

(2) FINALIZING REGULATIONS.—In accordance with section 5103(b)(2) of title 49, United States Code, not later than 1 year after the date of enactment of this Act, the Secretary shall take all actions necessary to finalize a regulation under paragraph (1) of this subsection.

(c) GRANTS AND COOPERATIVE AGREEMENTS.—Section 5121(g)(1) is amended by inserting ''safety and'' before ''security''.

SEC. 33010. CIVIL PENALTIES.

Section 5123 is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''at least $250 but''; and

(ii) by striking ''$50,000'' and inserting ''$75,000'';

(B) in paragraph (2), by striking ''$100,000'' and inserting ''$175,000''; and

(C) by amending paragraph (3) to read as follows:

''(3) If the violation is related to training, a person described in paragraph (1) shall be liable for a civil penalty of at least $450.''; and

(2) by adding at the end the following:

''(h) PENALTY FOR OBSTRUCTION OF INSPECTIONS AND INVESTIGATIONS.—

''(1) The Secretary may impose a penalty on a person who obstructs or prevents the Secretary from carrying out inspections or investigations under subsection (c) or (i) of section 5121.

''(2) For the purposes of this subsection, the term 'obstructs' means actions that were known, or reasonably should have been known, to prevent, hinder, or impede an investigation.

''(i) PROHIBITION ON HAZARDOUS MATERIAL OPERATIONS AFTER NONPAYMENT OF PENALTIES.—

''(1) IN GENERAL.—Except as provided under paragraph (2), a person subject to the jurisdiction of the Secretary under this chapter who fails to pay a civil penalty assessed under this chapter, or fails to arrange and abide by an acceptable payment plan for such civil penalty, may not conduct any activity regulated under this chapter beginning on the 91st day after the date specified by order of the Secretary for payment of such penalty unless the person has filed a formal administrative or judicial appeal of the penalty.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11.

''(3) RULEMAKING.—Not later than 2 years after the date of enactment of this subsection,

the Secretary, after providing notice and an opportunity for public comment, shall issue regulations that—

''(A) set forth procedures to require a person who is delinquent in paying civil penalties to cease any activity regulated under this chapter until payment has been made or an acceptable payment plan has been arranged; and

''(B) ensures that the person described in subparagraph (A)—

''(i) is notified in writing; and

''(ii) is given an opportunity to respond before the person is required to cease the activity.''.

SEC. 33011. REPORTING OF FEES.

Section 5125(f)(2) is amended by striking '', upon the Secretary's request,'' and inserting ''biennially''.

SEC. 33012. SPECIAL PERMITS, APPROVALS, AND EXCLUSIONS.

(a) RULEMAKING.—Not later than 2 years after the date of enactment of this Act, the Secretary, after providing notice and an opportunity for public comment, shall issue regulations that establish—

(1) standard operating procedures to support administration of the special permit and approval programs; and

(2) objective criteria to support the evaluation of special permit and approval applications.

(b) REVIEW OF SPECIAL PERMITS.—

(1) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Secretary shall conduct a review and analysis of special permits that have been in continuous effect for a 10-year period to determine which special permits may be converted into the hazardous materials regulations.

(2) FACTORS.—In conducting the review and analysis under paragraph (1), the Secretary may consider—

(A) the safety record for hazardous materials transported under the special permit;

(B) the application of a special permit;

(C) the suitability of provisions in the special permit for incorporation into the hazardous materials regulations; and

(D) rulemaking activity in related areas.

(3) RULEMAKING.—After completing the review and analysis under paragraph (1), but not later than 3 years after the date of enactment of this Act, and after providing notice and opportunity for public comment, the Secretary shall issue regulations to incorporate into the hazardous materials regulations any special permits identified in the review under paragraph (1) that the Secretary determines are appropriate for incorporation, based on the factors identified in paragraph (2).

(c) INCORPORATION INTO REGULATION.—Section 5117 is amended by adding at the end the following:

''(f) INCORPORATION INTO REGULATIONS.—

''(1) IN GENERAL.—Not later than 1 year after the date on which a special permit has been in continuous effect for a 10-year period, the Secretary shall conduct a review and analysis of that special permit to determine whether it may be converted into the hazardous materials regulations.

''(2) FACTORS.—In conducting the review and analysis under paragraph (1), the Secretary may consider—

''(A) the safety record for hazardous materials transported under the special permit;

''(B) the application of a special permit;

''(C) the suitability of provisions in the special permit for incorporation into the hazardous materials regulations; and

''(D) rulemaking activity in related areas.

''(3) RULEMAKING.—After completing the review and analysis under paragraph (1) and after providing notice and opportunity for public comment, the Secretary shall either institute a rulemaking to incorporate the special permit into the hazardous materials regulations or publish in the Federal Register the Secretary's justification for why the special permit is not appropriate for incorporation into the regulations.''.

SEC. 33013. HIGHWAY ROUTING DISCLOSURES.

(a) LIST OF ROUTE DESIGNATIONS.—Section 5112(c) is amended—

(1) by striking ''In coordination'' and inserting the following:

''(1) IN GENERAL.—In coordination''; and

(2) by adding at the end the following:

''(2) STATE RESPONSIBILITIES.—

''(A) IN GENERAL.—Each State shall submit to the Secretary, in a form and manner to be determined by the Secretary and in accordance with subparagraph (B)—

''(i) the name of the State agency responsible for hazardous material highway route designations; and

''(ii) a list of the State's currently effective hazardous material highway route designations.

''(B) FREQUENCY.—Each State shall submit the information described in subparagraph (A)(ii)—

''(i) at least once every 2 years; and

''(ii) not later than 60 days after a hazardous material highway route designation is established, amended, or discontinued.''.

(b) COMPLIANCE WITH SECTION 5112.—Section 5125(c)(1) is amended by inserting '', and is published in the Department's hazardous materials route registry under section 5112(c)'' before the period at the end.

SEC. 33014. MOTOR CARRIER SAFETY PERMITS.

(a) REVIEW.—Not later than 1 year after the date of enactment of this Act, the Secretary shall conduct a study of, and transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on, the implementation of the hazardous material safety permit program under section 5109 of title 49, United States Code. In conducting the study, the Secretary shall review, at a minimum—

(1) the list of hazardous materials requiring a safety permit;

(2) the number of permits that have been issued, denied, revoked, or suspended since inception of the program and the number of commercial motor carriers that have never had a permit denied, revoked, or suspended since inception of the program;

(3) the reasons for such denials, revocations, or suspensions;

(4) the criteria used by the Federal Motor Carrier Safety Administration to determine whether a hazardous material safety permit issued by a State is equivalent to the Federal permit; and

(5) actions the Secretary could implement to improve the program, including whether to provide opportunities for an additional level of fitness review prior to the denial, revocation, or suspension of a safety permit.

(b) ACTIONS TAKEN.—Not later than 2 years after the date of enactment of this Act, based on the study conducted under subsection (a), the Secretary shall either institute a rulemaking to make any necessary improvements to the hazardous materials safety permit program under section 5109 of title 49, United States Code or publish in the Federal Register the Secretary's justification for why a rulemaking is not necessary.

SEC. 33015. WETLINES.

(a) EVALUATION.—Not later than 1 year after the date of enactment of this Act, the United States Government Accountability Office shall evaluate, and transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, a report on the safety of transporting flammable liquids in the external product piping of cargo tank motor vehicles (commonly referred to as wetlines). The evaluation shall—

(1) review the safety of transporting flammable liquids in the external product piping of cargo tank motor vehicles;

(2) accurately quantify the number of incidents involving the transportation of flammable liquids in external product piping of cargo tank motor vehicles;

(3) identify various alternatives to loading, transporting, and unloading flammable liquids in such piping;

(4) examine the costs and benefits of each alternative; and

(5) identify any obstacles to implementing each alternative.

(b) REGULATIONS.—The Secretary may not issue a final rule regarding transporting flammable liquids in the external product piping of cargo tank motor vehicles prior to completion of the evaluation conducted under subsection (a), or 2 years after the date of enactment of this Act, whichever is earlier, unless the Secretary determines that a risk to public safety, property, or the environment is present or an imminent hazard (as defined in section 5102 of title 49, United States Code) exists and that the regulations will address the risk or hazard.

SEC. 33016. HAZMAT EMPLOYEE TRAINING REQUIREMENTS AND GRANTS.

Section 5107(e)(2) is amended—

(1) by inserting ''through a competitive process'' between ''made'' and ''to''; and

(2) by striking ''hazmat employee''.

SEC. 33017. AUTHORIZATION OF APPROPRIATIONS.

Section 5128 is amended to read as follows:

''§5128. Authorization of appropriations

''(a) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119)—

''(1) $42,338,000 for fiscal year 2013; and

''(2) $42,762,000 for fiscal year 2014.

''(b) HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND.—From the Hazardous Materials Emergency Preparedness Fund established under section 5116(i), the Secretary may expend, during each of fiscal years 2013 and 2014—

''(1) $188,000 to carry out section 5115;

''(2) $21,800,000 to carry out subsections (a) and (b) of section 5116, of which not less than $13,650,000 shall be available to carry out section 5116(b);

''(3) $150,000 to carry out section 5116(f);

''(4) $625,000 to publish and distribute the Emergency Response Guidebook under section 5116(i)(3); and

''(5) $1,000,000 to carry out section 5116(j).

''(c) HAZARDOUS MATERIALS TRAINING GRANTS.—From the Hazardous Materials Emergency Preparedness Fund established pursuant to section 5116(i), the Secretary may expend $4,000,000 for each of the fiscal years 2013 and 2014 to carry out section 5107(e).

''(d) CREDITS TO APPROPRIATIONS.—

''(1) EXPENSES.—In addition to amounts otherwise made available to carry out this chapter, the Secretary may credit amounts received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

''(2) AVAILABILITY OF AMOUNTS.—Amounts made available under this section shall remain available until expended.''.

TITLE IV—SPORT FISH RESTORATION AND RECREATIONAL BOATING SAFETY ACT OF 2012

SEC. 34001. SHORT TITLE.

This title may be cited as the ''Sport Fish Restoration and Recreational Boating Safety Act of 2012''.

SEC. 34002. AMENDMENT OF FEDERAL AID IN SPORT FISH RESTORATION ACT.

Section 4 of the Federal Aid in Fish Restoration Act (16 U.S.C. 777c) is amended—

(1) in subsection (a), by striking ''of fiscal years 2006 through 2011 and for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''fiscal year through 2014,''; and

(2) in subsection (b)(1)(A), by striking ''of fiscal years 2006 through 2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012,'' and inserting ''fiscal year through 2014,''.

TITLE V—MISCELLANEOUS

SEC. 35001. OVERFLIGHTS IN GRAND CANYON NATIONAL PARK.

(a) DETERMINATIONS WITH RESPECT TO SUBSTANTIAL RESTORATION OF NATURAL QUIET AND EXPERIENCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, for purposes of section 3(b)(1) of Public Law 100–91 (16 U.S.C. 1a–1 note), the substantial restoration of the natural quiet and experience of the Grand Canyon National Park (in this section referred to as the ''Park'') shall be considered to be achieved in the Park if, for at least 75 percent of each day, 50 percent of the Park is free of sound produced by commercial air tour operations that have an allocation to conduct commercial air tours in the Park as of the date of enactment of this Act.

(2) CONSIDERATIONS.—

(A) IN GENERAL.—For purposes of determining whether substantial restoration of the natural quiet and experience of the Park has been achieved in accordance with paragraph (1), the Secretary of the Interior (in this section referred to as the ''Secretary'') shall use—

(i) the 2-zone system for the Park in effect on the date of enactment of this Act to assess impacts relating to substantial restoration of natural quiet at the Park, including—

(I) the thresholds for noticeability and audibility; and

(II) the distribution of land between the 2 zones; and

(ii) noise modeling science that is—

(I) developed for use at the Park, specifically Integrated Noise Model Version 6.2;

(II) validated by reasonable standards for conducting field observations of model results; and

(III) accepted and validated by the Federal Interagency Committee on Aviation Noise.

(B) SOUND FROM OTHER SOURCES.—The Secretary shall not consider sound produced by sources other than commercial air tour operations, including sound emitted by other types of aircraft operations or other noise sources, for purposes of—

(i) making recommendations, developing a final plan, or issuing regulations relating to commercial air tour operations in the Park; or

(ii) determining under paragraph (1) whether substantial restoration of the natural quiet and experience of the Park has been achieved.

(3) CONTINUED MONITORING.—The Secretary shall continue monitoring noise from aircraft operating over the Park below 17,999 feet MSL to ensure continued compliance with the substantial restoration of natural quiet and experience of the Park.

(4) DAY DEFINED.—For purposes of this section, the term ''day'' means the hours between 7:00 a.m. and 7:00 p.m.

(b) CONVERSION TO QUIET TECHNOLOGY AIRCRAFT.—

(1) IN GENERAL.—Not later than 15 years after the date of enactment of this Act, all commercial air tour aircraft operating in the Grand Canyon National Park Special Flight Rules Area shall be required to fully convert to quiet aircraft technology (as determined in accordance with regulations in effect on the day before the date of enactment of this Act).

(2) CONVERSION INCENTIVES.—Not later than 60 days after the date of enactment of this Act, the Secretary and the Administrator of the Federal Aviation Administration shall provide incentives for commercial air tour operators that convert to quiet aircraft technology (as determined in accordance with the regulations in effect on the day before the date of enactment of this Act) before the date specified in paragraph (1), such as increasing the flight allocations for such operators on a net basis consistent with section 804(c) of the National Park Air Tours Management Act of 2000 (title VIII of Public Law 106–181), provided that the cumulative impact of such operations does not increase noise at Grand Canyon National Park.

SEC. 35002. COMMERCIAL AIR TOUR OPERATIONS.

Section 40128(b)(1)(C) of title 49, United States Code, is amended to read as follows:

''(C) EXCEPTION.—An application to begin or expand commercial air tour operations at Crater Lake National Park or Great Smoky Mountains National Park may be denied without the establishment of an air tour management plan by the Director of the National Park Service if the Director determines that such operations would adversely affect park resources or visitor experiences.''.

SEC. 35003. QUALIFICATIONS FOR PUBLIC AIRCRAFT STATUS.

Section 40125 of title 49, United States Code, is amended by adding at the end the following:

''(d) SEARCH AND RESCUE PURPOSES.—An aircraft described in section 40102(a)(41)(D) that is not exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of 1 of those governments, qualifies as a public aircraft if the Administrator determines that—

''(1) there are extraordinary circumstances;

''(2) the aircraft will be used for the performance of search and rescue missions;

''(3) a community would not otherwise have access to search and rescue services; and

''(4) a government entity demonstrates that granting the waiver is necessary to prevent an undue economic burden on that government.''.

DIVISION D—FINANCE

SEC. 40001. SHORT TITLE.

This division may be cited as the ''Highway Investment, Job Creation, and Economic Growth Act of 2012''.

TITLE I—EXTENSION OF HIGHWAY TRUST FUND EXPENDITURE AUTHORITY AND RELATED TAXES

SEC. 40101. EXTENSION OF TRUST FUND EXPENDITURE AUTHORITY.

(a) HIGHWAY TRUST FUND.—Section 9503 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''July 1, 2012'' in subsections (b)(6)(B), (c)(1), and (e)(3) and inserting ''October 1, 2014'', and

(2) by striking ''Surface Transportation Extension Act of 2012'' in subsections (c)(1) and (e)(3) and inserting ''MAP-21''.

(b) SPORT FISH RESTORATION AND BOATING TRUST FUND.—Section 9504 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''Surface Transportation Extension Act of 2012'' each place it appears in subsection (b)(2) and inserting ''MAP-21'', and

(2) by striking ''July 1, 2012'' in subsection (d)(2) and inserting ''October 1, 2014''.

(c) LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—Paragraph (2) of section 9508(e) of the Internal Revenue Code of 1986 is amended by striking ''July 1, 2012'' and inserting ''October 1, 2014''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2012.

SEC. 40102. EXTENSION OF HIGHWAY-RELATED TAXES.

(a) IN GENERAL.—

(1) Each of the following provisions of the Internal Revenue Code of 1986 is amended by striking ''June 30, 2012'' and inserting ''September 30, 2016'':

(A) Section 4041(a)(1)(C)(iii)(I).

(B) Section 4041(m)(1)(B).

(C) Section 4081(d)(1).

(2) Each of the following provisions of such Code is amended by striking ''July 1, 2012'' and inserting ''October 1, 2016'':

(A) Section 4041(m)(1)(A).

(B) Section 4051(c).

(C) Section 4071(d).

(D) Section 4081(d)(3).

(b) EXTENSION OF TAX, ETC., ON USE OF CERTAIN HEAVY VEHICLES.—

(1) IN GENERAL.—Each of the following provisions of the Internal Revenue Code of 1986 is amended by striking ''2013'' each place it appears and inserting ''2017'':

(A) Section 4481(f).

(B) Section 4482(d).

(2) EXTENSION AND TECHNICAL CORRECTION.—

(A) IN GENERAL.—Paragraph (4) of section 4482(c) of such Code is amended to read as follows:

''(4) TAXABLE PERIOD.—The term 'taxable period' means any year beginning before July 1, 2017, and the period which begins on July 1, 2017, and ends at the close of September 30, 2017.''.

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall take effect as if included in the amendments made by section 142 of the Surface Transportation Extension Act of 2011, Part II.

(c) FLOOR STOCKS REFUNDS.—Section 6412(a)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''July 1, 2012'' each place it appears and inserting ''October 1, 2016'',

(2) by striking ''December 31, 2012'' each place it appears and inserting ''March 31, 2017'', and

(3) by striking ''October 1, 2012'' and inserting ''January 1, 2017''.

(d) EXTENSION OF CERTAIN EXEMPTIONS.—

(1) Section 4221(a) of the Internal Revenue Code of 1986 is amended by striking ''July 1, 2012'' and inserting ''October 1, 2016''.

(2) Section 4483(i) of such Code is amended by striking ''July 1, 2012'' and inserting ''October 1, 2017''.

(e) EXTENSION OF TRANSFERS OF CERTAIN TAXES.—

(1) IN GENERAL.—Section 9503 of the Internal Revenue Code of 1986 is amended—

(A) in subsection (b)—

(i) by striking ''July 1, 2012'' each place it appears in paragraphs (1) and (2) and inserting ''October 1, 2016'',

(ii) by striking ''JULY 1, 2012'' in the heading of paragraph (2) and inserting ''OCTOBER 1, 2016'',

(iii) by striking ''June 30, 2012'' in paragraph (2) and inserting ''September 30, 2016'', and

(iv) by striking ''April 1, 2013'' in paragraph (2) and inserting ''July 1, 2017'', and

(B) in subsection (c)(2), by striking ''April 1, 2013'' and inserting ''July 1, 2017''.

(2) MOTORBOAT AND SMALL-ENGINE FUEL TAX TRANSFERS.—

(A) IN GENERAL.—Paragraphs (3)(A)(i) and (4)(A) of section 9503(c) of such Code are each amended by striking ''July 1, 2012'' and inserting ''October 1, 2016''.

(B) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Section 201(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–11(b)) is amended—

(i) by striking ''July 1, 2013'' each place it appears and inserting ''October 1, 2017'', and

(ii) by striking ''July 1, 2012'' and inserting ''October 1, 2016''.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall take effect on July 1, 2012.

TITLE II—REVENUE PROVISIONS

Subtitle A—Leaking Underground Storage Tank Trust Fund

SEC. 40201. TRANSFER FROM LEAKING UNDERGROUND STORAGE TANK TRUST FUND TO HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (c) of section 9508 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''Amounts'' and inserting:

''(1) IN GENERAL.—Except as provided in paragraph (2), amounts'', and

(2) by adding at the end the following new paragraph:

''(2) TRANSFER TO HIGHWAY TRUST FUND.—Out of amounts in the Leaking Underground Storage Tank Trust Fund there is hereby appropriated $2,400,000,000 to be transferred under section 9503(f)(3) to the Highway Account (as defined in section 9503(e)(5)(B)) in the Highway Trust Fund.''.

(b) TRANSFER TO HIGHWAY TRUST FUND.—

(1) IN GENERAL.—Subsection (f) of section 9503 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (2) the following new paragraph:

''(3) INCREASE IN FUND BALANCE.—There is hereby transferred to the Highway Account (as defined in subsection (e)(5)(B)) in the Highway Trust Fund amounts appropriated from the Leaking Underground Storage Tank Trust Fund under section 9508(c)(2).''.

(2) CONFORMING AMENDMENTS.—Paragraph (4) of section 9503(f) of such Code is amended—

(A) by inserting ''or transferred'' after ''appropriated'', and

(B) by striking ''APPROPRIATED'' in the heading thereof.

Subtitle B—Pension Provisions

PART I—PENSION FUNDING STABILIZATION

SEC. 40211. PENSION FUNDING STABILIZATION.

(a) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subparagraph (C) of section 430(h)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clause:

''(iv) SEGMENT RATE STABILIZATION.—

''(I) IN GENERAL.—If a segment rate described in clause (i), (ii), or (iii) with respect to any applicable month (determined without regard to this clause) is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the segment rates described in such clause for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate described in such clause with respect to the applicable month shall be equal to the applicable minimum percentage or the applicable maximum percentage of such average, whichever is closest. The Secretary shall determine such average on an annual basis and may prescribe equivalent rates for years in any such 25-year period for which the rates described in any such clause are not available.

''(II) APPLICABLE MINIMUM PERCENTAGE; APPLICABLE MAXIMUM PERCENTAGE.—For purposes of subclause (I), the applicable minimum percentage and the applicable maximum percentage for a plan year beginning in a calendar year shall be determined in accordance with the following table:

''If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
2012	90%	110%
2013	85%	115%
2014	80%	120%
2015	75%	125%
After 2015	70%	130%.''.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (6) of section 404(o) of such Code is amended by inserting ''(determined by not taking into account any adjustment under clause (iv) of subsection (h)(2)(C) thereof)'' before the period.

(B) Subparagraph (F) of section 430(h)(2) of such Code is amended by inserting ''and the averages determined under subparagraph (C)(iv)'' after ''subparagraph (C)''.

(C) Subparagraphs (C) and (D) of section 417(e)(3) of such Code are each amended by striking ''section 430(h)(2)(C)'' and inserting ''section 430(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof)''.

(D) Section 420 of such Code is amended by adding at the end the following new subsection:

''(g) SEGMENT RATES DETERMINED WITHOUT PENSION STABILIZATION.—For purposes of this section, section 430 shall be applied without regard to subsection (h)(2)(C)(iv) thereof.''.

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Subparagraph (C) of section 303(h)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(h)(2)) is amended by adding at the end the following new clause:

''(iv) SEGMENT RATE STABILIZATION.—

''(I) IN GENERAL.—If a segment rate described in clause (i), (ii), or (iii) with respect to any applicable month (determined without regard to this clause) is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the segment rates described in such clause for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate described in such clause with respect to the applicable month shall be equal to the applicable minimum percentage or the applicable maximum percentage of such average, whichever is closest. The Secretary of the Treasury shall determine such average on an annual basis and may prescribe equivalent rates for years in any such 25-year period for which the rates described in any such clause are not available.

''(II) APPLICABLE MINIMUM PERCENTAGE; APPLICABLE MAXIMUM PERCENTAGE.—For purposes of subclause (I), the applicable minimum percentage and the applicable maximum percentage for a plan year beginning in a calendar year shall be determined in accordance with the following table:

''If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
2012	90%	110%
2013	85%	115%
2014	80%	120%
2015	75%	125%
After 2015	70%	130%.''.

(2) DISCLOSURE OF EFFECT OF SEGMENT RATE STABILIZATION ON PLAN FUNDING.—

(A) IN GENERAL.—Paragraph (2) of section 101(f) of such Act (29 U.S.C. 1021(f)) is amended by adding at the end the following new subparagraph:

''(D) EFFECT OF SEGMENT RATE STABILIZATION ON PLAN FUNDING.—

''(i) IN GENERAL.—In the case of a single-employer plan for an applicable plan year, each notice under paragraph (1) shall include—

''(I) a statement that the MAP-21 modified the method for determining the interest rates used to determine the actuarial value of benefits earned under the plan, providing for a 25-year average of interest rates to be taken into account in addition to a 2-year average,

''(II) a statement that, as a result of the MAP-21, the plan sponsor may contribute less money to the plan when interest rates are at historical lows, and

''(III) a table which shows (determined both with and without regard to section 303(h)(2)(C)(iv)) the funding target attainment percentage (as defined in section 303(d)(2)), the funding shortfall (as defined in section 303(c)(4)), and the minimum required contribution (as determined under section 303), for the applicable plan year and each of the 2 preceding plan years.

''(ii) APPLICABLE PLAN YEAR.—For purposes of this subparagraph, the term 'applicable plan year' means any plan year beginning after December 31, 2011, and before January 1, 2015, for which—

''(I) the funding target (as defined in section 303(d)(2)) is less than 95 percent of such funding target determined without regard to section 303(h)(2)(C)(iv),

''(II) the plan has a funding shortfall (as defined in section 303(c)(4) and determined without regard to section 303(h)(2)(C)(iv)) greater than $500,000, and

''(III) the plan had 50 or more participants on any day during the preceding plan year.

For purposes of any determination under subclause (III), the aggregation rule under the last sentence of section 303(g)(2)(B) shall apply.

''(iii) SPECIAL RULE FOR PLAN YEARS BEGINNING BEFORE 2012.—In the case of a preceding plan year referred to in clause (i)(III) which begins before January 1, 2012, the information described in such clause shall be provided only without regard to section 303(h)(2)(C)(iv).''.

(B) MODEL NOTICE.—The Secretary of Labor shall modify the model notice required to be published under section 501(c) of the Pension Protection Act of 2006 to prominently include the information described in section 101(f)(2)(D) of the Employee Retirement Income Security Act of 1974, as added by this paragraph.

(3) CONFORMING AMENDMENTS.—

(A) Subparagraph (F) of section 303(h)(2) of such Act (29 U.S.C. 1083(h)(2)) is amended by inserting ''and the averages determined under subparagraph (C)(iv)'' after ''subparagraph (C)''.

(B) Clauses (ii) and (iii) of section 205(g)(3)(B) of such Act (29 U.S.C. 1055(g)(3)(B)) are each amended by striking ''section 303(h)(2)(C)'' and inserting ''section 303(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof)''.

(C) Clause (iv) of section 4006(a)(3)(E) of such Act (29 U.S.C. 1306(a)(3)(E)) is amended by striking ''section 303(h)(2)(C)'' and inserting ''section 303(h)(2)(C) (notwithstanding any regulations issued by the corporation, determined by not taking into account any adjustment under clause (iv) thereof)''.

(D) Section 4010(d) of such Act (29 U.S.C. 1310(d)) is amended by adding at the end the following:

''(3) PENSION STABILIZATION DISREGARDED.—For purposes of this section, the segment rates used in determining the funding target and funding target attainment percentage shall be determined by not taking into account any adjustment under section 302(h)((2)(C)(iv).''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2011.

(2) RULES WITH RESPECT TO ELECTIONS.—

(A) ADJUSTED FUNDING TARGET ATTAINMENT PERCENTAGE.—A plan sponsor may elect not to have the amendments made by this section apply to any plan year beginning before January 1, 2013, either (as specified in the election)—

(i) for all purposes for which such amendments apply, or

(ii) solely for purposes of determining the adjusted funding target attainment percentage under sections 436 of the Internal Revenue Code of 1986 and 206(g) of the Employee Retirement Income Security Act of 1974 for such plan year. A plan shall not be treated as failing to meet the requirements of sections 204(g) of such Act and 411(d)(6) of such Code solely by reason of an election under this paragraph.

(B) OPT OUT OF EXISTING ELECTIONS.—If, on the date of the enactment of this Act, an election is in effect with respect to any plan under sections 303(h)((2)(D)(ii) of the Employee Retirement Income Security Act of 1974 and 430(h)((2)(D)(ii) of the Internal Revenue Code of 1986, then, notwithstanding the last sentence of each such section, the plan sponsor may revoke such election without the consent of the Secretary of the Treasury. The plan sponsor may make such revocation at any time before the date which is 1 year after such date of enactment and such revocation shall be effective for the 1st plan year to which the amendments made by this section apply and all subsequent plan years. Nothing in this subparagraph shall preclude a plan sponsor from making a subsequent election in accordance with such sections.

PART II—PBGC PREMIUMS

SEC. 40221. SINGLE EMPLOYER PLAN ANNUAL PREMIUM RATES.

(a) FLAT-RATE PREMIUM.—

(1) IN GENERAL.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended to read as follows:

''(i) in the case of a single-employer plan, an amount for each individual who is a participant in such plan during the plan year equal to the sum of the additional premium (if any) determined under subparagraph (E) and—

''(I) for plan years beginning after December 31, 2005, and before January 1, 2013, $30;

''(II) for plan years beginning after December 31, 2012, and before January 1, 2014, $42; and

''(III) for plan years beginning after December 31, 2013, $49.''.

(2) ADJUSTMENT FOR INFLATION.—Subparagraph (F) of section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)) is amended—

(A) in clause (i)(II), by inserting ''(2012 in the case of plan years beginning after calendar year 2014)'' after ''2004''; and

(B) by adding at the end the following new sentence: ''This subparagraph shall not apply to plan years beginning in 2013 or 2014.''.

(b) VARIABLE-RATE PREMIUM.—

(1) IN GENERAL.—Subparagraph (E)(ii) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by striking ''$9.00'' and inserting ''the applicable dollar amount under paragraph (8)''.

(2) APPLICABLE DOLLAR AMOUNT.—Section 4006(a) of such Act (29 U.S.C. 1306(a)) is amended by adding at the end the following:

''(8) APPLICABLE DOLLAR AMOUNT FOR VARIABLE RATE PREMIUM.—For purposes of paragraph (3)(E)(ii)—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the applicable dollar amount shall be—

''(i) $9 for plan years beginning in a calendar year before 2015;

''(ii) for plan years beginning in calendar year 2015, the amount in effect for plan years beginning in 2014 (determined after application of subparagraph (C)); and

''(iii) for plan years beginning after calendar year 2015, the amount in effect for plan years beginning in 2015 (determined after application of subparagraph (C)).

''(B) ADJUSTMENT FOR INFLATION.—For each plan year beginning in a calendar year after 2012, there shall be substituted for the applicable dollar amount specified under subparagraph (A) an amount equal to the greater of—

''(i) the product derived by multiplying such applicable dollar amount for plan years beginning in that calendar year by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

''(II) the national average wage index (as so defined) for the base year; and

''(ii) such applicable dollar amount in effect for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.

''(C) ADDITIONAL INCREASE IN 2014 AND 2015.—The applicable dollar amount determined under subparagraph (A) (after the application of subparagraph (B)) shall be increased—

''(i) in the case of plan years beginning in calendar year 2014, by $4; and

''(ii) in the case of plan years beginning in calendar year 2015, by $5.

''(D) BASE YEAR.—For purposes of subparagraph (B), the base year is—

''(i) 2010, in the case of plan years beginning in calendar year 2013 or 2014;

''(ii) 2012, in the case of plan years beginning in calendar year 2015; and

''(iii) 2013, in the case of plan years beginning after calendar year 2015.''.

(3) CAP.—

(A) IN GENERAL.—Subparagraph (E)(i) of section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)) is amended by striking ''for any plan year shall be'' and all that follows through the end and inserting the following ''for any plan year—

''(I) shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year; and

''(II) in the case of plan years beginning in a calendar year after 2012, shall not exceed $400.''.

(B) ADJUSTMENT FOR INFLATION.—Paragraph (3) of section 4006(a) of such Act (29 U.S.C. 1306(a)(3)), as amended by this Act, is amended by adding at the end the following:

''(J) For each plan year beginning in a calendar year after 2013, there shall be substituted for the dollar amount specified in subclause (II) of subparagraph (E)(i) an amount equal to the greater of—

''(i) the product derived by multiplying such dollar amount by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

''(II) the national average wage index (as so defined) for 2011; and

''(ii) such dollar amount for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.''.

SEC. 40222. MULTIEMPLOYER ANNUAL PREMIUM RATES.

(a) IN GENERAL.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended—

(1) by inserting ''and before January 1, 2013,'' after ''December 31, 2005,'' in clause (iv),

(2) by striking ''or'' at the end of clause (iii),

(3) by striking the period at the end of clause (iv) and inserting '', or'', and

(4) by adding at the end the following new clause:

''(v) in the case of a multiemployer plan, for plan years beginning after December 31, 2012, $12.00 for each individual who is a participant in such plan during the applicable plan year.''.

(b) INFLATION ADJUSTMENT.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following:

''(I) For each plan year beginning in a calendar year after 2013, there shall be substituted for the premium rate specified in clause (v) of subparagraph (A) an amount equal to the greater of—

''(i) the product derived by multiplying the premium rate specified in clause (v) of subparagraph (A) by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to

''(II) the national average wage index (as so defined) for 2011; and

''(ii) the premium rate in effect under clause (v) of subparagraph (A) for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.''.

PART III—IMPROVEMENTS OF PBGC

SEC. 40231. PENSION BENEFIT GUARANTY CORPORATION GOVERNANCE IMPROVEMENT.

(a) BOARD OF DIRECTORS OF THE PENSION BENEFIT GUARANTY CORPORATION.—

(1) IN GENERAL.—Section 4002(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(d)) is amended—

(A) by striking ''(d) The board of directors'' and inserting ''(d)(1) The board of directors''; and

(B) by adding at the end the following:

''(2) A majority of the members of the board of directors in office shall constitute a quorum for the transaction of business. The vote of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the board of directors.

''(3) Each member of the board of directors shall designate in writing an official, not below the level of Assistant Secretary, to serve as the voting representative of such member on the board. Such designation shall be effective until revoked or until a date or event specified therein. Any such representative may refer for board action any matter under consideration by the designating board member, but such representative shall not count toward establishment of a quorum as described under paragraph (2).

''(4) The Inspector General of the corporation shall report to the board of directors, and not less than twice a year, shall attend a meeting of the board of directors to provide a report on the activities and findings of the Inspector General, including with respect to monitoring and review of the operations of the corporation.

''(5) The General Counsel of the corporation shall—

''(A) serve as the secretary to the board of directors, and advise such board as needed; and

''(B) have overall responsibility for all legal matters affecting the corporation and provide the corporation with legal advice and opinions on all matters of law affecting the corporation, except that the authority of the General Counsel shall not extend to the Office of Inspector General and the independent legal counsel of such Office.

''(6) Notwithstanding any other provision of this Act, the Office of Inspector General and the legal counsel of such Office are independent of the management of the corporation and the General Counsel of the corporation.

''(7) The board of directors may appoint and fix the compensation of employees as may be required to enable the board of directors to perform its duties. The board of directors shall determine the qualifications and duties of such employees and may appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.''.

(2) NUMBER OF MEETINGS; PUBLIC AVAILABILITY.—Section 4002(e) of such Act (29 U.S.C. 1302(e)) is amended—

(A) by striking ''The board'' and inserting ''(1) The board'';

(B) by striking ''the corporation.'' and inserting ''the corporation, but in no case less than 4 times a year with not fewer than 2 members present. Not less than 1 meeting of the board of directors during each year shall be a joint meeting with the advisory committee under subsection (h).''; and

(C) by adding at the end the following:

''(2)(A) Except as provided in subparagraph (B), the chairman of the board of directors shall make available to the public the minutes from each meeting of the board of directors.

''(B) The minutes of a meeting of the board of directors, or a portion thereof, shall not be subject to disclosure under subparagraph (A) if the chairman reasonably determines that such minutes, or portion thereof, contain confidential employer information including information obtained under section 4010, information about the investment activities of the corporation, or information regarding personnel decisions of the corporation.

''(C) The minutes of a meeting, or portion of thereof, exempt from disclosure pursuant to subparagraph (B) shall be exempt from disclosure under section 552(b) of title 5, United States

Code. For purposes of such section 552, this subparagraph shall be considered a statute described in subsection (b)(3) of such section 552.''.

(3) ADVISORY COMMITTEE.—

(A) ISSUES CONSIDERED BY THE COMMITTEE.—Section 4002(h)(1) of such Act (29 U.S.C. 1302(h)(1)) is amended—

(i) by striking '', and (D)'' and inserting '', (D)''; and

(ii) by striking ''time to time.'' and inserting ''time to time, and (E) other issues as determined appropriate by the advisory committee.''.

(B) JOINT MEETING.—Section 4002(h)(3) of such Act (29 U.S.C. 1302(h)(3)) is amended by adding at the end the following: ''Not less than 1 meeting of the advisory committee during each year shall be a joint meeting with the board of directors under subsection (e).''.

(b) AVOIDING CONFLICTS OF INTEREST.—Section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302) is amended by adding at the end the following:

''(j) CONFLICTS OF INTEREST.—

''(1) IN GENERAL.—The Director of the corporation and each member of the board of directors shall not participate in a decision of the corporation in which the Director or such member has a direct financial interest. The Director of the corporation shall not participate in any activities that would present a potential conflict of interest or appearance of a conflict of interest without approval of the board of directors.

''(2) ESTABLISHMENT OF POLICY.—The board of directors shall establish a policy that will inform the identification of potential conflicts of interests of the members of the board of directors and mitigate perceived conflicts of interest of such members and the Director of the corporation.''.

(c) RISK MITIGATION.—Section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302), as amended by subsection (b), is further amended by adding at the end the following:

''(k) RISK MANAGEMENT OFFICER.—The corporation shall have a risk management officer whose duties include evaluating and mitigating the risk that the corporation might experience. The individual in such position shall coordinate the risk management efforts of the corporation, explain risks and controls to senior management and the board of directors of the corporation, and make recommendations.''.

(d) DIRECTOR.—Section 4002(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(c)) is amended to read as follows:

''(c) The Director shall be accountable to the board of directors. The Director shall serve for a term of 5 years unless removed by the President or the board of directors before the expiration of such 5-year term.''.

(e) SENSES OF CONGRESS.—

(1) FORMATION OF COMMITTEES.—It is the sense of Congress that the board of directors of the Pension Benefit Guaranty Corporation established under section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302), as amended by this section, should form committees, including an audit committee and an investment committee composed of not less than 2 members, to enhance the overall effectiveness of the board of directors.

(2) ADVISORY COMMITTEE.—It is the sense of Congress that the advisory committee to the Pension Benefit Guaranty Corporation established under section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302), as amended by this section, should provide to the board of directors of such corporation policy recommendations regarding changes to the law that would be beneficial to the corporation or the voluntary private pension system.

(f) STUDY REGARDING GOVERNANCE STRUCTURES.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Pension Benefit Guaranty Corporation shall enter into a contract with the National Academy of Public Administration to conduct the study described in paragraph (2) with respect to the Pension Benefit Guaranty Corporation.

(2) CONTENT OF STUDY.—The study conducted under paragraph (1) shall include—

(A) a review of the governance structures of governmental and nongovernmental organizations that are analogous to the Pension Benefit Guaranty Corporation; and

(B) recommendations regarding—

(i) the ideal size and composition of the board of directors of the Pension Benefit Guaranty Corporation;

(ii) procedures to select and remove members of such board;

(iii) qualifications and term lengths of members of such board; and

(iv) policies necessary to enhance Congressional oversight and transparency of such board and to mitigate potential conflicts of interest of the members of such board.

(3) SUBMISSION TO CONGRESS.—Not later than 1 year after the initiation of the study under paragraph (1), the National Academy of Public Administration shall submit the results of the study to the Committees on Health, Education, Labor, and Pensions and Finance of the Senate and the Committees on Education and the Workforce and Ways and Means of the House of Representatives.

SEC. 40232. PARTICIPANT AND PLAN SPONSOR ADVOCATE.

(a) IN GENERAL.—Title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et seq.) is amended by inserting after section 4003 the following:

''SEC. 4004. PARTICIPANT AND PLAN SPONSOR ADVOCATE.

''(a) IN GENERAL.—The board of directors of the corporation shall select a Participant and Plan Sponsor Advocate from the candidates nominated by the advisory committee to the corporation under section 4002(h)(1) and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or Senior Executive Service.

''(b) DUTIES.—The Participant and Plan Sponsor Advocate shall—

''(1) act as a liaison between the corporation, sponsors of defined benefit pension plans insured by the corporation, and participants in pension plans trusteed by the corporation;

''(2) advocate for the full attainment of the rights of participants in plans trusteed by the corporation;

''(3) assist pension plan sponsors and participants in resolving disputes with the corporation;

''(4) identify areas in which participants and plan sponsors have persistent problems in dealings with the corporation;

''(5) to the extent possible, propose changes in the administrative practices of the corporation to mitigate problems;

''(6) identify potential legislative changes which may be appropriate to mitigate problems; and

''(7) refer instances of fraud, waste, and abuse, and violations of law to the Office of the Inspector General of the corporation.

''(c) REMOVAL.—If the Participant and Plan Sponsor Advocate is removed from office or is transferred to another position or location within the corporation or the Department of Labor, the board of the directors of the corporation shall communicate in writing the reasons for any such removal or transfer to Congress not less than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

''(d) COMPENSATION.—The annual rate of basic pay for the Participant and Plan Sponsor Advocate shall be the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the board of directors of the corporation so determines, at a rate fixed under section 9503 of such title.

''(e) ANNUAL REPORT.—

''(1) IN GENERAL.—Not later than December 31 of each calendar year, the Participant and Plan Sponsor Advocate shall report to the Health, Education, Labor, and Pensions Committee of the Senate, the Committee on Finance of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Ways and Means of the House of Representatives on the activities of the Office of the Participant and Plan Sponsor Advocate during the fiscal year ending during such calendar year.

''(2) CONTENT.—Each report submitted under paragraph (1) shall—

''(A) summarize the assistance requests received from participants and plan sponsors and describe the activities, and evaluate the effectiveness, of the Participant and Plan Sponsor Advocate during the preceding year;

''(B) identify significant problems the Participant and Plan Sponsor Advocate has identified;

''(C) include specific legislative and regulatory changes to address the problems; and

''(D) identify any actions taken to correct problems identified in any previous report.

''(3) CONCURRENT SUBMISSION.—The Participant and Plan Sponsor Advocate shall submit a copy of each report to the Secretary of Labor, the Director of the corporation, and any other appropriate official at the same time such report is submitted to the committees of Congress under paragraph (1).''.

(b) ADVISORY COMMITTEE NOMINATIONS.—Section 4002(h)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.1302(h)(1)) is amended by adding at the end the following new sentence: ''In the event of a vacancy or impending vacancy in the office of the Participant and Plan Sponsor Advocate established under section 4004, the Advisory Committee shall, in consultation with the Director of the corporation and participant and plan sponsor advocacy groups, nominate at least two but no more than three individuals to serve as the Participant and Plan Sponsor Advocate.''.

(c) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 4003 the following new item:

''4004. Participant and Plan Sponsor Advocate.''.

SEC. 40233. QUALITY CONTROL PROCEDURES FOR THE PENSION BENEFIT GUARANTY CORPORATION.

(a) ANNUAL PEER REVIEW OF INSURANCE MODELING SYSTEMS.—The Pension Benefit Guaranty Corporation shall contract with a capable agency or organization that is independent from the Corporation, such as the Social Security Administration, to conduct an annual peer review of the Corporation's Single-Employer Pension Insurance Modeling System and the Corporation's Multiemployer Pension Insurance Modeling System. The board of directors of the Corporation shall designate the agency or organization with which any such contract is entered into. The first of such annual peer reviews shall be initiated no later than 3 months after the date of enactment of this Act.

(b) POLICIES AND PROCEDURES RELATING TO THE POLICY, RESEARCH, AND ANALYSIS DEPARTMENT.—The Pension Benefit Guaranty Corporation shall—

(1) develop written quality review policies and procedures for all modeling and actuarial work performed by the Corporation's Policy, Research, and Analysis Department; and

(2) conduct a record management review of such Department to determine what records must be retained as Federal records.

(c) REPORT RELATING TO OIG RECOMMENDATIONS.—Not later than 2 months after the date of enactment of this Act, the Pension Benefit

Guaranty Corporation shall submit to Congress a report, approved by the board of directors of the Corporation, setting forth a timetable for addressing the outstanding recommendations of the Office of the Inspector General relating to the Policy, Research, and Analysis Department and the Benefits Administration and Payment Department.

SEC. 40234. LINE OF CREDIT REPEAL.

(a) IN GENERAL.—Subsection (c) of section 4005 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1305) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 4005 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1305) is amended—

(A) in subsection (b)—

(i) paragraph (1)—

(I) by striking subparagraph (A); and

(II) by redesignating subparagraphs (B) through (G) as subparagraphs (A) through (F), respectively;

(ii) in paragraph (2)—

(I) by striking subparagraph (C); and

(II) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and

(iii) in paragraph (3), by striking ''but,'' and all that follows through the end and inserting a period; and

(B) in subsection (g)—

(i) by striking paragraph (2); and

(ii) by redesignating paragraph (3) as paragraph (2).

(2) Section 4402 of such Act (29 U.S.C. 1461) is amended—

(A) in subsection (c)(4)—

(i) by striking subparagraph (C); and

(ii) by redesignating subparagraph (D) as subparagraph (C); and

(B) in subsection (d), by striking ''or (D)''.

PART IV—TRANSFERS OF EXCESS PENSION ASSETS

SEC. 40241. EXTENSION FOR TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) IN GENERAL.—Paragraph (5) of section 420(b) of the Internal Revenue Code of 1986 is amended by striking ''December 31, 2013'' and inserting ''December 31, 2021''.

(b) CONFORMING ERISA AMENDMENTS.—

(1) Sections 101(e)(3), 403(c)(1), and 408(b)(13) of the Employee Retirement Income Security Act of 1974 are each amended by striking ''Pension Protection Act of 2006'' and inserting ''MAP-21''.

(2) Section 408(b)(13) of such Act (29 U.S.C. 1108(b)(13)) is amended by striking ''January 1, 2014'' and inserting ''January 1, 2022''.

(c) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

SEC. 40242. TRANSFER OF EXCESS PENSION ASSETS TO RETIREE GROUP TERM LIFE INSURANCE ACCOUNTS.

(a) IN GENERAL.—Subsection (a) of section 420 of the Internal Revenue Code of 1986 is amended by inserting '', or an applicable life insurance account,'' after ''health benefits account''.

(b) APPLICABLE LIFE INSURANCE ACCOUNT DEFINED.—

(1) IN GENERAL.—Subsection (e) of section 420 of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) APPLICABLE LIFE INSURANCE ACCOUNT.—The term 'applicable life insurance account' means a separate account established and maintained for amounts transferred under this section for qualified current retiree liabilities based on premiums for applicable life insurance benefits.''.

(2) APPLICABLE LIFE INSURANCE BENEFITS DEFINED.—Paragraph (1) of section 420(e) of such Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

''(D) APPLICABLE LIFE INSURANCE BENEFITS.—The term 'applicable life insurance benefits' means group-term life insurance coverage provided to retired employees who, immediately before the qualified transfer, are entitled to receive such coverage by reason of retirement and who are entitled to pension benefits under the plan, but only to the extent that such coverage is provided under a policy for retired employees and the cost of such coverage is excludable from the retired employee's gross income under section 79.''.

(3) COLLECTIVELY BARGAINED LIFE INSURANCE BENEFITS DEFINED.—

(A) IN GENERAL.—Paragraph (6) of section 420(f) of such Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

''(D) COLLECTIVELY BARGAINED LIFE INSURANCE BENEFITS.—The term 'collectively bargained life insurance benefits' means, with respect to any collectively bargained transfer—

''(i) applicable life insurance benefits which are provided to retired employees who, immediately before the transfer, are entitled to receive such benefits by reason of retirement, and

''(ii) if specified by the provisions of the collective bargaining agreement governing the transfer, applicable life insurance benefits which will be provided at retirement to employees who are not retired employees at the time of the transfer.''.

(B) CONFORMING AMENDMENTS.—

(i) Clause (i) of section 420(e)(1)(C) of such Code is amended by striking ''upon retirement'' and inserting ''by reason of retirement''.

(ii) Subparagraph (C) of section 420(f)(6) of such Code is amended—

(I) by striking ''which are provided to'' in the matter preceding clause (i),

(II) by inserting ''which are provided to'' before ''retired employees'' in clause (i),

(III) by striking ''upon retirement'' in clause (i) and inserting ''by reason of retirement'', and

(IV) by striking ''active employees who, following their retirement,'' and inserting ''which will be provided at retirement to employees who are not retired employees at the time of the transfer and who''.

(c) MAINTENANCE OF EFFORT.—

(1) IN GENERAL.—Subparagraph (A) of section 420(c)(3) of the Internal Revenue Code of 1986 is amended by inserting '', and each group-term life insurance plan under which applicable life insurance benefits are provided,'' after ''health benefits are provided''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 420(c)(3) of such Code is amended—

(i) by redesignating subclauses (I) and (II) of clause (i) as subclauses (II) and (III) of such clause, respectively, and by inserting before subclause (II) of such clause, as so redesignated, the following new subclause:

''(I) separately with respect to applicable health benefits and applicable life insurance benefits,'', and

(ii) by striking ''for applicable health benefits'' and all that follows in clause (ii) and inserting ''was provided during such taxable year for the benefits with respect to which the determination under clause (i) is made.''.

(B) Subparagraph (C) of section 420(c)(3) of such Code is amended—

(i) by inserting ''for applicable health benefits'' after ''applied separately'', and

(ii) by inserting '', and separately for applicable life insurance benefits with respect to individuals age 65 or older at any time during the taxable year and with respect to individuals under age 65 during the taxable year'' before the period.

(C) Subparagraph (E) of section 420(c)(3) of such Code is amended—

(i) in clause (i), by inserting ''or retiree life insurance coverage, as the case may be,'' after ''retiree health coverage'',

(ii) in clause (ii), by inserting ''FOR RETIREE HEALTH COVERAGE'' after ''COST REDUCTIONS'' in the heading thereof, and

(iii) in clause (ii)(II), by inserting ''with respect to applicable health benefits'' after ''liabilities of the employer''.

(D) Paragraph (2) of section 420(f) of such Code is amended by striking ''collectively bargained retiree health liabilities'' each place it occurs and inserting ''collectively bargained retiree liabilities''.

(E) Clause (i) of section 420(f)(2)(D) of such Code is amended—

(i) by inserting '', and each group-term life insurance plan or arrangement under which applicable life insurance benefits are provided,'' in subclause (I) after ''applicable health benefits are provided'',

(ii) by inserting ''or applicable life insurance benefits, as the case may be,'' in subclause (I) after ''provides applicable health benefits'',

(iii) by striking ''group health'' in subclause (II), and

(iv) by inserting ''or collectively bargained life insurance benefits'' in subclause (II) after ''collectively bargained health benefits''.

(F) Clause (ii) of section 420(f)(2)(D) of such Code is amended—

(i) by inserting ''with respect to applicable health benefits or applicable life insurance benefits'' after ''requirements of subsection (c)(3)'', and

(ii) by adding at the end the following: ''Such election may be made separately with respect to applicable health benefits and applicable life insurance benefits. In the case of an election with respect to applicable life insurance benefits, the first sentence of this clause shall be applied as if subsection (c)(3) as in effect before the amendments made by such Act applied to such benefits.''.

(G) Clause (iii) of section 420(f)(2)(D) of such Code is amended—

(i) by striking ''retiree'' each place it occurs, and

(ii) by inserting '', collectively bargained life insurance benefits, or both, as the case may be,'' after ''health benefits'' each place it occurs.

(d) COORDINATION WITH SECTION 79.—Section 79 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(f) EXCEPTION FOR LIFE INSURANCE PURCHASED IN CONNECTION WITH QUALIFIED TRANSFER OF EXCESS PENSION ASSETS.—Subsection (b)(3) and section 72(m)(3) shall not apply in the case of any cost paid (whether directly or indirectly) with assets held in an applicable life insurance account (as defined in section 420(e)(4)) under a defined benefit plan.''.

(e) CONFORMING AMENDMENTS.—

(1) Section 420 of the Internal Revenue Code of 1986 is amended by striking ''qualified current retiree health liabilities'' each place it appears and inserting ''qualified current retiree liabilities''.

(2) Section 420 of such Code is amended by inserting '', or an applicable life insurance account,'' after ''a health benefits account'' each place it appears in subsection (b)(1)(A), subparagraphs (A), (B)(i), and (C) of subsection (c)(1), subsection (d)(1)(A), and subsection (f)(2)(E)(ii).

(3) Section 420(b) of such Code is amended—

(A) by adding the following at the end of paragraph (2)(A): ''If there is a transfer from a defined benefit plan to both a health benefits account and an applicable life insurance account during any taxable year, such transfers shall be treated as 1 transfer for purposes of this paragraph.'', and

(B) by inserting ''to an account'' after ''may be transferred'' in paragraph (3).

(4) The heading for section 420(c)(1)(B) of such Code is amended by inserting ''OR LIFE INSURANCE'' after ''HEALTH BENEFITS''.

(5) Paragraph (1) of section 420(e) of such Code is amended—

(A) by inserting ''and applicable life insurance benefits'' in subparagraph (A) after ''applicable health benefits'', and

(B) by striking ''HEALTH'' in the heading thereof.

(6) Subparagraph (B) of section 420(e)(1) of such Code is amended—

(A) in the matter preceding clause (i), by inserting ''(determined separately for applicable health benefits and applicable life insurance benefits)'' after ''shall be reduced by the amount'',

(B) in clause (i), by inserting ''or applicable life insurance accounts'' after ''health benefit accounts'', and

(C) in clause (i), by striking ''qualified current retiree health liability'' and inserting ''qualified current retiree liability''.

(7) The heading for subsection (f) of section 420 of such Code is amended by striking ''HEALTH'' each place it occurs.

(8) Subclause (II) of section 420(f)(2)(B)(ii) of such Code is amended by inserting ''or applicable life insurance account, as the case may be,'' after ''health benefits account''.

(9) Subclause (III) of section 420(f)(2)(E)(i) of such Code is amended—

(A) by inserting ''defined benefit'' before ''plan maintained by an employer'', and

(B) by inserting ''health'' before ''benefit plans maintained by the employer''.

(10) Paragraphs (4) and (6) of section 420(f) of such Code are each amended by striking ''collectively bargained retiree health liabilities'' each place it occurs and inserting ''collectively bargained retiree liabilities''.

(11) Subparagraph (A) of section 420(f)(6) of such Code is amended—

(A) in clauses (i) and (ii), by inserting '', in the case of a transfer to a health benefits account,'' before ''his covered spouse and dependents'', and

(B) in clause (ii), by striking ''health plan'' and inserting ''plan''.

(12) Subparagraph (B) of section 420(f)(6) of such Code is amended—

(A) in clause (i), by inserting '', and collectively bargained life insurance benefits,'' after ''collectively bargained health benefits'',

(B) in clause (ii)—

(i) by adding at the end the following: ''The preceding sentence shall be applied separately for collectively bargained health benefits and collectively bargained life insurance benefits.'', and

(ii) by inserting '', applicable life insurance accounts,'' after ''health benefit accounts'', and

(C) by striking ''HEALTH'' in the heading thereof.

(13) Subparagraph (E) of section 420(f)(6) of such Code, as redesignated by subsection (b), is amended—

(A) by striking ''bargained health'' and inserting ''bargained'',

(B) by inserting '', or a group-term life insurance plan or arrangement for retired employees,'' after ''dependents'', and

(C) by striking ''HEALTH'' in the heading thereof.

(14) Section 101(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)) is amended—

(A) in paragraphs (1) and (2), by inserting ''or applicable life insurance account'' after ''health benefits account'' each place it appears, and

(B) in paragraph (1), by inserting ''or applicable life insurance benefit liabilities'' after ''health benefits liabilities''.

(f) TECHNICAL CORRECTION.—Clause (iii) of section 420(f)(6)(B) of the Internal Revenue Code of 1986 is amended by striking ''416(I)(1)'' and inserting ''416(i)(1)''.

(g) REPEAL OF DEADWOOD.—

(1) Subparagraph (A) of section 420(b)(1) of the Internal Revenue Code of 1986 is amended by striking ''in a taxable year beginning after December 31, 1990''.

(2) Subsection (b) of section 420 of such Code is amended by striking paragraph (4) and by redesignating paragraph (5), as amended by this Act, as paragraph (4).

(3) Paragraph (2) of section 420(b) of such Code, as amended by this section, is amended—

(A) by striking subparagraph (B), and

(B) by striking ''PER YEAR.—'' and all that follows through ''No more than'' and inserting ''PER YEAR.—No more than''.

(4) Paragraph (2) of section 420(c) of such Code is amended—

(A) by striking subparagraph (B),

(B) by moving subparagraph (A) two ems to the left, and

(C) by striking ''BEFORE TRANSFER.—'' and all that follows through ''The requirements of this paragraph'' and inserting the following: ''BEFORE TRANSFER.—The requirements of this paragraph''.

(5) Paragraph (2) of section 420(d) of such Code is amended by striking ''after December 31, 1990''.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers made after the date of the enactment of this Act.

(2) CONFORMING AMENDMENTS RELATING TO PENSION PROTECTION ACT.—The amendments made by subsections (b)(3)(B) and (f) shall take effect as if included in the amendments made by section 841(a) of the Pension Protection Act of 2006.

Subtitle C—Additional Transfers to Highway Trust Fund

SEC. 40251. ADDITIONAL TRANSFERS TO HIGHWAY TRUST FUND.

Subsection (f) of section 9503 of the Internal Revenue Code of 1986, as amended by this Act, is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

''(4) ADDITIONAL APPROPRIATIONS TO TRUST FUND.—Out of money in the Treasury not otherwise appropriated, there is hereby appropriated to—

''(A) the Highway Account (as defined in subsection (e)(5)(B)) in the Highway Trust Fund—

''(i) for fiscal year 2013, $6,200,000,000, and

''(ii) for fiscal year 2014, $10,400,000,000, and

''(B) the Mass Transit Account in the Highway Trust Fund, for fiscal year 2014, $2,200,000,000.''.

DIVISION E—RESEARCH AND EDUCATION

SEC. 50001. SHORT TITLE.

This division may be cited as the ''Transportation Research and Innovative Technology Act of 2012''.

TITLE I—FUNDING

SEC. 51001. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following amounts are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) HIGHWAY RESEARCH AND DEVELOPMENT PROGRAM.—To carry out sections 503(b), 503(d), and 509 of title 23, United States Code, $115,000,000 for each of fiscal years 2013 and 2014.

(2) TECHNOLOGY AND INNOVATION DEPLOYMENT PROGRAM.—To carry out section 503(c) of title 23, United States Code, $62,500,000 for each of fiscal years 2013 and 2014.

(3) TRAINING AND EDUCATION.—To carry out section 504 of title 23, United States Code, $24,000,000 for each of fiscal years 2013 and 2014.

(4) INTELLIGENT TRANSPORTATION SYSTEMS PROGRAM.—To carry out sections 512 through 518 of title 23, United States Code, $100,000,000 for each of fiscal years 2013 and 2014.

(5) UNIVERSITY TRANSPORTATION CENTERS PROGRAM.—To carry out section 5505 of title 49, United States Code, $72,500,000 for each of fiscal years 2013 and 2014.

(6) BUREAU OF TRANSPORTATION STATISTICS.—To carry out chapter 63 of title 49, United States Code, $26,000,000 for each of fiscal years 2013 and 2014.

(b) APPLICABILITY OF TITLE 23, UNITED STATES CODE.—Funds authorized to be appropriated by subsection (a) shall—

(1) be available for obligation in the same manner as if those funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of a project or activity carried out using those funds shall be 80 percent, unless otherwise expressly provided by this Act (including the amendments by this Act) or otherwise determined by the Secretary; and

(2) remain available until expended and not be transferable.

TITLE II—RESEARCH, TECHNOLOGY, AND EDUCATION

SEC. 52001. RESEARCH, TECHNOLOGY, AND EDUCATION.

Section 501 of title 23, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (8);

(2) by inserting after paragraph (1) the following:

''(2) INCIDENT.—The term 'incident' means a crash, natural disaster, workzone activity, special event, or other emergency road user occurrence that adversely affects or impedes the normal flow of traffic.

''(3) INNOVATION LIFECYCLE.—The term 'innovation lifecycle' means the process of innovating through—

''(A) the identification of a need;

''(B) the establishment of the scope of research to address that need;

''(C) setting an agenda;

''(D) carrying out research, development, deployment, and testing of the resulting technology or innovation; and

''(E) carrying out an evaluation of the costs and benefits of the resulting technology or innovation.

''(4) INTELLIGENT TRANSPORTATION INFRASTRUCTURE.—The term 'intelligent transportation infrastructure' means fully integrated public sector intelligent transportation system components, as defined by the Secretary.

''(5) INTELLIGENT TRANSPORTATION SYSTEM.—The terms 'intelligent transportation system' and 'ITS' mean electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

''(6) NATIONAL ARCHITECTURE.—For purposes of this chapter, the term 'national architecture' means the common framework for interoperability that defines—

''(A) the functions associated with intelligent transportation system user services;

''(B) the physical entities or subsystems within which the functions reside;

''(C) the data interfaces and information flows between physical subsystems; and

''(D) the communications requirements associated with the information flows.

''(7) PROJECT.—The term 'project' means an undertaking to research, develop, or operationally test intelligent transportation systems or any other undertaking eligible for assistance under this chapter.''; and

(3) by inserting after paragraph (8) (as so redesignated) the following:

''(9) STANDARD.—The term 'standard' means a document that—

''(A) contains technical specifications or other precise criteria for intelligent transportation systems that are to be used consistently as rules, guidelines, or definitions of characteristics so as to ensure that materials, products, processes, and services are fit for the intended purposes of the materials, products, processes, and services; and

''(B) may support the national architecture and promote—

''(i) the widespread use and adoption of intelligent transportation system technology as a

component of the surface transportation systems of the United States; and

''(ii) interoperability among intelligent transportation system technologies implemented throughout the States.''.

SEC. 52002. SURFACE TRANSPORTATION RESEARCH, DEVELOPMENT, AND TECHNOLOGY.

(a) SURFACE TRANSPORTATION RESEARCH, DEVELOPMENT, AND TECHNOLOGY.—Section 502 of title 23, United States Code, is amended—

*(1) in the section heading by inserting ''**, DEVELOPMENT, AND TECHNOLOGY**'' after ''**SURFACE TRANSPORTATION RESEARCH**'';*

(2) in subsection (a)—

(A) by redesignating paragraphs (1) through (8) as paragraphs (2) through (9), respectively;

(B) by inserting before paragraph (2) (as redesignated by subparagraph (A)) the following:

''(1) APPLICABILITY.—The research, development, and technology provisions of this section shall apply throughout this chapter.'';

(C) in paragraph (2) (as redesignated by subparagraph (A))—

(i) by inserting ''within the innovation lifecycle'' after ''activities''; and

(ii) by inserting ''communications, impact analysis,'' after ''training,'';

(D) in paragraph (3) (as redesignated by subparagraph (A))—

(i) in subparagraph (B) by striking ''supports research in which there is a clear public benefit and'' and inserting ''delivers a clear public benefit and occurs where'';

(ii) in subparagraph (C) by striking ''or'' after the semicolon;

(iii) by redesignating subparagraph (D) as subparagraph (I); and

(iv) by inserting after subparagraph (C) the following:

''(D) meets and addresses current or emerging needs;

''(E) addresses current gaps in research;

''(F) presents the best means to align resources with multiyear plans and priorities;

''(G) ensures the coordination of highway research and technology transfer activities, including through activities performed by university transportation centers;

''(H) educates transportation professionals; or'';

(E) in paragraph (4) (as redesignated by subparagraph (A)) by striking subparagraphs (B) through (D) and inserting the following:

''(B) partner with State highway agencies and other stakeholders as appropriate to facilitate research and technology transfer activities;

''(C) communicate the results of ongoing and completed research;

''(D) lead efforts to coordinate national emphasis areas of highway research, technology, and innovation deployment;

''(E) leverage partnerships with industry, academia, international entities, and State departments of transportation;

''(F) lead efforts to reduce unnecessary duplication of effort; and

''(G) lead efforts to accelerate innovation delivery.'';

(F) in paragraph (5)(C) (as redesignated by subparagraph (A)) by striking ''policy and planning'' and inserting ''all highway objectives seeking to improve the performance of the transportation system'';

(G) in paragraph (6) (as redesignated by subparagraph (A)) in the second sentence, by inserting ''tribal governments,'' after ''local governments,'';

(H) in paragraph (8) (as redesignated by subparagraph (A))—

(i) in the first sentence, by striking ''To the maximum'' and inserting the following:

''(A) IN GENERAL.—To the maximum'';

(ii) in the second sentence, by striking ''Performance measures'' and inserting the following:

''(B) PERFORMANCE MEASURES.—Performance measures'';

(iii) in the third sentence, by striking ''All evaluations'' and inserting the following:

''(D) AVAILABILITY OF EVALUATIONS.—All evaluations under this paragraph''; and

(iv) by inserting after subparagraph (B) the following:

''(C) PROGRAM PLAN.—To the maximum extent practicable, each program pursued under this chapter shall be part of a data-driven, outcome-oriented program plan.''; and

(I) in paragraph (9) (as redesignated by subparagraph (A)), by striking ''surface'';

(3) in subsection (b)—

(A) in paragraph (4) by striking ''surface transportation research and technology development strategic plan developed under section 508'' and inserting ''transportation research and development strategic plan of the Secretary developed under section 508'';

(B) in paragraph (5) by striking ''section'' each place it appears and inserting ''chapter'';

(C) in paragraph (6) by adding at the end the following:

''(C) TRANSFER OF AMOUNTS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.—The Secretary may, at the request of a State, transfer amounts apportioned or allocated to that State under this chapter to another State or the Federal Highway Administration to fund research, development, and technology transfer activities of mutual interest on a pooled funds basis.

''(D) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority for amounts transferred under this subsection shall be disbursed in the same manner and for the same amount as provided for the project being transferred.''; and

(D) by adding at the end the following:

''(7) PRIZE COMPETITIONS.—

''(A) IN GENERAL.—The Secretary may use up to 1 percent of the funds made available under section 51001 of the Transportation Research and Innovative Technology Act of 2012 to carry out a program to competitively award cash prizes to stimulate innovation in basic and applied research and technology development that has the potential for application to the national transportation system.

''(B) TOPICS.—In selecting topics for prize competitions under this paragraph, the Secretary shall—

''(i) consult with a wide variety of governmental and nongovernmental representatives; and

''(ii) give consideration to prize goals that demonstrate innovative approaches and strategies to improve the safety, efficiency, and sustainability of the national transportation system.

''(C) ADVERTISING.—The Secretary shall encourage participation in the prize competitions through advertising efforts.

''(D) REQUIREMENTS AND REGISTRATION.—For each prize competition, the Secretary shall publish a notice on a public website that describes—

''(i) the subject of the competition;

''(ii) the eligibility rules for participation in the competition;

''(iii) the amount of the prize; and

''(iv) the basis on which a winner will be selected.

''(E) ELIGIBILITY.—An individual or entity may not receive a prize under this paragraph unless the individual or entity—

''(i) has registered to participate in the competition pursuant to any rules promulgated by the Secretary under this section;

''(ii) has complied with all requirements under this paragraph;

''(iii)(I) in the case of a private entity, is incorporated in, and maintains a primary place of business in, the United States; or

''(II) in the case of an individual, whether participating singly or in a group, is a citizen or permanent resident of the United States;

''(iv) is not a Federal entity or Federal employee acting within the scope of his or her employment; and

''(v) has not received a grant to perform research on the same issue for which the prize is awarded.

''(F) LIABILITY.—

''(i) ASSUMPTION OF RISK.—

''(I) IN GENERAL.—A registered participant shall agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in a competition, whether such injury, death, damage, or loss arises through negligence or otherwise.

''(II) RELATED ENTITY.—In this subparagraph, the term 'related entity' means a contractor, subcontractor (at any tier), supplier, user, customer, cooperating party, grantee, investigator, or detailee.

''(ii) FINANCIAL RESPONSIBILITY.—A participant shall obtain liability insurance or demonstrate financial responsibility, in amounts determined by the Secretary, for claims by—

''(I) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

''(II) the Federal Government for damage or loss to Government property resulting from such an activity.

''(G) JUDGES.—

''(i) SELECTION.—Subject to clause (iii), for each prize competition, the Secretary, either directly or through an agreement under subparagraph (H), may appoint 1 or more qualified judges to select the winner or winners of the prize competition on the basis of the criteria described in subparagraph (D).

''(ii) SELECTION.—Judges for each competition shall include individuals from outside the Federal Government, including the private sector.

''(iii) LIMITATIONS.—A judge selected under this subparagraph may not—

''(I) have personal or financial interests in, or be an employee, officer, director, or agent of, any entity that is a registered participant in a prize competition under this paragraph; or

''(II) have a familial or financial relationship with an individual who is a registered participant.

''(H) ADMINISTERING THE COMPETITION.—The Secretary may enter into an agreement with a private, nonprofit entity to administer the prize competition, subject to the provisions of this paragraph.

''(I) FUNDING.—

''(i) IN GENERAL.—

''(I) PRIVATE SECTOR FUNDING.—A cash prize under this paragraph may consist of funds appropriated by the Federal Government and funds provided by the private sector.

''(II) GOVERNMENT FUNDING.—The Secretary may accept funds from other Federal agencies, State and local governments, and metropolitan planning organizations for a cash prize under this paragraph.

''(III) NO SPECIAL CONSIDERATION.—The Secretary may not give any special consideration to any private sector entity in return for a donation under this subparagraph.

''(ii) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, amounts appropriated for prize awards under this paragraph—

''(I) shall remain available until expended; and

''(II) may not be transferred, reprogrammed, or expended for other purposes until after the expiration of the 10-year period beginning on the last day of the fiscal year for which the funds were originally appropriated.

''(iii) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to permit the obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

''(iv) PRIZE ANNOUNCEMENT.—A prize may not be announced under this paragraph until all the funds needed to pay out the announced amount of the prize have been appropriated by a governmental source or committed to in writing by a private source.

''(v) PRIZE INCREASES.—The Secretary may increase the amount of a prize after the initial announcement of the prize under this paragraph if—

''(I) notice of the increase is provided in the same manner as the initial notice of the prize; and

''(II) the funds needed to pay out the announced amount of the increase have been appropriated by a governmental source or committed to in writing by a private source.

''(vi) CONGRESSIONAL NOTIFICATION.—A prize competition under this paragraph may offer a prize in an amount greater than $1,000,000 only after 30 days have elapsed after written notice has been transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives.

''(vii) AWARD LIMIT.—A prize competition under this section may not result in the award of more than $25,000 in cash prizes without the approval of the Secretary.

''(J) COMPLIANCE WITH EXISTING LAW.—The Federal Government shall not, by virtue of offering or providing a prize under this paragraph, be responsible for compliance by registered participants in a prize competition with Federal law, including licensing, export control, and non-proliferation laws, and related regulations.

''(K) NOTICE AND ANNUAL REPORT.—

''(i) IN GENERAL.—Not later than 30 days prior to carrying out an activity under subparagraph (A), the Secretary shall notify the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives and the Committees on Environment and Public Works and Commerce, Science, and Transportation of the Senate of the intent to use such authority.

''(ii) REPORTS.—

''(I) IN GENERAL.—The Secretary shall submit to the committees described in clause (i) on an annual basis a report on the activities carried out under subparagraph (A) in the preceding fiscal year if the Secretary exercised the authority under subparagraph (A) in that fiscal year.

''(II) INFORMATION INCLUDED.—A report under this subparagraph shall include, for each prize competition under subparagraph (A)—

''(aa) a description of the proposed goals of the prize competition;

''(bb) an analysis of why the use of the authority under subparagraph (A) was the preferable method of achieving the goals described in item (aa) as opposed to other authorities available to the Secretary, such as contracts, grants, and cooperative agreements;

''(cc) the total amount of cash prizes awarded for each prize competition, including a description of the amount of private funds contributed to the program, the source of such funds, and the manner in which the amounts of cash prizes awarded and claimed were allocated among the accounts of the Department for recording as obligations and expenditures;

''(dd) the methods used for the solicitation and evaluation of submissions under each prize competition, together with an assessment of the effectiveness of such methods and lessons learned for future prize competitions;

''(ee) a description of the resources, including personnel and funding, used in the execution of each prize competition together with a detailed description of the activities for which such resources were used and an accounting of how funding for execution was allocated among the accounts of the agency for recording as obligations and expenditures; and

''(ff) a description of how each prize competition advanced the mission of the Department.'';

(4) in subsection (c)—

(A) in paragraph (3)(A)—

(i) by striking ''subsection'' and inserting ''chapter''; and

(ii) by striking ''50'' and inserting ''80''; and

(B) in paragraph (4) by striking ''subsection'' and inserting ''chapter''; and

(5) by striking subsections (d) through (j).

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by striking the item relating to section 502 and inserting the following:

''502. Surface transportation research, development, and technology.''

SEC. 52003. RESEARCH AND TECHNOLOGY DEVELOPMENT AND DEPLOYMENT.

(a) IN GENERAL.—Section 503 of title 23, United States Code, is amended to read as follows:

''§ 503. Research and technology development and deployment

''(a) IN GENERAL.—The Secretary shall—

''(1) carry out research, development, and deployment activities that encompass the entire innovation lifecycle; and

''(2) ensure that all research carried out under this section aligns with the transportation research and development strategic plan of the Secretary under section 508.

''(b) HIGHWAY RESEARCH AND DEVELOPMENT PROGRAM.—

''(1) OBJECTIVES.—In carrying out the highway research and development program, the Secretary, to address current and emerging highway transportation needs, shall—

''(A) identify research topics;

''(B) coordinate research and development activities;

''(C) carry out research, testing, and evaluation activities; and

''(D) provide technology transfer and technical assistance.

''(2) IMPROVING HIGHWAY SAFETY.—

''(A) IN GENERAL.—The Secretary shall carry out research and development activities from an integrated perspective to establish and implement systematic measures to improve highway safety.

''(B) OBJECTIVES.—In carrying out this paragraph, the Secretary shall carry out research and development activities—

''(i) to achieve greater long-term safety gains;

''(ii) to reduce the number of fatalities and serious injuries on public roads;

''(iii) to fill knowledge gaps that limit the effectiveness of research;

''(iv) to support the development and implementation of State strategic highway safety plans;

''(v) to advance improvements in, and use of, performance prediction analysis for decisionmaking; and

''(vi) to expand technology transfer to partners and stakeholders.

''(C) CONTENTS.—Research and technology activities carried out under this paragraph may include—

''(i) safety assessments and decisionmaking tools;

''(ii) data collection and analysis;

''(iii) crash reduction projections;

''(iv) low-cost safety countermeasures;

''(v) innovative operational improvements and designs of roadway and roadside features;

''(vi) evaluation of countermeasure costs and benefits;

''(vii) development of tools for projecting impacts of safety countermeasures;

''(viii) rural road safety measures;

''(ix) safety measures for vulnerable road users, including bicyclists and pedestrians;

''(x) safety policy studies;

''(xi) human factors studies and measures;

''(xii) safety technology deployment;

''(xiii) safety workforce professional capacity building initiatives;

''(xiv) safety program and process improvements; and

''(xv) tools and methods to enhance safety performance, including achievement of statewide safety performance targets.

''(3) IMPROVING INFRASTRUCTURE INTEGRITY.—

''(A) IN GENERAL.—The Secretary shall carry out and facilitate highway and bridge infrastructure research and development activities—

''(i) to maintain infrastructure integrity;

''(ii) to meet user needs; and

''(iii) to link Federal transportation investments to improvements in system performance.

''(B) OBJECTIVES.—In carrying out this paragraph, the Secretary shall carry out research and development activities—

''(i) to reduce the number of fatalities attributable to infrastructure design characteristics and work zones;

''(ii) to improve the safety and security of highway infrastructure;

''(iii) to increase the reliability of lifecycle performance predictions used in infrastructure design, construction, and management;

''(iv) to improve the ability of transportation agencies to deliver projects that meet expectations for timeliness, quality, and cost;

''(v) to reduce user delay attributable to infrastructure system performance, maintenance, rehabilitation, and construction;

''(vi) to improve highway condition and performance through increased use of design, materials, construction, and maintenance innovations;

''(vii) to reduce the environmental impacts of highway infrastructure through innovations in design, construction, operation, preservation, and maintenance; and

''(viii) to study vulnerabilities of the transportation system to seismic activities and extreme events and methods to reduce those vulnerabilities.

''(C) CONTENTS.—Research and technology activities carried out under this paragraph may include—

''(i) long-term infrastructure performance programs addressing pavements, bridges, tunnels, and other structures;

''(ii) short-term and accelerated studies of infrastructure performance;

''(iii) research to develop more durable infrastructure materials and systems;

''(iv) advanced infrastructure design methods;

''(v) accelerated highway and bridge construction;

''(vi) performance-based specifications;

''(vii) construction and materials quality assurance;

''(viii) comprehensive and integrated infrastructure asset management;

''(ix) infrastructure safety assurance;

''(x) sustainable infrastructure design and construction;

''(xi) infrastructure rehabilitation and preservation techniques, including techniques to rehabilitate and preserve historic infrastructure;

''(xii) hydraulic, geotechnical, and aerodynamic aspects of infrastructure;

''(xiii) improved highway construction technologies and practices;

''(xiv) improved tools, technologies, and models for infrastructure management, including assessment and monitoring of infrastructure condition;

''(xv) studies to improve flexibility and resiliency of infrastructure systems to withstand climate variability;

''(xvi) studies on the effectiveness of fiber-based additives to improve the durability of surface transportation materials in various geographic regions;

''(xvii) studies of infrastructure resilience and other adaptation measures;

''(xviii) maintenance of seismic research activities, including research carried out in conjunction with other Federal agencies to study

the vulnerability of the transportation system to seismic activity and methods to reduce that vulnerability; and

''(xix) technology transfer and adoption of permeable, pervious, or porous paving materials, practices, and systems that are designed to minimize environmental impacts, stormwater runoff, and flooding and to treat or remove pollutants by allowing stormwater to infiltrate through the pavement in a manner similar to predevelopment hydrologic conditions.

''(D) LIFECYCLE COSTS ANALYSIS STUDY.—

''(i) IN GENERAL.—In this subparagraph, the term 'lifecycle costs analysis' means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

''(ii) STUDY.—The Comptroller General shall conduct a study of the best practices for calculating lifecycle costs and benefits for federally funded highway projects, which shall include, at a minimum, a thorough literature review and a survey of current lifecycle cost practices of State departments of transportation.

''(iii) CONSULTATION.—In carrying out the study, the Comptroller shall consult with, at a minimum—

''(I) the American Association of State Highway and Transportation Officials;

''(II) appropriate experts in the field of lifecycle cost analysis; and

''(III) appropriate industry experts and research centers.

''(E) REPORT.—Not later than 1 year after the date of enactment of the Transportation Research and Innovative Technology Act of 2012, the Comptroller General shall submit to the Committee on Environment and Public Works of the Senate and the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives a report on the results of the study which shall include—

''(i) a summary of the latest research on lifecycle cost analysis; and

''(ii) recommendations on the appropriate—

''(I) period of analysis;

''(II) design period;

''(III) discount rates; and

''(IV) use of actual material life and maintenance cost data.

''(4) STRENGTHENING TRANSPORTATION PLANNING AND ENVIRONMENTAL DECISIONMAKING.—

''(A) IN GENERAL.—The Secretary may carry out research—

''(i) to minimize the cost of transportation planning and environmental decisionmaking processes;

''(ii) to improve transportation planning and environmental decisionmaking processes; and

''(iii) to minimize the potential impact of surface transportation on the environment.

''(B) OBJECTIVES.—In carrying out this paragraph the Secretary may carry out research and development activities—

''(i) to minimize the cost of highway infrastructure and operations;

''(ii) to reduce the potential impact of highway infrastructure and operations on the environment;

''(iii) to advance improvements in environmental analyses and processes and context sensitive solutions for transportation decisionmaking;

''(iv) to improve construction techniques;

''(v) to accelerate construction to reduce congestion and related emissions;

''(vi) to reduce the impact of highway runoff on the environment;

''(vii) to improve understanding and modeling of the factors that contribute to the demand for transportation; and

''(viii) to improve transportation planning decisionmaking and coordination.

''(C) CONTENTS.—Research and technology activities carried out under this paragraph may include—

''(i) creation of models and tools for evaluating transportation measures and transportation system designs, including the costs and benefits;

''(ii) congestion reduction efforts;

''(iii) transportation and economic development planning in rural areas and small communities;

''(iv) improvement of State, local, and tribal government capabilities relating to surface transportation planning and the environment; and

''(v) streamlining of project delivery processes.

''(5) REDUCING CONGESTION, IMPROVING HIGHWAY OPERATIONS, AND ENHANCING FREIGHT PRODUCTIVITY.—

''(A) IN GENERAL.—The Secretary shall carry out research under this paragraph with the goals of—

''(i) addressing congestion problems;

''(ii) reducing the costs of congestion;

''(iii) improving freight movement;

''(iv) increasing productivity; and

''(v) improving the economic competitiveness of the United States.

''(B) OBJECTIVES.—In carrying out this paragraph, the Secretary shall carry out research and development activities to identify, develop, and assess innovations that have the potential—

''(i) to reduce traffic congestion;

''(ii) to improve freight movement; and

''(iii) to reduce freight-related congestion throughout the transportation network.

''(C) CONTENTS.—Research and technology activities carried out under this paragraph may include—

''(i) active traffic and demand management;

''(ii) acceleration of the implementation of Intelligent Transportation Systems technology;

''(iii) advanced transportation concepts and analysis;

''(iv) arterial management and traffic signal operation;

''(v) congestion pricing;

''(vi) corridor management;

''(vii) emergency operations;

''(viii) research relating to enabling technologies and applications;

''(ix) freeway management;

''(x) evaluation of enabling technologies;

''(xi) impacts of vehicle size and weight on congestion;

''(xii) freight operations and technology;

''(xiii) operations and freight performance measurement and management;

''(xiv) organization and planning for operations;

''(xv) planned special events management;

''(xvi) real-time transportation information;

''(xvii) road weather management;

''(xviii) traffic and freight data and analysis tools;

''(xix) traffic control devices;

''(xx) traffic incident management;

''(xxi) work zone management;

''(xxii) communication of travel, roadway, and emergency information to persons with disabilities;

''(xxiii) research on enhanced mode choice and intermodal connectivity;

''(xxiv) techniques for estimating and quantifying public benefits derived from freight transportation projects; and

''(xxv) other research areas to identify and address emerging needs related to freight transportation by all modes.

''(6) EXPLORATORY ADVANCED RESEARCH.—The Secretary shall carry out research and development activities relating to exploratory advanced research—

''(A) to leverage the targeted capabilities of the Turner-Fairbank Highway Research Center to develop technologies and innovations of national importance; and

''(B) to develop potentially transformational solutions to improve the durability, efficiency, environmental impact, productivity, and safety aspects of highway and intermodal transportation systems.

''(7) TURNER-FAIRBANK HIGHWAY RESEARCH CENTER.—

''(A) IN GENERAL.—The Secretary shall continue to operate in the Federal Highway Administration a Turner-Fairbank Highway Research Center.

''(B) USES OF THE CENTER.—The Turner-Fairbank Highway Research Center shall support—

''(i) the conduct of highway research and development relating to emerging highway technology;

''(ii) the development of understandings, tools, and techniques that provide solutions to complex technical problems through the development of economical and environmentally sensitive designs, efficient and quality-controlled construction practices, and durable materials;

''(iii) the development of innovative highway products and practices; and

''(iv) the conduct of long-term, high-risk research to improve the materials used in highway infrastructure.

''(8) INFRASTRUCTURE INVESTMENT NEEDS REPORT.—

''(A) IN GENERAL.—Not later than July 31, 2013, and July 31 of every second year thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes estimates of the future highway and bridge needs of the United States and the backlog of current highway and bridge needs.

''(B) COMPARISONS.—Each report under subparagraph (A) shall include all information necessary to relate and compare the conditions and service measures used in the previous biennial reports to conditions and service measures used in the current report.

''(C) INCLUSIONS.—Each report under subparagraph (A) shall provide recommendations to Congress on changes to the highway performance monitoring system that address—

''(i) improvements to the quality and standardization of data collection on all functional classifications of Federal-aid highways for accurate system length, lane length, and vehicle-mile of travel; and

''(ii) changes to the reporting requirements authorized under section 315, to reflect recommendations under this paragraph for collection, storage, analysis, reporting, and display of data for Federal-aid highways and, to the maximum extent practical, all public roads.

''(c) TECHNOLOGY AND INNOVATION DEPLOYMENT PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a technology and innovation deployment program relating to all aspects of highway transportation, including planning, financing, operation, structures, materials, pavements, environment, construction, and the duration of time between project planning and project delivery, with the goals of—

''(A) significantly accelerating the adoption of innovative technologies by the surface transportation community;

''(B) providing leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in highway construction processes that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction;

''(C) constructing longer-lasting highways through the use of innovative technologies and practices that lead to faster construction of efficient and safe highways and bridges;

''(D) improving highway efficiency, safety, mobility, reliability, service life, environmental protection, and sustainability; and

''(E) developing and deploying new tools, techniques, and practices to accelerate the adoption of innovation in all aspects of highway transportation.

''(2) IMPLEMENTATION.—

''(A) IN GENERAL.—The Secretary shall promote, facilitate, and carry out the program established under paragraph (1) to distribute the products, technologies, tools, methods, or other findings that result from highway research and development activities, including research and development activities carried out under this chapter.

''(B) ACCELERATED INNOVATION DEPLOYMENT.—In carrying out the program established under paragraph (1), the Secretary shall—

''(i) establish and carry out demonstration programs;

''(ii) provide technical assistance, and training to researchers and developers; and

''(iii) develop improved tools and methods to accelerate the adoption of proven innovative practices and technologies as standard practices.

''(C) IMPLEMENTATION OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM FINDINGS AND RESULTS.—

''(i) IN GENERAL.—The Secretary, in consultation with the American Association of State Highway and Transportation Officials and the Transportation Research Board of the National Academy of Sciences, shall promote research results and products developed under the future strategic highway research program administered by the Transportation Research Board of the National Academy of Sciences.

''(ii) BASIS FOR FINDINGS.—The activities carried out under this subparagraph shall be based on the report submitted to Congress by the Transportation Research Board of the National Academy of Sciences under section 510(e).

''(iii) PERSONNEL.—The Secretary may use funds made available to carry out this subsection for administrative costs under this subparagraph.

''(3) ACCELERATED IMPLEMENTATION AND DEPLOYMENT OF PAVEMENT TECHNOLOGIES.—

''(A) IN GENERAL.—The Secretary shall establish and implement a program under the technology and innovation deployment program to promote, implement, deploy, demonstrate, showcase, support, and document the application of innovative pavement technologies, practices, performance, and benefits.

''(B) GOALS.—The goals of the accelerated implementation and deployment of pavement technologies program shall include—

''(i) the deployment of new, cost-effective designs, materials, recycled materials, and practices to extend the pavement life and performance and to improve user satisfaction;

''(ii) the reduction of initial costs and lifecycle costs of pavements, including the costs of new construction, replacement, maintenance, and rehabilitation;

''(iii) the deployment of accelerated construction techniques to increase safety and reduce construction time and traffic disruption and congestion;

''(iv) the deployment of engineering design criteria and specifications for new and efficient practices, products, and materials for use in highway pavements;

''(v) the deployment of new nondestructive and real-time pavement evaluation technologies and construction techniques; and

''(vi) effective technology transfer and information dissemination to accelerate implementation of new technologies and to improve life, performance, cost effectiveness, safety, and user satisfaction.

''(C) FUNDING.—The Secretary shall obligate for each of fiscal years 2013 through 2014 from funds made available to carry out this subsection $12,000,000 to accelerate the deployment and implementation of pavement technology.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by striking the item relating to section 503 and inserting the following:

''503. Research and technology development and deployment.''.

SEC. 52004. TRAINING AND EDUCATION.

Section 504 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A) by inserting ''and the employees of any other applicable Federal agency'' before the semicolon at the end; and

(B) in paragraph (3)(A)(ii)(V) by striking ''expediting'' and inserting ''reducing the amount of time required for'';

(2) in subsection (b) by striking paragraph (3) and inserting the following:

''(3) FEDERAL SHARE.—

''(A) LOCAL TECHNICAL ASSISTANCE CENTERS.—

''(i) IN GENERAL.—Subject to subparagraph (B), the Federal share of the cost of an activity carried out by a local technical assistance center under paragraphs (1) and (2) shall be 50 percent.

''(ii) NON-FEDERAL SHARE.—The non-Federal share of the cost of an activity described in clause (i) may consist of amounts provided to a recipient under subsection (e) or section 505, up to 100 percent of the non-Federal share.

''(B) TRIBAL TECHNICAL ASSISTANCE CENTERS.—The Federal share of the cost of an activity carried out by a tribal technical assistance center under paragraph (2)(D)(ii) shall be 100 percent.'';

(3) in subsection (c)(2)—

(A) by striking ''The Secretary'' and inserting the following:

''(A) IN GENERAL.—The Secretary'';

(B) in subparagraph (A) (as designated by subparagraph (A)) by striking ''. The program'' and inserting '', which program''; and

(C) by adding at the end the following:

''(B) USE OF AMOUNTS.—Amounts provided to institutions of higher education to carry out this paragraph shall be used to provide direct support of student expenses.'';

(4) in subsection (e)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A) by striking ''sections 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4), and 144(e)'' and inserting ''paragraphs (1) through (4) of section 104(b)'';

(ii) in subparagraph (D) by striking ''and'' at the end;

(iii) in subparagraph (E) by striking the period and inserting a semicolon; and

(iv) by adding at the end the following:

''(F) activities carried out by the National Highway Institute under subsection (a); and

''(G) local technical assistance programs under subsection (b).''; and

(B) in paragraph (2) by inserting '', except for activities carried out under paragraph (1)(G), for which the Federal share shall be 50 percent'' before the period at the end;

(5) in subsection (f) in the heading, by striking ''PILOT'';

(6) in subsection (g)(4)(F) by striking ''excellence'' and inserting ''stewardship''; and

(7) by adding at the end the following:

''(h) CENTERS FOR SURFACE TRANSPORTATION EXCELLENCE.—

''(1) IN GENERAL.—The Secretary shall make grants under this section to establish and maintain centers for surface transportation excellence.

''(2) GOALS.—The goals of a center referred to in paragraph (1) shall be to promote and support strategic national surface transportation programs and activities relating to the work of State departments of transportation in the areas of environment, surface transportation safety, rural safety, and project finance.

''(3) ROLE OF THE CENTERS.—To achieve the goals set forth in paragraph (2), any centers established under paragraph (1) shall provide technical assistance, information sharing of best practices, and training in the use of tools and decisionmaking processes that can assist States in effectively implementing surface transportation programs, projects, and policies.

''(4) PROGRAM ADMINISTRATION.—

''(A) COMPETITION.—A party entering into a contract, cooperative agreement, or other transaction with the Secretary under this subsection, or receiving a grant to perform research or provide technical assistance under this subsection, shall be selected on a competitive basis.

''(B) STRATEGIC PLAN.—The Secretary shall require each center to develop a multiyear strategic plan, that—

''(i) is submitted to the Secretary at such time as the Secretary requires; and

''(ii) describes—

''(I) the activities to be undertaken by the center; and

''(II) how the work of the center will be coordinated with the activities of the Federal Highway Administration and the various other research, development, and technology transfer activities authorized under this chapter.''.

SEC. 52005. STATE PLANNING AND RESEARCH.

Section 505 of title 23, United States Code, is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1) by striking ''section 104 (other than sections 104(f) and 104(h)) and under section 144'' and inserting ''paragraphs (1) through (4) of section 104(b)''; and

(B) in paragraph (3) by striking ''under section 303'' and inserting '', plans, and processes under sections 119, 148, 149, and 167'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(3) by inserting after subsection (b) the following:

''(c) IMPLEMENTATION OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM FINDINGS AND RESULTS.—

''(1) FUNDS.—A State shall make available to the Secretary to carry out section 503(c)(2)(C) a percentage of funds subject to subsection (a) that are apportioned to that State, that is agreed to by ¾ of States for each of fiscal years 2013 and 2014.

''(2) TREATMENT OF FUNDS.—Funds expended under paragraph (1) shall not be considered to be part of the extramural budget of the agency for the purpose of section 9 of the Small Business Act (15 U.S.C. 638).''; and

(4) in subsection (e) (as so redesignated) by striking ''section 118(b)(2)'' and inserting ''section 118(b)''.

SEC. 52006. INTERNATIONAL HIGHWAY TRANSPORTATION PROGRAM.

(a) IN GENERAL.—Section 506 of title 23, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by striking the item relating to section 506.

SEC. 52007. SURFACE TRANSPORTATION ENVIRONMENTAL COOPERATIVE RESEARCH PROGRAM.

(a) IN GENERAL.—Section 507 of title 23, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by striking the item relating to section 507.

SEC. 52008. NATIONAL COOPERATIVE FREIGHT RESEARCH.

(a) IN GENERAL.—Section 509 of title 23, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by striking the item relating to section 509.

SEC. 52009. UNIVERSITY TRANSPORTATION CENTERS PROGRAM.

(a) IN GENERAL.—Section 5505 of title 49, United States Code, is amended to read as follows:

''§ 5505. University transportation centers program

''(a) UNIVERSITY TRANSPORTATION CENTERS PROGRAM.—

''(1) ESTABLISHMENT AND OPERATION.—The Secretary shall make grants under this section to eligible nonprofit institutions of higher education to establish and operate university transportation centers.

''(2) ROLE OF CENTERS.—The role of each university transportation center referred to in paragraph (1) shall be—

''(A) to advance transportation expertise and technology in the varied disciplines that comprise the field of transportation through education, research, and technology transfer activities;

''(B) to provide for a critical transportation knowledge base outside of the Department of Transportation; and

''(C) to address critical workforce needs and educate the next generation of transportation leaders.

''(b) COMPETITIVE SELECTION PROCESS.—

''(1) APPLICATIONS.—To receive a grant under this section, a nonprofit institution of higher education shall submit to the Secretary an application that is in such form and contains such information as the Secretary may require.

''(2) RESTRICTION.—A nonprofit institution of higher education or the lead institution of a consortium of nonprofit institutions of higher education, as applicable, that receives a grant for a national transportation center or a regional transportation center in a fiscal year shall not be eligible to receive as a lead institution or member of a consortium an additional grant in that fiscal year for a national transportation center or a regional transportation center.

''(3) COORDINATION.—The Secretary shall solicit grant applications for national transportation centers, regional transportation centers, and Tier 1 university transportation centers with identical advertisement schedules and deadlines.

''(4) GENERAL SELECTION CRITERIA.—

''(A) IN GENERAL.—Except as otherwise provided by this section, the Secretary shall award grants under this section in nonexclusive candidate topic areas established by the Secretary that address the research priorities identified in section 503 of title 23.

''(B) CRITERIA.—The Secretary, in consultation as appropriate with the Administrators of the Federal Highway Administration and the Federal Transit Administration, shall select each recipient of a grant under this section through a competitive process based on the assessment of the Secretary relating to—

''(i) the demonstrated ability of the recipient to address each specific topic area described in the research and strategic plans of the recipient;

''(ii) the demonstrated research, technology transfer, and education resources available to the recipient to carry out this section;

''(iii) the ability of the recipient to provide leadership in solving immediate and long-range national and regional transportation problems;

''(iv) the ability of the recipient to carry out research, education, and technology transfer activities that are multimodal and multidisciplinary in scope;

''(v) the demonstrated commitment of the recipient to carry out transportation workforce development programs through—

''(I) degree-granting programs; and

''(II) outreach activities to attract new entrants into the transportation field;

''(vi) the demonstrated ability of the recipient to disseminate results and spur the implementation of transportation research and education programs through national or statewide continuing education programs;

''(vii) the demonstrated commitment of the recipient to the use of peer review principles and other research best practices in the selection, management, and dissemination of research projects;

''(viii) the strategic plan submitted by the recipient describing the proposed research to be carried out by the recipient and the performance metrics to be used in assessing the performance of the recipient in meeting the stated research, technology transfer, education, and outreach goals; and

''(ix) the ability of the recipient to implement the proposed program in a cost-efficient manner, such as through cost sharing and overall reduced overhead, facilities, and administrative costs.

''(5) TRANSPARENCY.—

''(A) IN GENERAL.—The Secretary shall provide to each applicant, upon request, any materials, including copies of reviews (with any information that would identify a reviewer redacted), used in the evaluation process of the proposal of the applicant.

''(B) REPORTS.—The Secretary shall submit to the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing the overall review process under paragraph (3) that includes—

''(i) specific criteria of evaluation used in the review;

''(ii) descriptions of the review process; and

''(iii) explanations of the selected awards.

''(6) OUTSIDE STAKEHOLDERS.—The Secretary shall, to the maximum extent practicable, consult external stakeholders such as the Transportation Research Board of the National Academy of Sciences to evaluate and competitively review all proposals.

''(c) GRANTS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Transportation Research and Innovative Technology Act of 2012, the Secretary, in consultation as appropriate with the Administrators of the Federal Highway Administration and the Federal Transit Administration, shall select grant recipients under subsection (b) and make grant amounts available to the selected recipients.

''(2) NATIONAL TRANSPORTATION CENTERS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall provide grants to 5 recipients that the Secretary determines best meet the criteria described in subsection (b)(3).

''(B) RESTRICTIONS.—

''(i) IN GENERAL.—For each fiscal year, a grant made available under this paragraph shall be $3,000,000 per recipient.

''(ii) FOCUSED RESEARCH.—The grant recipients under this paragraph shall focus research on national transportation issues, as determined by the Secretary.

''(C) MATCHING REQUIREMENT.—

''(i) IN GENERAL.—As a condition of receiving a grant under this paragraph, a grant recipient shall match 100 percent of the amounts made available under the grant.

''(ii) SOURCES.—The matching amounts referred to in clause (i) may include amounts made available to the recipient under section 504(b) or 505 of title 23.

''(3) REGIONAL UNIVERSITY TRANSPORTATION CENTERS.—

''(A) LOCATION OF REGIONAL CENTERS.—One regional university transportation center shall be located in each of the 10 Federal regions that comprise the Standard Federal Regions established by the Office of Management and Budget in the document entitled 'Standard Federal Regions' and dated April, 1974 (circular A-105).

''(B) SELECTION CRITERIA.—In conducting a competition under subsection (b), the Secretary shall provide grants to 10 recipients on the basis of—

''(i) the criteria described in subsection (b)(3);

''(ii) the location of the center within the Federal region to be served; and

''(iii) whether the institution (or, in the case of consortium of institutions, the lead institution) demonstrates that the institution has a well-established, nationally recognized program in transportation research and education, as evidenced by—

''(I) recent expenditures by the institution in highway or public transportation research;

''(II) a historical track record of awarding graduate degrees in professional fields closely related to highways and public transportation; and

''(III) an experienced faculty who specialize in professional fields closely related to highways and public transportation.

''(C) RESTRICTIONS.—For each fiscal year, a grant made available under this paragraph shall be $2,750,000 for each recipient.

''(D) MATCHING REQUIREMENTS.—

''(i) IN GENERAL.—As a condition of receiving a grant under this paragraph, a grant recipient shall match 100 percent of the amounts made available under the grant.

''(ii) SOURCES.—The matching amounts referred to in the clause (i) may include amounts made available to the recipient under section 504(b) or 505 of title 23.

''(E) FOCUSED RESEARCH.—The Secretary shall make a grant to 1 of the 10 regional university transportation centers established under this paragraph for the purpose of furthering the objectives described in subsection (a)(2) in the field of comprehensive transportation safety.

''(4) TIER 1 UNIVERSITY TRANSPORTATION CENTERS.—

''(A) IN GENERAL.—The Secretary shall provide grants of $1,500,000 each to not more than 20 recipients to carry out this paragraph.

''(B) RESTRICTION.—A lead institution of a consortium that receives a grant under paragraph (2) or (3) shall not be eligible to receive a grant under this paragraph.

''(C) MATCHING REQUIREMENT.—

''(i) IN GENERAL.—Subject to clause (iii), as a condition of receiving a grant under this paragraph, a grant recipient shall match 50 percent of the amounts made available under the grant.

''(ii) SOURCES.—The matching amounts referred to in clause (i) may include amounts made available to the recipient under section 504(b) or 505 of title 23.

''(iii) EXEMPTION.—This subparagraph shall not apply on a demonstration of financial hardship by the applicant institution.

''(D) FOCUSED RESEARCH.—In awarding grants under this paragraph, consideration shall be given to minority institutions, as defined by section 365 of the Higher Education Act of 1965 (20 U.S.C. 1067k), or consortia that include such institutions that have demonstrated an ability in transportation-related research.

''(d) PROGRAM COORDINATION.—

''(1) IN GENERAL.—The Secretary shall—

''(A) coordinate the research, education, and technology transfer activities carried out by grant recipients under this section; and

''(B) disseminate the results of that research through the establishment and operation of an information clearinghouse.

''(2) ANNUAL REVIEW AND EVALUATION.—Not less frequently than annually, and consistent with the plan developed under section 508 of title 23, the Secretary shall—

''(A) review and evaluate the programs carried out under this section by grant recipients; and

''(B) submit to the Committees on Transportation and Infrastructure and Science, Space, and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate a report describing that review and evaluation.

''(3) PROGRAM EVALUATION AND OVERSIGHT.—For each of fiscal years 2013 and 2014, the Secretary shall expend not more than 1½ percent of the amounts made available to the Secretary to carry out this section for any coordination, evaluation, and oversight activities of the Secretary under this section.

''(e) LIMITATION ON AVAILABILITY OF AMOUNTS.—Amounts made available to the Secretary to carry out this section shall remain available for obligation by the Secretary for a period of 3 years after the last day of the fiscal year for which the amounts are appropriated.

''(f) INFORMATION COLLECTION.—Any survey, questionnaire, or interview that the Secretary determines to be necessary to carry out reporting requirements relating to any program assessment or evaluation activity under this section, including customer satisfaction assessments, shall not be subject to chapter 35 of title 44.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 55 of title 49, United States Code, is

amended by striking the item relating to section 5505 and inserting the following:

''5505. University transportation centers program.''.

SEC. 52010. UNIVERSITY TRANSPORTATION RESEARCH.

(a) IN GENERAL.—Section 5506 of title 49, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The analysis for chapter 55 of title 49, United States Code, is amended by striking the item relating to section 5506.

SEC. 52011. BUREAU OF TRANSPORTATION STATISTICS.

(a) IN GENERAL.—Subtitle III of title 49, United States Code, is amended by adding at the end the following:

''CHAPTER 63—BUREAU OF TRANSPORTATION STATISTICS

''Sec.
''6301. Definitions.
''6302. Bureau of Transportation Statistics.
''6303. Intermodal transportation database.
''6304. National Transportation Library.
''6305. Advisory council on transportation statistics.
''6306. Transportation statistical collection, analysis, and dissemination.
''6307. Furnishing of information, data, or reports by Federal agencies.
''6308. Proceeds of data product sales.
''6309. National transportation atlas database.
''6310. Limitations on statutory construction.
''6311. Research and development grants.
''6312. Transportation statistics annual report.
''6313. Mandatory response authority for freight data collection.

''§ 6301. Definitions

''In this chapter, the following definitions apply:

''(1) BUREAU.—The term 'Bureau' means the Bureau of Transportation Statistics established by section 6302(a).

''(2) DEPARTMENT.—The term 'Department' means the Department of Transportation.

''(3) DIRECTOR.—The term 'Director' means the Director of the Bureau.

''(4) LIBRARY.—The term 'Library' means the National Transportation Library established by section 6304(a).

''(5) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

''§ 6302. Bureau of Transportation Statistics

''(a) ESTABLISHMENT.—There is established in the Research and Innovative Technology Administration the Bureau of Transportation Statistics.

''(b) DIRECTOR.—

''(1) APPOINTMENT.—The Bureau shall be headed by a Director, who shall be appointed in the competitive service by the Secretary.

''(2) QUALIFICATIONS.—The Director shall be appointed from among individuals who are qualified to serve as the Director by virtue of their training and experience in the collection, analysis, and use of transportation statistics.

''(3) DUTIES.—

''(A) IN GENERAL.—The Director shall—

''(i) serve as the senior advisor to the Secretary on data and statistics; and

''(ii) be responsible for carrying out the duties described in subparagraph (B).

''(B) DUTIES.—The Director shall—

''(i) ensure that the statistics compiled under clause (vi) are designed to support transportation decisionmaking by—

''(I) the Federal Government;

''(II) State and local governments;

''(III) metropolitan planning organizations;

''(IV) transportation-related associations;

''(V) the private sector, including the freight community; and

''(VI) the public;

''(ii) establish on behalf of the Secretary a program—

''(I) to effectively integrate safety data across modes; and

''(II) to address gaps in existing safety data programs of the Department;

''(iii) work with the operating administrations of the Department—

''(I) to establish and implement the data programs of the Bureau; and

''(II) to improve the coordination of information collection efforts with other Federal agencies;

''(iv) continually improve surveys and data collection methods of the Department to improve the accuracy and utility of transportation statistics;

''(v) encourage the standardization of data, data collection methods, and data management and storage technologies for data collected by—

''(I) the Bureau;

''(II) the operating administrations of the Department;

''(III) State and local governments;

''(IV) metropolitan planning organizations; and

''(V) private sector entities;

''(vi) collect, compile, analyze, and publish a comprehensive set of transportation statistics on the performance and impacts of the national transportation system, including statistics on—

''(I) transportation safety across all modes and intermodally;

''(II) the state of good repair of United States transportation infrastructure;

''(III) the extent, connectivity, and condition of the transportation system, building on the national transportation atlas database developed under section 6310;

''(IV) economic efficiency across the entire transportation sector;

''(V) the effects of the transportation system on global and domestic economic competitiveness;

''(VI) demographic, economic, and other variables influencing travel behavior, including choice of transportation mode and goods movement;

''(VII) transportation-related variables that influence the domestic economy and global competitiveness;

''(VIII) economic costs and impacts for passenger travel and freight movement;

''(IX) intermodal and multimodal passenger movement;

''(X) intermodal and multimodal freight movement; and

''(XI) consequences of transportation for the human and natural environment;

''(vii) build and disseminate the transportation layer of the National Spatial Data Infrastructure developed under Executive Order 12906 (59 Fed. Reg. 17671) (or a successor Executive Order), including by coordinating the development of transportation geospatial data standards, compiling intermodal geospatial data, and collecting geospatial data that is not being collected by other entities;

''(viii) issue guidelines for the collection of information by the Department that the Director determines necessary to develop transportation statistics and carry out modeling, economic assessment, and program assessment activities to ensure that such information is accurate, reliable, relevant, uniform, and in a form that permits systematic analysis by the Department;

''(ix) review and report to the Secretary on the sources and reliability of—

''(I) the statistics proposed by the heads of the operating administrations of the Department to measure outputs and outcomes as required by the Government Performance and Results Act of 1993 (Public Law 103–62;107 Stat. 285); and

''(II) at the request of the Secretary, any other data collected or statistical information published by the heads of the operating administrations of the Department; and

''(x) ensure that the statistics published under this section are readily accessible to the public, consistent with applicable security constraints and confidentiality interests.

''(c) ACCESS TO FEDERAL DATA.—In carrying out subsection (b)(3)(B)(ii), the Director shall be given access to all safety data that the Director determines necessary to carry out that subsection that is held by the Department or any other Federal agency upon written request and subject to any statutory or regulatory restrictions.

''§ 6303. Intermodal transportation database

''(a) IN GENERAL.—In consultation with the Under Secretary Transportation for Policy, the Assistant Secretaries of the Department, and the heads of the operating administrations of the Department, the Director shall establish and maintain a transportation database for all modes of transportation.

''(b) USE.—The database established under this section shall be suitable for analyses carried out by the Federal Government, the States, and metropolitan planning organizations.

''(c) CONTENTS.—The database established under this section shall include—

''(1) information on the volumes and patterns of movement of goods, including local, interregional, and international movement, by all modes of transportation, intermodal combinations, and relevant classification;

''(2) information on the volumes and patterns of movement of people, including local, interregional, and international movements, by all modes of transportation (including bicycle and pedestrian modes), intermodal combinations, and relevant classification;

''(3) information on the location and connectivity of transportation facilities and services; and

''(4) a national accounting of expenditures and capital stocks on each mode of transportation and intermodal combination.

''§ 6304. National Transportation Library

''(a) PURPOSE AND ESTABLISHMENT.—To support the information management and decisionmaking needs of transportation officials at the Federal, State, and local levels, there is established in the Bureau a National Transportation Library which shall—

''(1) be headed by an individual who is highly qualified in library and information science;

''(2) acquire, preserve, and manage transportation information and information products and services for use by the Department, other Federal agencies, and the general public;

''(3) provide reference and research assistance;

''(4) serve as a central depository for research results and technical publications of the Department;

''(5) provide a central clearinghouse for transportation data and information of the Federal Government;

''(6) serve as coordinator and policy lead for transportation information access;

''(7) provide transportation information and information products and services to—

''(A) the Department;

''(B) other Federal agencies;

''(C) public and private organizations; and

''(D) individuals, within the United States and internationally;

''(8) coordinate efforts among, and cooperate with, transportation libraries, information providers, and technical assistance centers, in conjunction with private industry and other transportation library and information centers, with the goal of developing a comprehensive transportation information and knowledge network that supports the activities described in section 6302(b)(3)(B)(vi); and

''(9) engage in such other activities as the Director determines to be necessary and as the resources of the Library permit.

''(b) ACCESS.—The Director shall publicize, facilitate, and promote access to the information products and services described in subsection (a), to improve the ability of the transportation community to share information and the ability of the Director to make statistics and other information readily accessible as required under section 6302(b)(3)(B)(x).

''(c) AGREEMENTS.—

''(1) IN GENERAL.—To carry out this section, the Director may enter into agreements with, award grants to, and receive amounts from, any—

''(A) State or local government;

''(B) organization;

''(C) business; or

''(D) individual.

''(2) CONTRACTS, GRANTS, AND AGREEMENTS.—The Library may initiate and support specific information and data management, access, and exchange activities in connection with matters relating to the Department's strategic goals, knowledge networking, and national and international cooperation, by entering into contracts or other agreements or awarding grants for the conduct of such activities.

''(3) AMOUNTS.—Any amounts received by the Library as payment for library products and services or other activities shall be made available to the Director to carry out this section, deposited in the Research and Innovative Technology Administration's general fund account, and remain available until expended.

''§ 6305. Advisory council on transportation statistics

''(a) IN GENERAL.—The Director shall establish and consult with an advisory council on transportation statistics.

''(b) FUNCTION.—The advisory council established under this section shall advise the Director on—

''(1) the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department; and

''(2) methods to encourage cooperation and interoperability of transportation data collected by the Bureau, the operating administrations of the Department, States, local governments, metropolitan planning organizations, and private sector entities.

''(c) MEMBERSHIP.—

''(1) IN GENERAL.—The advisory council shall be composed of not fewer than 9 and not more than 11 members appointed by the Director.

''(2) SELECTION.—In selecting members for the advisory council, the Director shall appoint individuals who—

''(A) are not officers or employees of the United States;

''(B) possess expertise in—

''(i) transportation data collection, analysis, or application;

''(ii) economics; or

''(iii) transportation safety; and

''(C) represent a cross section of transportation stakeholders, to the greatest extent possible.

''(d) TERMS OF APPOINTMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), members of the advisory council shall be appointed to staggered terms not to exceed 3 years.

''(2) ADDITIONAL TERMS.—A member may be renominated for 1 additional 3-year term.

''(3) CURRENT MEMBERS.—A member serving on an advisory council on transportation statistics on the day before the date of enactment of the Transportation Research and Innovative Technology Act of 2012 shall serve until the end of the appointed term of the member.

''(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the advisory council established under this section, except that section 14 of that Act shall not apply.

''§ 6306. Transportation statistical collection, analysis, and dissemination

''To ensure that all transportation statistical collection, analysis, and dissemination is carried out in a coordinated manner, the Director may—

''(1) use the services, equipment, records, personnel, information, and facilities of other Federal agencies, or State, local, and private agencies and instrumentalities, subject to the conditions that the applicable agency or instrumentality consents to that use and with or without reimbursement for such use;

''(2) enter into agreements with the agencies and instrumentalities described in paragraph (1) for purposes of data collection and analysis;

''(3) confer and cooperate with foreign governments, international organizations, and State, municipal, and other local agencies;

''(4) request such information, data, and reports from any Federal agency as the Director determines necessary to carry out this chapter;

''(5) encourage replication, coordination, and sharing of information among transportation agencies regarding information systems, information policy, and data; and

''(6) confer and cooperate with Federal statistical agencies as the Director determines necessary to carry out this chapter, including by entering into cooperative data sharing agreements in conformity with all laws and regulations applicable to the disclosure and use of data.

''§ 6307. Furnishing of information, data, or reports by Federal agencies

''(a) IN GENERAL.—Except as provided in subsection (b), a Federal agency requested to furnish information, data, or reports by the Director under section 6302(b)(3)(B) shall provide the information to the Director.

''(b) PROHIBITION ON CERTAIN DISCLOSURES.—

''(1) IN GENERAL.—An officer, employee, or contractor of the Bureau may not—

''(A) make any disclosure in which the data provided by an individual or organization under section 6302(b)(3)(B) can be identified;

''(B) use the information provided under section 6302(b)(3)(B) for a nonstatistical purpose; or

''(C) permit anyone other than an individual authorized by the Director to examine any individual report provided under section 6302(b)(3)(B).

''(2) COPIES OF REPORTS.—

''(A) IN GENERAL.—No department, bureau, agency, officer, or employee of the United States (except the Director in carrying out this chapter) may require, for any reason, a copy of any report that has been filed under section 6302(b)(3)(B) with the Bureau or retained by an individual respondent.

''(B) LIMITATION ON JUDICIAL PROCEEDINGS.—A copy of a report described in subparagraph (A) that has been retained by an individual respondent or filed with the Bureau or any of the employees, contractors, or agents of the Bureau—

''(i) shall be immune from legal process; and

''(ii) shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings.

''(C) APPLICABILITY.—This paragraph shall apply only to reports that permit information concerning an individual or organization to be reasonably determined by direct or indirect means.

''(3) INFORMING RESPONDENT OF USE OF DATA.—If the Bureau is authorized by statute to collect data or information for a nonstatistical purpose, the Director shall clearly distinguish the collection of the data or information, by rule and on the collection instrument, in a manner that informs the respondent who is requested or required to supply the data or information of the nonstatistical purpose.

''(c) TRANSPORTATION AND TRANSPORTATION-RELATED DATA ACCESS.—The Director shall be provided access to any transportation and transportation-related information in the possession of any Federal agency, except—

''(1) information that is expressly prohibited by law from being disclosed to another Federal agency; or

''(2) information that the agency possessing the information determines could not be disclosed without significantly impairing the discharge of authorities and responsibilities which have been delegated to, or vested by law, in such agency.

''§ 6308. Proceeds of data product sales

''Notwithstanding section 3302 of title 31, amounts received by the Bureau from the sale of data products for necessary expenses incurred may be credited to the Highway Trust Fund (other than the Mass Transit Account) for the purpose of reimbursing the Bureau for those expenses.

''§ 6309. National transportation atlas database

''(a) IN GENERAL.—The Director shall develop and maintain a national transportation atlas database that is comprised of geospatial databases that depict—

''(1) transportation networks;

''(2) flows of people, goods, vehicles, and craft over the transportation networks; and

''(3) social, economic, and environmental conditions that affect or are affected by the transportation networks.

''(b) INTERMODAL NETWORK ANALYSIS.—The databases referred to in subsection (a) shall be capable of supporting intermodal network analysis.

''§ 6310. Limitations on statutory construction

''Nothing in this chapter—

''(1) authorizes the Bureau to require any other Federal agency to collect data; or

''(2) alters or diminishes the authority of any other officer of the Department to collect and disseminate data independently.

''§ 6311. Research and development grants

''The Secretary may make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including State transportation departments, metropolitan planning organizations, and institutions of higher education) for—

''(1) investigation of the subjects described in section 6302(b)(3)(B)(vi);

''(2) research and development of new methods of data collection, standardization, management, integration, dissemination, interpretation, and analysis;

''(3) demonstration programs by States, local governments, and metropolitan planning organizations to coordinate data collection, reporting, management, storage, and archiving to simplify data comparisons across jurisdictions;

''(4) development of electronic clearinghouses of transportation data and related information, as part of the Library; and

''(5) development and improvement of methods for sharing geographic data, in support of the database under section 6310 and the National Spatial Data Infrastructure developed under Executive Order 12906 (59 Fed. Reg. 17671) (or a successor Executive Order).

''§ 6312. Transportation statistics annual report

''The Director shall submit to the President and Congress a transportation statistics annual report, which shall include—

''(1) information on the progress of the Director in carrying out the duties described in section 6302(b)(3)(B);

''(2) documentation of the methods used to obtain and ensure the quality of the statistics presented in the report; and

''(3) any recommendations of the Director for improving transportation statistical information.

''§ 6313. Mandatory response authority for freight data collection

''(a) FREIGHT DATA COLLECTION.—

''(1) IN GENERAL.—An owner, official, agent, person in charge, or assistant to the person in charge of a freight corporation, company, business, institution, establishment, or organization described in paragraph (2) shall be fined in accordance with subsection (b) if that individual

neglects or refuses, when requested by the Director or other authorized officer, employee, or contractor of the Bureau to submit data under section 6302(b)(3)(B)—

''(A) to answer completely and correctly to the best knowledge of that individual all questions relating to the corporation, company, business, institution, establishment, or other organization; or

''(B) to make available records or statistics in the official custody of the individual.

''(2) DESCRIPTION OF ENTITIES.—A freight corporation, company, business, institution, establishment, or organization referred to in paragraph (1) is a corporation, company, business, institution, establishment, or organization that—

''(A) receives Federal funds relating to the freight program; and

''(B) has consented to be subject to a fine under this subsection on—

''(i) refusal to supply any data requested; or

''(ii) failure to respond to a written request.

''(b) FINES.—

''(1) IN GENERAL.—Subject to paragraph (2), an individual described in subsection (a) shall be fined not more than $500.

''(2) WILLFUL ACTIONS.—If an individual willfully gives a false answer to a question described in subsection (a)(1), the individual shall be fined not more than $10,000.''.

(b) RULES OF CONSTRUCTION.—If the provisions of section 111 of title 49, United States Code, are transferred to chapter 63 of that title, the following rules of construction apply:

(1) For purposes of determining whether 1 provision of law supersedes another based on enactment later in time, a chapter 63 provision is deemed to have been enacted on the date of enactment of the corresponding section 111 provision.

(2) A reference to a section 111 provision, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding chapter 63 provision.

(3) A regulation, order, or other administrative action in effect under a section 111 provision continues in effect under the corresponding chapter 63 provision.

(4) An action taken or an offense committed under a section 111 provision is deemed to have been taken or committed under the corresponding chapter 63 provision.

(c) CONFORMING AMENDMENTS.—

(1) REPEAL.—Section 111 of title 49, United States Code, is repealed, and the item relating to section 111 in the analysis for chapter 1 of that title is deleted.

(2) ANALYSIS FOR SUBTITLE III.—The analysis for subtitle III of title 49, United States Code, is amended by inserting after the items for chapter 61 the following:

''CHAPTER 63—BUREAU OF TRANSPORTATION STATISTICS.''.

SEC. 52012. ADMINISTRATIVE AUTHORITY.

Section 112 of title 49, United States Code, is amended by adding at the end the following:

''(f) PROGRAM EVALUATION AND OVERSIGHT.—For each of fiscal years 2013 and 2014, the Administrator is authorized to expend not more than 1½ percent of the amounts authorized to be appropriated for necessary expenses for administration and operations of the Research and Innovative Technology Administration for the coordination, evaluation, and oversight of the programs administered by the Administration.

''(g) COLLABORATIVE RESEARCH AND DEVELOPMENT.—

''(1) IN GENERAL.—To encourage innovative solutions to multimodal transportation problems and stimulate the deployment of new technology, the Administrator may carry out, on a cost-shared basis, collaborative research and development with—

''(A) non-Federal entities, including State and local governments, foreign governments, institutions of higher education, corporations, institutions, partnerships, sole proprietorships, and trade associations that are incorporated or established under the laws of any State;

''(B) Federal laboratories; and

''(C) other Federal agencies.

''(2) COOPERATION, GRANTS, CONTRACTS, AND AGREEMENTS.—Notwithstanding any other provision of law, the Administrator may directly initiate contracts, grants, cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)), and other agreements to fund, and accept funds from, the Transportation Research Board of the National Research Council of the National Academy of Sciences, State departments of transportation, cities, counties, institutions of higher education, associations, and the agents of those entities to carry out joint transportation research and technology efforts.

''(3) FEDERAL SHARE.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Federal share of the cost of an activity carried out under paragraph (2) shall not exceed 50 percent.

''(B) EXCEPTION.—If the Secretary determines that the activity is of substantial public interest or benefit, the Secretary may approve a greater Federal share.

''(C) NON-FEDERAL SHARE.—All costs directly incurred by the non-Federal partners, including personnel, travel, facility, and hardware development costs, shall be credited toward the non-Federal share of the cost of an activity described in subparagraph (A).

''(4) USE OF TECHNOLOGY.—The research, development, or use of a technology under a contract, grant, cooperative research and development agreement, or other agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).

''(5) WAIVER OF ADVERTISING REQUIREMENTS.—Section 6101 of title 41 shall not apply to a contract, grant, or other agreement entered into under this section.''.

SEC. 52013. TRANSPORTATION RESEARCH AND DEVELOPMENT STRATEGIC PLANNING.

Section 508(a) of title 23, United States Code, is amended—

(1) in paragraph (1), by striking ''SAFETEA–LU'' and inserting ''Transportation Research and Innovative Technology Act of 2012''; and

(2) in paragraph (2), by striking subparagraph (A) and inserting the following:

''(A) describe the primary purposes of the transportation research and development program, which shall include, at a minimum—

''(i) promoting safety;

''(ii) reducing congestion and improving mobility;

''(iii) preserving the environment;

''(iv) preserving the existing transportation system;

''(v) improving the durability and extending the life of transportation infrastructure; and

''(vi) improving goods movement.''.

TITLE III—INTELLIGENT TRANSPORTATION SYSTEMS RESEARCH

SEC. 53001. USE OF FUNDS FOR ITS ACTIVITIES.

Section 513 of title 23, United States Code, is amended to read as follows:

''§ 513. Use of funds for ITS activities

''(a) DEFINITIONS.—In this section, the following definitions apply:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means a State or local government, tribal government, transit agency, public toll authority, metropolitan planning organization, other political subdivision of a State or local government, or a multistate or multijurisdictional group applying through a single lead applicant.

''(2) MULTIJURISDICTIONAL GROUP.—The term 'multijurisdictional group' means a combination of State governments, local governments, metropolitan planning agencies, transit agencies, or other political subdivisions of a State that—

''(A) have signed a written agreement to implement an activity that meets the grant criteria under this section; and

''(B) is comprised of at least 2 members, each of whom is an eligible entity.

''(b) PURPOSE.—The purpose of this section is to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs.

''(c) ITS ADOPTION.—

''(1) INNOVATIVE TECHNOLOGIES AND STRATEGIES.—The Secretary shall encourage the deployment of ITS technologies that will improve the performance of the National Highway System in such areas as traffic operations, emergency response, incident management, surface transportation network management, freight management, traffic flow information, and congestion management by accelerating the adoption of innovative technologies through the use of—

''(A) demonstration programs;

''(B) grant funding;

''(C) incentives to eligible entities; and

''(D) other tools, strategies, or methods that will result in the deployment of innovative ITS technologies.

''(2) COMPREHENSIVE PLAN.—To carry out this section, the Secretary shall develop a detailed and comprehensive plan that addresses the manner in which incentives may be adopted, as appropriate, through the existing deployment activities carried out by surface transportation modal administrations.''.

SEC. 53002. GOALS AND PURPOSES.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 513 the following:

''§ 514. Goals and purposes

''(a) GOALS.—The goals of the intelligent transportation system program include—

''(1) enhancement of surface transportation efficiency and facilitation of intermodalism and international trade to enable existing facilities to meet a significant portion of future transportation needs, including public access to employment, goods, and services and to reduce regulatory, financial, and other transaction costs to public agencies and system users;

''(2) achievement of national transportation safety goals, including enhancement of safe operation of motor vehicles and nonmotorized vehicles and improved emergency response to collisions, with particular emphasis on decreasing the number and severity of collisions;

''(3) protection and enhancement of the natural environment and communities affected by surface transportation, with particular emphasis on assisting State and local governments to achieve national environmental goals;

''(4) accommodation of the needs of all users of surface transportation systems, including operators of commercial motor vehicles, passenger motor vehicles, motorcycles, bicycles, and pedestrians (including individuals with disabilities); and

''(5) enhancement of national defense mobility and improvement of the ability of the United States to respond to security-related or other manmade emergencies and natural disasters.

''(b) PURPOSES.—The Secretary shall implement activities under the intelligent transportation system program, at a minimum—

''(1) to expedite, in both metropolitan and rural areas, deployment and integration of intelligent transportation systems for consumers of passenger and freight transportation;

''(2) to ensure that Federal, State, and local transportation officials have adequate knowledge of intelligent transportation systems for consideration in the transportation planning process;

''(3) to improve regional cooperation and operations planning for effective intelligent transportation system deployment;

''(4) to promote the innovative use of private resources in support of intelligent transportation system development;

''(5) to facilitate, in cooperation with the motor vehicle industry, the introduction of vehicle-based safety enhancing systems;

''(6) to support the application of intelligent transportation systems that increase the safety and efficiency of commercial motor vehicle operations;

''(7) to develop a workforce capable of developing, operating, and maintaining intelligent transportation systems;

''(8) to provide continuing support for operations and maintenance of intelligent transportation systems; and

''(9) to ensure a systems approach that includes cooperation among vehicles, infrastructure, and users.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by adding after the item relating to section 513 the following:

''514. Goals and purposes.''.

SEC. 53003. GENERAL AUTHORITIES AND REQUIREMENTS.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 514 (as added by section 53002) the following:

''§ 515. General authorities and requirements

''(a) SCOPE.—Subject to the provisions of this chapter, the Secretary shall conduct an ongoing intelligent transportation system program—

''(1) to research, develop, and operationally test intelligent transportation systems; and

''(2) to provide technical assistance in the nationwide application of those systems as a component of the surface transportation systems of the United States.

''(b) POLICY.—Intelligent transportation system research projects and operational tests funded pursuant to this chapter shall encourage and not displace public-private partnerships or private sector investment in those tests and projects.

''(c) COOPERATION WITH GOVERNMENTAL, PRIVATE, AND EDUCATIONAL ENTITIES.—The Secretary shall carry out the intelligent transportation system program in cooperation with State and local governments and other public entities, the private sector firms of the United States, the Federal laboratories, and institutions of higher education, including historically Black colleges and universities and other minority institutions of higher education.

''(d) CONSULTATION WITH FEDERAL OFFICIALS.—In carrying out the intelligent transportation system program, the Secretary shall consult with the heads of other Federal agencies, as appropriate.

''(e) TECHNICAL ASSISTANCE, TRAINING, AND INFORMATION.—The Secretary may provide technical assistance, training, and information to State and local governments seeking to implement, operate, maintain, or evaluate intelligent transportation system technologies and services.

''(f) TRANSPORTATION PLANNING.—The Secretary may provide funding to support adequate consideration of transportation systems management and operations, including intelligent transportation systems, within metropolitan and statewide transportation planning processes.

''(g) INFORMATION CLEARINGHOUSE.—

''(1) IN GENERAL.—The Secretary shall—

''(A) maintain a repository for technical and safety data collected as a result of federally sponsored projects carried out under this chapter; and

''(B) make, on request, that information (except for proprietary information and data) readily available to all users of the repository at an appropriate cost.

''(2) AGREEMENT.—

''(A) IN GENERAL.—The Secretary may enter into an agreement with a third party for the maintenance of the repository for technical and safety data under paragraph (1)(A).

''(B) FEDERAL FINANCIAL ASSISTANCE.—If the Secretary enters into an agreement with an entity for the maintenance of the repository, the entity shall be eligible for Federal financial assistance under this section.

''(3) AVAILABILITY OF INFORMATION.—Information in the repository shall not be subject to sections 552 and 555 of title 5, United States Code.

''(h) ADVISORY COMMITTEE.—

''(1) IN GENERAL.—The Secretary shall establish an Advisory Committee to advise the Secretary on carrying out this chapter.

''(2) MEMBERSHIP.—The Advisory Committee shall have no more than 20 members, be balanced between metropolitan and rural interests, and include, at a minimum—

''(A) a representative from a State highway department;

''(B) a representative from a local highway department who is not from a metropolitan planning organization;

''(C) a representative from a State, local, or regional transit agency;

''(D) a representative from a metropolitan planning organization;

''(E) a private sector user of intelligent transportation system technologies;

''(F) an academic researcher with expertise in computer science or another information science field related to intelligent transportation systems, and who is not an expert on transportation issues;

''(G) an academic researcher who is a civil engineer;

''(H) an academic researcher who is a social scientist with expertise in transportation issues;

''(I) a representative from a nonprofit group representing the intelligent transportation system industry;

''(J) a representative from a public interest group concerned with safety;

''(K) a representative from a public interest group concerned with the impact of the transportation system on land use and residential patterns; and

''(L) members with expertise in planning, safety, telecommunications, utilities, and operations.

''(3) DUTIES.—The Advisory Committee shall, at a minimum, perform the following duties:

''(A) Provide input into the development of the intelligent transportation system aspects of the strategic plan under section 508.

''(B) Review, at least annually, areas of intelligent transportation systems research being considered for funding by the Department, to determine—

''(i) whether these activities are likely to advance either the state-of-the-practice or state-of-the-art in intelligent transportation systems;

''(ii) whether the intelligent transportation system technologies are likely to be deployed by users, and if not, to determine the barriers to deployment; and

''(iii) the appropriate roles for government and the private sector in investing in the research and technologies being considered.

''(4) REPORT.—Not later than February 1 of each year after the date of enactment of the Transportation Research and Innovative Technology Act of 2012, the Secretary shall submit to Congress a report that includes—

''(A) all recommendations made by the Advisory Committee during the preceding calendar year;

''(B) an explanation of the manner in which the Secretary has implemented those recommendations; and

''(C) for recommendations not implemented, the reasons for rejecting the recommendations.

''(5) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Advisory Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

''(i) REPORTING.—

''(1) GUIDELINES AND REQUIREMENTS.—

''(A) IN GENERAL.—The Secretary shall issue guidelines and requirements for the reporting and evaluation of operational tests and deployment projects carried out under this chapter.

''(B) OBJECTIVITY AND INDEPENDENCE.—The guidelines and requirements issued under subparagraph (A) shall include provisions to ensure the objectivity and independence of the reporting entity so as to avoid any real or apparent conflict of interest or potential influence on the outcome by parties to any such test or deployment project or by any other formal evaluation carried out under this chapter.

''(C) FUNDING.—The guidelines and requirements issued under subparagraph (A) shall establish reporting funding levels based on the size and scope of each test or project that ensure adequate reporting of the results of the test or project.

''(2) SPECIAL RULE.—Any survey, questionnaire, or interview that the Secretary considers necessary to carry out the reporting of any test, deployment project, or program assessment activity under this chapter shall not be subject to chapter 35 of title 44, United States Code.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by adding after the item relating to section 514 (as added by section 53002) the following:

''515. General authorities and requirements.''.

SEC. 53004. RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 515 (as added by section 53003) the following:

''§ 516. Research and development

''(a) IN GENERAL.—The Secretary shall carry out a comprehensive program of intelligent transportation system research and development, and operational tests of intelligent vehicles, intelligent infrastructure systems, and other similar activities that are necessary to carry out this chapter.

''(b) PRIORITY AREAS.—Under the program, the Secretary shall give higher priority to funding projects that—

''(1) enhance mobility and productivity through improved traffic management, incident management, transit management, freight management, road weather management, toll collection, traveler information, or highway operations systems and remote sensing products;

''(2) use interdisciplinary approaches to develop traffic management strategies and tools to address multiple impacts of congestion concurrently;

''(3) address traffic management, incident management, transit management, toll collection traveler information, or highway operations systems;

''(4) incorporate research on the potential impact of environmental, weather, and natural conditions on intelligent transportation systems, including the effects of cold climates;

''(5) enhance intermodal use of intelligent transportation systems for diverse groups, including for emergency and health-related services;

''(6) enhance safety through improved crash avoidance and protection, crash and other notification, commercial motor vehicle operations, and infrastructure-based or cooperative safety systems; or

''(7) facilitate the integration of intelligent infrastructure, vehicle, and control technologies.

''(c) FEDERAL SHARE.—The Federal share payable on account of any project or activity carried out under subsection (a) shall not exceed 80 percent.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by adding after the item relating to section 515 (as added by section 53003) the following:

''516. Research and development.''.

SEC. 53005. NATIONAL ARCHITECTURE AND STANDARDS.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 516 (as added by section 53004) the following:

"§ 517. National architecture and standards

''(a) IN GENERAL.—

''(1) DEVELOPMENT, IMPLEMENTATION, AND MAINTENANCE.—In accordance with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note; 110 Stat. 783; 115 Stat. 1241), the Secretary shall develop and maintain a national ITS architecture and supporting ITS standards and protocols to promote the use of systems engineering methods in the widespread deployment and evaluation of intelligent transportation systems as a component of the surface transportation systems of the United States.

''(2) INTEROPERABILITY AND EFFICIENCY.—To the maximum extent practicable, the national ITS architecture and supporting ITS standards and protocols shall promote interoperability among, and efficiency of, intelligent transportation systems and technologies implemented throughout the United States.

''(3) USE OF STANDARDS DEVELOPMENT ORGANIZATIONS.—In carrying out this section, the Secretary shall support the development and maintenance of standards and protocols using the services of such standards development organizations as the Secretary determines to be necessary and whose memberships are comprised of, and represent, the surface transportation and intelligent transportation systems industries.

''(b) STANDARDS FOR NATIONAL POLICY IMPLEMENTATION.—If the Secretary finds that a standard is necessary for implementation of a nationwide policy relating to user fee collection or other capability requiring nationwide uniformity, the Secretary, after consultation with stakeholders, may establish and require the use of that standard.

''(c) PROVISIONAL STANDARDS.—

''(1) IN GENERAL.—If the Secretary finds that the development or balloting of an intelligent transportation system standard jeopardizes the timely achievement of the objectives described in subsection (a), the Secretary may establish a provisional standard, after consultation with affected parties, using, to the maximum extent practicable, the work product of appropriate standards development organizations.

''(2) PERIOD OF EFFECTIVENESS.—A provisional standard established under paragraph (1) shall be published in the Federal Register and remain in effect until the appropriate standards development organization adopts and publishes a standard.

''(d) CONFORMITY WITH NATIONAL ARCHITECTURE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall ensure that intelligent transportation system projects carried out using amounts made available from the Highway Trust Fund, including amounts made available to deploy intelligent transportation systems, conform to the appropriate regional ITS architecture, applicable standards, and protocols developed under subsection (a) or (c).

''(2) DISCRETION OF THE SECRETARY.—The Secretary, at the discretion of the Secretary, may offer an exemption from paragraph (1) for projects designed to achieve specific research objectives outlined in the national intelligent transportation system program plan or the surface transportation research and development strategic plan developed under section 508.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by adding after the item relating to section 516 (as added by section 53004) the following:

''517. National architecture and standards.''.

SEC. 53006. VEHICLE-TO-VEHICLE AND VEHICLE-TO-INFRASTRUCTURE COMMUNICATIONS SYSTEMS DEPLOYMENT.

(a) IN GENERAL.—Chapter 5 of title 23, United States Code, is amended by adding after section 517 (as added by section 53005) the following:

"§ 518. Vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment

''(a) IN GENERAL.—Not later than 3 years after the date of enactment of this section, the Secretary shall submit to the Committees on Commerce, Science, and Transportation and Environment and Public Works of the Senate and the Committees on Transportation and Infrastructure, Energy and Commerce, and Science, Space, and Technology of the House of Representatives that—

''(1) assesses the status of dedicated short-range communications technology and applications developed through research and development;

''(2) analyzes the known and potential gaps in short-range communications technology and applications;

''(3) defines a recommended implementation path for dedicated short-range communications technology and applications that—

''(A) is based on the assessment described in paragraph (1); and

''(B) takes into account the analysis described in paragraph (2);

''(4) includes guidance on the relationship of the proposed deployment of dedicated short-range communications to the National ITS Architecture and ITS Standards; and

''(5) ensures competition by not preferencing the use of any particular frequency for vehicle to infrastructure operations.

''(b) REPORT REVIEW.—The Secretary shall enter into agreements with the National Research Council and an independent third party with subject matter expertise for the review of the report described in subsection (a).''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 5 of title 23, United States Code, is amended by adding after section 517 (as added by section 53005) the following:

''518. Vehicle-to-vehicle and vehicle-to-infrastructure communications systems deployment.''.

DIVISION F—MISCELLANEOUS

TITLE I—REAUTHORIZATION OF CERTAIN PROGRAMS

Subtitle A—Secure Rural Schools and Community Self-determination Program

SEC. 100101. SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION PROGRAM.

(a) AMENDMENTS.—The Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7101 et seq.) is amended—

(1) in section 3(11)—

(A) in subparagraph (A), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (B)—

(i) by striking ''fiscal year 2009 and each fiscal year thereafter'' and inserting ''each of fiscal years 2009 through 2011''; and

(ii) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) for fiscal year 2012 and each fiscal year thereafter, the amount that is equal to 95 percent of the full funding amount for the preceding fiscal year.'';

(2) in sections 101, 102, 203, 207, 208, 304, and 402, by striking ''2011'' each place it appears and inserting ''2012'';

(3) in section 102—

(A) by striking ''2008'' each place it appears and inserting ''2012'';

(B) in subsection (b)(2)(B), by inserting ''in 2012'' before '', the election''; and

(C) in subsection (d)—

(i) in paragraph (1)(A), by striking ''paragraph (3)(B)'' and inserting ''subparagraph (D)''; and

(ii) in paragraph (3)—

(I) by striking subparagraph (A) and inserting the following:

''(A) NOTIFICATION.—The Governor of each eligible State shall notify the Secretary concerned of an election by an eligible county under this subsection not later than September 30, 2012, and each September 30 thereafter for each succeeding fiscal year.'';

(II) by redesignating subparagraph (B) as subparagraph (D) and moving the subparagraph so as to appear at the end of paragraph (1) of subsection (d); and

(III) by inserting after subparagraph (A) the following:

''(B) FAILURE TO ELECT.—If the Governor of an eligible State fails to notify the Secretary concerned of the election for an eligible county by the date specified in subparagraph (A)—

''(i) the eligible county shall be considered to have elected to expend 80 percent of the funds in accordance with paragraph (1)(A); and

''(ii) the remainder shall be available to the Secretary concerned to carry out projects in the eligible county to further the purpose described in section 202(b).'';

(4) in section 103(d)(2), by striking ''fiscal year 2011'' and inserting ''each of fiscal years 2011 and 2012'';

(5) in section 202, by adding at the end the following:

''(c) ADMINISTRATIVE EXPENSES.—A resource advisory committee may, in accordance with section 203, propose to use not more than 10 percent of the project funds of an eligible county for any fiscal year for administrative expenses associated with operating the resource advisory committee under this title.'';

(6) in section 204(e)(3)(B)(iii), by striking ''and 2011'' and inserting ''through 2012'';

(7) in section 205(a)(4), by striking ''2006'' each place it appears and inserting ''2011'';

(8) in section 208(b), by striking ''2012'' and inserting ''2013'';

(9) in section 302(a)(2)(A), by inserting ''and'' after the semicolon; and

(10) in section 304(b), by striking ''2012'' and inserting ''2013''.

(b) FAILURE TO MAKE ELECTION.—For each county that failed to make an election for fiscal year 2011 in accordance with section 102(d)(3)(A) of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7112(d)(3)(A)), there shall be available to the Secretary of Agriculture to carry out projects to further the purpose described in section 202(b) of that Act (16 U.S.C. 7122(b)), from amounts in the Treasury not otherwise appropriated, the amount that is equal to 15 percent of the total share of the State payment that otherwise would have been made to the county under that Act for fiscal year 2011.

Subtitle B—Payment in Lieu of Taxes Program

SEC. 100111. PAYMENTS IN LIEU OF TAXES.

Section 6906 of title 31, United States Code, is amended by striking ''2012'' and inserting ''2013''.

Subtitle C—Offsets

SEC. 100121. PHASED RETIREMENT AUTHORITY.

(a) CSRS.—Chapter 83 of title 5, United States Code, is amended—

(1) in section 8331—

(A) in paragraph (30) by striking ''and'' at the end;

(B) in paragraph (31) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(32) 'Director' means the Director of the Office of Personnel Management.'';

(2) by inserting after section 8336 the following:

"§ 8336a. Phased retirement

''(a) For the purposes of this section—

''(1) the term 'composite retirement annuity' means the annuity computed when a phased retiree attains full retirement status;

''(2) the term 'full retirement status' means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity;

''(3) the term 'phased employment' means the less-than-full-time employment of a phased retiree;

''(4) the term 'phased retiree' means a retirement-eligible employee who—

''(A) makes an election under subsection (b); and

''(B) has not entered full retirement status;

''(5) the term 'phased retirement annuity' means the annuity payable under this section before full retirement;

''(6) the term 'phased retirement percentage' means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent;

''(7) the term 'phased retirement period' means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment;

''(8) the term 'phased retirement status' means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity;

''(9) the term 'retirement-eligible employee'—

''(A) means an individual who, if the individual separated from the service, would meet the requirements for retirement under subsection (a) or (b) of section 8336; but

''(B) does not include an employee described in section 8335 after the date on which the employee is required to be separated from the service by reason of such section; and

''(10) the term 'working percentage' means the percentage of full-time employment equal to the quotient obtained by dividing—

''(A) the number of hours per pay period to be worked by a phased retiree, as scheduled in accordance with subsection (b)(2); by

''(B) the number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

''(b)(1) With the concurrence of the head of the employing agency, and under regulations promulgated by the Director, a retirement-eligible employee who has been employed on a full-time basis for not less than the 3-year period ending on the date on which the retirement-eligible employee makes an election under this subsection may elect to enter phased retirement status.

''(2)(A) Subject to subparagraph (B), at the time of entering phased retirement status, a phased retiree shall be appointed to a position for which the working percentage is 50 percent.

''(B) The Director may, by regulation, provide for working percentages different from the percentage specified under subparagraph (A), which shall be not less than 20 percent and not more than 80 percent.

''(C) The working percentage for a phased retiree may not be changed during the phased retiree's phased retirement period.

''(D)(i) Not less than 20 percent of the hours to be worked by a phased retiree shall consist of mentoring.

''(ii) The Director may, by regulation, provide for exceptions to the requirement under clause (i).

''(iii) Clause (i) shall not apply to a phased retiree serving in the United States Postal Service. Nothing in this clause shall prevent the application of clause (i) or (ii) with respect to a phased retiree serving in the Postal Regulatory Commission.

''(3) A phased retiree—

''(A) may not be employed in more than one position at any time; and

''(B) may transfer to another position in the same or a different agency, only if the transfer does not result in a change in the working percentage.

''(4) A retirement-eligible employee may make not more than one election under this subsection during the retirement-eligible employee's lifetime.

''(5) A retirement-eligible employee who makes an election under this subsection may not make an election under section 8343a.

''(c)(1) Except as otherwise provided under this subsection, the phased retirement annuity for a phased retiree is the product obtained by multiplying—

''(A) the amount of an annuity computed under section 8339 that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired under section 8336(a) or (b); by

''(B) the phased retirement percentage for the phased retiree.

''(2) A phased retirement annuity shall be paid in addition to the basic pay for the position to which a phased retiree is appointed during phased employment.

''(3) A phased retirement annuity shall be adjusted in accordance with section 8340.

''(4)(A) A phased retirement annuity shall not be subject to reduction for any form of survivor annuity, shall not serve as the basis of the computation of any survivor annuity, and shall not be subject to any court order requiring a survivor annuity to be provided to any individual.

''(B) A phased retirement annuity shall be subject to a court order providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities.

''(5) Any reduction of a phased retirement annuity based on an election under section 8334(d)(2) shall be applied to the phased retirement annuity after computation under paragraph (1).

''(6)(A) Any deposit, or election of an actuarial annuity reduction in lieu of a deposit, for military service or for creditable civilian service for which retirement deductions were not made or refunded shall be made by a retirement-eligible employee at or before the time the retirement-eligible employee enters phased retirement status. No such deposit may be made, or actuarial adjustment in lieu thereof elected, at the time a phased retiree enters full retirement status.

''(B) Notwithstanding subparagraph (A), if a phased retiree does not make such a deposit and dies in service as a phased retiree, a survivor of the phased retiree shall have the same right to make such deposit as would have been available had the employee not entered phased retirement status and died in service.

''(C) If a phased retiree makes an election for an actuarial annuity reduction under section 8334(d)(2) and dies in service as a phased retiree, the amount of any deposit upon which such actuarial reduction shall have been based shall be deemed to have been fully paid.

''(7) A phased retirement annuity shall commence on the date on which a phased retiree enters phased employment.

''(8) No unused sick leave credit may be used in the computation of the phased retirement annuity.

''(d) All basic pay not in excess of the full-time rate of pay for the position to which a phased retiree is appointed shall be deemed to be basic pay for purposes of section 8334.

''(e) Under such procedures as the Director may prescribe, a phased retiree may elect to enter full retirement status at any time. Upon making such an election, a phased retiree shall be entitled to a composite retirement annuity.

''(f)(1) Except as provided otherwise under this subsection, a composite retirement annuity is a single annuity computed under regulations prescribed by the Director, equal to the sum of—

''(A) the amount of the phased retirement annuity as of the date of full retirement, before any reduction based on an election under section 8334(d)(2), and including any adjustments made under section 8340; and

''(B) the product obtained by multiplying—

''(i) the amount of an annuity computed under section 8339 that would have been payable at the time of full retirement if the individual had not elected a phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any reduction for survivor annuity or reduction based on an election under section 8334(d)(2); by

''(ii) the working percentage.

''(2) After computing a composite retirement annuity under paragraph (1), the Director shall adjust the amount of the annuity for any applicable reductions for a survivor annuity and any previously elected actuarial reduction under section 8334(d)(2).

''(3) A composite retirement annuity shall be adjusted in accordance with section 8340, except that subsection (c)(1) of that section shall not apply.

''(4) In computing a composite retirement annuity under paragraph (1)(B)(i), the unused sick leave to the credit of a phased retiree at the time of entry into full retirement status shall be adjusted by dividing the number of hours of unused sick leave by the working percentage.

''(g)(1) Under such procedures and conditions as the Director may provide, and with the concurrence of the head of the employing agency, a phased retiree may elect to terminate phased retirement status and return to a full-time work schedule.

''(2) Upon entering a full-time work schedule based upon an election under paragraph (1), the phased retirement annuity of a phased retiree shall terminate.

''(3) After the termination of a phased retirement annuity under this subsection, the individual's rights under this subchapter shall be determined based on the law in effect at the time of any subsequent separation from service. For purposes of this subchapter or chapter 84, at time of the subsequent separation from service, the phased retirement period shall be treated as if it had been a period of part-time employment with the work schedule described in subsection (b)(2).

''(h) For purposes of section 8341—

''(1) the death of a phased retiree shall be deemed to be the death in service of an employee; and

''(2) the phased retirement period shall be deemed to have been a period of part-time employment with the work schedule described in subsection (b)(2).

''(i) Employment of a phased retiree shall not be deemed to be part-time career employment, as defined in section 3401(2).

''(j) A phased retiree is not eligible to apply for an annuity under section 8337.

''(k) For purposes of section 8341(h)(4), retirement shall be deemed to occur on the date on which a phased retiree enters into full retirement status.

''(l) For purposes of sections 8343 and 8351, and subchapter III of chapter 84, a phased retiree shall be deemed to be an employee.

''(m) A phased retiree is not subject to section 8344.

''(n) For purposes of chapter 87, a phased retiree shall be deemed to be receiving basic pay at the rate of a full-time employee in the position to which the phased retiree is appointed.''; and

(3) in the table of sections by inserting after the item relating to section 8336 the following:

''8336a. Phased retirement.''.

(b) FERS.—Chapter 84 of title 5, United States Code, is amended—

(1) by inserting after section 8412 the following new section:

''§ 8412a. Phased retirement

''(a) For the purposes of this section—

''(1) the term 'composite retirement annuity' means the annuity computed when a phased retiree attains full retirement status;

''(2) the term 'full retirement status' means that a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity;

''(3) the term 'phased employment' means the less-than-full-time employment of a phased retiree;

''(4) the term 'phased retiree' means a retirement-eligible employee who—

''(A) makes an election under subsection (b); and

''(B) has not entered full retirement status;

''(5) the term 'phased retirement annuity' means the annuity payable under this section before full retirement;

''(6) the term 'phased retirement percentage' means the percentage which, when added to the working percentage for a phased retiree, produces a sum of 100 percent;

''(7) the term 'phased retirement period' means the period beginning on the date on which an individual becomes entitled to receive a phased retirement annuity and ending on the date on which the individual dies or separates from phased employment;

''(8) the term 'phased retirement status' means that a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity;

''(9) the term 'retirement-eligible employee'—

''(A) means an individual who, if the individual separated from the service, would meet the requirements for retirement under subsection (a) or (b) of section 8412; and

''(B) does not include—

''(i) an individual who, if the individual separated from the service, would meet the requirements for retirement under subsection (d) or (e) of section 8412; but

''(ii) does not include an employee described in section 8425 after the date on which the employee is required to be separated from the service by reason of such section; and

''(10) the term 'working percentage' means the percentage of full-time employment equal to the quotient obtained by dividing—

''(A) the number of hours per pay period to be worked by a phased retiree, as scheduled in accordance with subsection (b)(2); by

''(B) the number of hours per pay period to be worked by an employee serving in a comparable position on a full-time basis.

''(b)(1) With the concurrence of the head of the employing agency, and under regulations promulgated by the Director, a retirement-eligible employee who has been employed on a full-time basis for not less than the 3-year period ending on the date on which the retirement-eligible employee makes an election under this subsection may elect to enter phased retirement status.

''(2)(A) Subject to subparagraph (B), at the time of entering phased retirement status, a phased retiree shall be appointed to a position for which the working percentage is 50 percent.

''(B) The Director may, by regulation, provide for working percentages different from the percentage specified under subparagraph (A), which shall be not less than 20 percent and not more than 80 percent.

''(C) The working percentage for a phased retiree may not be changed during the phased retiree's phased retirement period.

''(D)(i) Not less than 20 percent of the hours to be worked by a phased retiree shall consist of mentoring.

''(ii) The Director may, by regulation, provide for exceptions to the requirement under clause (i).

''(iii) Clause (i) shall not apply to a phased retiree serving in the United States Postal Service. Nothing in this clause shall prevent the application of clause (i) or (ii) with respect to a phased retiree serving in the Postal Regulatory Commission.

''(3) A phased retiree—

''(A) may not be employed in more than one position at any time; and

''(B) may transfer to another position in the same or a different agency, only if the transfer does not result in a change in the working percentage.

''(4) A retirement-eligible employee may make not more than one election under this subsection during the retirement-eligible employee's lifetime.

''(5) A retirement-eligible employee who makes an election under this subsection may not make an election under section 8420a.

''(c)(1) Except as otherwise provided under this subsection, the phased retirement annuity for a phased retiree is the product obtained by multiplying—

''(A) the amount of an annuity computed under section 8415 that would have been payable to the phased retiree if, on the date on which the phased retiree enters phased retirement status, the phased retiree had separated from service and retired under section 8412 (a) or (b); by

''(B) the phased retirement percentage for the phased retiree.

''(2) A phased retirement annuity shall be paid in addition to the basic pay for the position to which a phased retiree is appointed during the phased employment.

''(3) A phased retirement annuity shall be adjusted in accordance with section 8462.

''(4)(A) A phased retirement annuity shall not be subject to reduction for any form of survivor annuity, shall not serve as the basis of the computation of any survivor annuity, and shall not be subject to any court order requiring a survivor annuity to be provided to any individual.

''(B) A phased retirement annuity shall be subject to a court order providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities.

''(5)(A) Any deposit, or election of an actuarial annuity reduction in lieu of a deposit, for military service or for creditable civilian service for which retirement deductions were not made or refunded, shall be made by a retirement-eligible employee at or before the time the retirement-eligible employee enters phased retirement status. No such deposit may be made, or actuarial adjustment in lieu thereof elected, at the time a phased retiree enters full retirement status.

''(B) Notwithstanding subparagraph (A), if a phased retiree does not make such a deposit and dies in service as a phased retiree, a survivor of the phased retiree shall have the same right to make such deposit as would have been available had the employee not entered phased retirement status and died in service.

''(6) A phased retirement annuity shall commence on the date on which a phased retiree enters phased employment.

''(7) No unused sick leave credit may be used in the computation of the phased retirement annuity.

''(d) All basic pay not in excess of the full-time rate of pay for the position to which a phased retiree is appointed shall be deemed to be basic pay for purposes of sections 8422 and 8423.

''(e) Under such procedures as the Director may prescribe, a phased retiree may elect to enter full retirement status at any time. Upon making such an election, a phased retiree shall be entitled to a composite retirement annuity.

''(f)(1) Except as provided otherwise under this subsection, a composite retirement annuity is a single annuity computed under regulations prescribed by the Director, equal to the sum of—

''(A) the amount of the phased retirement annuity as of the date of full retirement, including any adjustments made under section 8462; and

''(B) the product obtained by multiplying—

''(i) the amount of an annuity computed under section 8412 that would have been payable at the time of full retirement if the individual had not elected a phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and before any adjustment to provide for a survivor annuity; by

''(ii) the working percentage.

''(2) After computing a composite retirement annuity under paragraph (1), the Director shall adjust the amount of the annuity for any applicable reductions for a survivor annuity.

''(3) A composite retirement annuity shall be adjusted in accordance with section 8462, except that subsection (c)(1) of that section shall not apply.

''(4) In computing a composite retirement annuity under paragraph (1)(B)(i), the unused sick leave to the credit of a phased retiree at the time of entry into full retirement status shall be adjusted by dividing the number of hours of unused sick leave by the working percentage.

''(g)(1) Under such procedures and conditions as the Director may provide, and with the concurrence of the head of employing agency, a phased retiree may elect to terminate phased retirement status and return to a full-time work schedule.

''(2) Upon entering a full-time work schedule based on an election under paragraph (1), the phased retirement annuity of a phased retiree shall terminate.

''(3) After termination of the phased retirement annuity under this subsection, the individual's rights under this chapter shall be determined based on the law in effect at the time of any subsequent separation from service. For purposes of this chapter, at the time of the subsequent separation from service, the phased retirement period shall be treated as if it had been a period of part-time employment with the work schedule described in subsection (b)(2).

''(h) For purposes of subchapter IV—

''(1) the death of a phased retiree shall be deemed to be the death in service of an employee;

''(2) except for purposes of section 8442(b)(1)(A)(i), the phased retirement period shall be deemed to have been a period of part-time employment with the work schedule described in subsection (b)(2) of this section; and

''(3) for purposes of section 8442(b)(1)(A)(i), the phased retiree shall be deemed to have been at the full-time rate of pay for the position occupied.

''(i) Employment of a phased retiree shall not be deemed to be part-time career employment, as defined in section 3401(2).

''(j) A phased retiree is not eligible to receive an annuity supplement under section 8421.

''(k) For purposes of subchapter III, a phased retiree shall be deemed to be an employee.

''(l) For purposes of section 8445(d), retirement shall be deemed to occur on the date on which a phased retiree enters into full retirement status.

''(m) A phased retiree is not eligible to apply for an annuity under subchapter V.

''(n) A phased retiree is not subject to section 8468.

''(o) For purposes of chapter 87, a phased retiree shall be deemed to be receiving basic pay at the rate of a full-time employee in the position to which the phased retiree is appointed.''; and

(2) in the table of sections by inserting after the item relating to section 8412 the following:

''8412a. Phased retirement.''.

(c) EXEMPTION FROM 10-PERCENT ADDITIONAL TAX ON EARLY DISTRIBUTIONS.—Section 72(t)(2)(A) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of clause (vi), by striking the period at the end of clause (vii) and inserting '', or'', and by adding at the end the following:

''(viii) payments under a phased retirement annuity under section 8366a(a)(5) or 8412a(a)(5) of title 5, United States Code, or a composite retirement annuity under section 8366a(a)(1) or 8412a(a)(1) of such title.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the effective date of the implementing regulations issued by the Director of the Office of Personnel Management.

SEC. 100122. ROLL-YOUR-OWN CIGARETTE MACHINES.

(a) IN GENERAL.—Subsection (d) of section 5702 of the Internal Revenue Code of 1986 is amended by adding at the end the following new flush sentence:

''Such term shall include any person who for commercial purposes makes available for consumer use (including such consumer's personal

consumption or use under paragraph (1)) a machine capable of making cigarettes, cigars, or other tobacco products. A person making such a machine available for consumer use shall be deemed the person making the removal as defined by subsection (j) with respect to any tobacco products manufactured by such machine. A person who sells a machine directly to a consumer at retail for a consumer's personal home use is not making a machine available for commercial purposes if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to articles removed after the date of the enactment of this Act.

SEC. 100123. CHANGE IN FMAP INCREASE FOR DISASTER RECOVERY STATES.

(a) ACCELERATED DATE FOR PRIOR AMENDMENTS.—Section 3204(b) of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112–96) is amended by striking ''October 1, 2013'' and inserting ''October 1, 2012''.

(b) APPLICATION OF 50 PERCENT IN FISCAL YEAR 2013.—Subparagraph (B) of section 1905(aa)(1) of the Social Security Act (42 U.S.C. 1396d(aa)(1)), as amended by section 3204(a) of Public Law 112–96, is amended by striking ''25 percent'' and inserting ''25 percent (or 50 percent in the case of fiscal year 2013)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of section 3204 of Public Law 112–96.

SEC. 100124. REPEALS.

(a) TRANSPORTATION REQUIREMENTS FOR CERTAIN EXPORTS SPONSORED BY THE SECRETARY OF AGRICULTURE.—

(1) REPEAL.—Subsections (a) and (c) of section 55314 of title 46, United States Code, are repealed.

(2) ACTIVITIES DESCRIBED.—Subsection (b) of section 55314 of title 46, United States Code, is amended by striking ''This section applies to export activity'' and inserting ''The activities specified in this subsection are export activities''.

(b) FINANCING THE TRANSPORTATION OF AGRICULTURAL COMMODITIES.—Subsection (a) of section 55316 of title 46, United States Code, is repealed.

(c) CONFORMING AMENDMENTS.—

(1) MINIMUM TONNAGE.—Section 55315(b) of title 46, United States Code, is amended by striking ''subject to section 55314'' and inserting ''specified in section 55314(b)''.

(2) ISSUANCE AND PURCHASE OF OBLIGATIONS AND NOTIFICATION TO CONGRESS OF INSUFFICIENCY.—Section 55316 of title 46, United States Code, is amended—

(A) in subsection (c)(1) by striking ''under subsections (a) and (b)'' and inserting ''under subsection (b)''; and

(B) in subsection (f) by striking ''subsections (a) and (b) and section 55314(a) of this title'' and inserting ''subsection (b)''.

(3) TERMINATION OF SUBCHAPTER.—Section 55317 of title 46, United States Code, is amended by striking ''sections 55314(a) and 55316(a) and (b)'' and inserting ''section 55316(b)''.

SEC. 100125. LIMITATION ON PAYMENTS FROM THE ABANDONED MINE RECLAMATION FUND.

Section 411(h) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1240a(h)) is amended by adding at the end the following:

''(5) LIMITATION ON ANNUAL PAYMENTS.—Notwithstanding any other provision of this subsection, the total annual payment to a certified State or Indian tribe under this subsection shall be not more than $15,000,000.''.

TITLE II—FLOOD INSURANCE

Subtitle A—Flood Insurance Reform and Modernization

SEC. 100201. SHORT TITLE.

This subtitle may be cited as the ''Biggert-Waters Flood Insurance Reform Act of 2012''.

SEC. 100202. DEFINITIONS.

(a) IN GENERAL.—In this subtitle, the following definitions shall apply:

(1) 100-YEAR FLOODPLAIN.—The term ''100-year floodplain'' means that area which is subject to inundation from a flood having a 1-percent chance of being equaled or exceeded in any given year.

(2) 500-YEAR FLOODPLAIN.—The term ''500-year floodplain'' means that area which is subject to inundation from a flood having a 0.2-percent chance of being equaled or exceeded in any given year.

(3) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Federal Emergency Management Agency.

(4) NATIONAL FLOOD INSURANCE PROGRAM.—The term ''National Flood Insurance Program'' means the program established under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.).

(5) WRITE YOUR OWN.—The term ''Write Your Own'' means the cooperative undertaking between the insurance industry and the Federal Insurance Administration which allows participating property and casualty insurance companies to write and service standard flood insurance policies.

(b) COMMON TERMINOLOGY.—Except as otherwise provided in this subtitle, any terms used in this subtitle shall have the meaning given to such terms under section 1370 of the National Flood Insurance Act of 1968 (42 U.S.C. 4121).

SEC. 100203. EXTENSION OF NATIONAL FLOOD INSURANCE PROGRAM.

(a) FINANCING.—Section 1309(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)) is amended by striking ''July 31, 2012'' and inserting ''September 30, 2017''.

(b) PROGRAM EXPIRATION.—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026) is amended by striking ''July 31, 2012'' and inserting ''September 30, 2017''.

SEC. 100204. AVAILABILITY OF INSURANCE FOR MULTIFAMILY PROPERTIES.

Section 1305 of the National Flood Insurance Act of 1968 (42 U.S.C. 4012) is amended—

(1) in subsection (b)(2)(A), by inserting ''not described in subsection (a) or (d)'' after ''properties''; and

(2) by adding at the end the following:

''(d) AVAILABILITY OF INSURANCE FOR MULTIFAMILY PROPERTIES.—

''(1) IN GENERAL.—The Administrator shall make flood insurance available to cover residential properties of 5 or more residences. Notwithstanding any other provision of law, the maximum coverage amount that the Administrator may make available under this subsection to such residential properties shall be equal to the coverage amount made available to commercial properties.

''(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the ability of individuals residing in residential properties of 5 or more residences to obtain insurance for the contents and personal articles located in such residences.''.

SEC. 100205. REFORM OF PREMIUM RATE STRUCTURE.

(a) TO EXCLUDE CERTAIN PROPERTIES FROM RECEIVING SUBSIDIZED PREMIUM RATES.—

(1) IN GENERAL.—Section 1307 of the National Flood Insurance Act of 1968 (42 U.S.C. 4014) is amended—

(A) in subsection (a)(2), by striking ''for any residential property which is not the primary residence of an individual; and'' and inserting the following: ''for—

''(A) any residential property which is not the primary residence of an individual;

''(B) any severe repetitive loss property;

''(C) any property that has incurred flood-related damage in which the cumulative amounts of payments under this title equaled or exceeded the fair market value of such property;

''(D) any business property; or

''(E) any property which on or after the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012 has experienced or sustained—

''(i) substantial damage exceeding 50 percent of the fair market value of such property; or

''(ii) substantial improvement exceeding 30 percent of the fair market value of such property; and''; and

(B) by adding at the end the following:

''(g) NO EXTENSION OF SUBSIDY TO NEW POLICIES OR LAPSED POLICIES.—The Administrator shall not provide flood insurance to prospective insureds at rates less than those estimated under subsection (a)(1), as required by paragraph (2) of that subsection, for—

''(1) any property not insured by the flood insurance program as of the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012;

''(2) any property purchased after the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012;

''(3) any policy under the flood insurance program that has lapsed in coverage, as a result of the deliberate choice of the holder of such policy; or

''(4) any prospective insured who refuses to accept any offer for mitigation assistance by the Administrator (including an offer to relocate), including an offer of mitigation assistance—

''(A) following a major disaster, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122); or

''(B) in connection with—

''(i) a repetitive loss property; or

''(ii) a severe repetitive loss property.

''(h) DEFINITION.—In this section, the term 'severe repetitive loss property' has the following meaning:

''(1) SINGLE-FAMILY PROPERTIES.—In the case of a property consisting of 1 to 4 residences, such term means a property that—

''(A) is covered under a contract for flood insurance made available under this title; and

''(B) has incurred flood-related damage—

''(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this chapter, with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or

''(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

''(2) MULTIFAMILY PROPERTIES.—In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director shall by regulation provide.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall become effective 90 days after the date of enactment of this Act.

(b) ESTIMATES OF PREMIUM RATES.—Section 1307(a)(1)(B) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)(1)(B)) is amended—

(1) in clause (ii), by striking ''and'' at the end;

(2) in clause (iii), by adding ''and'' at the end; and

(3) by inserting after clause (iii) the following:

''(iv) all costs, as prescribed by principles and standards of practice in ratemaking adopted by the American Academy of Actuaries and the Casualty Actuarial Society, including—

''(I) an estimate of the expected value of future costs,

''(II) all costs associated with the transfer of risk, and

''(III) the costs associated with an individual risk transfer with respect to risk classes, as defined by the Administrator,''.

(c) INCREASE IN ANNUAL LIMITATION ON PREMIUM INCREASES.—Section 1308(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking ''or (3)''; and

(B) by inserting ''any properties'' after ''under this title for'';

(2) in paragraph (1)—

(A) by striking ''any properties within any single'' and inserting ''within any single''; and

(B) by striking ''10 percent'' and inserting ''20 percent''; and

(3) by striking paragraph (2) and inserting the following:

''(2) described in subparagraphs (A) through (E) of section 1307(a)(2) shall be increased by 25 percent each year, until the average risk premium rate for such properties is equal to the average of the risk premium rates for properties described under paragraph (1).''.

(d) PREMIUM PAYMENT FLEXIBILITY FOR NEW AND EXISTING POLICYHOLDERS.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by adding at the end the following:

''(g) FREQUENCY OF PREMIUM COLLECTION.—With respect to any chargeable premium rate prescribed under this section, the Administrator shall provide policyholders that are not required to escrow their premiums and fees for flood insurance as set forth under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) with the option of paying their premiums either annually or in more frequent installments.''.

(e) RULE OF CONSTRUCTION.—Nothing in this section or the amendments made by this section may be construed to affect the requirement under section 2(c) of the Act entitled ''An Act to extend the National Flood Insurance Program, and for other purposes'', approved May 31, 2012 (Public Law 112–123), that the first increase in chargeable risk premium rates for residential properties which are not the primary residence of an individual take effect on July 1, 2012.

SEC. 100207. PREMIUM ADJUSTMENT.

Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015), as amended by section 100205, is further amended by adding at the end the following:

''(h) PREMIUM ADJUSTMENT TO REFLECT CURRENT RISK OF FLOOD.—Notwithstanding subsection (f), upon the effective date of any revised or updated flood insurance rate map under this Act, the Flood Disaster Protection Act of 1973, or the Biggert-Waters Flood Insurance Reform Act of 2012, any property located in an area that is participating in the national flood insurance program shall have the risk premium rate charged for flood insurance on such property adjusted to accurately reflect the current risk of flood to such property, subject to any other provision of this Act. Any increase in the risk premium rate charged for flood insurance on any property that is covered by a flood insurance policy on the effective date of such an update that is a result of such updating shall be phased in over a 5-year period, at the rate of 20 percent for each year following such effective date. In the case of any area that was not previously designated as an area having special flood hazards and that, pursuant to any issuance, revision, updating, or other change in a flood insurance map, becomes designated as such an area, the chargeable risk premium rate for flood insurance under this title that is purchased on or after the date of enactment of this subsection with respect to any property that is located within such area shall be phased in over a 5-year period, at the rate of 20 percent for each year following the effective date of such issuance, revision, updating, or change.''.

SEC. 100208. ENFORCEMENT.

Section 102(f)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(5)) is amended—

(1) in the first sentence, by striking ''$350'' and inserting ''$2,000''; and

(2) by striking the second sentence.

SEC. 100209. ESCROW OF FLOOD INSURANCE PAYMENTS.

(a) IN GENERAL.—Paragraph (1) of section 102(d) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(d)) is amended to read as follows:

''(1) REGULATED LENDING INSTITUTIONS.—

''(A) FEDERAL ENTITIES RESPONSIBLE FOR LENDING REGULATIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Federal Financial Institutions Examination Council) shall, by regulation, direct that all premiums and fees for flood insurance under the National Flood Insurance Act of 1968, for improved real estate or a mobile home, shall be paid to the regulated lending institution or servicer for any loan secured by the improved real estate or mobile home, with the same frequency as payments on the loan are made, for the duration of the loan. Except as provided in subparagraph (C), upon receipt of any premiums or fees, the regulated lending institution or servicer shall deposit such premiums and fees in an escrow account on behalf of the borrower. Upon receipt of a notice from the Administrator or the provider of the flood insurance that insurance premiums are due, the premiums deposited in the escrow account shall be paid to the provider of the flood insurance.

''(B) LIMITATION.—Except as may be required under applicable State law, a Federal entity for lending regulation may not direct or require a regulated lending institution to deposit premiums or fees for flood insurance under the National Flood Insurance Act of 1968 in an escrow account on behalf of a borrower under subparagraph (A) or (B), if—

''(i) the regulated lending institution has total assets of less than $1,000,000,000; and

''(ii) on or before the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012, the regulated lending institution—

''(I) in the case of a loan secured by residential improved real estate or a mobile home, was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of the loan; and

''(II) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home.''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to any mortgage outstanding or entered into on or after the expiration of the 2-year period beginning on the date of enactment of this Act.

SEC. 100210. MINIMUM DEDUCTIBLES FOR CLAIMS UNDER THE NATIONAL FLOOD INSURANCE PROGRAM.

Section 1312 of the National Flood Insurance Act of 1968 (42 U.S.C. 4019) is amended—

(1) by striking ''The Director is'' and inserting the following:

''(a) IN GENERAL.—The Administrator is''; and

(2) by adding at the end the following:

''(b) MINIMUM ANNUAL DEDUCTIBLE.—

''(1) PRE-FIRM PROPERTIES.—For any structure which is covered by flood insurance under this title, and on which construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of an initial flood insurance rate map published by the Administrator under section 1360 for the area in which such structure is located, the minimum annual deductible for damage to such structure shall be—

''(A) $1,500, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount equal to or less than $100,000; and

''(B) $2,000, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount greater than $100,000.

''(2) POST-FIRM PROPERTIES.—For any structure which is covered by flood insurance under this title, and on which construction or substantial improvement occurred after December 31, 1974, or after the effective date of an initial flood insurance rate map published by the Administrator under section 1360 for the area in which such structure is located, the minimum annual deductible for damage to such structure shall be—

''(A) $1,000, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount equal to or less than $100,000; and

''(B) $1,250, if the flood insurance coverage for such structure covers loss of, or physical damage to, such structure in an amount greater than $100,000.''.

SEC. 100211. CONSIDERATIONS IN DETERMINING CHARGEABLE PREMIUM RATES.

Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015), as amended by this Act, is amended—

(1) in subsection (a), by striking '', after consultation with'' and all that follows through ''by regulation'' and inserting ''prescribe, after providing notice'';

(2) in subsection (b)—

(A) in paragraph (1), by striking the period at the end and inserting a semicolon;

(B) in paragraph (2), by striking the comma at the end and inserting a semicolon;

(C) in paragraph (3), by striking '', and'' and inserting a semicolon;

(D) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(E) by adding at the end the following:

''(5) adequate, on the basis of accepted actuarial principles, to cover the average historical loss year obligations incurred by the National Flood Insurance Fund.''; and

(3) by adding at the end the following:

''(i) RULE OF CONSTRUCTION.—For purposes of this section, the calculation of an 'average historical loss year'—

''(1) includes catastrophic loss years; and

''(2) shall be computed in accordance with generally accepted actuarial principles.''.

SEC. 100212. RESERVE FUND.

Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by inserting after section 1310 (42 U.S.C. 4017) the following:

''SEC. 1310A. RESERVE FUND.

''(a) ESTABLISHMENT OF RESERVE FUND.—In carrying out the flood insurance program authorized by this chapter, the Administrator shall establish in the Treasury of the United States a National Flood Insurance Reserve Fund (in this section referred to as the 'Reserve Fund') which shall—

''(1) be an account separate from any other accounts or funds available to the Administrator; and

''(2) be available for meeting the expected future obligations of the flood insurance program, including—

''(A) the payment of claims;

''(B) claims adjustment expenses; and

''(C) the repayment of amounts outstanding under any note or other obligation issued by the Administrator under section 1309(a).

''(b) RESERVE RATIO.—Subject to the phase-in requirements under subsection (d), the Reserve Fund shall maintain a balance equal to—

''(1) 1 percent of the sum of the total potential loss exposure of all outstanding flood insurance policies in force in the prior fiscal year; or

''(2) such higher percentage as the Administrator determines to be appropriate, taking into consideration any circumstance that may raise a significant risk of substantial future losses to the Reserve Fund.

''(c) MAINTENANCE OF RESERVE RATIO.—

''(1) IN GENERAL.—The Administrator shall have the authority to establish, increase, or decrease the amount of aggregate annual insurance premiums to be collected for any fiscal year necessary—

''(A) to maintain the reserve ratio required under subsection (b); and

''(B) to achieve such reserve ratio, if the actual balance of such reserve is below the amount required under subsection (b).

''(2) CONSIDERATIONS.—In exercising the authority granted under paragraph (1), the Administrator shall consider—

''(A) the expected operating expenses of the Reserve Fund;

''(B) the insurance loss expenditures under the flood insurance program;

''(C) any investment income generated under the flood insurance program; and

''(D) any other factor that the Administrator determines appropriate.

''(3) LIMITATIONS.—

''(A) RATES.—In exercising the authority granted under paragraph (1), the Administrator shall be subject to all other provisions of this Act, including any provisions relating to chargeable premium rates or annual increases of such rates.

''(B) USE OF ADDITIONAL ANNUAL INSURANCE PREMIUMS.—Notwithstanding any other provision of law or any agreement entered into by the Administrator, the Administrator shall ensure that all amounts attributable to the establishment or increase of annual insurance premiums under paragraph (1) are transferred to the Administrator for deposit into the Reserve Fund, to be available for meeting the expected future obligations of the flood insurance program as described in subsection (a)(2).

''(d) PHASE-IN REQUIREMENTS.—The phase-in requirements under this subsection are as follows:

''(1) IN GENERAL.—Beginning in fiscal year 2013 and not ending until the fiscal year in which the ratio required under subsection (b) is achieved, in each such fiscal year the Administrator shall place in the Reserve Fund an amount equal to not less than 7.5 percent of the reserve ratio required under subsection (b).

''(2) AMOUNT SATISFIED.—As soon as the ratio required under subsection (b) is achieved, and except as provided in paragraph (3), the Administrator shall not be required to set aside any amounts for the Reserve Fund.

''(3) EXCEPTION.—If at any time after the ratio required under subsection (b) is achieved, the Reserve Fund falls below the required ratio under subsection (b), the Administrator shall place in the Reserve Fund for that fiscal year an amount equal to not less than 7.5 percent of the reserve ratio required under subsection (b).

''(e) LIMITATION ON RESERVE RATIO.—In any given fiscal year, if the Administrator determines that the reserve ratio required under subsection (b) cannot be achieved, the Administrator shall submit a report to Congress that—

''(1) describes and details the specific concerns of the Administrator regarding the consequences of the reserve ratio not being achieved;

''(2) demonstrates how such consequences would harm the long-term financial soundness of the flood insurance program; and

''(3) indicates the maximum attainable reserve ratio for that particular fiscal year.

''(f) INVESTMENT.—The Secretary of the Treasury shall invest such amounts of the Reserve Fund as the Secretary determines advisable in obligations issued or guaranteed by the United States.''.

SEC. 100213. REPAYMENT PLAN FOR BORROWING AUTHORITY.

(a) REPAYMENT PLAN REQUIRED.—Section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016) is amended by adding at the end the following:

''(c) Upon the exercise of the authority established under subsection (a), the Administrator shall transmit a schedule for repayment of such amounts to—

''(1) the Secretary of the Treasury;

''(2) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(3) the Committee on Financial Services of the House of Representatives.

''(d) In connection with any funds borrowed by the Administrator under the authority established in subsection (a), the Administrator, beginning 6 months after the date on which such funds are borrowed, and continuing every 6 months thereafter until such borrowed funds are fully repaid, shall submit a report on the progress of such repayment to—

''(1) the Secretary of the Treasury;

''(2) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

''(3) the Committee on Financial Services of the House of Representatives.''.

(b) REPORT.—Not later than the expiration of the 6-month period beginning on the date of enactment of this Act, the Administrator shall submit a report to the Congress setting forth options for repaying within 10 years all amounts, including any amounts previously borrowed but not yet repaid, owed pursuant to clause (2) of subsection (a) of section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)(2)).

SEC. 100214. PAYMENT OF CONDOMINIUM CLAIMS.

Section 1312 of the National Flood Insurance Act of 1968 (42 U.S.C. 4019), as amended by section 100210, is amended by adding at the end the following:

''(c) PAYMENT OF CLAIMS TO CONDOMINIUM OWNERS.—The Administrator may not deny payment for any damage to or loss of property which is covered by flood insurance to condominium owners who purchased such flood insurance separate and apart from the flood insurance purchased by the condominium association in which such owner is a member, based solely, or in any part, on the flood insurance coverage of the condominium association or others on the overall property owned by the condominium association.''.

SEC. 100215. TECHNICAL MAPPING ADVISORY COUNCIL.

(a) ESTABLISHMENT.—There is established a council to be known as the Technical Mapping Advisory Council (in this section referred to as the ''Council'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of—

(A) the Administrator (or the designee thereof);

(B) the Secretary of the Interior (or the designee thereof);

(C) the Secretary of Agriculture (or the designee thereof);

(D) the Under Secretary of Commerce for Oceans and Atmosphere (or the designee thereof); and

(E) 16 additional members appointed by the Administrator or the designee of the Administrator, who shall be—

(i) a member of a recognized professional surveying association or organization;

(ii) a member of a recognized professional mapping association or organization;

(iii) a member of a recognized professional engineering association or organization;

(iv) a member of a recognized professional association or organization representing flood hazard determination firms;

(v) a representative of the United States Geological Survey;

(vi) a representative of a recognized professional association or organization representing State geographic information;

(vii) a representative of State national flood insurance coordination offices;

(viii) a representative of the Corps of Engineers;

(ix) a member of a recognized regional flood and storm water management organization;

(x) 2 representatives of different State government agencies that have entered into cooperating technical partnerships with the Administrator and have demonstrated the capability to produce flood insurance rate maps;

(xi) 2 representatives of different local government agencies that have entered into cooperating technical partnerships with the Administrator and have demonstrated the capability to produce flood insurance maps;

(xii) a member of a recognized floodplain management association or organization;

(xiii) a member of a recognized risk management association or organization; and

(xiv) a State mitigation officer.

(2) QUALIFICATIONS.—Members of the Council shall be appointed based on their demonstrated knowledge and competence regarding surveying, cartography, remote sensing, geographic information systems, or the technical aspects of preparing and using flood insurance rate maps. In appointing members under paragraph (1)(E), the Administrator shall, to the maximum extent practicable, ensure that the membership of the Council has a balance of Federal, State, local, tribal, and private members, and includes geographic diversity, including representation from areas with coastline on the Gulf of Mexico and other States containing areas identified by the Administrator as at high risk for flooding or as areas having special flood hazards.

(c) DUTIES.—The Council shall—

(1) recommend to the Administrator how to improve in a cost-effective manner the—

(A) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and

(B) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States;

(2) recommend to the Administrator mapping standards and guidelines for—

(A) flood insurance rate maps; and

(B) data accuracy, data quality, data currency, and data eligibility;

(3) recommend to the Administrator how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification;

(4) recommend procedures for delegating mapping activities to State and local mapping partners;

(5) recommend to the Administrator and other Federal agencies participating in the Council—

(A) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination; and

(B) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies; and

(6) submit an annual report to the Administrator that contains—

(A) a description of the activities of the Council;

(B) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update flood insurance rate maps, as required under section 100216; and

(C) a summary of recommendations made by the Council to the Administrator.

(d) FUTURE CONDITIONS RISK ASSESSMENT AND MODELING REPORT.—

(1) IN GENERAL.—The Council shall consult with scientists and technical experts, other Federal agencies, States, and local communities to—

(A) develop recommendations on how to—

(i) ensure that flood insurance rate maps incorporate the best available climate science to assess flood risks; and

(ii) ensure that the Federal Emergency Management Agency uses the best available methodology to consider the impact of—

(I) the rise in the sea level; and

(II) future development on flood risk; and

(B) not later than 1 year after the date of enactment of this Act, prepare written recommendations in a future conditions risk assessment and modeling report and to submit such recommendations to the Administrator.

(2) RESPONSIBILITY OF THE ADMINISTRATOR.—The Administrator, as part of the ongoing program to review and update National Flood Insurance Program rate maps under section 100216, shall incorporate any future risk assessment submitted under paragraph (1)(B) in any such revision or update.

(e) CHAIRPERSON.—The members of the Council shall elect 1 member to serve as the chairperson of the Council (in this section referred to as the ''Chairperson'').

(f) COORDINATION.—To ensure that the Council's recommendations are consistent, to the maximum extent practicable, with national digital spatial data collection and management standards, the Chairperson shall consult with the Chairperson of the Federal Geographic Data Committee (established pursuant to Office of Management and Budget Circular A–16).

(g) COMPENSATION.—Members of the Council shall receive no additional compensation by reason of their service on the Council.

(h) MEETINGS AND ACTIONS.—

(1) IN GENERAL.—The Council shall meet not less frequently than twice each year at the request of the Chairperson or a majority of its members, and may take action by a vote of the majority of the members.

(2) INITIAL MEETING.—The Administrator, or a person designated by the Administrator, shall request and coordinate the initial meeting of the Council.

(i) OFFICERS.—The Chairperson may appoint officers to assist in carrying out the duties of the Council under subsection (c).

(j) STAFF.—

(1) STAFF OF FEMA.—Upon the request of the Chairperson, the Administrator may detail, on a nonreimbursable basis, personnel of the Federal Emergency Management Agency to assist the Council in carrying out its duties.

(2) STAFF OF OTHER FEDERAL AGENCIES.—Upon request of the Chairperson, any other Federal agency that is a member of the Council may detail, on a nonreimbursable basis, personnel to assist the Council in carrying out its duties.

(k) POWERS.—In carrying out this section, the Council may hold hearings, receive evidence and assistance, provide information, and conduct research, as it considers appropriate.

(l) REPORT TO CONGRESS.—The Administrator, on an annual basis, shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and the Office of Management and Budget on the—

(1) recommendations made by the Council;

(2) actions taken by the Federal Emergency Management Agency to address such recommendations to improve flood insurance rate maps and flood risk data; and

(3) any recommendations made by the Council that have been deferred or not acted upon, together with an explanatory statement.

SEC. 100216. NATIONAL FLOOD MAPPING PROGRAM.

(a) REVIEWING, UPDATING, AND MAINTAINING MAPS.—The Administrator, in coordination with the Technical Mapping Advisory Council established under section 100215, shall establish an ongoing program under which the Administrator shall review, update, and maintain National Flood Insurance Program rate maps in accordance with this section.

(b) MAPPING.—

(1) IN GENERAL.—In carrying out the program established under subsection (a), the Administrator shall—

(A) identify, review, update, maintain, and publish National Flood Insurance Program rate maps with respect to—

(i) all populated areas and areas of possible population growth located within the 100-year floodplain;

(ii) all populated areas and areas of possible population growth located within the 500-year floodplain;

(iii) areas of residual risk, including areas that are protected by levees, dams, and other flood control structures;

(iv) areas that could be inundated as a result of the failure of a levee, dam, or other flood control structure; and

(v) the level of protection provided by flood control structures;

(B) establish or update flood-risk zone data in all such areas, and make estimates with respect to the rates of probable flood caused loss for the various flood risk zones for each such area; and

(C) use, in identifying, reviewing, updating, maintaining, or publishing any National Flood Insurance Program rate map required under this section or under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.), the most accurate topography and elevation data available.

(2) MAPPING ELEMENTS.—Each map updated under this section shall—

(A) assess the accuracy of current ground elevation data used for hydrologic and hydraulic modeling of flooding sources and mapping of the flood hazard and wherever necessary acquire new ground elevation data utilizing the most up-to-date geospatial technologies in accordance with guidelines and specifications of the Federal Emergency Management Agency; and

(B) develop National Flood Insurance Program flood data on a watershed basis—

(i) to provide the most technically effective and efficient studies and hydrologic and hydraulic modeling; and

(ii) to eliminate, to the maximum extent possible, discrepancies in base flood elevations between adjacent political subdivisions.

(3) OTHER INCLUSIONS.—In updating maps under this section, the Administrator shall include—

(A) any relevant information on coastal inundation from—

(i) an applicable inundation map of the Corps of Engineers; and

(ii) data of the National Oceanic and Atmospheric Administration relating to storm surge modeling;

(B) any relevant information of the United States Geological Survey on stream flows, watershed characteristics, and topography that is useful in the identification of flood hazard areas, as determined by the Administrator;

(C) any relevant information on land subsidence, coastal erosion areas, changing lake levels, and other flood-related hazards;

(D) any relevant information or data of the National Oceanic and Atmospheric Administration and the United States Geological Survey relating to the best available science regarding future changes in sea levels, precipitation, and intensity of hurricanes; and

(E) any other relevant information as may be recommended by the Technical Mapping Advisory Committee.

(c) STANDARDS.—In updating and maintaining maps under this section, the Administrator shall—

(1) establish standards to—

(A) ensure that maps are adequate for—

(i) flood risk determinations; and

(ii) use by State and local governments in managing development to reduce the risk of flooding; and

(B) facilitate identification and use of consistent methods of data collection and analysis by the Administrator, in conjunction with State and local governments, in developing maps for communities with similar flood risks, as determined by the Administrator; and

(2) publish maps in a format that is—

(A) digital geospatial data compliant;

(B) compliant with the open publishing and data exchange standards established by the Open Geospatial Consortium; and

(C) aligned with official data defined by the National Geodetic Survey.

(d) COMMUNICATION AND OUTREACH.—

(1) IN GENERAL.—The Administrator shall—

(A) work to enhance communication and outreach to States, local communities, and property owners about the effects—

(i) of any potential changes to National Flood Insurance Program rate maps that may result from the mapping program required under this section; and

(ii) that any such changes may have on flood insurance purchase requirements;

(B) engage with local communities to enhance communication and outreach to the residents of such communities, including tenants (with regard to contents insurance), on the matters described under subparagraph (A); and

(C) upon the issuance of any proposed map and any notice of an opportunity to make an appeal relating to the proposed map, notify the Senators for each State affected and each Member of the House of Representatives for each congressional district affected by the proposed map of any action taken by the Administrator with respect to the proposed map or an appeal relating to the proposed map.

(2) REQUIRED ACTIVITIES.—The communication and outreach activities required under paragraph (1) shall include—

(A) notifying property owners when their properties become included in, or when they are excluded from, an area covered by the mandatory flood insurance purchase requirement under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a);

(B) educating property owners regarding the flood risk and reduction of this risk in their community, including the continued flood risks to areas that are no longer subject to the flood insurance mandatory purchase requirement;

(C) educating property owners regarding the benefits and costs of maintaining or acquiring flood insurance, including, where applicable, lower-cost preferred risk policies under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) for such properties and the contents of such properties;

(D) educating property owners about flood map revisions and the process available to such owners to appeal proposed changes in flood elevations through their community, including by notifying local radio and television stations; and

(E) encouraging property owners to maintain or acquire flood insurance coverage.

(e) COMMUNITY REMAPPING REQUEST.—Upon the adoption by the Administrator of any recommendation by the Technical Mapping Advisory Council for reviewing, updating, or maintaining National Flood Insurance Program rate maps in accordance with this section, a community that believes that its flood insurance rates in effect prior to adoption would be affected by the adoption of such recommendation may submit a request for an update of its rate maps, which may be considered at the Administrator's sole discretion. The Administrator shall establish a protocol for the evaluation of such community map update requests.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this section $400,000,000 for each of fiscal years 2013 through 2017.

SEC. 100217. SCOPE OF APPEALS.

Section 1363 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104) is amended—

(1) in subsection (a)—

(A) by inserting ''and designating areas having special flood hazards'' after ''flood elevations''; and

(B) by striking ''such determinations'' and inserting ''such determinations and designations''; and

(2) in subsection (b)—

(A) in the first sentence, by inserting ''and designations of areas having special flood hazards'' after ''flood elevation determinations''; and

(B) by amending the third sentence to read as follows: ''The sole grounds for appeal shall be the possession of knowledge or information indicating that (1) the elevations being proposed by the Administrator with respect to an identified area having special flood hazards are scientifically or technically incorrect, or (2) the designation of an identified special flood hazard area is scientifically or technically incorrect.''.

SEC. 100218. SCIENTIFIC RESOLUTION PANEL.

(a) ESTABLISHMENT.—Chapter III of the National Flood Insurance Act of 1968 (42 U.S.C. 4101 et seq.) is amended by inserting after section 1363 (42 U.S.C. 4104) the following:

''SEC. 1363A. SCIENTIFIC RESOLUTION PANEL.

''(a) AVAILABILITY.—

''(1) IN GENERAL.—Pursuant to the authority provided under section 1363(e), the Administrator shall make available an independent review panel, to be known as the Scientific Resolution Panel, to any community—

''(A) that has—

''(i) filed a timely map appeal in accordance with section 1363;

''(ii) completed 60 days of consultation with the Federal Emergency Management Agency on the appeal; and

''(iii) not allowed more than 120 days, or such longer period as may be provided by the Administrator by waiver, to pass since the end of the appeal period; or

''(B) that has received an unsatisfactory ruling under the map revision process established pursuant to section 1360(f).

''(2) APPEALS BY OWNERS AND LESSEES.—If a community and an owner or lessee of real property within the community appeal a proposed determination of a flood elevation under section 1363(b), upon the request of the community—

''(A) the owner or lessee shall submit scientific and technical data relating to the appeals to the Scientific Resolution Panel; and

''(B) the Scientific Resolution Panel shall make a determination with respect to the appeals in accordance with subsection (c).

''(3) DEFINITION.—For purposes of paragraph (1)(B), an 'unsatisfactory ruling' means that a community—

''(A) received a revised Flood Insurance Rate Map from the Federal Emergency Management Agency, via a Letter of Final Determination, after September 30, 2008, and prior to the date of enactment of this section;

''(B) has subsequently applied for a Letter of Map Revision or Physical Map Revision with the Federal Emergency Management Agency; and

''(C) has received an unfavorable ruling on their request for a map revision.

''(b) MEMBERSHIP.—The Scientific Resolution Panel made available under subsection (a) shall consist of 5 members with expertise that relates to the creation and study of flood hazard maps and flood insurance. The Scientific Resolution Panel may include representatives from Federal agencies not involved in the mapping study in question and from other impartial experts. Employees of the Federal Emergency Management Agency may not serve on the Scientific Resolution Panel.

''(c) DETERMINATION.—

''(1) IN GENERAL.—Following deliberations, and not later than 90 days after its formation, the Scientific Resolution Panel shall issue a determination of resolution of the dispute. Such determination shall set forth recommendations for the base flood elevation determination or the designation of an area having special flood hazards that shall be reflected in the Flood Insurance Rate Maps.

''(2) BASIS.—The determination of the Scientific Resolution Panel shall be based on—

''(A) data previously provided to the Administrator by the community, and, in the case of a dispute submitted under subsection (a)(2), an owner or lessee of real property in the community; and

''(B) data provided by the Administrator.

''(3) NO ALTERNATIVE DETERMINATIONS PERMISSIBLE.—The Scientific Resolution Panel—

''(A) shall provide a determination of resolution of a dispute that—

''(i) is either in favor of the Administrator or in favor of the community on each distinct element of the dispute; or

''(ii) in the case of a dispute submitted under subsection (a)(2), is in favor of the Administrator, in favor of the community, or in favor of the owner or lessee of real property in the community on each distinct element of the dispute; and

''(B) may not offer as a resolution any other alternative determination.

''(4) EFFECT OF DETERMINATION.—

''(A) BINDING.—The recommendations of the Scientific Resolution Panel shall be binding on all appellants and not subject to further judicial review unless the Administrator determines that implementing the determination of the panel would—

''(i) pose a significant threat due to failure to identify a substantial risk of special flood hazards; or

''(ii) violate applicable law.

''(B) WRITTEN JUSTIFICATION NOT TO ENFORCE.—If the Administrator elects not to implement the determination of the Scientific Resolution Panel pursuant to subparagraph (A), then not later than 60 days after the issuance of the determination, the Administrator shall issue a written justification explaining such election.

''(C) APPEAL OF DETERMINATION NOT TO ENFORCE.—If the Administrator elects not to implement the determination of the Scientific Resolution Panel pursuant to subparagraph (A), the community may appeal the determination of the Administrator as provided for under section 1363(g).

''(d) MAPS USED FOR INSURANCE AND MANDATORY PURCHASE REQUIREMENTS.—With respect to any community that has a dispute that is being considered by the Scientific Resolution Panel formed pursuant to this subsection, the Federal Emergency Management Agency shall ensure that for each such community that—

''(1) the Flood Insurance Rate Map described in the most recently issued Letter of Final Determination shall be in force and effect with respect to such community; and

''(2) flood insurance shall continue to be made available to the property owners and residents of the participating community.''.

(b) CONFORMING AMENDMENTS.—

(1) ADMINISTRATIVE REVIEW.—Section 1363(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104(e)) is amended, in the second sentence, by striking ''an independent scientific body or appropriate Federal agency for advice'' and inserting ''the Scientific Resolution Panel provided for in section 1363A''.

(2) JUDICIAL REVIEW.—The first sentence of section 1363(g) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104(g)) is amended by striking ''Any appellant'' and inserting ''Except as provided in section 1363A, any appellant''.

SEC. 100219. REMOVAL OF LIMITATION ON STATE CONTRIBUTIONS FOR UPDATING FLOOD MAPS.

Section 1360(f)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(f)(2)) is amended by striking '', but which may not exceed 50 percent of the cost of carrying out the requested revision or update''.

SEC. 100220. COORDINATION.

(a) INTERAGENCY BUDGET CROSSCUT AND COORDINATION REPORT.—

(1) IN GENERAL.—The Secretary of Homeland Security, the Administrator, the Director of the Office of Management and Budget, and the heads of each Federal department or agency carrying out activities under sections 100215 and 100216 shall work together to ensure that flood risk determination data and geospatial data are shared among Federal agencies in order to coordinate the efforts of the Nation to reduce its vulnerability to flooding hazards.

(2) REPORT.—Not later than 30 days after the submission of the budget of the United States Government by the President to Congress, the Director of the Office of Management and Budget, in coordination with the Federal Emergency Management Agency, the United States Geological Survey, the National Oceanic and Atmospheric Administration, the Corps of Engineers, and other Federal agencies, as appropriate, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives an interagency budget crosscut and coordination report, certified by the Secretary or head of each such agency, that—

(A) contains an interagency budget crosscut report that displays relevant sections of the budget proposed for each of the Federal agencies working on flood risk determination data and digital elevation models, including any planned interagency or intra-agency transfers; and

(B) describes how the efforts aligned with such sections complement one another.

(b) DUTIES OF THE ADMINISTRATOR.—In carrying out sections 100215 and 100216, the Administrator shall—

(1) participate, pursuant to section 216 of the E–Government Act of 2002 (44 U.S.C. 3501 note), in the establishment of such standards and common protocols as are necessary to assure the interoperability of geospatial data for all users of such information;

(2) coordinate with, seek assistance and cooperation of, and provide a liaison to the Federal Geographic Data Committee pursuant to the Office of Management and Budget Circular A–16 and Executive Order 12906 (43 U.S.C. 1457 note; relating to the National Spatial Data Infrastructure) for the implementation of and compliance with such standards;

(3) integrate with, leverage, and coordinate funding of, to the maximum extent practicable, the current flood mapping activities of each unit of State and local government;

(4) integrate with, leverage, and coordinate, to the maximum extent practicable, the current geospatial activities of other Federal agencies and units of State and local government; and

(5) develop a funding strategy to leverage and coordinate budgets and expenditures, and to maintain or establish joint funding and other agreement mechanisms with other Federal agencies and units of State and local government to share in the collection and utilization of geospatial data among all governmental users.

SEC. 100221. INTERAGENCY COORDINATION STUDY.

(a) IN GENERAL.—The Administrator shall enter into a contract with the National Academy of Public Administration to conduct a study on how the Federal Emergency Management Agency—

(1) should improve interagency and intergovernmental coordination on flood mapping, including a funding strategy to leverage and coordinate budgets and expenditures; and

(2) can establish joint funding mechanisms with other Federal agencies and units of State and local government to share the collection and utilization of data among all governmental users.

(b) TIMING.—A contract entered into under subsection (a) shall require that, not later than 180 days after the date of enactment of this subtitle, the National Academy of Public Administration shall report the findings of the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(2) the Committee on Financial Services of the House of Representatives;

(3) the Committee on Appropriations of the Senate; and

(4) the Committee on Appropriations of the House of Representatives.

SEC. 100222. NOTICE OF FLOOD INSURANCE AVAILABILITY UNDER RESPA.

Section 5(b) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(b)), as amended by section 1450 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 2174), is amended by adding at the end the following:

''(14) An explanation of flood insurance and the availability of flood insurance under the National Flood Insurance Program or from a private insurance company, whether or not the real estate is located in an area having special flood hazards.''.

SEC. 100223. PARTICIPATION IN STATE DISASTER CLAIMS MEDIATION PROGRAMS.

Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by inserting after section 1313 (42 U.S.C. 4020) the following:

"SEC. 1314. PARTICIPATION IN STATE DISASTER CLAIMS MEDIATION PROGRAMS.

''(a) REQUIREMENT TO PARTICIPATE.—In the case of the occurrence of a major disaster, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), that may have resulted in flood damage covered under the national flood insurance program established under this title and other personal lines residential property insurance coverage offered by a State regulated insurer, upon a request made by the insurance commissioner of a State (or such other official responsible for regulating the business of insurance in the State) for the participation of representatives of the Administrator in a program sponsored by such State for nonbinding mediation of insurance claims resulting from a major disaster, the Administrator shall cause representatives of the national flood insurance program to participate in such a State program where claims under the national flood insurance program are involved to expedite settlement of flood damage claims resulting from such disaster.

''(b) EXTENT OF PARTICIPATION.—In satisfying the requirements of subsection (a), the Administrator shall require that each representative of the Administrator—

''(1) be certified for purposes of the national flood insurance program to settle claims against such program resulting from such disaster in amounts up to the limits of policies under such program;

''(2) attend State-sponsored mediation meetings regarding flood insurance claims resulting from such disaster at such times and places as may be arranged by the State;

''(3) participate in good-faith negotiations toward the settlement of such claims with policyholders of coverage made available under the national flood insurance program; and

''(4) finalize the settlement of such claims on behalf of the national flood insurance program with such policyholders.

''(c) COORDINATION.—Representatives of the Administrator shall at all times coordinate their activities with insurance officials of the State and representatives of insurers for the purposes of consolidating and expediting settlement of claims under the national flood insurance program resulting from such disaster.

''(d) QUALIFICATIONS OF MEDIATORS.—Each State mediator participating in State-sponsored mediation under this section shall be—

''(1)(A) a member in good standing of the State bar in the State in which the mediation is to occur with at least 2 years of practical experience; and

''(B) an active member of such bar for at least 1 year prior to the year in which such mediator's participation is sought; or

''(2) a retired trial judge from any United States jurisdiction who was a member in good standing of the bar in the State in which the judge presided for at least 5 years prior to the year in which such mediator's participation is sought.

''(e) MEDIATION PROCEEDINGS AND DOCUMENTS PRIVILEGED.—As a condition of participation, all statements made and documents produced pursuant to State-sponsored mediation involving representatives of the Administrator shall be deemed privileged and confidential settlement negotiations made in anticipation of litigation.

''(f) LIABILITY, RIGHTS, OR OBLIGATIONS NOT AFFECTED.—Participation in State-sponsored mediation, as described in this section does not—

''(1) affect or expand the liability of any party in contract or in tort; or

''(2) affect the rights or obligations of the parties, as established—

''(A) in any regulation issued by the Administrator, including any regulation relating to a standard flood insurance policy;

''(B) under this title; and

''(C) under any other provision of Federal law.

''(g) EXCLUSIVE FEDERAL JURISDICTION.—Participation in State-sponsored mediation shall not alter, change, or modify the original exclusive jurisdiction of United States courts, as set forth in this title.

''(h) COST LIMITATION.—Nothing in this section shall be construed to require the Administrator or a representative of the Administrator to pay additional mediation fees relating to flood insurance claims associated with a State-sponsored mediation program in which such representative of the Administrator participates.

''(i) EXCEPTION.—In the case of the occurrence of a major disaster that results in flood damage claims under the national flood insurance program and that does not result in any loss covered by a personal lines residential property insurance policy—

''(1) this section shall not apply; and

''(2) the provisions of the standard flood insurance policy under the national flood insurance program and the appeals process established under section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note) and the regulations issued pursuant to such section shall apply exclusively.

''(j) REPRESENTATIVES OF THE ADMINISTRATOR.—For purposes of this section, the term 'representatives of the Administrator' means representatives of the national flood insurance program who participate in the appeals process established under section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note).''.

SEC. 100224. OVERSIGHT AND EXPENSE REIMBURSEMENTS OF INSURANCE COMPANIES.

(a) SUBMISSION OF BIENNIAL REPORTS.—

(1) TO THE ADMINISTRATOR.—Not later than 20 days after the date of enactment of this Act, each property and casualty insurance company participating in the Write Your Own program shall submit to the Administrator any biennial report required by the Federal Emergency Management Agency to be prepared in the prior 5 years by such company.

(2) TO GAO.—Not later than 10 days after the submission of the biennial reports under paragraph (1), the Administrator shall submit all such reports to the Comptroller General of the United States.

(3) NOTICE TO CONGRESS OF FAILURE TO COMPLY.—The Administrator shall notify and report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on any property and casualty insurance company participating in the Write Your Own program that failed to submit its biennial reports as required under paragraph (1).

(4) FAILURE TO COMPLY.—A property and casualty insurance company participating in the Write Your Own program which fails to comply with the reporting requirement under this subsection or the requirement under section 62.23(j)(1) of title 44, Code of Federal Regulations (relating to biennial audit of the flood insurance financial statements) shall be subject to a civil penalty in an amount of not more than $1,000 per day for each day that the company remains in noncompliance with either such requirement.

(b) METHODOLOGY TO DETERMINE REIMBURSED EXPENSES.—Not later than 180 days after the date of enactment of this Act, the Administrator shall develop a methodology for determining the appropriate amounts that property and casualty insurance companies participating in the Write Your Own program should be reimbursed for selling, writing, and servicing flood insurance policies and adjusting flood insurance claims on behalf of the National Flood Insurance Program. The methodology shall be developed using actual expense data for the flood insurance line and can be derived from—

(1) flood insurance expense data produced by the property and casualty insurance companies;

(2) flood insurance expense data collected by the National Association of Insurance Commissioners; or

(3) a combination of the methodologies described in paragraphs (1) and (2).

(c) SUBMISSION OF EXPENSE REPORTS.—To develop the methodology established under subsection (b), the Administrator may require each property and casualty insurance company participating in the Write Your Own program to submit a report to the Administrator, in a format determined by the Administrator and within 60 days of the request, that details the expense levels of each such company for selling, writing, and servicing standard flood insurance policies and adjusting and servicing claims.

(d) FEMA RULEMAKING ON REIMBURSEMENT OF EXPENSES UNDER THE WRITE YOUR OWN PROGRAM.—Not later than 12 months after the date of enactment of this Act, the Administrator shall issue a rule to formulate revised expense reimbursements to property and casualty insurance companies participating in the Write Your Own program for their expenses (including their operating and administrative expenses for adjustment of claims) in selling, writing, and servicing standard flood insurance policies, including how such companies shall be reimbursed in both catastrophic and noncatastrophic years. Such reimbursements shall be structured to ensure reimbursements track the actual expenses, including standard business costs and operating expenses, of such companies as closely as practicably possible.

(e) REPORT OF THE ADMINISTRATOR.—Not later than 60 days after the effective date of the final rule issued pursuant to subsection (d), the Administrator shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing—

(1) the specific rationale and purposes of such rule;

(2) the reasons for the adoption of the policies contained in such rule; and

(3) the degree to which such rule accurately represents the true operating costs and expenses of property and casualty insurance companies participating in the Write Your Own program.

(f) GAO STUDY AND REPORT ON EXPENSES OF WRITE YOUR OWN PROGRAM.—

(1) STUDY.—Not later than 180 days after the effective date of the final rule issued pursuant to subsection (d), the Comptroller General of the United States shall—

(A) conduct a study on the efficacy, adequacy, and sufficiency of the final rules issued pursuant to subsection (d); and

(B) report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the findings of the study conducted under subparagraph (A).

(2) GAO AUTHORITY.—In conducting the study and report required under paragraph (1), the Comptroller General—

(A) may use any previous findings, studies, or reports that the Comptroller General previously completed on the Write Your Own program;

(B) shall determine if—

(i) the final rule issued pursuant to subsection (d) allows the Federal Emergency Management Agency to access adequate information regarding the actual expenses of property and casualty insurance companies participating in the Write Your Own program; and

(ii) the actual reimbursements paid out under the final rule issued pursuant to subsection (d)

accurately reflect the expenses reported by property and casualty insurance companies participating in the Write Your Own program, including the standard business costs and operating expenses of such companies; and

(C) shall analyze the effect of the final rule issued pursuant to subsection (d) on the level of participation of property and casualty insurers in the Write Your Own program.

SEC. 100225. MITIGATION.

(a) MITIGATION ASSISTANCE GRANTS.—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended—

(1) by striking subsections (b), (d), (f), (g), (h), (k), and (m);

(2) by redesignating subsections (c), (e), (i), and (j) as subsections (b), (c), (e), and (f), respectively;

(3) in subsection (a), by striking the last sentence and inserting the following: ''Such financial assistance shall be made available—

''(1) to States and communities in the form of grants under this section for carrying out mitigation activities;

''(2) to States and communities in the form of grants under this section for carrying out mitigation activities that reduce flood damage to severe repetitive loss structures; and

''(3) to property owners in the form of direct grants under this section for carrying out mitigation activities that reduce flood damage to individual structures for which 2 or more claim payments for losses have been made under flood insurance coverage under this title if the Administrator, after consultation with the State and community, determines that neither the State nor community in which such a structure is located has the capacity to manage such grants.'';

(4) in subsection (b), as so redesignated, in the first sentence—

(A) by striking ''and provides protection against'' and inserting ''provides for reduction of''; and

(B) by inserting before the period at the end the following: '', and may be included in a multihazard mitigation plan'';

(5) in subsection (c), as so redesignated—

(A) in paragraph (1), by striking ''(1) USE OF AMOUNTS.—'' and all that follows through the end of the first sentence and inserting the following:

''(1) REQUIREMENT OF CONSISTENCY WITH APPROVED MITIGATION PLAN.—Amounts provided under this section may be used only for mitigation activities that are consistent with mitigation plans that are approved by the Administrator and identified under paragraph (4).'';

(B) by striking paragraphs (2), (3), and (4) and inserting the following new paragraphs:

''(2) REQUIREMENTS OF TECHNICAL FEASIBILITY, COST EFFECTIVENESS, AND INTEREST OF NATIONAL FLOOD INSURANCE FUND.—

''(A) IN GENERAL.—The Administrator may approve only mitigation activities that the Administrator determines—

''(i) are technically feasible and cost-effective; or

''(ii) will eliminate future payments from the National Flood Insurance Fund for severe repetitive loss structures through an acquisition or relocation activity.

''(B) CONSIDERATIONS.—In making a determination under subparagraph (A), the Administrator shall take into consideration recognized ancillary benefits.'';

(C) by redesignating paragraph (5) as paragraph (3);

(D) in paragraph (3), as so redesignated—

(i) in the matter preceding subparagraph (A), by striking ''The Director'' and all that follows through ''Such activities may'' and inserting ''Eligible activities under a mitigation plan may'';

(ii) by striking subparagraphs (E) and (H);

(iii) by redesignating subparagraphs (D), (F), and (G) as subparagraphs (E), (G), and (H), respectively;

(iv) by inserting after subparagraph (C) the following new subparagraph:

''(D) elevation, relocation, or floodproofing of utilities (including equipment that serves structures);'';

(v) by inserting after subparagraph (E), as so redesignated, the following new subparagraph:

''(F) the development or update of mitigation plans by a State or community which meet the planning criteria established by the Administrator, except that the amount from grants under this section that may be used under this subparagraph may not exceed $50,000 for any mitigation plan of a State or $25,000 for any mitigation plan of a community;'';

(vi) in subparagraph (H), as so redesignated, by striking ''and'' at the end; and

(vii) by adding at the end the following new subparagraphs:

''(I) other mitigation activities not described in subparagraphs (A) through (G) or the regulations issued under subparagraph (H), that are described in the mitigation plan of a State or community; and

''(J) without regard to the requirements under paragraphs (1) and (2) of subsection (d), and if the State applied for and was awarded at least $1,000,000 in grants available under this section in the prior fiscal year, technical assistance to communities to identify eligible activities, to develop grant applications, and to implement grants awarded under this section, not to exceed $50,000 to any 1 State in any fiscal year.''; and

(E) by striking paragraph (6) and inserting the following:

''(4) ELIGIBILITY OF DEMOLITION AND REBUILDING OF PROPERTIES.—The Administrator shall consider as an eligible activity the demolition and rebuilding of properties to at least base flood elevation or greater, if required by the Administrator or if required by any State regulation or local ordinance, and in accordance with criteria established by the Administrator.'';

(6) by inserting after subsection (c), as so redesignated, the following new subsection:

''(d) MATCHING REQUIREMENT.—The Administrator may provide grants for eligible mitigation activities as follows:

''(1) SEVERE REPETITIVE LOSS STRUCTURES.—In the case of mitigation activities to severe repetitive loss structures, in an amount up to—

''(A) 100 percent of all eligible costs, if the activities are approved under subsection (c)(2)(A)(i); or

''(B) the expected savings to the National Flood Insurance Fund from expected avoided damages through acquisition or relocation activities, if the activities are approved under subsection (c)(2)(A)(ii).

''(2) REPETITIVE LOSS STRUCTURES.—In the case of mitigation activities to repetitive loss structures, in an amount up to 90 percent of all eligible costs.

''(3) OTHER MITIGATION ACTIVITIES.—In the case of all other mitigation activities, in an amount up to 75 percent of all eligible costs.'';

(7) in subsection (e)(2), as so redesignated—

(A) by striking ''certified under subsection (g)'' and inserting ''required under subsection (d)''; and

(B) by striking ''3 times the amount'' and inserting ''the amount'';

(8) in subsection (f), as so redesignated, by striking ''Riegle Community Development and Regulatory Improvement Act of 1994'' and inserting ''Biggert-Waters Flood Insurance Reform Act of 2012''; and

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

''(g) FAILURE TO MAKE GRANT AWARD WITHIN 5 YEARS.—For any application for a grant under this section for which the Administrator fails to make a grant award within 5 years of the date of the application, the grant application shall be considered to be denied and any funding amounts allocated for such grant applications shall remain in the National Flood Mitigation Fund under section 1367 of this title and shall be made available for grants under this section.

''(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) COMMUNITY.—The term 'community' means—

''(A) a political subdivision that—

''(i) has zoning and building code jurisdiction over a particular area having special flood hazards; and

''(ii) is participating in the national flood insurance program; or

''(B) a political subdivision of a State, or other authority, that is designated by political subdivisions, all of which meet the requirements of subparagraph (A), to administer grants for mitigation activities for such political subdivisions.

''(2) REPETITIVE LOSS STRUCTURE.—The term 'repetitive loss structure' has the meaning given such term in section 1370.

''(3) SEVERE REPETITIVE LOSS STRUCTURE.—The term 'severe repetitive loss structure' means a structure that—

''(A) is covered under a contract for flood insurance made available under this title; and

''(B) has incurred flood-related damage—

''(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this title, with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or

''(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the insured structure.''.

(b) ELIMINATION OF GRANTS PROGRAM FOR REPETITIVE INSURANCE CLAIMS PROPERTIES.—Chapter I of the National Flood Insurance Act of 1968 is amended by striking section 1323 (42 U.S.C. 4030).

(c) ELIMINATION OF PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.—Chapter III of the National Flood Insurance Act of 1968 is amended by striking section 1361A (42 U.S.C. 4102a).

(d) NATIONAL FLOOD INSURANCE FUND.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (6), by inserting ''and'' after the semicolon;

(2) in paragraph (7), by striking the semicolon and inserting a period; and

(3) by striking paragraphs (8) and (9).

(e) NATIONAL FLOOD MITIGATION FUND.—Section 1367 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d) is amended—

(1) in subsection (b)—

(A) by striking paragraph (1) and inserting the following new paragraph:

''(1) in each fiscal year, amounts from the National Flood Insurance Fund not to exceed $90,000,000 and to remain available until expended, of which—

''(A) not more than $40,000,000 shall be available pursuant to subsection (a) of this section for assistance described in section 1366(a)(1);

''(B) not more than $40,000,000 shall be available pursuant to subsection (a) of this section for assistance described in section 1366(a)(2); and

''(C) not more than $10,000,000 shall be available pursuant to subsection (a) of this section for assistance described in section 1366(a)(3);''; and

(B) in paragraph (3), by striking ''section 1366(i)'' and inserting ''section 1366(e)'';

(2) in subsection (c), by striking ''sections 1366 and 1323'' and inserting ''section 1366'';

(3) by redesignating subsections (d) and (e) as subsections (f) and (g), respectively; and

(4) by inserting after subsection (c) the following new subsections:

''(d) PROHIBITION ON OFFSETTING COLLECTIONS.—Notwithstanding any other provision of this title, amounts made available pursuant to this section shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

''(e) CONTINUED AVAILABILITY AND REALLOCATION.—Any amounts made available pursuant to subparagraph (A), (B), or (C) of subsection (b)(1) that are not used in any fiscal year shall continue to be available for the purposes specified in the subparagraph of subsection (b)(1) pursuant to which such amounts were made available, unless the Administrator determines that reallocation of such unused amounts to meet demonstrated need for other mitigation activities under section 1366 is in the best interest of the National Flood Insurance Fund.''.

(f) INCREASED COST OF COMPLIANCE COVERAGE.—Section 1304(b)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)(4)) is amended—

(1) by striking subparagraph (B); and

(2) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

SEC. 100226. FLOOD PROTECTION STRUCTURE ACCREDITATION TASK FORCE.

(a) DEFINITIONS.—In this section—

(1) the term ''flood protection structure accreditation requirements'' means the requirements established under section 65.10 of title 44, Code of Federal Regulations, for levee systems to be recognized on maps created for purposes of the National Flood Insurance Program;

(2) the term ''National Committee on Levee Safety'' means the Committee on Levee Safety established under section 9003 of the National Levee Safety Act of 2007 (33 U.S.C. 3302); and

(3) the term ''task force'' means the Flood Protection Structure Accreditation Task Force established under subsection (b).

(b) ESTABLISHMENT.—

(1) IN GENERAL.—The Administrator and the Secretary of the Army, acting through the Chief of Engineers, in cooperation with the National Committee on Levee Safety, shall jointly establish a Flood Protection Structure Accreditation Task Force.

(2) DUTIES.—

(A) DEVELOPING PROCESS.—The task force shall develop a process to better align the information and data collected by or for the Corps of Engineers under the Inspection of Completed Works Program with the flood protection structure accreditation requirements so that—

(i) information and data collected for either purpose can be used interchangeably; and

(ii) information and data collected by or for the Corps of Engineers under the Inspection of Completed Works Program is sufficient to satisfy the flood protection structure accreditation requirements.

(B) GATHERING RECOMMENDATIONS.—The task force shall gather, and consider in the process developed under subparagraph (A), recommendations from interested persons in each region relating to the information, data, and accreditation requirements described in subparagraph (A).

(3) CONSIDERATIONS.—In developing the process under paragraph (2), the task force shall consider changes to—

(A) the information and data collected by or for the Corps of Engineers under the Inspection of Completed Works Program; and

(B) the flood protection structure accreditation requirements.

(4) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require a reduction in the level of public safety and flood control provided by accredited levees, as determined by the Administrator for purposes of this section.

(c) IMPLEMENTATION.—The Administrator and the Secretary of the Army, acting through the Chief of Engineers, shall implement the process developed by the task force under subsection (b) not later than 1 year after the date of enactment of this Act and shall complete the process under subsection (b) not later than 2 years after the date of enactment of this Act.

(d) REPORTS.—The Administrator and the Secretary of the Army, acting through the Chief of Engineers, in cooperation with the National Committee on Levee Safety, shall jointly submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on Environment and Public Works of the Senate and the Committee on Financial Services, the Committee on Transportation and Infrastructure, and the Committee on Natural Resources of the House of Representatives reports concerning the activities of the task force and the implementation of the process developed by the task force under subsection (b), including—

(1) an interim report, not later than 180 days after the date of enactment of this Act; and

(2) a final report, not later than 1 year after the date of enactment of this Act.

(e) TERMINATION.—The task force shall terminate on the date of submission of the report under subsection (d)(2).

SEC. 100227. FLOOD IN PROGRESS DETERMINATIONS.

(a) REPORT.—

(1) REVIEW.—The Administrator shall review—

(A) the processes and procedures for determining that a flood event has commenced or is in progress for purposes of flood insurance coverage made available under the National Flood Insurance Program;

(B) the processes and procedures for providing public notification that such a flood event has commenced or is in progress;

(C) the processes and procedures regarding the timing of public notification of flood insurance requirements and availability; and

(D) the effects and implications that weather conditions, including rainfall, snowfall, projected snowmelt, existing water levels, and other conditions, have on the determination that a flood event has commenced or is in progress.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Administrator shall submit a report to Congress that describes—

(A) the results and conclusions of the review under paragraph (1); and

(B) any actions taken, or proposed actions to be taken, by the Administrator to provide for more precise and technical processes and procedures for determining that a flood event has commenced or is in progress.

(b) EFFECTIVE DATE OF POLICIES COVERING PROPERTIES AFFECTED BY FLOODING OF THE MISSOURI RIVER IN 2011.—

(1) ELIGIBLE COVERAGE.—For purposes of this subsection, the term ''eligible coverage'' means coverage under a new contract for flood insurance coverage under the National Flood Insurance Program, or a modification to coverage under an existing flood insurance contract, for property damaged by the flooding of the Missouri River that commenced on June 1, 2011, that was purchased or made during the period beginning May 1, 2011, and ending June 6, 2011.

(2) EFFECTIVE DATES.—Notwithstanding section 1306(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)), or any other provision of law, any eligible coverage shall—

(A) be deemed to take effect on the date that is 30 days after the date on which all obligations for the eligible coverage (including completion of the application and payment of any initial premiums owed) are satisfactorily completed; and

(B) cover damage to property occurring after the effective date described in subparagraph (A) that resulted from the flooding of the Missouri River that commenced on June 1, 2011, if the property did not suffer damage or loss as a result of such flooding before the effective date described in subparagraph (A).

(c) TIMELY NOTIFICATION.—Not later than 90 days after the date on which the Administrator submits the report required under subsection (a)(2), the Administrator shall, taking into consideration the results of the review under subsection (a)(1)(B), develop procedures for providing timely notification, to the extent practicable, to policyholders who have purchased flood insurance coverage under the National Flood Insurance Program within 30 days of a determination of a flood in progress and who may be affected by the flood of the determination and how the determination may affect their coverage.

SEC. 100228. CLARIFICATION OF RESIDENTIAL AND COMMERCIAL COVERAGE LIMITS.

Section 1306(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(b)) is amended—

(1) in paragraph (2)—

(A) by striking ''in the case of any residential property'' and inserting ''in the case of any residential building designed for the occupancy of from 1 to 4 families''; and

(B) by striking ''shall be made available to every insured upon renewal and every applicant for insurance so as to enable such insured or applicant to receive coverage up to a total amount (including such limits specified in paragraph (1)(A)(i)) of $250,000'' and inserting ''shall be made available, with respect to any single such building, up to an aggregate liability (including such limits specified in paragraph (1)(A)(i)) of $250,000''; and

(2) in paragraph (4)—

(A) by striking ''in the case of any nonresidential property, including churches,'' and inserting ''in the case of any nonresidential building, including a church,''; and

(B) by striking ''shall be made available to every insured upon renewal and every applicant for insurance, in respect to any single structure, up to a total amount (including such limit specified in subparagraph (B) or (C) of paragraph (1), as applicable) of $500,000 for each structure and $500,000 for any contents related to each structure'' and inserting ''shall be made available with respect to any single such building, up to an aggregate liability (including such limits specified in subparagraph (B) or (C) of paragraph (1), as applicable) of $500,000, and coverage shall be made available up to a total of $500,000 aggregate liability for contents owned by the building owner and $500,000 aggregate liability for each unit within the building for contents owned by the tenant''.

SEC. 100229. LOCAL DATA REQUIREMENT.

(a) IN GENERAL.—Notwithstanding any other provision of this subtitle, no area or community participating in the National Flood Insurance Program that is or includes a community that is identified by the Administrator as Community Identification Number 360467 and impacted by the Jamaica Bay flooding source or identified by the Administrator as Community Identification Number 360495 may be or become designated as an area having special flood hazards for purposes of the National Flood Insurance Program, unless the designation is made on the basis of—

(1) flood hazard analyses of hydrologic, hydraulic, or coastal flood hazards that have been properly calibrated and validated, and are specific and directly relevant to the geographic area being studied; and

(2) ground elevation information of sufficient accuracy and precision to meet the guidelines of the Administration for accuracy at the 95 percent confidence level.

(b) REMAPPING.—

(1) REMAPPING REQUIRED.—If the Administrator determines that an area described in subsection (a) has been designated as an area of special flood hazard on the basis of information that does not comply with the requirements under subsection (a), the Administrator shall revise and update any National Flood Insurance Program rate map for the area—

(A) using information that complies with the requirements under subsection (a); and

(B) in accordance with the procedures established under section 1363 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104) for flood elevation determinations.

(2) INTERIM PERIOD.—A National Flood Insurance Program rate map in effect on the date of enactment of this Act for an area for which the

Administrator has made a determination under paragraph (1) shall continue in effect with respect to the area during the period—

(A) beginning on the date of enactment of this Act; and

(B) ending on the date on which the Administrator determines that the requirements under section 1363 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104) for flood elevation determinations have been met with respect to a revision and update under paragraph (1) of a National Flood Insurance Program rate map for the area.

(3) DEADLINE.—The Administrator shall issue a preliminary National Flood Insurance Program rate map resulting from a revision and update required under paragraph (1) not later than 1 year after the date of enactment of this Act.

(4) RISK PREMIUM RATE CLARIFICATION.—

(A) IN GENERAL.—If a revision and update required under paragraph (1) results in a reduction in the risk premium rate for a property in an area for which the Administrator has made a determination under paragraph (1), the Administrator shall—

(i) calculate the difference between the reduced risk premium rate and the risk premium rate paid by a policyholder with respect to the property during the period—

(I) beginning on the date on which the National Flood Insurance Program rate map in effect for the area on the date of enactment of this Act took effect; and

(II) ending on the date on which the revised or updated National Flood Insurance Program rate map takes effect; and

(ii) reimburse the policyholder an amount equal to such difference.

(B) FUNDING.—Notwithstanding section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017), there shall be available to the Administrator from premiums deposited in the National Flood Insurance Fund pursuant to subsection (d) of such section 1310, of amounts not otherwise obligated, the amount necessary to carry out this paragraph.

(c) TERMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall cease to have effect on the effective date of a National Flood Insurance Program rate map revised and updated under subsection (b)(1).

(2) REIMBURSEMENTS.—Subsection (b)(4) shall cease to have effect on the date on which the Administrator has made all reimbursements required under subsection (b)(4).

SEC. 100230. ELIGIBILITY FOR FLOOD INSURANCE FOR PERSONS RESIDING IN COMMUNITIES THAT HAVE MADE ADEQUATE PROGRESS ON THE RECONSTRUCTION OR IMPROVEMENT OF A FLOOD PROTECTION SYSTEM.

(a) ELIGIBILITY FOR FLOOD INSURANCE COVERAGE.—

(1) IN GENERAL.—Notwithstanding any other provision of law (including section 1307(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(e))), a person residing in a community that the Administrator determines has made adequate progress on the reconstruction or improvement of a flood protection system that will afford flood protection for a 100-year floodplain (without regard to the level of Federal funding of or participation in the construction, reconstruction, or improvement), shall be eligible for flood insurance coverage under the National Flood Insurance Program—

(A) if the person resides in a community that is a participant in the National Flood Insurance Program; and

(B) at a risk premium rate that does not exceed the risk premium rate that would be chargeable if the flood protection system had been completed.

(2) ADEQUATE PROGRESS.—

(A) RECONSTRUCTION OR IMPROVEMENT.—For purposes of paragraph (1), the Administrator shall determine that a community has made adequate progress on the reconstruction or improvement of a flood protection system if—

(i) 100 percent of the project cost has been authorized;

(ii) not less than 60 percent of the project cost has been secured or appropriated;

(iii) not less than 50 percent of the flood protection system has been assessed as being without deficiencies; and

(iv) the reconstruction or improvement has a project schedule that does not exceed 5 years, beginning on the date on which the reconstruction or construction of the improvement commences.

(B) CONSIDERATIONS.—In determining whether a flood protection system has been assessed as being without deficiencies, the Administrator shall consider the requirements under section 65.10 of chapter 44, Code of Federal Regulations, or any successor thereto.

(C) DATE OF COMMENCEMENT.—For purposes of subparagraph (A)(iv) of this paragraph and subsection (b)(2)(B), the date of commencement of the reconstruction or improvement of a flood protection system that is undergoing reconstruction or improvement on the date of enactment of this Act shall be deemed to be the date on which the owner of the flood protection system submits a request under paragraph (3).

(3) REQUEST FOR DETERMINATION.—The owner of a flood protection system that is undergoing reconstruction or improvement on the date of enactment of this Act may submit to the Administrator a request for a determination under paragraph (2) that the community in which the flood protection system is located has made adequate progress on the reconstruction or improvement of the flood protection system.

(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit the Administrator from making a determination under paragraph (2) for any community in which a flood protection system is not undergoing reconstruction or improvement on the date of enactment of this Act.

(b) TERMINATION OF ELIGIBILITY.—

(1) ADEQUATE CONTINUING PROGRESS.—The Administrator shall issue rules to establish a method of determining whether a community has made adequate continuing progress on the reconstruction or improvement of a flood protection system that includes—

(A) a requirement that the Administrator shall—

(i) consult with the owner of the flood protection system—

(I) 6 months after the date of a determination under subsection (a);

(II) 18 months after the date of a determination under subsection (a); and

(III) 36 months after the date of a determination under subsection (a); and

(ii) after each consultation under clause (i), determine whether the reconstruction or improvement is reasonably likely to be completed in accordance with the project schedule described in subsection (a)(2)(A)(iv); and

(B) a requirement that, if the Administrator makes a determination under subparagraph (A)(ii) that reconstruction or improvement is not reasonably likely to be completed in accordance with the project schedule, the Administrator shall—

(i) not later than 30 days after the date of the determination, notify the owner of the flood protection system of the determination and provide the rationale and evidence for the determination; and

(ii) provide the owner of the flood protection system the opportunity to appeal the determination.

(2) TERMINATION.—The Administrator shall terminate the eligibility for flood insurance coverage under subsection (a) for persons residing in a community with respect to which the Administrator made a determination under subsection (a) if—

(A) the Administrator determines that the community has not made adequate continuing progress; or

(B) on the date that is 5 years after the date on which the reconstruction or construction of the improvement commences, the project has not been completed.

(3) WAIVER.—A person whose eligibility would otherwise be terminated under paragraph (2)(B) shall continue to be eligible to purchase flood insurance coverage described in subsection (a) if the Administrator determines—

(A) the community has made adequate continuing progress on the reconstruction or improvement of a flood protection system; and

(B) there is a reasonable expectation that the reconstruction or improvement of the flood protection system will be completed not later than 1 year after the date of the determination under this paragraph.

(4) RISK PREMIUM RATE.—If the Administrator terminates the eligibility of persons residing in a community to purchase flood insurance coverage described in subsection (a), the Administrator shall establish an appropriate risk premium rate for flood insurance coverage under the National Flood Insurance Program for persons residing in the community that purchased flood insurance coverage before the date on which the termination of eligibility takes effect, taking into consideration the then-current state of the flood protection system.

(c) ADDITIONAL AUTHORITY.—

(1) ADDITIONAL AUTHORITY.—Notwithstanding subsection (a), in exceptional and exigent circumstances, the Administrator may, in the Administrator's sole discretion, determine that a person residing in a community, which is a participant in the National Flood Insurance Program, that has begun reconstruction or improvement of a flood protection system that will afford flood protection for a 100-year floodplain (without regard to the level of Federal funding of or participation in the reconstruction or improvement) shall be eligible for flood insurance coverage under the National Flood Insurance Program at a risk premium rate that does not exceed the risk premium rate that would be chargeable if the flood protection system had been completed, provided—

(A) the community makes a written request for the determination setting forth the exceptional and exigent circumstances, including why the community cannot meet the criteria for adequate progress set forth in under subsection (a)(2)(A) and why immediate relief is necessary;

(B) the Administrator submits a written report setting forth findings of the exceptional and exigent circumstances on which the Administrator based an affirmative determination to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives not later than 15 days before making the determination; and

(C) the eligibility for flood insurance coverage at a risk premium rate determined under this subsection terminates no later than 1 year after the date on which the Administrator makes the determination.

(2) LIMITATION.—Upon termination of eligibility under paragraph (1)(C), a community may submit another request pursuant to paragraph (1)(A). The Administrator may make no more than two determinations under paragraph (1) with respect to persons residing within any single requesting community.

(3) TERMINATION.—The authority provided under paragraphs (1) and (2) shall terminate two years after the enactment of this Act.

SEC. 100231. STUDIES AND REPORTS.

(a) REPORT ON IMPROVING THE NATIONAL FLOOD INSURANCE PROGRAM.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs

of the Senate and the Committee on Financial Services of the House of Representatives, on—

(1) the number of flood insurance policy holders currently insuring—

(A) a residential structure up to the maximum available coverage amount, as established in section 61.6 of title 44, Code of Federal Regulations, of—

(i) $250,000 for the structure; and

(ii) $100,000 for the contents of such structure; or

(B) a commercial structure up to the maximum available coverage amount, as established in section 61.6 of title 44, Code of Federal Regulations, of $500,000;

(2) the increased losses the National Flood Insurance Program would have sustained during the 2004 and 2005 hurricane season if the National Flood Insurance Program had insured all policyholders up to the maximum conforming loan limit for fiscal year 2006 of $417,000, as established under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2));

(3) the availability in the private marketplace of flood insurance coverage in amounts that exceed the current limits of coverage amounts established in section 61.6 of title 44, Code of Federal Regulations; and

(4) what effect, if any—

(A) raising the current limits of coverage amounts established in section 61.6 of title 44, Code of Federal Regulations, would have on the ability of private insurers to continue providing flood insurance coverage; and

(B) reducing the current limits of coverage amounts established in section 61.6 of title 44, Code of Federal Regulations, would have on the ability of private insurers to provide sufficient flood insurance coverage to effectively replace the current level of flood insurance coverage being provided under the National Flood Insurance Program.

(b) REPORT OF THE ADMINISTRATOR ON ACTIVITIES UNDER THE NATIONAL FLOOD INSURANCE PROGRAM.—

(1) IN GENERAL.—The Administrator shall, on an annual basis, submit a full report on the operations, activities, budget, receipts, and expenditures of the National Flood Insurance Program for the preceding 12-month period to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) TIMING.—Each report required under paragraph (1) shall be submitted to the committees described in paragraph (1) not later than 3 months following the end of each fiscal year.

(3) CONTENTS.—Each report required under paragraph (1) shall include—

(A) the current financial condition and income statement of the National Flood Insurance Fund established under section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017), including—

(i) premiums paid into such Fund;

(ii) policy claims against such Fund; and

(iii) expenses in administering such Fund;

(B) the number and face value of all policies issued under the National Flood Insurance Program that are in force;

(C) a description and summary of the losses attributable to repetitive loss structures;

(D) a description and summary of all losses incurred by the National Flood Insurance Program due to—

(i) hurricane related damage; and

(ii) nonhurricane related damage;

(E) the amounts made available by the Administrator for mitigation assistance under section 1366(c)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(c)(4)), as so redesignated by this Act, for the purchase of properties substantially damaged by flood for that fiscal year, and the actual number of flood damaged properties purchased and the total cost expended to purchase such properties;

(F) the estimate of the Administrator as to the average historical loss year, and the basis for that estimate;

(G) the estimate of the Administrator as to the maximum amount of claims that the National Flood Insurance Program would have to expend in the event of a catastrophic year;

(H) the average—

(i) amount of insurance carried per flood insurance policy;

(ii) premium per flood insurance policy; and

(iii) loss per flood insurance policy; and

(I) the number of claims involving damages in excess of the maximum amount of flood insurance available under the National Flood Insurance Program and the sum of the amount of all damages in excess of such amount.

(c) GAO STUDY ON PRE-FIRM STRUCTURES.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on the—

(1) composition of the remaining pre-FIRM structures that are explicitly receiving discounted premium rates under section 1307 of the National Flood Insurance Act of 1968 (42 U.S.C. 4014), including the historical basis for the receipt of such subsidy and the extent to which pre-FIRM structures are currently owned by the same owners of the property at the time of the original National Flood Insurance Program rate map;

(2) number and fair market value of such structures;

(3) respective income level of the owners of such structures;

(4) number of times each such structure has been sold since 1968, including specific dates, sales price, and any other information the Secretary determines appropriate;

(5) total losses incurred by such structures since the establishment of the National Flood Insurance Program compared to the total losses incurred by all structures that are charged a nondiscounted premium rate;

(6) total cost of foregone premiums since the establishment of the National Flood Insurance Program, as a result of the subsidies provided to such structures;

(7) annual cost as a result of the subsidies provided to such structures;

(8) the premium income collected and the losses incurred by the National Flood Insurance Program as a result of such explicitly subsidized structures compared to the premium income collected and the losses incurred by such Program as a result of structures that are charged a nondiscounted premium rate, on a State-by-State basis; and

(9) the options for eliminating the subsidy to such structures.

(d) GAO REVIEW OF FEMA CONTRACTORS.—The Comptroller General of the United States, in conjunction with the Office of the Inspector General of the Department of Homeland Security, shall—

(1) conduct a review of the 3 largest contractors the Administrator uses in administering the National Flood Insurance Program; and

(2) not later than 18 months after the date of enactment of this Act, submit a report on the findings of such review to the Administrator, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(e) STUDY AND REPORT ON GRADUATED RISK.—

(1) STUDY.—

(A) STUDY REQUIRED.—The Administrator shall enter into a contract under which the National Academy of Sciences shall conduct a study exploring methods for understanding graduated risk behind levees and the associated land development, insurance, and risk communication dimensions.

(B) CONTENTS OF STUDY.—The study under this paragraph shall—

(i) research, review, and recommend current best practices for estimating direct annualized flood losses behind levees for residential and commercial structures;

(ii) rank each best practice recommended under clause (i) based on the best value, balancing cost, scientific integrity, and the inherent uncertainties associated with all aspects of the loss estimate, including geotechnical engineering, flood frequency estimates, economic value, and direct damages;

(iii) research, review, and identify current best floodplain management and land use practices behind levees that effectively balance social, economic, and environmental considerations as part of an overall flood risk management strategy;

(iv) identify areas in which the best floodplain management and land use practices described in clause (iii) have proven effective and recommend methods and processes by which such practices could be applied more broadly across the United States, given the variety of different flood risks, State and local legal frameworks, and evolving judicial opinions;

(v) research, review, and identify a variety of flood insurance pricing options for flood hazards behind levees that are actuarially sound and based on the flood risk data developed using the 3 best practices recommended under clause (i) that have the best value as determined under clause (ii);

(vi) evaluate and recommend methods to reduce insurance costs through creative arrangements between insureds and insurers while keeping a clear accounting of how much financial risk is being borne by various parties such that the entire risk is accounted for, including establishment of explicit limits on disaster aid or other assistance in the event of a flood; and

(vii) taking into consideration the recommendations under clauses (i) through (iii), recommend approaches to communicate the associated risks to community officials, homeowners, and other residents of communities.

(2) REPORT.—The contract under paragraph (1)(A) shall provide that not later than 12 months after the date of enactment of this Act, the National Academy of Sciences shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services and the Committee on Science, Space, and Technology of the House of Representatives a report on the study under paragraph (1) that includes the information and recommendations required under paragraph (1).

SEC. 100232. REINSURANCE.

(a) FEMA AND GAO REPORTS ON PRIVATIZATION.—Not later than 18 months after the date of enactment of this Act, the Administrator and the Comptroller General of the United States shall each—

(1) conduct a separate study to assess a broad range of options, methods, and strategies for privatizing the National Flood Insurance Program; and

(2) submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate with recommendations for the best manner to accomplish the privatization described in paragraph (1).

(b) PRIVATE RISK-MANAGEMENT INITIATIVES.—The Administrator may carry out such private risk-management initiatives as are otherwise authorized under applicable law, as the Administrator considers appropriate to determine the capacity of private insurers, reinsurers, and financial markets to assist communities, on a voluntary basis only, in managing the full range of financial risks associated with flooding.

(c) REINSURANCE ASSESSMENT.—

(1) PRIVATE MARKET PRICING ASSESSMENT.—Not later than 12 months after the date of enactment of this Act, the Administrator shall submit to Congress a report that—

(A) assesses the capacity of the private reinsurance, capital, and financial markets to assist communities, on a voluntary basis, in managing

the full range of financial risks associated with flooding by requesting proposals to assume a portion of the insurance risk of the National Flood Insurance Program;

(B) describes any responses to the request for proposals under subparagraph (A);

(C) assesses whether the rates and terms contained in any proposals received by the Administrator are—

(i) reasonable and appropriate; and

(ii) in an amount sufficient to maintain the ability of the National Flood Insurance Program to pay claims;

(D) describes the extent to which carrying out the proposals received by the Administrator would minimize the likelihood that the Administrator would use the borrowing authority under section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016);

(E) describes fluctuations in historical reinsurance rates; and

(F) includes an economic cost-benefit analysis of the impact on the National Flood Insurance Program if the Administrator were to exercise the authority under section 1335(a)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4055(a)(2)), as added by this section, to secure reinsurance of coverage provided by the National Flood Insurance Program from the private market.

(2) PROTOCOL FOR RELEASE OF DATA.—The Administrator shall develop a protocol, including adequate privacy protections, to provide for the release of data sufficient to conduct the assessment required under paragraph (1).

(d) REINSURANCE.—The National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is amended—

(1) in section 1331(a)(2) (42 U.S.C. 4051(a)(2)), by inserting '', including as reinsurance of coverage provided by the flood insurance program'' before '', on such terms'';

(2) in section 1332(c)(2) (42 U.S.C. 4052(c)(2)), by inserting ''or reinsurance'' after ''flood insurance coverage'';

(3) in section 1335(a) (42 U.S.C. 4055(a))—

(A) by striking ''The Director'' and inserting the following:

''(1) IN GENERAL.—The Administrator''; and

(B) by adding at the end the following:

''(2) PRIVATE REINSURANCE.—The Administrator is authorized to secure reinsurance of coverage provided by the flood insurance program from the private market at rates and on terms determined by the Administrator to be reasonable and appropriate, in an amount sufficient to maintain the ability of the program to pay claims.'';

(4) in section 1346(a) (42 U.S.C. 4082(a))—

(A) in the matter preceding paragraph (1), by inserting after ''for the purpose of'' the following: ''securing reinsurance of insurance coverage provided by the program or for the purpose of'';

(B) in paragraph (1)—

(i) by striking ''estimating'' and inserting ''Estimating''; and

(ii) by striking the semicolon at the end and inserting a period;

(C) in paragraph (2)—

(i) by striking ''receiving'' and inserting ''Receiving''; and

(ii) by striking the semicolon at the end and inserting a period;

(D) in paragraph (3)—

(i) by striking ''making'' and inserting ''Making''; and

(ii) by striking '''; and''' and inserting a period;

(E) by redesignating paragraph (4) as paragraph (5);

(F) in paragraph (5), as so redesignated, by striking ''otherwise'' and inserting ''Otherwise''; and

(G) by inserting after paragraph (3) the following new paragraph:

''(4) Placing reinsurance coverage on insurance provided by such program.''; and

(5) in section 1370(a)(3) (42 U.S.C. 4121(a)(3)), by striking ''include any'' and all that follows and inserting the following: ''include any organization or person that is authorized to engage in the business of insurance under the laws of any State, subject to the reporting requirements of the Securities Exchange Act of 1934 pursuant to section 13(a) or 15(d) of such Act (15 U.S.C. 78m(a) and 78o(d)), or authorized by the Administrator to assume reinsurance on risks insured by the flood insurance program;''.

(e) ASSESSMENT OF CLAIMS-PAYING ABILITY.—

(1) ASSESSMENT.—

(A) ASSESSMENT REQUIRED.—

(i) IN GENERAL.—Not later than September 30 of each year, the Administrator shall conduct an assessment of the ability of the National Flood Insurance Program to pay claims.

(ii) PRIVATE MARKET REINSURANCE.—The assessment under this paragraph for any year in which the Administrator exercises the authority under section 1335(a)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4055(a)(2)), as added by this section, to secure reinsurance of coverage provided by the National Flood Insurance Program from the private market shall include information relating the use of private sector reinsurance and reinsurance equivalents by the Administrator, whether or not the Administrator used the borrowing authority under section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016).

(iii) FIRST ASSESSMENT.—The Administrator shall conduct the first assessment required under this paragraph not later than September 30, 2012.

(B) CONSIDERATIONS.—In conducting an assessment under subparagraph (A), the Administrator shall take into consideration regional concentrations of coverage written by the National Flood Insurance Program, peak flood zones, and relevant mitigation measures.

(2) ANNUAL REPORT OF THE ADMINISTRATOR OF ACTIVITIES UNDER THE NATIONAL FLOOD INSURANCE PROGRAM.—The Administrator shall—

(A) include the results of each assessment in the report required under section 100231(b); and

(B) not later than 30 days after the date on which the Administrator completes an assessment required under paragraph (1), make the results of the assessment available to the public.

SEC. 100233. GAO STUDY ON BUSINESS INTERRUPTION AND ADDITIONAL LIVING EXPENSES COVERAGES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study concerning—

(1) the availability of additional living expenses and business interruption coverage in the private marketplace for flood insurance;

(2) the feasibility of allowing the National Flood Insurance Program to offer such coverage at the option of the consumer;

(3) the estimated cost to consumers if the National Flood Insurance Program priced such optional coverage at true actuarial rates;

(4) the impact such optional coverage would have on consumer participation in the National Flood Insurance Program; and

(5) the fiscal impact such optional coverage would have upon the National Flood Insurance Fund if such optional coverage were included in the National Flood Insurance Program, as described in paragraph (2), at the price described in paragraph (3).

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing the results of the study under subsection (a).

SEC. 100234. POLICY DISCLOSURES.

(a) IN GENERAL.—Notwithstanding any other provision of law, in addition to any other disclosures that may be required, each policy under the National Flood Insurance Program shall state all conditions, exclusions, and other limitations pertaining to coverage under the subject policy, regardless of the underlying insurance product, in plain English, in boldface type, and in a font size that is twice the size of the text of the body of the policy.

(b) VIOLATIONS.—The Administrator may impose a civil penalty of not more than $50,000 on any person that fails to comply with subsection (a).

SEC. 100235. REPORT ON INCLUSION OF BUILDING CODES IN FLOODPLAIN MANAGEMENT CRITERIA.

Not later than 6 months after the date of enactment of this Act, the Administrator of the Federal Emergency Management Agency shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the impact, effectiveness, and feasibility of amending section 1361 of the National Flood Insurance Act of 1968 (42 U.S.C. 4102) to include widely used and nationally recognized building codes as part of the floodplain management criteria developed under such section, and shall determine—

(1) the regulatory, financial, and economic impacts of such a building code requirement on homeowners, States and local communities, local land use policies, and the Federal Emergency Management Agency;

(2) the resources required of State and local communities to administer and enforce such a building code requirement;

(3) the effectiveness of such a building code requirement in reducing flood-related damage to buildings and contents;

(4) the impact of such a building code requirement on the actuarial soundness of the National Flood Insurance Program;

(5) the effectiveness of nationally recognized codes in allowing innovative materials and systems for flood-resistant construction;

(6) the feasibility and effectiveness of providing an incentive in lower premium rates for flood insurance coverage under such Act for structures meeting whichever of such widely used and nationally recognized building codes or any applicable local building codes provides greater protection from flood damage;

(7) the impact of such a building code requirement on rural communities with different building code challenges than urban communities; and

(8) the impact of such a building code requirement on Indian reservations.

SEC. 100236. STUDY OF PARTICIPATION AND AFFORDABILITY FOR CERTAIN POLICYHOLDERS.

(a) FEMA STUDY.—The Administrator shall conduct a study of—

(1) methods to encourage and maintain participation in the National Flood Insurance Program;

(2) methods to educate consumers about the National Flood Insurance Program and the flood risk associated with their property;

(3) methods for establishing an affordability framework for the National Flood Insurance Program, including methods to aid individuals to afford risk-based premiums under the National Flood Insurance Program through targeted assistance rather than generally subsidized rates, including means-tested vouchers; and

(4) the implications for the National Flood Insurance Program and the Federal budget of using each such method.

(b) NATIONAL ACADEMY OF SCIENCES ECONOMIC ANALYSIS.—To inform the Administrator in the conduct of the study under subsection (a), the Administrator shall enter into a contract under which the National Academy of Sciences, in consultation with the Comptroller General of the United States, shall conduct and submit to the Administrator an economic analysis of the costs and benefits to the Federal Government of a flood insurance program with full

risk-based premiums, combined with means-tested Federal assistance to aid individuals who cannot afford coverage, through an insurance voucher program. The analysis shall compare the costs of a program of risk-based rates and means-tested assistance to the current system of subsidized flood insurance rates and federally funded disaster relief for people without coverage.

(c) REPORT.—Not later than 270 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains the results of the study and analysis under this section.

(d) FUNDING.—Notwithstanding section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017), there shall be available to the Administrator from the National Flood Insurance Fund, of amounts not otherwise obligated, not more than $750,000 to carry out this section.

SEC. 100237. STUDY AND REPORT CONCERNING THE PARTICIPATION OF INDIAN TRIBES AND MEMBERS OF INDIAN TRIBES IN THE NATIONAL FLOOD INSURANCE PROGRAM.

(a) DEFINITION.—In this section, the term ''Indian tribe'' has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(b) FINDINGS.—Congress finds that participation by Indian tribes in the National Flood Insurance Program is low. Only 45 of 565 Indian tribes participate in the National Flood Insurance Program.

(c) STUDY.—The Comptroller General of the United States, in coordination and consultation with Indian tribes and members of Indian tribes throughout the United States, shall carry out a study that examines—

(1) the factors contributing to the current rates of participation by Indian tribes and members of Indian tribes in the National Flood Insurance Program; and

(2) methods of encouraging participation by Indian tribes and members of Indian tribes in the National Flood Insurance Program.

(d) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report that—

(1) contains the results of the study carried out under subsection (c);

(2) describes the steps that the Administrator should take to increase awareness and encourage participation by Indian tribes and members of Indian tribes in the National Flood Insurance Program; and

(3) identifies any legislative changes that would encourage participation by Indian tribes and members of Indian tribes in the National Flood Insurance Program.

SEC. 100238. TECHNICAL CORRECTIONS.

(a) FLOOD DISASTER PROTECTION ACT OF 1973.—The Flood Disaster Protection Act of 1973 (42 U.S.C. 4002 et seq.) is amended—

(1) by striking ''Director'' each place that term appears, except in section 102(f)(3) (42 U.S.C. 4012a(f)(3)), and inserting ''Administrator''; and

(2) in section 201(b) (42 U.S.C. 4105(b)), by striking ''Director's'' and inserting ''Administrator's''.

(b) NATIONAL FLOOD INSURANCE ACT OF 1968.—The National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is amended—

(1) by striking ''Director'' each place that term appears and inserting ''Administrator'';

(2) in section 1363 (42 U.S.C. 4104), by striking ''Director's'' each place that term appears and inserting ''Administrator's''; and

(3) in section 1370(a)(9) (42 U.S.C. 4121(a)(9)), by striking ''the Office of Thrift Supervision,''.

(c) FEDERAL FLOOD INSURANCE ACT OF 1956.—Section 15(e) of the Federal Flood Insurance Act of 1956 (42 U.S.C. 2414(e)) is amended by striking ''Director'' each place that term appears and inserting ''Administrator''.

SEC. 100239. USE OF PRIVATE INSURANCE TO SATISFY MANDATORY PURCHASE REQUIREMENT.

(a) AMENDMENTS.—Section 102(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)) is amended—

(1) in paragraph (1)—

(A) by striking the period at the end and inserting ''; and'';

(B) by striking ''lending institutions not to make'' and inserting ''lending institutions—

''(A) not to make''; and

(C) by adding at the end the following:

''(B) to accept private flood insurance as satisfaction of the flood insurance coverage requirement under subparagraph (A) if the coverage provided by such private flood insurance meets the requirements for coverage under such subparagraph.'';

(2) in paragraph (2)—

(A) by striking ''paragraph (1)'' each place that term appears and inserting ''paragraph (1)(A)''; and

(B) by inserting after the first sentence the following: ''Each Federal agency lender shall accept private flood insurance as satisfaction of the flood insurance coverage requirement under the preceding sentence if the flood insurance coverage provided by such private flood insurance meets the requirements for coverage under such sentence.'';

(3) in paragraph (3), in the matter following subparagraph (B), by striking ''paragraph (1).'' and inserting ''paragraph (1)(A). The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall accept private flood insurance as satisfaction of the flood insurance coverage requirement under paragraph (1)(A) if the flood insurance coverage provided by such private flood insurance meets the requirements for coverage under such paragraph and any requirements established by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, respectively, relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation will accept private flood insurance.''; and

(4) by adding at the end the following:

''(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to supersede or limit the authority of a Federal entity for lending regulation, the Federal Housing Finance Agency, a Federal agency lender, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to establish requirements relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which the entity or agency will accept private flood insurance.

''(6) NOTICE.—

''(A) IN GENERAL.—Each lender shall disclose to a borrower that is subject to this subsection that—

''(i) flood insurance is available from private insurance companies that issue standard flood insurance policies on behalf of the national flood insurance program or directly from the national flood insurance program;

''(ii) flood insurance that provides the same level of coverage as a standard flood insurance policy under the national flood insurance program may be available from a private insurance company that issues policies on behalf of the company; and

''(iii) the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the national flood insurance program and policies issued on behalf of private insurance companies and to direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent.

''(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting or otherwise limiting the authority of a Federal entity for lending regulation to approve any disclosure made by a regulated lending institution for purposes of complying with subparagraph (A).

''(7) PRIVATE FLOOD INSURANCE DEFINED.—In this subsection, the term 'private flood insurance' means an insurance policy that—

''(A) is issued by an insurance company that is—

''(i) licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

''(ii) in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located;

''(B) provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the national flood insurance program, including when considering deductibles, exclusions, and conditions offered by the insurer;

''(C) includes—

''(i) a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to—

''(I) the insured; and

''(II) the regulated lending institution or Federal agency lender;

''(ii) information about the availability of flood insurance coverage under the national flood insurance program;

''(iii) a mortgage interest clause similar to the clause contained in a standard flood insurance policy under the national flood insurance program; and

''(iv) a provision requiring an insured to file suit not later than 1 year after date of a written denial of all or part of a claim under the policy; and

''(D) contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the national flood insurance program.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 1364(a)(3)(C) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104a(a)(3)(C)) is amended by inserting after ''private insurers'' the following: '', as required under section 102(b)(6) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)(6))''.

SEC. 100240. LEVEES CONSTRUCTED ON CERTAIN PROPERTIES.

(a) DEFINITION.—In this section, the term ''covered hazard mitigation land'' means land that—

(1) was acquired and deed restricted under section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) during the period beginning on January 1, 1999, and ending December 31, 2011;

(2) is located at—

(A) 1029 Oak Street, Fargo, North Dakota;

(B) 27 South Terrace, Fargo, North Dakota;

(C) 1033 Oak Street, Fargo, North Dakota;

(D) 308 Schnell Drive, Oxbow, North Dakota; or

(E) 306 Schnell Drive, Oxbow, North Dakota; and

(3) is located in a community that—

(A) is participating in the National Flood Insurance Program on the date on which a State, local, or tribal government submits an application requesting to construct a permanent flood risk reduction levee under subsection (b); and

(B) certifies to the Administrator and the Chief of Engineers that the community will continue to participate in the National Flood Insurance Program.

(b) AUTHORITY.—Notwithstanding any other prohibition on construction on property acquired with funding from the Federal Emergency Management Agency for conversion to open space purposes, the Administrator shall allow the construction of a permanent flood risk reduction levee by a State, local, or tribal government on covered hazard mitigation land if—

(1) the Administrator and the Chief of Engineers make a determination that—

(A) construction of the proposed permanent flood risk reduction levee would more effectively mitigate against flooding risk than an open floodplain or other flood risk reduction measures;

(B) the proposed permanent flood risk reduction levee complies with Federal, State, and local requirements, including mitigation of adverse impacts and implementation of floodplain management requirements, which shall include an evaluation of whether the construction, operation, and maintenance of the proposed levee—

(i) would continue to meet best available industry standards and practices;

(ii) would be the most cost-effective measure to protect against the assessed flood risk; and

(iii) minimizes future costs to the Federal Government;

(C) the State, local, or tribal government seeking to construct the proposed permanent flood risk reduction levee has provided an adequate maintenance plan that documents the procedures the State, local, or tribal government will use to ensure that the stability, height, and overall integrity of the proposed levee and the structure and systems of the proposed levee are maintained, including—

(i) specifying the maintenance activities to be performed;

(ii) specifying the frequency with which maintenance activities will be performed;

(iii) specifying the person responsible for performing each maintenance activity (by name or title);

(iv) detailing the plan for financing the maintenance of the levee; and

(v) documenting the ability of the State, local, or tribal government to finance the maintenance of the levee; and

(2) before the commencement of construction, the State, local, or tribal government provides to the Administrator an amount—

(A) equal to the Federal share of all project costs previously provided by the Administrator under the applicable program for each deed restricted parcel of the covered hazard mitigation land, which the Administrator shall deposit in the National Flood Insurance Fund; and

(B) that does not include any Federal funds.

(c) MAINTENANCE CERTIFICATION.—

(1) IN GENERAL.—A State, local, or tribal government that constructs a permanent flood risk reduction levee under subsection (b) shall submit to the Administrator and the Chief of Engineers an annual certification indicating whether the State, local, or tribal government is in compliance with the maintenance plan provided under subsection (b)(1)(C).

(2) REVIEW.—The Chief of Engineers shall review each certification submitted under paragraph (1) and determine whether the State, local, or tribal government has complied with the maintenance plan.

SEC. 100241. INSURANCE COVERAGE FOR PRIVATE PROPERTIES AFFECTED BY FLOODING FROM FEDERAL LANDS.

Section 1306(c)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(2)) is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the initial purchase of flood insurance coverage for private property if—

''(i) the Administrator determines that the property is affected by flooding on Federal land that is a result of, or is exacerbated by, post-wildfire conditions, after consultation with an authorized employee of the Federal agency that has jurisdiction of the land on which the wildfire that caused the post-wildfire conditions occurred; and

''(ii) the flood insurance coverage was purchased not later than 60 days after the fire containment date, as determined by the appropriate Federal employee, relating to the wildfire that caused the post-wildfire conditions described in clause (i).''.

SEC. 100242. PERMISSIBLE LAND USE UNDER FEDERAL FLOOD INSURANCE PLAN.

Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by adding at the end the following:

''SEC. 1325. TREATMENT OF SWIMMING POOL ENCLOSURES OUTSIDE OF HURRICANE SEASON.

''(a) IN GENERAL.—Notwithstanding any other provision of law, including the adequate land use and control measures developed pursuant to section 1361 and applicable to non-one- and two-family structures located within coastal areas, as identified by the Administrator, the following may be permitted:

''(1) Nonsupporting breakaway walls in the space below the lowest elevated floor of a building, if the space is used solely for a swimming pool between November 30 and June 1 of any year, in an area designated as Zone V on a flood insurance rate map.

''(2) Openings in walls in the space below the lowest elevated floor of a building, if the space is used solely for a swimming pool between November 30 and June 1 of any year, in an area designated as Zone A on a flood insurance rate map.

''(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to alter the terms and conditions of eligibility and insurability of coverage for a building under the standard flood insurance policy under the national flood insurance program.''.

SEC. 100243. CDBG ELIGIBILITY FOR FLOOD INSURANCE OUTREACH ACTIVITIES AND COMMUNITY BUILDING CODE ADMINISTRATION GRANTS.

(a) AMENDMENTS.—Section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)) is amended—

(1) by redesignating paragraph (25) as paragraph (26);

(2) by redesignating the second paragraph designated as paragraph (24) (relating to tornado-safe shelters) as paragraph (25);

(3) in paragraph (24) (relating to homeownership among persons with low and moderate income), by striking ''and'' at the end;

(4) in paragraph (25), as so redesignated, by striking ''and'' at the end;

(5) in paragraph (26), as so redesignated, by striking the period at the end and inserting a semicolon; and

(6) by adding at the end the following new paragraphs:

''(27) supplementing existing State or local funding for administration of building code enforcement by local building code enforcement departments, including for increasing staffing, providing staff training, increasing staff competence and professional qualifications, and supporting individual certification or departmental accreditation, and for capital expenditures specifically dedicated to the administration of the building code enforcement department, except that, to be eligible to use amounts as provided in this paragraph—

''(A) a building code enforcement department shall provide matching, non-Federal funds to be used in conjunction with amounts used under this paragraph in an amount—

''(i) in the case of a building code enforcement department serving an area with a population of more than 50,000, equal to not less than 50 percent of the total amount of any funds made available under this title that are used under this paragraph;

''(ii) in the case of a building code enforcement department serving an area with a population of between 20,001 and 50,000, equal to not less than 25 percent of the total amount of any funds made available under this title that are used under this paragraph; and

''(iii) in the case of a building code enforcement department serving an area with a population of less than 20,000, equal to not less than 12.5 percent of the total amount of any funds made available under this title that are used under this paragraph,

except that the Secretary may waive the matching fund requirements under this subparagraph, in whole or in part, based upon the level of economic distress of the jurisdiction in which is located the local building code enforcement department that is using amounts for purposes under this paragraph, and shall waive such matching fund requirements in whole for any recipient jurisdiction that has dedicated all building code permitting fees to the conduct of local building code enforcement; and

''(B) any building code enforcement department using funds made available under this title for purposes under this paragraph shall empanel a code administration and enforcement team consisting of at least 1 full-time building code enforcement officer, a city planner, and a health planner or similar officer; and

''(28) provision of assistance to local governmental agencies responsible for floodplain management activities (including such agencies of Indians tribes, as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103)) in communities that participate in the national flood insurance program under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), only for carrying out outreach activities to encourage and facilitate the purchase of flood insurance protection under such Act by owners and renters of properties in such communities and to promote educational activities that increase awareness of flood risk reduction; except that—

''(A) amounts used as provided under this paragraph shall be used only for activities designed to—

''(i) identify owners and renters of properties in communities that participate in the national flood insurance program, including owners of residential and commercial properties;

''(ii) notify such owners and renters when their properties become included in, or when they are excluded from, an area having special flood hazards and the effect of such inclusion or exclusion on the applicability of the mandatory flood insurance purchase requirement under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) to such properties;

''(iii) educate such owners and renters regarding the flood risk and reduction of this risk in their community, including the continued flood risks to areas that are no longer subject to the flood insurance mandatory purchase requirement;

''(iv) educate such owners and renters regarding the benefits and costs of maintaining or acquiring flood insurance, including, where applicable, lower-cost preferred risk policies under this title for such properties and the contents of such properties;

''(v) encourage such owners and renters to maintain or acquire such coverage;

''(vi) notify such owners of where to obtain information regarding how to obtain such coverage, including a telephone number, mailing address, and Internet site of the Administrator of the Federal Emergency Management Agency (in this paragraph referred to as the 'Administrator') where such information is available; and

''(vii) educate local real estate agents in communities participating in the national flood insurance program regarding the program and the availability of coverage under the program for

owners and renters of properties in such communities, and establish coordination and liaisons with such real estate agents to facilitate purchase of coverage under the National Flood Insurance Act of 1968 and increase awareness of flood risk reduction;

''(B) in any fiscal year, a local governmental agency may not use an amount under this paragraph that exceeds 3 times the amount that the agency certifies, as the Secretary, in consultation with the Administrator, shall require, that the agency will contribute from non-Federal funds to be used with such amounts used under this paragraph only for carrying out activities described in subparagraph (A); and for purposes of this subparagraph, the term 'non-Federal funds' includes State or local government agency amounts, in-kind contributions, any salary paid to staff to carry out the eligible activities of the local governmental agency involved, the value of the time and services contributed by volunteers to carry out such services (at a rate determined by the Secretary), and the value of any donated material or building and the value of any lease on a building;

''(C) a local governmental agency that uses amounts as provided under this paragraph may coordinate or contract with other agencies and entities having particular capacities, specialties, or experience with respect to certain populations or constituencies, including elderly or disabled families or persons, to carry out activities described in subparagraph (A) with respect to such populations or constituencies; and

''(D) each local government agency that uses amounts as provided under this paragraph shall submit a report to the Secretary and the Administrator, not later than 12 months after such amounts are first received, which shall include such information as the Secretary and the Administrator jointly consider appropriate to describe the activities conducted using such amounts and the effect of such activities on the retention or acquisition of flood insurance coverage.''.

(b) SUNSET.—Effective on the date that is 2 years after the date of enactment of this Act, section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)) is amended—

(1) in paragraph (25), as so redesignated by subsection (a) of this subsection, by adding ''and'' at the end;

(2) in paragraph (26), as so redesignated by subsection (a) of this subsection, by striking the semicolon at the end and inserting a period; and

(3) by striking paragraphs (27) and (28), as added by subsection (a) of this subsection.

SEC. 100244. TERMINATION OF FORCE-PLACED INSURANCE.

(a) IN GENERAL.—Section 102(e) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(e)) is amended—

(1) in paragraph (2), by striking ''purchasing the insurance'' and inserting ''purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount'';

(2) by redesignating paragraphs (3) and (4) as paragraphs (5) and (6), respectively; and

(3) by inserting after paragraph (2) the following new paragraphs:

''(3) TERMINATION OF FORCE-PLACED INSURANCE.—Within 30 days of receipt by the lender or servicer of a confirmation of a borrower's existing flood insurance coverage, the lender or servicer shall—

''(A) terminate any insurance purchased by the lender or servicer under paragraph (2); and

''(B) refund to the borrower all premiums paid by the borrower for any insurance purchased by the lender or servicer under paragraph (2) during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the lender or servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the lender or servicer during such period.

''(4) SUFFICIENCY OF DEMONSTRATION.—For purposes of confirming a borrower's existing flood insurance coverage, a lender or servicer for a loan shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.''.

SEC. 100245. FEMA AUTHORITY ON TRANSFER OF POLICIES.

Section 1345 of the National Flood Insurance Act of 1968 (42 U.S.C. 4081) is amended by adding at the end the following new subsection:

''(d) FEMA AUTHORITY ON TRANSFER OF POLICIES.—Notwithstanding any other provision of this title, the Administrator may, at the discretion of the Administrator, refuse to accept the transfer of the administration of policies for coverage under the flood insurance program under this title that are written and administered by any insurance company or other insurer, or any insurance agent or broker.''.

SEC. 100246. REIMBURSEMENT OF CERTAIN EXPENSES.

Section 1363 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104) is amended by striking subsection (f) and inserting the following:

''(f) REIMBURSEMENT OF CERTAIN EXPENSES.—When, incident to any appeal under subsection (b) or (c) of this section, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal based on a scientific or technical error on the part of the Federal Emergency Management Agency, which is successful in whole or part, the Administrator shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Administrator in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. The amounts available for implementing this subsection shall not exceed $250,000. The Administrator shall promulgate regulations to carry out this subsection.''.

SEC. 100247. FIO STUDY ON RISKS, HAZARDS, AND INSURANCE.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Director of the Federal Insurance Office shall conduct a study and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report providing an assessment of the current state of the market for natural catastrophe insurance in the United States.

(b) FACTORS.—The study and report required under subsection (a) shall assess—

(1) the current condition of, as well as the outlook for, the availability and affordability of insurance for natural catastrophe perils in all regions of the United States;

(2) the current ability of States, communities, and individuals to mitigate their natural catastrophe risks, including the affordability and feasibility of such mitigation activities;

(3) the current state of catastrophic insurance and reinsurance markets and the current approaches in providing insurance protection to different sectors of the population of the United States;

(4) the current financial condition of State residual markets and catastrophe funds in high-risk regions, including the likelihood of insolvency following a natural catastrophe, the concentration of risks within such funds, the reliance on post-event assessments and State funding, and the adequacy of rates; and

(5) the current role of the Federal Government and State and local governments in providing incentives for feasible risk mitigation efforts and the cost of providing post-natural catastrophe aid in the absence of insurance.

(c) ADDITIONAL FACTORS.—The study and report required under subsection (a) shall also contain an assessment of current approaches to insuring natural catastrophe risks in the United States and such other information as the Director of the Federal Insurance Office determines necessary or appropriate.

(d) CONSULTATION.—In carrying out the study and report under subsection (a), the Director of the Federal Insurance Office shall consult with the National Academy of Sciences, State insurance regulators, consumer organizations, representatives of the insurance and reinsurance industry, policyholders, and other organizations and experts, as appropriate.

SEC. 100248. FLOOD PROTECTION IMPROVEMENTS CONSTRUCTED ON CERTAIN PROPERTIES.

(a) DEFINITION.—In this section, the term ''covered hazard mitigation land'' means land that—

(1) was acquired and deed restricted under section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) during the period beginning on March 1, 2008, and ending on December 31, 2008;

(2) is located at—

(A) 809 East Main Cross Street, Findlay, Ohio, 45840;

(B) 801 East Main Cross Street, Findlay, Ohio, 45840;

(C) 725 East Main Cross Street, Findlay, Ohio, 45840; or

(D) 631 East Main Cross Street, Findlay, Ohio, 45840; and

(3) is located in a community that—

(A) is participating in the National Flood Insurance Program on the date on which a State, local, or tribal government submits an application requesting to construct a flood protection improvement under subsection (b); and

(B) certifies to the Administrator and the Chief of Engineers that the community will continue to participate in the National Flood Insurance Program.

(b) AUTHORITY.—Notwithstanding any other prohibition on construction on property acquired with funding from the Federal Emergency Management Agency for conversion to open space purposes, the Administrator shall allow the construction of a flood protection improvement by a State, local, or tribal government on covered hazard mitigation land if—

(1) the Administrator and the Chief of Engineers make a determination that—

(A) construction of the proposed flood protection improvement would more effectively mitigate against flooding risk than an open floodplain or other flood risk reduction measures;

(B) the proposed flood protection improvement complies with Federal, State, and local requirements, including mitigation of adverse impacts and implementation of floodplain management requirements, which shall include an evaluation of whether the construction, operation, and maintenance of the proposed flood protection improvement—

(i) would continue to meet best available industry standards and practices;

(ii) would be the most cost-effective measure to protect against the assessed flood risk; and

(iii) minimizes future costs to the Federal Government;

(C) the State, local, or tribal government seeking to construct the flood protection improvement has provided an adequate maintenance plan that documents the procedures the State, local, or tribal government will use to ensure that the stability, height, and overall integrity of the proposed flood protection improvement and the structure and systems of the proposed flood protection improvement are maintained, including—

(i) specifying the maintenance activities to be performed;

(ii) specifying the frequency with which maintenance activities will be performed;

(iii) specifying the person responsible for performing each maintenance activity (by name or title);

(iv) detailing the plan for financing the maintenance of the flood protection improvement; and

(v) documenting the ability of the State, local, or tribal government to finance the maintenance of the flood protection improvement; and

(2) before the commencement of construction, the State, local, or tribal government provides to the Administrator an amount—

(A) equal to the Federal share of all project costs previously provided by the Administrator under the applicable program for each deed restricted parcel of the covered hazard mitigation land, which the Administrator shall deposit in the National Flood Insurance Fund; and

(B) that does not include any Federal funds.

(c) MAINTENANCE CERTIFICATION.—

(1) IN GENERAL.—A State, local, or tribal government that constructs a flood protection improvement under subsection (b) shall submit to the Administrator and the Chief of Engineers an annual certification indicating whether the State, local, or tribal government is in compliance with the maintenance plan provided under subsection (b)(1)(C).

(2) REVIEW.—The Chief of Engineers shall review each certification submitted under paragraph (1) and determine whether the State, local, or tribal government has complied with the maintenance plan.

SEC. 100249. NO CAUSE OF ACTION.

No cause of action shall exist and no claim may be brought against the United States for violation of any notification requirement imposed upon the United States by this subtitle or any amendment made by this subtitle.

Subtitle B—Alternative Loss Allocation

SEC. 100251. SHORT TITLE.

This subtitle may be cited as the ''Consumer Option for an Alternative System to Allocate Losses Act of 2012'' or the ''COASTAL Act of 2012''.

SEC. 100252. ASSESSING AND MODELING NAMED STORMS OVER COASTAL STATES.

Subtitle C of title XII of the Omnibus Public Land Management Act of 2009 (33 U.S.C. 3601 et seq.) (also known as the ''Integrated Coastal and Ocean Observation System Act of 2009'') is amended by adding at the end the following:

''SEC. 12312. ASSESSING AND MODELING NAMED STORMS OVER COASTAL STATES.

''(a) DEFINITIONS.—In this section:

''(1) COASTAL FORMULA.—The term 'COASTAL Formula' has the meaning given the term in section 1337(a) of the National Flood Insurance Act of 1968.

''(2) COASTAL STATE.—The term 'coastal State' has the meaning given the term 'coastal state' in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453).

''(3) COASTAL WATERS.—The term 'coastal waters' has the meaning given the term in such section.

''(4) COVERED DATA.—The term 'covered data' means, with respect to a named storm identified by the Administrator under subsection (b)(2)(A), empirical data that are—

''(A) collected before, during, or after such storm; and

''(B) necessary to determine magnitude and timing of wind speeds, rainfall, the barometric pressure, river flows, the extent, height, and timing of storm surge, topographic and bathymetric data, and other measures required to accurately model and assess damage from such storm.

''(5) INDETERMINATE LOSS.—The term 'indeterminate loss' has the meaning given the term in section 1337(a) of the National Flood Insurance Act of 1968.

''(6) NAMED STORM.—The term 'named storm' means any organized weather system with a defined surface circulation and maximum winds of at least 39 miles per hour which the National Hurricane Center of the United States National Weather Service names as a tropical storm or a hurricane.

''(7) NAMED STORM EVENT MODEL.—The term 'Named Storm Event Model' means the official meteorological and oceanographic computerized model, developed by the Administrator under subsection (b)(1)(A), which utilizes covered data to replicate the magnitude, timing, and spatial variations of winds, rainfall, and storm surges associated with named storms that threaten any portion of a coastal State.

''(8) PARTICIPANT.—The term 'participant' means a Federal, State, or private entity that chooses to cooperate with the Administrator in carrying out the provisions of this section by collecting, contributing, and maintaining covered data.

''(9) POST-STORM ASSESSMENT.—The term 'post-storm assessment' means a scientific assessment produced and certified by the Administrator to determine the magnitude, timing, and spatial variations of winds, rainfall, and storm surges associated with a specific named storm to be used in the COASTAL Formula.

''(10) STATE.—The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

''(b) NAMED STORM EVENT MODEL AND POST-STORM ASSESSMENT.—

''(1) ESTABLISHMENT OF NAMED STORM EVENT MODEL.—

''(A) IN GENERAL.—Not later than 540 days after the date of the enactment of the Consumer Option for an Alternative System to Allocate Losses Act of 2012, the Administrator shall develop by regulation the Named Storm Event Model.

''(B) ACCURACY.—The Named Storm Event Model shall be designed to generate post-storm assessments, as provided in paragraph (2), that have a degree of accuracy of not less than 90 percent for every indeterminate loss for which a post-storm assessment is utilized.

''(2) POST-STORM ASSESSMENT.—

''(A) IDENTIFICATION OF NAMED STORMS THREATENING COASTAL STATES.—After the establishment of the COASTAL Formula, the Administrator shall, in consultation with the Secretary of Homeland Security, identify named storms that may reasonably constitute a threat to any portion of a coastal State.

''(B) POST-STORM ASSESSMENT REQUIRED.—Upon identification of a named storm under subparagraph (A), the Administrator shall develop a post-storm assessment for such named storm using the Named Storm Event Model and covered data collected for such named storm pursuant to the protocol established under subsection (c)(1).

''(C) SUBMITTAL OF POST-STORM ASSESSMENT.—Not later than 90 days after an identification of a named storm is made under subparagraph (A), the Administrator shall submit to the Secretary of Homeland Security the post-storm assessment developed for such storm under subparagraph (B).

''(3) ACCURACY.—The Administrator shall ensure, to the greatest extent practicable, that each post-storm assessment developed under paragraph (2) has a degree of accuracy of not less than 90 percent.

''(4) CERTIFICATION.—For each post-storm assessment carried out under paragraph (2), the Administrator shall—

''(A) certify the degree of accuracy for such assessment, including specific reference to any segments or geographic areas for which the assessment is less than 90 percent accurate; and

''(B) report such certification to the Secretary of Homeland Security for the purposes of use with indeterminate loss claims under section 1337 of the National Flood Insurance Act of 1968.

''(5) FINALITY OF DETERMINATIONS.—A certification of the degree of accuracy of a post-storm assessment under this subsection by the Administrator shall be final and shall not be subject to judicial review.

''(6) AVAILABILITY.—The Administrator shall make available to the public the Named Storm Event Model and any post-storm assessment developed under this subsection.

''(c) ESTABLISHMENT OF A PROTOCOL FOR POST-STORM ASSESSMENT.—

''(1) IN GENERAL.—Not later than 540 days after the date of the enactment of the Consumer Option for an Alternative System to Allocate Losses Act of 2012, the Administrator shall establish a protocol, based on the plan submitted under subsection (d)(3), to collect and assemble all covered data required by the Administrator to produce post-storm assessments required by subsection (b), including assembling data collected by participants and stored in the database established under subsection (f) and from such other sources as the Administrator considers appropriate.

''(2) ACQUISITION OF SENSORS AND STRUCTURES.—If the Administrator is unable to use a public or private asset to obtain covered data as part of the protocol established under paragraph (1), the Administrator may acquire such sensors and structures for the placement of sensors as may be necessary to obtain such data.

''(3) USE OF FEDERAL ASSETS.—If the protocol requires placement of a sensor to develop assessments pursuant to subsection (b), the Administrator shall, to the extent practicable, use Federal assets for the placement of such sensors.

''(4) USE OF ACQUIRED STRUCTURES.—

''(A) IN GENERAL.—If the Administrator acquires a structure for the placement of a sensor for purposes of such protocol, the Administrator shall to the extent practical permit other public and private entities to place sensors on such structure to collect—

''(i) meteorological data;

''(ii) national security-related data;

''(iii) navigation-related data;

''(iv) hydrographic data; or

''(v) such other data as the Administrator considers appropriate.

''(B) RECEIPT OF CONSIDERATION.—The Administrator may receive consideration for the placement of a sensor on a structure under subparagraph (A).

''(C) IN-KIND CONSIDERATION.—Consideration received under subparagraph (B) may be received in-kind.

''(D) USE OF CONSIDERATION.—To the extent practicable, consideration received under subparagraph (B) shall be used for the maintenance of sensors used to collect covered data.

''(5) COORDINATED DEPLOYMENTS AND DATA COLLECTION PRACTICES.—The Administrator shall, in consultation with the Office of the Federal Coordinator for Meteorology, coordinate the deployment of sensors as part of the protocol established under paragraph (1) and related data collection carried out by Federal, State, academic, and private entities who choose to cooperate with the Administrator in carrying out this subsection.

''(6) PRIORITY ACQUISITION AND DEPLOYMENT.—The Administrator shall give priority in the acquisition for and deployment of sensors under the protocol required by paragraph (1) to areas of coastal States that have the highest risk of being harmed by named storms.

''(d) ASSESSMENT OF SYSTEMS AND EFFORTS TO COLLECT COVERED DATA.—

''(1) IDENTIFICATION OF SYSTEMS AND EFFORTS TO COLLECT COVERED DATA.—Not later than 180 days after the date of the enactment of the Consumer Option for an Alternative System to Allocate Losses Act of 2012, the Administrator shall, in consultation with the Office of the Federal Coordinator for Meteorology—

''(A) carry out a survey to identify all Federal and State efforts and systems that are capable of collecting covered data; and

''(B) consult with private and academic sector entities to identify domestic private and academic systems that are capable of collecting covered data.

''(2) IDENTIFICATION OF GAPS.—The Administrator shall, in consultation with the Office of the Federal Coordinator for Meteorology and individuals and entities consulted under subsection (e)(3), assess the systems identified under paragraph (1) and identify which systems meet the needs of the National Oceanic and Atmospheric Administration for the collection of covered data, including with respect to the accuracy requirement for post-storm assessment under subsection (b)(3).

''(3) PLAN.—Not later than 270 days after the date of the enactment of the Consumer Option for an Alternative System to Allocate Losses Act of 2012, the Administrator shall, in consultation with the Office of the Federal Coordinator for Meteorology, submit to Congress a plan for the collection of covered data necessary to develop the Named Storm Event Model and post-storm assessment required by subsection (b) that addresses any gaps identified in paragraph (2).

''(e) COORDINATION OF COVERED DATA COLLECTION AND MAINTENANCE BY PARTICIPANTS.—

''(1) IN GENERAL.—The Administrator shall, in consultation with the Office of the Federal Coordinator for Meteorology, coordinate the collection and maintenance of covered data by participants under this section—

''(A) to streamline the process of collecting covered data in accordance with the protocol established under subsection (c)(1); and

''(B) to maintain transparency of such process and the database established under subsection (f).

''(2) SHARING INFORMATION.—The Administrator shall establish a process for sharing among participants information relevant to collecting and using covered data for—

''(A) academic research;

''(B) private sector use;

''(C) public outreach; and

''(D) such other purposes as the Administrator considers appropriate.

''(3) CONSULTATION.—In carrying out paragraphs (1) and (2), the Administrator shall consult with the following:

''(A) The Commanding General of the Corps of Engineers.

''(B) The Administrator of the Federal Emergency Management Agency.

''(C) The Commandant of the Coast Guard.

''(D) The Director of the United States Geological Survey.

''(E) The Office of the Federal Coordinator for Meteorology.

''(F) The Director of the National Science Foundation.

''(G) The Administrator of the National Aeronautics and Space Administration.

''(H) Such public, private, and academic sector entities as the Administrator considers appropriate for purposes of carrying out the provisions of this section.

''(f) ESTABLISHMENT OF COASTAL WIND AND WATER EVENT DATABASE.—

''(1) IN GENERAL.—Not later than 1 year after the date of the enactment of the Consumer Option for an Alternative System to Allocate Losses Act of 2012, the Administrator shall establish a database for the collection and compilation of covered data—

''(A) to support the protocol established under subsection (c)(1); and

''(B) for the purposes listed in subsection (e)(2).

''(2) DESIGNATION.—The database established under paragraph (1) shall be known as the 'Coastal Wind and Water Event Database'.

''(g) COMPTROLLER GENERAL STUDY.—Not later than 1 year after the date of the enactment of the Consumer Option for an Alternative System to Allocate Losses Act of 2012, the Comptroller General of the United States shall—

''(1) complete an audit of Federal efforts to collect covered data for purposes of the Consumer Option for an Alternative System to Allocate Losses Act of 2012, which audit shall—

''(A) examine duplicated Federal efforts to collect covered data; and

''(B) determine the cost effectiveness of such efforts; and

''(2) submit to the Committee on Banking, Housing, and Urban Affairs and the Commerce, Science, and Transportation of the Senate and the Committee on Financial Services and the Committee on Science, Space, and Technology of the House of Representatives a report on the findings of the Comptroller General with respect to the audit completed under paragraph (1).''.

SEC. 100253. ALTERNATIVE LOSS ALLOCATION SYSTEM FOR INDETERMINATE CLAIMS.

Part A of chapter II of the National Flood Insurance Act of 1968 (42 U.S.C. 4051 et seq.) is amended by adding at the end the following:

''SEC. 1337. ALTERNATIVE LOSS ALLOCATION SYSTEM FOR INDETERMINATE CLAIMS.

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Federal Emergency Management Agency.

''(2) COASTAL FORMULA.—The term 'COASTAL Formula' means the formula established under subsection (b).

''(3) COASTAL STATE.—The term 'coastal State' has the meaning given the term 'coastal state' in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453).

''(4) INDETERMINATE LOSS.—

''(A) IN GENERAL.—The term 'indeterminate loss' means, as determined by an insurance claims adjuster certified under the national flood insurance program and in consultation with an engineer as appropriate, a loss resulting from physical damage to, or loss of, property located in any coastal State arising from the combined perils of flood and wind associated with a named storm.

''(B) REQUIREMENTS.—An insurance claims adjuster certified under the national flood insurance program shall only determine that a loss is an indeterminate loss if the claims adjuster determines that—

''(i) no material remnant of physical buildings or man-made structures remain except building foundations for the specific property for which the claim is made; and

''(ii) there is insufficient or no tangible evidence created, yielded, or otherwise left behind of the specific property for which the claim is made as a result of the named storm.

''(5) NAMED STORM.—The term 'named storm' means any organized weather system with a defined surface circulation and maximum winds of not less than 39 miles per hour which the National Hurricane Center of the United States National Weather Service names as a tropical storm or a hurricane.

''(6) POST-STORM ASSESSMENT.—The term 'post-storm assessment' means the post-storm assessment developed under section 12312(b) of the Omnibus Public Land Management Act of 2009.

''(7) STATE.—The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

''(8) SECRETARY.—The term 'Secretary' means the Secretary of Homeland Security.

''(9) STANDARD INSURANCE POLICY.—The term 'standard insurance policy' means any insurance policy issued under the national flood insurance program that covers loss or damage to property resulting from water peril.

''(10) PROPERTY.—The term 'property' means real or personal property that is insured under a standard insurance policy for loss or damage to structure or contents.

''(11) UNDER SECRETARY.—The term 'Under Secretary' means the Under Secretary of Commerce for Oceans and Atmosphere, in the Under Secretary's capacity as Administrator of the National Oceanic and Atmospheric Administration.

''(b) ESTABLISHMENT OF FLOOD LOSS ALLOCATION FORMULA FOR INDETERMINATE CLAIMS.—

''(1) IN GENERAL.—Not later than 180 days after the date on which the protocol is established under section 12312(c)(1) of the Omnibus Public Land Management Act of 2009, the Secretary, acting through the Administrator and in consultation with the Under Secretary, shall establish by rule a standard formula to determine and allocate wind losses and flood losses for claims involving indeterminate losses.

''(2) CONTENTS.—The standard formula established under paragraph (1) shall—

''(A) incorporate data available from the Coastal Wind and Water Event Database established under section 12312(f) of the Omnibus Public Land Management Act of 2009;

''(B) use relevant data provided on the National Flood Insurance Program Elevation Certificate for each indeterminate loss for which the formula is used;

''(C) consider any sufficient and credible evidence, approved by the Administrator, of the pre-event condition of a specific property, including the findings of any policyholder or insurance claims adjuster in connection with the indeterminate loss to that specific property;

''(D) include other measures, as the Administrator considers appropriate, required to determine and allocate by mathematical formula the property damage caused by flood or storm surge associated with a named storm; and

''(E) subject to paragraph (3), for each indeterminate loss, use the post-storm assessment to allocate water damage (flood or storm surge) associated with a named storm.

''(3) DEGREE OF ACCURACY REQUIRED.—The standard formula established under paragraph (1) shall specify that the Administrator may only use the post-storm assessment for purposes of the formula if the Under Secretary certifies that the post-storm assessment has a degree of accuracy of not less than 90 percent in connection with the specific indeterminate loss for which the assessment and formula are used.

''(c) AUTHORIZED USE OF POST-STORM ASSESSMENT AND COASTAL FORMULA.—

''(1) IN GENERAL.—Subject to paragraph (3), the Administrator may use the post-storm assessment and the COASTAL Formula to—

''(A) review flood loss payments for indeterminate losses, including as part of the quality assurance reinspection program of the Federal Emergency Management Agency for claims under the national flood insurance program and any other process approved by the Administrator to review and validate payments under the national flood insurance program for indeterminate losses following a named storm; and

''(B) assist the national flood insurance program to—

''(i) properly cover qualified flood loss for claims for indeterminate losses; and

''(ii) avoid paying for any loss or damage to property caused by any peril (including wind), other than flood or storm surge, that is not covered under a standard policy under the national flood insurance program.

''(2) FEDERAL DISASTER DECLARATION.—Subject to paragraph (3), in order to expedite claims and reduce costs to the national flood insurance program, following any major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) relating to a named storm in a coastal State, the Administrator may use the COASTAL Formula to determine and pay for any flood loss covered under a standard insurance policy under the national flood insurance program, if the loss is an indeterminate loss.

''(3) NATIONAL ACADEMY OF SCIENCES EVALUATION.—

''(A) EVALUATION REQUIRED.—

''(i) EVALUATION.—Upon the issuance of the rule establishing the COASTAL Formula, and each time the Administrator modifies the COASTAL Formula, the National Academy of Sciences shall—

''(I) evaluate the expected financial impact on the national flood insurance program of the use

of the COASTAL Formula as so established or modified; and

''(II) evaluate the validity of the scientific assumptions upon which the formula is based and determine whether the COASTAL formula can achieve a degree of accuracy of not less than 90 percent in allocating flood losses for indeterminate losses.

''(ii) REPORT.—The National Academy of Sciences shall submit a report containing the results of each evaluation under clause (i) to the Administrator, the Committee on Banking, Housing, and Urban Affairs and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Financial Services and the Committee on Science, Space, and Technology of the House of Representatives.

''(B) EFFECTIVE DATE AND APPLICABILITY.—

''(i) EFFECTIVE DATE.—Paragraphs (1) and (2) of this subsection shall not take effect unless the report under subparagraph (A) relating to the establishment of the COASTAL Formula concludes that the use of the COASTAL Formula for purposes of paragraph (1) and (2) would not have an adverse financial impact on the national flood insurance program and that the COASTAL Formula is based on valid scientific assumptions that would allow a degree of accuracy of not less than 90 percent to be achieved in allocating flood losses for indeterminate losses.

''(ii) EFFECT OF MODIFICATIONS.—Unless the report under subparagraph (A) relating to a modification of the COASTAL Formula concludes that the use of the COASTAL Formula, as so modified, for purposes of paragraphs (1) and (2) would not have an adverse financial impact on the national flood insurance program and that the COASTAL Formula is based on valid scientific assumptions that would allow a degree of accuracy of not less than 90 percent to be achieved in allocating flood losses for indeterminate losses the Administrator may not use the COASTAL Formula, as so modified, for purposes of paragraphs (1) and (2).

''(C) FUNDING.—Notwithstanding section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017), there shall be available to the Administrator from the National Flood Insurance Fund, of amounts not otherwise obligated, not more than $750,000 to carry out this paragraph.

''(d) DISCLOSURE OF COASTAL FORMULA.—Not later than 30 days after the date on which a post-storm assessment is submitted to the Secretary under section 12312(b)(2)(C) of the Omnibus Public Land Management Act of 2009, for each indeterminate loss for which the COASTAL Formula is used pursuant to subsection (c)(2), the Administrator shall disclose to the policyholder that makes a claim relating to the indeterminate loss—

''(1) that the Administrator used the COASTAL Formula with respect to the indeterminate loss; and

''(2) a summary of the results of the use of the COASTAL Formula.

''(e) CONSULTATION.—In carrying out subsections (b) and (c), the Secretary shall consult with—

''(1) the Under Secretary for Oceans and Atmosphere;

''(2) the Director of the National Institute of Standards and Technology;

''(3) the Chief of Engineers of the Corps of Engineers;

''(4) the Director of the United States Geological Survey;

''(5) the Office of the Federal Coordinator for Meteorology;

''(6) State insurance regulators of coastal States; and

''(7) such public, private, and academic sector entities as the Secretary considers appropriate for purposes of carrying out such subsections.

''(f) RECORDKEEPING.—Each consideration and measure the Administrator determines necessary to carry out subsection (b) may be required, with advanced approval of the Administrator, to be provided for on the National Flood Insurance Program Elevation Certificate, or maintained otherwise on record if approved by the Administrator, for any property that qualifies for the COASTAL Formula under subsection (c).

''(g) CIVIL PENALTY.—

''(1) IN GENERAL.—If an insurance claims adjuster knowingly and willfully makes a false or inaccurate determination relating to an indeterminate loss, the Administrator may, after notice and opportunity for hearing, impose on the insurance claims adjuster a civil penalty of not more than $1,000.

''(2) DEPOSIT.—Notwithstanding section 3302 of title 31, United States Code, or any other law relating to the crediting of money, the Administrator shall deposit in the National Flood Insurance Fund any amounts received under this subsection, which shall remain available until expended and be available to the Administrator for purposes authorized for the National Flood Insurance Fund without further appropriation.

''(h) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to require the Administrator to make any payment under the national flood insurance program, or an insurance company to make any payment, for an indeterminate loss based upon post-storm assessment or the COASTAL Formula.

''(i) APPLICABILITY.—Subsection (c) shall apply with respect to an indeterminate loss associated with a named storm that occurs after the date on which the Administrator issues the rule establishing the COASTAL Formula under subsection (b).

''(j) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to negate, set aside, or void any policy limit, including any loss limitation, set forth in a standard insurance policy.''.

Subtitle C—HEARTH Act Amendment

SEC. 100261. HEARTH ACT TECHNICAL CORRECTIONS.

For purposes of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.)—

(1) the term ''local government'' includes an instrumentality of a unit of general purpose local government other than a public housing agency that is established pursuant to legislation and designated by the chief executive to act on behalf of the local government with regard to activities funded under such title IV and includes a combination of general purpose local governments, such as an association of governments, that is recognized by the Secretary of Housing and Urban Development;

(2) the term ''State'' includes any instrumentality of any of the several States designated by the Governor to act on behalf of the State and does not include the District of Columbia;

(3) for purposes of environmental review, the Secretary of Housing and Urban Development shall continue to permit assistance and projects to be treated as assistance for special projects that are subject to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547), and subject to the regulations issued by the Secretary of Housing and Urban Development to implement such section; and

(4) a metropolitan city and an urban county that each receive an allocation under such title IV and are located within a geographic area that is covered by a single continuum of care may jointly request the Secretary of Housing and Urban Development to permit the urban county or the metropolitan city, as agreed to by such county and city, to receive and administer their combined allocations under a single grant.

TITLE III—STUDENT LOAN INTEREST RATE EXTENSION

SEC. 100301. FEDERAL DIRECT STAFFORD LOAN INTEREST RATE EXTENSION.

Section 455(b)(7)(D) of the Higher Education Act of 1965 (20 U.S.C. 1087e(b)(7)(D)) is amended—

(1) in the matter preceding clause (i), by striking ''and before July 1, 2012,'' and inserting ''and before July 1, 2013,''; and

(2) in clause (v), by striking ''and before July 1, 2012,'' and inserting ''and before July 1, 2013,''.

SEC. 100302. ELIGIBILITY FOR, AND INTEREST CHARGES ON, FEDERAL DIRECT STAFFORD LOANS FOR NEW BORROWERS ON OR AFTER JULY 1, 2013.

(a) IN GENERAL.—Section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e) is amended by adding at the end the following:

''(q) ELIGIBILITY FOR, AND INTEREST CHARGES ON, FEDERAL DIRECT STAFFORD LOANS FOR NEW BORROWERS ON OR AFTER JULY 1, 2013.—

''(1) IN GENERAL.—Notwithstanding subsection (a) or any other provision of this title, any borrower who was a new borrower on or after July 1, 2013, shall not be eligible for a Federal Direct Stafford Loan if the period of time for which the borrower has received Federal Direct Stafford Loans, in the aggregate, exceeds the period of enrollment described in paragraph (3). Such borrower may still receive any Federal Direct Unsubsidized Stafford Loan for which such borrower is otherwise eligible.

''(2) ACCRUAL OF INTEREST ON FEDERAL DIRECT STAFFORD LOANS.—Notwithstanding subsection (f)(1)(A) or any other provision of this title and beginning on the date upon which a borrower who is enrolled in a program of education or training (including a course of study or program described in paragraph (3)(B) or (4)(B) of section 484(b)) for which borrowers are otherwise eligible to receive Federal Direct Stafford Loans, becomes ineligible for such loan as a result of paragraph (1), interest on all Federal Direct Stafford Loans that were disbursed to such borrower on or after July 1, 2013, shall accrue. Such interest shall be paid or capitalized in the same manner as interest on a Federal Direct Unsubsidized Stafford Loan is paid or capitalized under section 428H(e)(2).

''(3) PERIOD OF ENROLLMENT.—

''(A) IN GENERAL.—The aggregate period of enrollment referred to in paragraph (1) shall not exceed the lesser of—

''(i) a period equal to 150 percent of the published length of the educational program in which the student is enrolled; or

''(ii) in the case of a borrower who was previously enrolled in one or more other educational programs that began on or after July 1, 2013, and subject to subparagraph (B), a period of time equal to the difference between—

''(I) 150 percent of the published length of the longest educational program in which the borrower was, or is, enrolled; and

''(II) any periods of enrollment in which the borrower received a Federal Direct Stafford Loan.

''(B) REGULATIONS.—The Secretary shall specify in regulation—

''(i) how the aggregate period described in subparagraph (A) shall be calculated with respect to a borrower who was or is enrolled on less than a full-time basis; and

''(ii) how such aggregate period shall be calculated to include a course of study or program described in paragraph (3)(B) or (4)(B) of section 484(b), respectively.''.

(b) INAPPLICABILITY OF TITLE IV NEGOTIATED RULEMAKING REQUIREMENT AND MASTER CALENDAR EXCEPTION.—Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the amendment made by subsection (a), or to any regulations promulgated under such amendment.

DIVISION G—SURFACE TRANSPORTATION EXTENSION

SEC. 110001. SHORT TITLE.

This division may be cited as the ''Surface Transportation Extension Act of 2012, Part II''.

TITLE I—FEDERAL-AID HIGHWAYS

SEC. 111001. EXTENSION OF FEDERAL-AID HIGHWAY PROGRAMS.

(a) IN GENERAL.—Section 111 of the Surface Transportation Extension Act of 2011, Part II (Public Law 112–30; 125 Stat. 343; 126 Stat. 272) is amended—

(1) by striking ''the period beginning on October 1, 2011, and ending on June 30, 2012,'' each place it appears and inserting ''fiscal year 2012'';

(2) by striking ''¾ of'' each place it appears; and

(3) in subsection (a) by striking ''June 30, 2012'' and inserting ''September 30, 2012''.

(b) USE OF FUNDS.—Section 111(c) of the Surface Transportation Extension Act of 2011, Part II (125 Stat. 343; 126 Stat. 272) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A) by striking '', except that during such period'' and all that follows before the period at the end; and

(B) in subparagraph (B)(ii) by striking ''$479,250,000'' and inserting ''$639,000,000''; and

(2) by striking paragraph (4).

(c) EXTENSION OF AUTHORIZATIONS UNDER TITLE V OF SAFETEA–LU.—Section 111(e)(2) of the Surface Transportation Extension Act of 2011, Part II (125 Stat. 346; 126 Stat. 272) is amended by striking ''the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''fiscal year 2012.''.

(d) ADMINISTRATIVE EXPENSES.—Section 112(a) of the Surface Transportation Extension Act of 2011, Part II (125 Stat. 346; 126 Stat. 272) is amended by striking ''$294,641,438 for the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''$392,855,250 for fiscal year 2012.''.

TITLE II—EXTENSION OF HIGHWAY SAFETY PROGRAMS

SEC. 112001. EXTENSION OF NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION HIGHWAY SAFETY PROGRAMS.

(a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Section 2001(a)(1) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''$235,000,000 for each of fiscal years 2009 through 2011'' and all that follows through the period at the end and inserting ''and $235,000,000 for each of fiscal years 2009 through 2012.''.

(b) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—Section 2001(a)(2) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''and $81,183,000 for the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''and $108,244,000 for fiscal year 2012.''.

(c) OCCUPANT PROTECTION INCENTIVE GRANTS.—Section 2001(a)(3) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''$25,000,000 for each of fiscal years 2006 through 2011'' and all that follows through the period at the end and inserting ''and $25,000,000 for each of fiscal years 2006 through 2012.''.

(d) SAFETY BELT PERFORMANCE GRANTS.—Section 2001(a)(4) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''and $36,375,000 for the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''and $48,500,000 for fiscal year 2012.''.

(e) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—Section 2001(a)(5) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''for each of fiscal years 2006 through 2011'' and all that follows through the period at the end and inserting ''for each of fiscal years 2006 through 2012.''.

(f) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANT PROGRAM.—Section 2001(a)(6) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''$139,000,000 for each of fiscal years fiscal years 2009 through 2011'' and all that follows through the period at the end and inserting ''and $139,000,000 for each of fiscal years 2009 through 2012.''.

(g) NATIONAL DRIVER REGISTER.—Section 2001(a)(7) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''and $3,087,000 for the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''and $4,116,000 for fiscal year 2012.''.

(h) HIGH VISIBILITY ENFORCEMENT PROGRAM.—Section 2001(a)(8) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''for each of fiscal years 2006 through 2011'' and all that follows through the period at the end and inserting ''for each of fiscal years 2006 through 2012.''.

(i) MOTORCYCLIST SAFETY.—Section 2001(a)(9) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''$7,000,000 for each of fiscal years 2009 through 2011'' and all that follows through the period at the end and inserting ''and $7,000,000 for each of fiscal years 2009 through 2012.''.

(j) CHILD SAFETY AND CHILD BOOSTER SEAT SAFETY INCENTIVE GRANTS.—Section 2001(a)(10) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''$7,000,000 for each of fiscal years 2009 through 2011'' and all that follows through the period at the end and inserting ''and $7,000,000 for each of fiscal years 2009 through 2012.''.

(k) ADMINISTRATIVE EXPENSES.—Section 2001(a)(11) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''$25,328,000 for fiscal year 2011'' and all that follows through the period at the end and inserting ''and $25,328,000 for each of fiscal years 2011 and 2012.''.

SEC. 112002. EXTENSION OF FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PROGRAMS.

(a) FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION GRANTS.—Section 31104(a)(8) of title 49, United States Code, is amended to read as follows:

''(8) $212,000,000 for fiscal year 2012.''.

(b) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—Section 31104(i)(1)(H) of title 49, United States Code, is amended to read as follows:

''(H) $244,144,000 for fiscal year 2012.''.

(2) TECHNICAL CORRECTION.—Section 31104(i)(1)(F) of title 49, United States Code, is amended to read as follows:

''(F) $239,828,000 for fiscal year 2010;''.

(c) GRANT PROGRAMS.—Section 4101(c) of SAFETEA–LU (119 Stat. 1715) is amended—

(1) in paragraph (1) by striking ''and $22,500,000 for the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''and $30,000,000 for fiscal year 2012.'';

(2) in paragraph (2) by striking ''2011 and $24,000,000 for the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''2012.'';

(3) in paragraph (3) by striking ''2011 and $3,750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''2012.'';

(4) in paragraph (4) by striking ''2011 and $18,750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''2012.''; and

(5) in paragraph (5) by striking ''2011 and $2,250,000 for the period beginning on October 1, 2011, and ending on June 30, 2012.'' and inserting ''2012.''.

(d) NEW ENTRANT AUDITS.—Section 31144(g)(5)(B) of title 49, United States Code, is amended by striking ''and up to $21,750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,''.

(e) OUTREACH AND EDUCATION.—Section 4127(e) of SAFETEA–LU (119 Stat. 1741) is amended by striking ''and 2011 (and $750,000 to the Federal Motor Carrier Safety Administration, and $2,250,000 to the National Highway Traffic Safety Administration, for the period beginning on October 1, 2011, and ending on June 30, 2012)'' and inserting ''2011, and 2012''.

(f) WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS.—Section 4213(d) of SAFETEA–LU (49 U.S.C. 14710 note; 119 Stat. 1759) is amended by striking ''June 30, 2012'' and inserting ''September 30, 2012''.

SEC. 112003. ADDITIONAL PROGRAMS.

Section 7131(c) of SAFETEA–LU (119 Stat. 1910) is amended by striking ''and $870,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $1,160,000 for fiscal year 2012''.

TITLE III—PUBLIC TRANSPORTATION PROGRAMS

SEC. 113001. ALLOCATION OF FUNDS FOR PLANNING PROGRAMS.

Section 5305(g) of title 49, United States Code, is amended by striking ''2011 and for the period beginning on October 1, 2011, and ending on June 30, 2012'' and inserting ''2012''.

SEC. 113002. SPECIAL RULE FOR URBANIZED AREA FORMULA GRANTS.

Section 5307(b)(2) of title 49, United States Code, is amended—

(1) by striking the paragraph heading and inserting ''SPECIAL RULE FOR FISCAL YEARS 2005 THROUGH 2012.—'' ;

(2) in subparagraph (A) by striking ''2011 and the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2012,''; and

(3) in subparagraph (E)—

(A) by striking the subparagraph heading and inserting ''MAXIMUM AMOUNTS IN FISCAL YEARS 2008 THROUGH 2012 .—''; and

(B) in the matter preceding clause (i) by striking ''2011 and during the period beginning on October 1, 2011, and ending on June 30, 2012'' and inserting ''2012''.

SEC. 113003. ALLOCATING AMOUNTS FOR CAPITAL INVESTMENT GRANTS.

Section 5309(m) of title 49, United States Code, is amended—

(1) in paragraph (2)—

(A) by striking the paragraph heading and inserting ''FISCAL YEARS 2006 THROUGH 2012.—'';

(B) in the matter preceding subparagraph (A) by striking ''2011 and the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2012''; and

(C) in subparagraph (A)(i) by striking ''2011 and $150,000,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2012'';

(2) in paragraph (6)—

(A) in subparagraph (B) by striking ''2011 and $11,250,000 shall be available for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2012''; and

(B) in subparagraph (C) by striking ''though 2011 and $3,750,000 shall be available for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''through 2012''; and

(3) in paragraph (7)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) in the first sentence by striking ''2011 and $7,500,000 shall be available for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2012''; and

(II) in the second sentence by inserting ''each fiscal year'' before the colon;

(ii) in clause (i) by striking ''for each fiscal year and $1,875,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'';

(iii) in clause (ii) by striking ''for each fiscal year and $1,875,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'';

(iv) in clause (iii) by striking ''for each fiscal year and $750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'';

(v) in clause (iv) by striking ''for each fiscal year and $750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'';

(vi) in clause (v) by striking ''for each fiscal year and $750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'';

(vii) in clause (vi) by striking ''for each fiscal year and $750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'';

(viii) in clause (vii) by striking ''for each fiscal year and $487,500 for the period beginning on October 1, 2011, and ending on June 30, 2012,''; and

(ix) in clause (viii) by striking ''for each fiscal year and $262,500 for the period beginning on October 1, 2011, and ending on June 30, 2012,'';

(B) in subparagraph (B) by striking clause (vii) and inserting the following:

''(vii) $13,500,000 for fiscal year 2012.'';

(C) in subparagraph (C) by striking ''and during the period beginning on October 1, 2011, and ending on June 30, 2012,'';

(D) in subparagraph (D) by striking ''and not less than $26,250,000 shall be available for the period beginning on October 1, 2011, and ending on June 30, 2012,''; and

(E) in subparagraph (E) by striking ''and $2,250,000 shall be available for the period beginning on October 1, 2011, and ending on June 30, 2012,''.

SEC. 113004. APPORTIONMENT OF FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

Section 5311(c)(1)(G) of title 49, United States Code, is amended to read as follows:

''(G) $15,000,000 for fiscal year 2012.''.

SEC. 113005. APPORTIONMENT BASED ON FIXED GUIDEWAY FACTORS.

Section 5337 of title 49, United States Code, is amended by striking subsection (g).

SEC. 113006. AUTHORIZATIONS FOR PUBLIC TRANSPORTATION.

(a) FORMULA AND BUS GRANTS.—Section 5338(b) of title 49, United States Code, is amended—

(1) in paragraph (1) by striking subparagraph (G) and inserting the following:

''(G) $8,360,565,000 for fiscal year 2012.''; and

(2) in paragraph (2)—

(A) in subparagraph (A) by striking ''$113,500,000 for each of fiscal years 2009 through 2011, and $85,125,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $113,500,000 for each of fiscal years 2009 through 2012'';

(B) in subparagraph (B) by striking ''$4,160,365,000 for each of fiscal years 2009 through 2011, and $3,120,273,750 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $4,160,365,000 for each of fiscal years 2009 through 2012'';

(C) in subparagraph (C) by striking ''$51,500,000 for each of fiscal years 2009 through 2011, and $38,625,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $51,500,000 for each of fiscal years 2009 through 2012'';

(D) in subparagraph (D) by striking ''$1,666,500,000 for each of fiscal years 2009 through 2011, and $1,249,875,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $1,666,500,000 for each of fiscal years 2009 through 2012'';

(E) in subparagraph (E) by striking ''$984,000,000 for each of fiscal years 2009 through 2011, and $738,000,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $984,000,000 for each of fiscal years 2009 through 2012'';

(F) in subparagraph (F) by striking ''$133,500,000 for each of fiscal years 2009 through 2011, and $100,125,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $133,500,000 for each of fiscal years 2009 through 2012'';

(G) in subparagraph (G) by striking ''$465,000,000 for each of fiscal years 2009 through 2011, and $348,750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $465,000,000 for each of fiscal years 2009 through 2012'';

(H) in subparagraph (H) by striking ''$164,500,000 for each of fiscal years 2009 through 2011, and $123,375,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $164,500,000 for each of fiscal years 2009 through 2012'';

(I) in subparagraph (I) by striking ''$92,500,000 for each of fiscal years 2009 through 2011, and $69,375,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $92,500,000 for each of fiscal years 2009 through 2012'';

(J) in subparagraph (J) by striking ''$26,900,000 for each of fiscal years 2009 through 2011, and $20,175,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $26,900,000 for each of fiscal years 2009 through 2012'';

(K) in subparagraph (K) by striking ''for each of fiscal years 2006 through 2011 and $2,625,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''for each of fiscal years 2006 through 2012'';

(L) in subparagraph (L) by striking ''for each of fiscal years 2006 through 2011 and $18,750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''for each of fiscal years 2006 through 2012'';

(M) in subparagraph (M) by striking ''$465,000,000 for each of fiscal years 2009 through 2011, and $348,750,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $465,000,000 for each of fiscal years 2009 through 2012''; and

(N) in subparagraph (N) by striking ''$8,800,000 for each of fiscal years 2009 through 2011, and $6,600,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''and $8,800,000 for each of fiscal years 2009 through 2012''.

(b) CAPITAL INVESTMENT GRANTS.—Section 5338(c)(7) of title 49, United States Code, is amended to read as follows:

''(7) $1,955,000,000 for fiscal year 2012.''.

(c) RESEARCH AND UNIVERSITY RESEARCH CENTERS.—Section 5338(d) of title 49, United States Code, is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A), by striking ''through 2011, and $33,000,000 for the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''through 2011, and $44,000,000 for fiscal year 2012,''; and

(2) by striking paragraph (3) and inserting the following:

''(3) ADDITIONAL AUTHORIZATIONS.—

''(A) RESEARCH.—Of amounts authorized to be appropriated under paragraph (1) for fiscal year 2012, the Secretary shall allocate for each of the activities and projects described in subparagraphs (A) through (F) of paragraph (1) an amount equal to 63 percent of the amount allocated for fiscal year 2009 under each such subparagraph.

''(B) UNIVERSITY CENTERS PROGRAM.—

''(i) FISCAL YEAR 2012.—Of the amounts allocated under paragraph (1)(C) for the university centers program under section 5506 for fiscal year 2012, the Secretary shall allocate for each program described in clauses (i) through (iii) and (v) through (viii) of paragraph (2)(A) an amount equal to 63 percent of the amount allocated for fiscal year 2009 under each such clause.

''(ii) FUNDING.—If the Secretary determines that a project or activity described in paragraph (2) received sufficient funds in fiscal year 2011, or a previous fiscal year, to carry out the purpose for which the project or activity was authorized, the Secretary may not allocate any amounts under clause (i) for the project or activity for fiscal year 2012 or any subsequent fiscal year.''.

(d) ADMINISTRATION.—Section 5338(e)(7) of title 49, United States Code, is amended to read as follows:

''(7) $98,713,000 for fiscal year 2012.''.

SEC. 113007. AMENDMENTS TO SAFETEA–LU.

(a) CONTRACTED PARATRANSIT PILOT.—Section 3009(i)(1) of SAFETEA–LU (119 Stat. 1572) is amended by striking ''2011 and the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2012,''.

(b) PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.—Section 3011 of SAFETEA–LU (49 U.S.C. 5309 note; 119 Stat. 1588) is amended—

(1) in subsection (c)(5) by striking ''2011 and the period beginning on October 1, 2011, and ending on June 30, 2012'' and inserting ''2012''; and

(2) in the second sentence of subsection (d) by striking ''2011 and the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2012''.

(c) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES PILOT PROGRAM.—Section 3012(b)(8) of SAFETEA–LU (49 U.S.C. 5310 note; 119 Stat. 1593) is amended by striking ''June 30, 2012'' and inserting ''September 30, 2012''.

(d) OBLIGATION CEILING.—Section 3040(8) of SAFETEA–LU (119 Stat. 1639) is amended to read as follows:

''(8) $10,458,278,000 for fiscal year 2012, of which not more than $8,360,565,000 shall be from the Mass Transit Account.''.

(e) PROJECT AUTHORIZATIONS FOR NEW FIXED GUIDEWAY CAPITAL PROJECTS.—Section 3043 of SAFETEA–LU (119 Stat. 1640) is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by striking ''2011 and the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2012''; and

(2) in subsection (c), in the matter preceding paragraph (1), by striking ''2011 and the period beginning on October 1, 2011, and ending on June 30, 2012,'' and inserting ''2012''.

(f) ALLOCATIONS FOR NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS.—Section 3046 of SAFETEA–LU (49 U.S.C. 5338 note; 119 Stat. 1706) is amended—

(1) in subsection (b) by striking ''fiscal year or period'' and inserting ''fiscal year''; and

(2) by striking subsection (c)(2) and inserting the following:

''(2) for fiscal year 2012, in amounts equal to 63 percent of the amounts allocated for fiscal year 2009 under each of paragraphs (2), (3), (5), and (8) through (25) of subsection (a).''.

TITLE IV—EFFECTIVE DATE

SEC. 114001. EFFECTIVE DATE.

This division and the amendments made by this division shall take effect on July 1, 2012.

DIVISION H—BUDGETARY EFFECTS

SEC. 120001. BUDGETARY EFFECTS.

(a) PAYGO SCORECARD.—The budgetary effects of this Act shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARD.—The budgetary effects of this Act shall not be recorded on any PAYGO scorecard maintained for purposes of section 201 of S. Con. Res. 21 (110th Congress).

Amend the title so as to read: ''An Act to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.''.

And the Senate agree to the same.

From the Committee on Transportation and Infrastructure, for consideration of the House bill (except section 141) and the Senate amendment (except secs. 1801, 40102, 40201, 40202, 40204, 40205, 40305, 40307, 40309–40312, 100112–100114, and 100116), and modifications committed to conference:

JOHN L. MICA,
DON YOUNG,
JOHN J. DUNCAN, JR.,
BILL SHUSTER,
SHELLEY MOORE CAPITO,
ERIC A. ''RICK'' CRAWFORD,
JAIME HERRERA BEUTLER,
LARRY BUCSHON,
RICHARD L. HANNA,
STEVE SOUTHERLAND, II,

JAMES LANKFORD,
REID J. RIBBLE,

From the Committee on Energy and Commerce, for consideration of sec. 142 and titles II and V of the House bill, and secs. 1113, 1201, 1202, subtitles B, C, D, and E of title I of Division C, secs, 32701–32705, 32710, 32713, 40101, and 40301 of the Senate amendment, and modifications committed to conference:

FRED UPTON,
ED WHITFIELD,
HENRY A. WAXMAN,

From the Committee on Natural Resources, for consideration of secs. 123, 142, 204, and titles III and VI of the House bill, and sec. 1116, subtitles C, F, and G of title I of Division A, sec. 33009, titles VI and VII of Division C, sec. 40101, subtitles A and B of title I of Division F, and sec. 100301 of the Senate amendment, and modifications committed to converence:

DOC HASTINGS,
ROB BISHOP,

From the Committee on Science, Space, and Technology for consideration of secs. 121, 123, 136, and 137 of the House bill, and sec. 1534, subtitle F of title I of Division A, secs. 20013, 20014, 20029, 31101, 31103, 31111, 31204, 31504, 32705, 33009, 34008, and Division E of the Senate amendment, and modifications committed to conference:

RALPH M. HALL,
CHIP CRAVAACK,

From the Committee on Ways and Means, for consideration of secs. 141 and 142 of the House bill, and secs. 1801, 40101, 40102, 40201, 40202, 40204, 40205, 40301–40307, 40309–40314, 100112–100114, and 100116 of the Senate amendment, and modifications committed to conference:

DAVE CAMP,
PATRICK J. TIBERI,
Managers on the Part of the House.

BARABARA BOXER,
MAX BAUCUS,
JOHN D. ROCKEFELLER, IV,
RICHARD J. DURBIN, (With the exception of: Div. A, Title I, §1538 Asian Carp and Div. F, Title II, §100206—Residual Risk)
TIM JOHNSON,
CHARLES E. SCHUMER,
BILL NELSON,
ROBERT MENENDEZ,
JAMES M. INHOFE,
DAVID VITTER,
RICHARD C. SHELBY,
KAY BAILEY HUTCHISON,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF THE CONFERENCE

The managers on the part of the Senate and the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4348), to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House recedes from its disagreement to the amendment of the Senate to the text of the bill and agrees to the same with an amendment.

A summary of the bill agreed to in conference is set forth below:

Moving Ahead for Progress in the 21st Century (MAP–21) replaces the previous authorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), that expired on September 30, 2009 and which has been continued with a series of short-term extensions. MAP–21 will modernize and reform our current transportation system to help create jobs, accelerate economic recovery, and build the foundation for long-term prosperity. This conference report makes a number of necessary changes in the Federal-aid highway program structure to increase State flexibility and better serve the American people.

DIVISION A—FEDERAL-AID HIGHWAYS AND HIGHWAY SAFETY CONSTRUCTION PROGRAMS

Highway funding levels

The conference report provides funding for the federal-aid highway program through fiscal 2014 at current funding levels with a small inflationary adjustment.

Program consolidation

The Senate and the House both sought to consolidate the number of programs in the federal-aid highway program to focus priorities and resources on key national goals. The conference report consolidates the number of highway programs by two-thirds. The elimination of dozens of programs makes more resources available to States and metropolitan areas to invest in their most critical needs to improve the condition and performance of their transportation system.

Project delivery

The conference report combined provisions from the House and Senate bills focusing on the shared priority of accelerating project delivery. It maintains the vast majority of project acceleration provisions from S. 1813 and provisions from the House bill in addition to new provisions that will maintain substantive environment and public health protections while streamlining the creation and use of documents and environmental reviews, enhancing efficiency and accountability in the project delivery process.

The conference report adopts and modifies provisions from the House bill directing the Secretary to designate, through rulemaking, certain activities as categorical exclusions under the National Environmental Policy Act. The Secretary is directed to designate the repair or reconstruction of a road, highway, or bridge damaged by a declared emergency or disaster as a categorical exclusion, if the repair or reconstruction project is in the same location and with the same specifications as the original project and is commenced within two years of the declaration of emergency or disaster. The Secretary is also directed to designate any project within the existing operational right-of-way as a categorical exclusion and defines the term ''operational right-of-way''. Additionally, the Secretary is directed to designate projects receiving limited Federal assistance as a categorical exclusion. The categorical exclusion applies to any project that receives less than $5,000,000 in Federal funds and any project with a total estimated cost of not more than $30,000,000 receiving Federal funds comprising less than 15 percent of the total estimated project costs.

Performance measures

The nation's surface transportation programs have not provided sufficient accountability for how tax dollars are being spent on transportation projects and would benefit from a greater focus on key national priorities. The conference report focuses the highway program on key outcomes, such as reducing fatalities, improving road and bridge conditions, reducing congestion, increasing system reliability, and improving freight movement and economic vitality.

Focus on the National Highway System

The conference report combines the old interstate maintenance program into a new program called the National Highway Performance Program to address both the interstate system as well as an extended National Highway System. It is these roads that are most critical to our economic vitality, and the conference report ensures the roads and bridges that make up this system will be better maintained.

Freight policy

A top priority of the nation's transportation system should be the safe and efficient movement of goods. The nation's economic health is reliant upon a transportation system that provides for reliable and timely goods movement.

This conference report establishes policies to improve freight movement. It calls for the development of a National Freight Strategic Plan, encourages state freight plans and advisory committees, and provides incentives for states that fund projects to improve freight movement.

America fast forward

Given our massive investment needs and the limited funding available, we need to find ways to better leverage Federal dollars by encouraging additional non-Federal investment and helping to accelerate the benefits of State and locally funded transportation projects.

This conference report builds upon the success of the TIFIA program to help communities leverage their transportation resources and stretch Federal dollars further than they have been stretched before. The conference report modifies the TIFIA program by increasing funding for the program to $1 billion per year, by increasing the maximum share of project costs from 33 percent to 49 percent, by allowing TIFIA to be used to support a related set of projects, and by setting aside funding for projects in rural areas at more favorable terms.

Gulf Coast restoration

The conference report modifies a Senate provision related to Gulf Coast restoration known as the Resources and Ecosystems Sustainability, Tourism Opportunities and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The provision establishes the Gulf Coast Restoration Trust Fund and places in the Trust Fund 80% of all civil penalties paid by responsible parties in connection with the Deepwater Horizon oil spill. Funding may be used to invest in projects and activities to restore the long-term health of the coastal ecosystem and local economies in the Gulf Coast Region, which includes the states of Mississippi, Louisiana, Alabama, Florida, and Texas. A portion of the funds will be allocated directly and equally to the five Gulf Coast states for ecological and economic recovery along the coast. A portion will be provided to the Gulf Coast Ecosystem Restoration Council established by the bill to develop and fund a comprehensive plan for the restoration of Gulf Coast ecosystems. A portion will be allocated among the states using an impact-based formula to implement state plans that have been approved by the Council. Finally, a portion of the fines will be allocated to a Gulf Coast ecosystem restoration, science, observation, monitoring and technology program and for grants to nongovernmental entities for the establishment of Gulf Coast centers of excellence.

Harbor maintenance

The Conference report modifies a Senate provision highlighting the significance of the nation's ports for efficient movement of goods and products and the need for increased investment in the maintenance of these ports to promote the economic competiveness of the United States. The provision states the Sense of Congress that the

Administration should request and the Congress should fully expend each year all of the revenues collected in the Harbor Maintenance Trust Fund (HMTF) for the operation and maintenance of the nation's federally maintained ports. The provision also expresses the importance of protecting other critical Army Corps programs, including inland navigation, flood and coastal storm protection, and ecosystem restoration, from funding reductions.

Finally, the provision directs the Administration to provide an annual estimate of national harbor maintenance needs, including an estimate of the percentage of waterways that will be available for use based on the annual budget request as well as how much funding would be needed to achieve 95 percent availability of the nation's ports and waterways within 3 years

DIVISION B—FEDERAL PUBLIC TRANSPORTATION ACT OF 2012

The Federal Public Transportation Act of 2012 contains historic improvements in safety oversight, streamlined review of new capital projects, program consolidation, and a shift from earmarks and discretionary programs to robust formula programs that public transportation systems can rely on to upgrade and improve aging infrastructure and vehicles. The Act provides increased funding levels for fiscal years 2013 and 2014 based on expected inflation, giving public transportation providers the stable funding needed to make essential investments.

Secs. 20005 and 20006, 49 U.S.C. 5303/5304, metropolitan and statewide transportation planning

The Conference report improves metropolitan and statewide planning processes to incorporate a more comprehensive performance-based approach. The conference committee requires the structure of all Metropolitan Planning Organizations include officials of public agencies that administer or operate public transportation systems within two years of enactment.

The conference report creates a pilot program for transit-oriented development planning to advance planning efforts that support transit-oriented development around fixed guideway capital investment projects. Grants for planning will help communities develop strategies to facilitate transit-oriented development.

Secs. 20007 and 20026, 49 U.S.C. 5307 and 5336, urbanized area formula grants

Maintains the basic structure for urbanized area grants under Section 5307. The program continues to be the largest program for federal investment in public transportation. The ''Job Access and Reverse Commute'' program (JARC) has been moved to Section 5307 and the conferees have removed the Senate bill set-aside for JARC activities.

Maintains the existing criteria for use of 5307 funds for capital projects (operating expenses continue to be ineligible) in urban areas with a population greater than 200,000. In addition, the bill maintains language allowing small urbanized areas with populations under 200,000 to use up to 100 percent of their 5307 funding for operating expenses. A modified ''100 bus rule'' has been included, allowing systems with 76–100 buses operating in peak service to use up to 50% of their 5307 funding for operating expenses and those operating 75 or fewer buses to use up to 75% for operating expenses.

The Senate receded to the House request to remove a provision in the Senate bill establishing a program to allow public transportation providers temporary flexibility during periods of high unemployment to use a limited portion of their 5307 funds for up to two years for operating expenses.

Sec. 20008, 49 U.S.C. 5309, Fixed Guideway Capital Investment Grants (new starts)

Reforms and streamlines the ''Fixed Guideway Capital Investment Grant'' program (previously the ''Major Capital Investment Grant'' or ''New Starts'' program). Based on extensive feedback from project sponsors and other stakeholders, the bill streamlines the New Starts process to accelerate project delivery by eliminating duplicative steps in project development and instituting a modified program structure that will allow the Federal Transit Administration to review proposals quickly, without sacrificing effective project oversight.

Projects under $100 million can utilize an expedited review process if they meet standards of similar highly qualified projects. The bill also creates a category of demonstration projects for sponsors that propose a significant amount of local and/or private funding and reduce the federal commitment required for the projects.

Establishes a new category for capital investment projects by authorizing core capacity projects, which will undergo the same process as other ''new starts'' projects but provide an opportunity for existing systems to make necessary but significant investments that were not previously eligible for funding. The conference report requires that eligible activities under a core capacity project achieve at least a 10% increase in capacity along a corridor.

The Senate agreed to a House request to modify the definition of Bus Rapid Transit projects in the Senate bill to allow broader use of the program. The conference report also includes incentives for the development of bus rapid transit projects that incorporate elements of fixed-guideway transit like light rail.

Sec. 20009, 49 U.S.C. 5310, formula grants for the enhanced mobility of seniors and individuals with disabilities

Consolidates the existing ''Elderly and Disabled'' (Sec. 5310) and ''New Freedom'' (Sec. 5317) programs into a single program that increases the level of resources available beyond the level of funding available under existing programs. The consolidated program will continue to ensure support for non-profit providers of transportation, and it will continue to make available funds for public transportation services that exceed the requirements of the Americans with Disabilities Act, as previously provided under the ''New Freedom'' program.

Sec. 20010, 49 U.S.C. 5311, formula grants for rural areas

Maintains the existing structure providing funding to states for public transportation in rural areas. The 5311 formula is expanded to include the rural component of the ''Job Access and Reverse Commute'' program, and the level of public transportation service that is provided within a state's rural areas is considered in the distribution of new funds.

Funding for the ''Public Transportation on Indian Reservations'' program is increased to $30 million. The Secretary will distribute $5 million competitively each fiscal year, and $25 million will be available to Indian Tribes as formula grants to continue and expand public transportation services.

The conference report also establishes a new ''Appalachian Development Public Transportation Program'' to distribute $20 million to states within the Appalachian region with a goal of providing greater public transportation opportunities to residents in these challenged areas.

Sec. 20011, 49 U.S.C. 5312, research, development, demonstration, and deployment projects

Modifies the existing research program by eliminating earmarks and reforming the program to provide research focused on public transportation with a goal of providing meaningful results.

Creates a clearly delineated pipeline with criteria for continued progress with a goal of taking an idea from the research phase through to demonstration and deployment in the field. For the first time, the program specifically provides funding for demonstration and deployment of products and services that may benefit public transportation; a major impediment to putting new technology to use in the field often cited by public transportation providers.

Creates a section of the deployment program dedicated to low or no emission public transportation vehicles. Grants will be available for the acquisition of low or no emission vehicles and related equipment, the construction of facilities for low or no emission vehicles, and the rehabilitation of existing facilities to accommodate the use of low or no emission vehicles.

Sec. 20012, 49 U.S.C. 5314, technical assistance and standards development

Provides grants for activities that help public transportation systems more effectively and efficiently provide public transportation service and helps grant recipients administer funds received under this chapter. Authorizes the Federal Transit Administration to continue making grants for the development of voluntary standards by the public transportation industry related to procurement, safety and other subjects and authorizes the Secretary to fund technical assistance centers to assist grant recipients following a competitive process.

Sec. 20014, 49 U.S.C. 5318, bus testing facilities

Instructs the Secretary to certify one facility for testing new bus models. Requires the Secretary to work with the bus industry to develop a mutually agreed upon pass/fail test for vehicles to ensure the safety and reliability of buses purchased with federal funds.

Sec. 20015, 49 U.S.C. 5322, public transportation workforce development and human resource programs

Authorizes the Secretary to make grants, or enter into contracts for, activities that address human resource and workforce needs as they apply to public transportation activities. Creates the Innovative Public Transportation Workforce Development Program, a competitive grant program to promote and assist the development of innovative workforce development and human resource activities within the public transportation industry.

Sec. 20017, 49 U.S.C. 5324, public transportation emergency relief program

Establishes a program to assist States and public transportation systems pay for protecting, repairing, or replacing equipment and facilities that are in danger of suffering serious damage or have suffered serious damage as a result of an emergency.

Sec. 20019, 49 U.S.C. 5326, transit asset management

Establishes a system to monitor and manage public transportation assets to improve safety and increase reliability and performance. Recipients are required to establish and use an asset management system to develop capital asset inventories and condition assessments, and report on the condition of their system as a whole, including a description of the change in overall condition since the last report. The Secretary of Transportation is also required to define the term 'state of good repair,' including objective standards for measuring the condition of capital assets.

Sec. 20021, 49 U.S.C. 5329, public transportation safety program

Establishes a National Public Transportation Safety Plan to improve the safety of all public transportation systems that receive Federal funding. The Secretary will develop minimum performance standards for vehicles used in public transportation and establish a training program for Federal and State employees who conduct safety audits and examinations of public transportation systems.

Requires public transportation agencies to establish comprehensive safety plans, thus encouraging a ''culture of safety'' in which each employee completes a safety training program that includes continuing safety education and training. The Senate receded to a House request to give smaller systems the option to rely on states to prepare these plans.

Improves the effectiveness of State Safety Oversight Agencies and increases federal funding for safety. States will submit proposals for state safety oversight programs for rail fixed guideway public transportation systems to the Secretary, and upon approval, receive funding at an 80 percent Federal share. The Act builds on the existence of State safety oversight agencies and requires them to be legally and financially independent from the rail fixed guideway systems they oversee, and have the authority, staff training and expertise to enforce Federal and state safety laws.

At the request of the House the conference changes the nature of the enforcement powers contained in the Senate bill. Instead of direct oversight of public transportation agencies, the program relies on State Safety Oversight Agencies to provide direct oversight of rail fixed guideway public transportation providers.

Sec. 20027, 49 U.S.C. 5337, state of good repair grant program

Modernizes, renames, and provides historic levels of funding for the old ''Rail Modernization'' program by establishing a program structure and defining eligible expenses under the program with a goal of moving all systems towards a state of good repair and enabling systems to maintain a state of good repair.

The program has two major components: a rail fixed guideway state of good repair formula program and a high intensity bus state of good repair formula program. Funding tiers and earmarks in the old rail modernization program have been eliminated and replaced with a new structure that focuses on the age of the system, revenue vehicle miles and directional route miles.

DIVISION C—TRANSPORTATION SAFETY AND SURFACE TRANSPORTATION POLICY

TITLE I—MOTOR VEHICLE AND HIGHWAY SAFETY IMPROVEMENT ACT

Highway Safety Grant Programs. The conference report includes provisions that restructure the existing highway safety grant programs administered by the National Highway Traffic Safety Administration (NHTSA). The conference report largely reflects the Senate approach on modifications to the existing formula grant programs, including the establishment of a single grant application and reporting process for all grants received under this title, the adoption of performance measures, and the establishment of planning and reporting requirements for the states. In addition, the conference report inserts a prohibition on state use of these formula grant funds to pay for red light or speed cameras. The report moves a provision establishing a cooperative research and evaluation program into a different section, but continues to fund it from the funds provided for the formula grant program.

The conference report accepts the Senate approach on incentive grants, but consolidates all of those grants into a single section in Code. The new Section 405 of Title 23, ''National Priority Safety Programs,'' allocates funds across six incentive grant programs and allows such funds to be used for a research program on technology to prevent impaired driving. The conference report retains the Senate language with respect to state traffic safety information system improvement grants, the motorcycle safety grant program, and the high visibility enforcement program.

The conference report retains the Senate language with respect to an occupant protection incentive grant with two modifications. First, the report provides the highest performing states with additional flexibility in spending grant funds. Second, the report does not specifically state that education to the public concerning the dangers of children left unattended in vehicles is an allowable use of these funds, however the conferees agree that such education efforts could be carried out under other allowable uses, including education to the public concerning the proper use of child restraints.

The conference report reflects the Senate approach with regard to the impaired driving countermeasures and teen driver safety grants with one modification made to each that allows states additional flexibility in spending a percentage of funds received through these programs. The report also accepts the Senate approach on distracted driving incentive grants, with one change to the eligibility requirements for the grants.

Highway Safety Research. The conference report accepts the Senate approach to modifying the highway safety research authorities provided to NHTSA. The report strikes provisions in the Senate bill that authorized additional collaborative research and development with non-federal entities, allowed the Secretary to establish an international highway safety information and cooperation program, funded training for highway safety personnel, and created a clearinghouse for information about best practices for driver's licensing concerning drivers with medical issues. The report removes language in the Senate bill that allowed NHTSA to develop model specifications for devices. The conferees understand the removal of this language does not alter the current authority of NHTSA in this area.

The conference report modifies Senate language providing NHTSA with the authority to conduct research into advanced technology to prevent impaired driving, and allows the Secretary to use funds from the National Priority Safety Programs to fund this research.

Enhanced Safety Authorities. The conference report includes several provisions intended to enhance NHTSA's safety authorities. The conference report revises the Senate language on civil penalties and sets the maximum penalty at $35 million for a related series of violations. The increase will take effect one year after enactment or when NHTSA issues a rule interpreting the new civil penalty factors, whichever is earlier, and the conferees agree that the new penalty amount will only be subject to adjustment for inflation occurring thereafter. The conference report maintains the Senate approach on motor vehicle safety research and development with modification, including to NHTSA's authority to plan, design, or build facilities. The conference report largely maintains the Senate approach providing NHTSA additional authority over imported motor vehicles and motor vehicle equipment, though it strikes a provision related to financial responsibility requirements for importers and modifies a provision relating to conditions of importation.

Transparency and Accountability. The conference report contains several provisions designed to increase transparency and accountability at NHTSA and in the auto industry. The conference report adopts a modified Senate approach on establishing public accessibility to vehicle recall information and further modifies Senate provisions addressing the set of communications with dealers that must be made available to the public. The report strikes the provision regarding public availability of early warning reporting data. The report strikes a provision imposing new post-employment restrictions for vehicle safety officials at NHTSA, but retains language calling on the inspector general to report on the issue. The report slightly modifies the whistleblower protection provision and calls on the Government Accountability Office to examine this and other such provisions. The report slightly modifies the provision directing NHTSA to study crash data collection. And the report makes slight modifications to NHTSA's authority to require additional recall notifications.

Vehicle Electronics and Safety Standards. The conference report maintains a Senate provision that establishes a Council for Vehicle Electronics, Vehicle Software, and Emerging Technologies to build, implement, and aggregate NHTSA's expertise in passenger motor vehicle electronics and other new and emerging technologies. The conference report includes a provision calling on NHTSA to evaluate vehicle electronic systems and report to Congress on highest priority areas for safety. The conference report strikes all other safety mandates contained in Subtitle D of the Senate bill.

Child Safety Standards. The conference report maintains the Senate approach with regard to child safety. The report strikes mandates for new safety standards for booster seats and child restraint anchorage systems because conferees understand that NHTSA has completed a rulemaking that achieves these goals. The report modifies the mandate that NHTSA update its frontal impact test parameters for child safety seats to clarify that the mandate only applies to the seat assembly specifications. The report revises the provision relating to unattended passengers to a discretionary research effort without any mandate for NHTSA to begin a rulemaking process.

Improved Daytime and Nighttime Visibility of Agricultural Equipment. The Conference report accepts the Senate language.

TITLE II—COMMERCIAL MOTOR VEHICLE SAFETY ENHANCEMENT ACT OF 2012

Commercial Motor Vehicle Registration requirements. The conference report includes several provisions amending registration requirements under federal law for commercial motor vehicles (CMV), freight forwarders, and brokers. The conference report largely adopts the Senate registration provisions. The provisions include new requirements, such as completing a written examination and applying for a US DOT number, as a precondition for being registered. The included provisions amend safety fitness requirements and require license holders to provide registration updates. The conference report also includes Senate provisions for registering household goods motor carriers, but removes provisions directing the Secretary to establish education and assistance programs to address the problems of household property being held hostage.

The conference report makes changes to some Senate registration provisions. It retains the current presumption in favor of

registration, removes a management plan requirement, and changes written examination provisions. For providers of motorcoach services, the conference report also replaces a pre-authorization audit requirement with a requirement that new operators undergo a safety review within 120 days of beginning operations. The conference report also removes requirements to periodically update registration information when no changes have been made.

The conference report includes a number of Senate provisions to address motor carrier companies that mask prior noncompliance and adverse safety history. The provisions authorize the Secretary to withhold, suspend, amend, or revoke a motor carrier's registration if the carrier failed to disclose an adverse safety history or other facts relevant to its past regulatory compliance. The provisions authorize similar action where the Secretary finds that within the previous 3 years the carrier: (1) was closely related to another motor carrier with a poor compliance history; and (2) did not disclose this relationship in its application. The Secretary is granted authority to refuse or revoke a USDOT number to an applicant that is unfit, unwilling or unable to comply with the safety regulations. The conference report amends some of the Senate provisions to limit the unintended results of punishing individuals who were not guilty parties in previous companies.

The conference report adopts several Senate penalty provisions for operations in violation of registration requirements. The conference report includes civil penalties and revocation authority for operating without registration, operating as imminent hazard, and transporting hazardous wastes without necessary registration. Provisions increase the civil penalties for motor carriers, motor carriers of migrant workers and private motor carriers that disobey a subpoena or a requirement of the Secretary to produce witnesses or records. Other provisions included authorize the Secretary to suspend, amend or revoke the registration of a motor carrier, broker or freight forwarder for failing to obey an administrative subpoena. Another provision authorizes the Secretary to place out of service the operations of a motor carrier discovered to be operating vehicles without the required registration, or operating beyond the scope of the registration granted. The conference report amends the Senate provision for hazardous waste transportation penalties and sets the penalty range at not less than $20,000 but not to exceed $40,000.

Electronic logging devices. The conference report includes provisions directing the Secretary to issue regulations requiring electronic logging devices for recording hours of service in commercial motor vehicles and sets basic performance standards for the device. The conference report adopted the Senate approach with some amendments. The conference report adds an hours of service field study to expand on a previous Federal Motor Carrier Safety Administration (FMCSA) report on driver fatigue and maximum driving time requirements focusing on the 34-hour restart rule. The conference report directs the Secretary, in prescribing regulations, to consider how the rule may reduce or eliminate requirements for drivers and motor carriers to retain supporting documentation associated with paper-based records. The conference report changes the name of the device and adds other language to make clear that the devices are to be used only to enforce federal regulations. The report also includes a definition of ''tamper resistant'' and provisions to ensure that appropriate measures are taken to protect the privacy of individuals and the confidentiality of the data.

Commercial motor vehicle driver safety. The conference report includes several Senate provisions to address commercial driver safety: driver medical qualifications, operator training, driver's license program, driver's requirements and driver information systems. The conference report removes a Senate provision that would have directed the development of driver safety fitness ratings. The report also removes a study and report to Congress examining the extent to which detention time contributes to drivers violating hours of service requirements and driver fatigue. The conference report removes a Senate provision that would have amended the membership of the Motor Carrier Safety Advisory Committee to specifically include non-profit employee organization representation.

The provisions included direct the Secretary to establish a national registry of medical examiners, issue regulations to establish minimum entry-level training requirements for all CMV operators, require States to modernize commercial driver's license (CDL) information systems, and add disqualification standards for drivers. The conference report includes Senate provisions for the commercial driver's license program, but removes language for federal guidance on critical requirements for effective State CDL programs. The conference report includes alternate language directing states to prioritize areas that the Secretary has identified as critical in the most recent audit of their programs.

The conference report also includes language for streamlining the process by which military members and veterans who operate heavy trucks during duty are able to obtain commercial driver's licenses. The conference provision includes Senate language directing the Secretary to complete a study and report to Congress on what can be done to streamline the process. The report adds new language requiring the Secretary, based on recommendations of the report, to establish accelerated licensing procedures within 1 year of enactment.

Drug and Alcohol Clearinghouse. The conference report includes Senate provisions directing the Secretary to establish a national repository for records relating to alcohol and controlled substances testing of CMV drivers. The records will be used to determine the qualifications for operating a CMV. The clearinghouse will include safeguards to protect the privacy of individuals to whom the information pertains and ensure that the information is not divulged to anyone not directly involved in evaluating the individual's qualifications to drive a CMV. The conference report also includes Senate provisions for prohibiting an employer from hiring a driver unless he or she has determined that during the preceding three years that such driver: did not test positive in violation of the regulations at title 49, Code of Federal Regulations; and did not refuse a test under these regulations. Other included provisions grant preemption authority to the Secretary in regard to the reporting of valid positive results or refusals to take alcohol screening and drug tests, and apply civil penalties to any violators of privacy and reporting requirements.

The conference report amends Senate provisions for archiving personal records to ensure further individual privacy protections. The conference report also includes amendments to the National Transportation Safety Board's access to clearinghouse records. The conference report makes amendments to clarify that the clearinghouse will be used to determine whether individuals have existing employment prohibitions at the time of making hiring decisions.

Motor Carrier Grant programs. The conference report does not include Senate provisions updating and consolidating grant programs and processes. While the conference believes that reducing administrative burdens on the states and local governments by streamlining grants processes is beneficial, the short time frame of the legislation does not allow for these changes. In that regard, the conference agrees to retain existing grant programs and authorizes them for FY 2013 and FY 2014 at current funding levels. The conference report adds language allowing the Secretary to examine methods and approaches for streamlining grants administration and processes to reduce burdens for the states and local governments. The conference report makes some administrative amendments to the existing commercial driver license program improvement grant that was included in the Senate bill. The conference also retains the Senate provision requiring a report to Congress on resuming the commercial vehicle information systems and networks program.

Motorcoach Safety. The conference report includes provisions addressing the safety of motorcoach operations. The conference adopts the Senate approach, but modifies some rulemaking and research requirements and removes registration provisions. The conference report consolidates several research and rulemakings related to fire prevention and mitigation. The report amends language on assessing the feasibility of retrofitting existing motorcoaches with safety requirements. The report makes conforming definition changes regarding the registration of motorcoaches. The registration provisions were not included in the conference report because they are largely redundant to the provisions in the report updating registration requirements for all motor carriers.

The conference report also includes a Senate provision for oversight of motorcoaches. The provision directs the Secretary to establish a safety fitness system to rate motor coaches, determine and assign a fitness rating for each motor coach, periodically review the safety ratings and make public the fitness ratings of each motorcoach.

The conference report includes a new provision that directs the Secretary, to the extent feasible, to ensure that motorcoach research programs and rulemaking are carried out concurrently. The report also includes a provision requiring the Secretary to review and report to Congress on the current knowledge and skill testing requirements for a commercial driver's license passenger endorsement. The conference agreement removes a Senate rulemaking requirement on distracted driving because FMCSA has already addressed this issue.

Truck, Size and Weight. The conference report includes provisions directing the Secretary to study the effects of truck, size and weight on highway safety and infrastructure and compile a list of existing state truck size and weight laws. The conference report amends the Senate study provisions. The conference report includes language directing the Secretary to consider the effects of trucks operating in excess of federal law and regulations in comparison to those trucks that do not operate in excess of federal law and regulations, when assessing accident frequency and impacts to highway and bridge infrastructure. The conference report adopts the Senate requirement that the report must be submitted to Congress not later than 2 years after enactment.

Financial responsibility requirements. The conference report includes provisions addressing the financial responsibility of freight-forwarders and brokers. These provisions direct rulemakings to establish minimum financial solvency and bonding requirements for these entities. The conference agreement includes exemptions for

air carrier and customs brokers who are already subject to financial responsibility requirements under federal law.

Enforcement. The Senate bill included several provisions amending and updating FMCSA's enforcement authorities. The conference report includes nine of the Senate provisions. Five of the Senate enforcement provisions were not included in the conference report: minimum prohibition on operation of unfit carriers, minimum out of service penalties, failure to pay civil penalty as a disqualifying offense, intrastate operations of interstate motor carriers and enforcement of safety laws and regulations.

Exemptions. The conference report amends an exemption for the transportation of agricultural commodities by increasing the permitted travel radius from 100 air-miles to 150 air-miles. The conference report includes Senate language for a narrow exemption from federal requirements for covered farm vehicles. This conference report adopts the Senate language directing the Secretary to study and report to Congress on the safety impacts of the covered farm vehicle exemption.

TITLE III—SURFACE TRANSPORTATION AND FREIGHT POLICY ACT OF 2012

The Senate legislation included provisions establishing a comprehensive national surface transportation system and freight transportation policy. The policy would have provided certainty to states and localities by requiring the development of long term, strategic plans and directing transportation investment data collection and evaluation efforts. This Senate title had included provisions for safety standards to ensure that the design of federal transportation projects provides for adequate consideration of non-motorized users. The conference report does not include this title.

TITLE IV—HAZARDOUS MATERIALS TRANSPORTATION SAFETY IMPROVEMENT ACT OF 2012

Training Programs. There is currently no uniform training standard for hazardous materials (''hazmat'') inspectors and investigators. The conference bill requires the Secretary to establish standards for training these inspectors and investigators. The conference report modifies the Senate bill to require that the standards be developed not later than 18 months after enactment, and to clarify that the standards are established as guidelines.

The conference report includes Senate provisions that amend training requirements for emergency responders of hazardous materials. These provisions direct that organizations receiving grant funding to train emergency responders have the ability to protect against accidents or incidents involving the transportation of hazardous material in accordance with existing regulations and standards.

The conference report adds language to permit ''portable training'' which can be offered in any suitable setting rather than specific, designated facilities. This provision is included to allow training at locations and times convenient to students and instructors. The conference report also adds requirements to ensure that the emergency responder and hazmat employee training grants be awarded through a competitive process.

Data Collection and Research. The Senate bill recognized the need for increased research and data collection on hazardous materials programs and included a new pilot program for paperless hazard communications. The program would permit the Secretary to conduct pilot projects to evaluate the feasibility and effectiveness of using paperless hazard communications systems. The conference report includes these provisions and adds a requirement to conduct a cost-benefit analysis of the pilot projects and submit recommendations on the analysis and other findings in the report to Congress.

The conference report includes Senate provisions requiring an assessment of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) hazmat data collection, analysis and reporting. These provisions require PHMSA to develop an action plan and timeline to make improvements to its systems. The conference report directs PHMSA to conduct the assessment in consultation with Commandant of the Coast Guard, in lieu of in coordination with the Secretary of Homeland Security. This amendment was included because the Coast Guard is more specifically involved in handling accidents and investigations in the transportation of hazardous materials.

Hazmat Transportation. The conference report includes a new requirement for the Secretary to study the safety of transporting flammable liquids in the external pipes of cargo tanks, ''wetlines.'' The report specifies that the Secretary may not issue a rulemaking on ''wetlines'' until the study is complete, but no later than two years after the date of enactment. The conference report also modifies Senate provisions that direct the Secretary to address transportation of perishable material after inspection, training for inspectors and the proper closing of packaging after inspections, by requiring that these regulations be issued within a year after enactment.

The Senate bill included a provision that requires uniform regulations for the safe loading and unloading of hazardous materials on and off tank cars and cargo tank trucks. The provision was not included in the conference report due to an ongoing rulemaking addressing the matter.

The conference report includes a Senate provision that ensures States update the hazardous materials route registry kept by the Department of Transportation.

Special permitting. The conference report amends provisions included in the Senate bill on special permits. The conference report removes some language regarding criteria for special permits but includes the rulemaking provision for special permit and approvals procedures. It directs a review and analysis of special permits that have been in continuous effect for a 10-year period to determine which permits can be converted into the hazardous materials regulations (HMR). It includes factors that the Secretary may consider in reviewing special permits. After the analysis is complete, but no later than 3 years after enactment, the report authorizes the Secretary to issue regulations for incorporating special permits into the HMR. The amended language also directs the Secretary to publish in the Federal Register justification in the case of special permits that are not appropriate for incorporation into the HMR. Similarly, the amended language includes a process to review a special permit for incorporation into the regulations once that permit has been in effect for 10 years.

Motor carrier safety permits. The conference report includes a provision directing the Secretary to conduct a review of the implementation of the hazardous material safety permit program. The conference report directs the Secretary to consider factors, including the list of hazardous materials requiring a safety permit, the criteria used by PHMSA to determine whether a hazardous material safety permit issued by a State is equivalent to the Federal permit, and actions to improve the program including an additional level of fitness review. Based on the findings of the review, the Secretary may either issue a rulemaking to make any necessary improvements to the program, or publish in the Federal Register justification for why a rulemaking is not necessary.

Civil penalties. The conference report adds new language amending civil penalties by removing the minimum penalty amount for violations of hazardous materials laws and regulations. The conference report also adds language amending penalties for training violations. It includes a definition of ''obstruct'' regarding penalties for obstruction of inspections and investigations.

TITLE V—NATIONAL RAIL SYSTEM PRESERVATION, EXPANSION AND DEVELOPMENT ACT OF 2012

The Senate legislation included provisions that would direct the Secretary, in collaboration with stakeholders, to develop a long-range, national rail plan. Other provisions in this title would amend statutory requirements for implementation of positive train control, refine Surface Transportation Board authorities and amend and update Amtrak's environmental review, capital planning and financing, and inspector general authorities. The conference report does not include any of the provisions in this title.

TITLE VI—SPORT FISH RESTORATION AND RECREATIONAL BOATING SAFETY ACT OF 2012

Sport Fish Restoration and Boating Trust Fund. The conference report adopts Senate provisions to authorize appropriations and amounts for administrative costs through FY 2013 for the Sport Fish Restoration and Boating Trust Fund. The Trust Fund, often referred to as Wallop-Breaux, is the mainstay of funding for State and Federal sport fish conservation and recreational boating safety programs. Funds go to projects that support sport fish conservation and habitat conservation in the States, and to assist States in establishing and maintaining recreational boating safety and boater education programs. The Trust Fund receives income from the following five sources: (1) motorboat fuel taxes; (2) annual tax receipts from small engine fuel used for outdoor power equipment; (3) a manufacturers' excise tax on sport fishing equipment; (4) import duties on fishing tackle and on yachts and pleasure craft; and (5) interest on funds invested prior to disbursal. All moneys received in a given fiscal year are apportioned to the States in the following fiscal year.

TITLE VII—MISCELLANEOUS

Overflights in Grand Canyon National Park. The conference report makes amendments to a Senate provision on aircraft noise abatement at Grand Canyon National Park (GCNP). The provision establishes standards to be used by the National Park Service (NPS) in restoring natural quiet at GCNP, defines the term ''substantial restoration of natural quiet'' for the park, and directs the NPS to take measures that promote adoption of quiet technology aircraft at GCNP.

Commercial air tour operations. The conference report amends a Senate provision for commercial air tour operations at national parks. The report modifies existing statutory authority to clarify the conditions under which the Director of the NPS may deny an application to begin or expand commercial air tour operations without developing an air tour management plan at Crater Lake National Park and Great Smoky Mountains National Park only.

PART I—EXTENSION OF HIGHWAY TRUST FUND EXPENDITURE AUTHORITY AND RELATED TAXES

A. Extension of Highway Trust Fund Expenditure Authority and Extension of Highway-Related Taxes

(secs. 141 and 142 of the House bill, secs. 40101 and 40102 of the Senate amendment, secs. 40101 and 40102 of the conference agreement, and secs. 4041, 4051, 4071, 4081, 4221, 4481 4483, 6412, 9503, 9504, and 9508 of the Code)[1]

PRESENT LAW HIGHWAY TRUST FUND EXCISE TAXES

In general

Six separate excise taxes are imposed to finance the Federal Highway Trust Fund program. Three of these taxes are imposed on highway motor fuels. The remaining three are a retail sales tax on heavy highway vehicles, a manufacturers' excise tax on heavy vehicle tires, and an annual use tax on heavy vehicles. A substantial majority of the revenues produced by the Highway Trust Fund excise taxes are derived from the taxes on motor fuels. The annual use tax on heavy vehicles expires October 1, 2013. Except for 4.3 cents per gallon of the Highway Trust Fund fuels tax rates, the remaining taxes are scheduled to expire after June 30, 2012. The 4.3-cents-per-gallon portion of the fuels tax rates is permanent.[2] The six taxes are summarized below.

Highway motor fuels taxes

The Highway Trust Fund motor fuels tax rates are as follows:[3]

Gasoline	18.3 cents per gallon
Diesel fuel and kerosene	24.3 cents per gallon
Alternative fuels	18.3 or 24.3 cents per gallon generally[4]

[4] See secs. 4041(a)(2), 4041(a)(3), and 4041(m).

Non-fuel highway trust fund excise taxes

In addition to the highway motor fuels excise tax revenues, the Highway Trust Fund receives revenues produced by three excise taxes imposed exclusively on heavy highway vehicles or tires. These taxes are:

1. A 12-percent excise tax imposed on the first retail sale of heavy highway vehicles, tractors, and trailers (generally, trucks having a gross vehicle weight in excess of 33,000 pounds and trailers having such a weight in excess of 26,000 pounds);[5]

2. An excise tax imposed on highway tires with a rated load capacity exceeding 3,500 pounds, generally at a rate of 0.945 cents per 10 pounds of excess;[6] and

3. An annual use tax imposed on highway vehicles having a taxable gross weight of 55,000 pounds or more.[7] (The maximum rate for this tax is $550 per year, imposed on vehicles having a taxable gross weight over 75,000 pounds.)

The taxable year for the annual use tax is from July 1st through June 30th of the following year. For the period July 1, 2013, through September 30, 2013, the amount of the annual use tax is reduced by 75 percent.[8]

PRESENT LAW HIGHWAY TRUST FUND EXPENDITURE PROVISIONS

In general

Under present law, revenues from the highway excise taxes, as imposed through June 30, 2012, generally are dedicated to the Highway Trust Fund. Dedication of excise tax revenues to the Highway Trust Fund and expenditures from the Highway Trust Fund are governed by the Code.[9] The Code authorizes expenditures (subject to appropriations) from the Highway Trust Fund through June 30, 2012, for the purposes provided in authorizing legislation, as such legislation was in effect on the date of enactment of the Surface Transportation Extension Act of 2012.

Highway Trust Fund expenditure purposes

The Highway Trust Fund has a separate account for mass transit, the Mass Transit Account.[10] The Highway Trust Fund and the Mass Transit Account are funding sources for specific programs.

Highway Trust Fund expenditure purposes have been revised with each authorization Act enacted since establishment of the Highway Trust Fund in 1956. In general, expenditures authorized under those Acts (as the Acts were in effect on the date of enactment of the most recent such authorizing Act) are specified by the Code as Highway Trust Fund expenditure purposes.[11] The Code provides that the authority to make expenditures from the Highway Trust Fund expires after June 30, 2012. Thus, no Highway Trust Fund expenditures may occur after June 30, 2012, without an amendment to the Code.

As noted above, section 9503 appropriates to the Highway Trust Fund amounts equivalent to the taxes received from the following: the taxes on diesel, gasoline, kerosene and special motor fuel, the tax on tires, the annual heavy vehicle use tax, and the tax on the retail sale of heavy trucks and trailers.[12] Section 9601 provides that amounts appropriated to a trust fund pursuant to sections 9501 through 9511, are to be transferred at least monthly from the General Fund of the Treasury to such trust fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in the Code section appropriating the amounts to such trust fund. The Code requires that proper adjustments be made in amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

HOUSE BILL

Present-law expenditure authority and taxes are extended for an additional three months, through September 30, 2012.

Effective date.—The provision is effective July 1, 2012.

SENATE AMENDMENT

The expenditure authority for the Highway Trust Fund is extended through September 30, 2013. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the reauthorization bill, Moving Ahead for Progress for the 21st Century (MAP–21).[13]

The provision extends the motor fuel taxes, and all three non-fuel excise taxes at their current rates through September 30, 2015.[14] The provision resolves the projected deficit in the Highway Trust Fund, assures a cushion of $2.8 billion in each account of the Highway Trust Fund, and creates a solvency account available for use by either highways or mass transit. Specifically, the Secretary of the Treasury is to transfer the excess of (1) any amount appropriated to the Highway Trust Fund before October 1, 2013, by reason of the provisions of this bill, over (2) the amount necessary to meet the required expenditures from the Highway Trust Fund as authorized in section 9503(c) of the Code (which provides expenditure authority from the Highway Trust Fund) for the period ending before October 1, 2013. Amounts in the solvency account are available for transfers to the Highway Account and the Mass Transit Account in such amounts as determined necessary by the Secretary to ensure that each account has a surplus balance of $2.8 billion on September 30, 2013. The solvency account terminates on September 30, 2013 and any remainder in the solvency account remains in the Highway Trust Fund. The Committee expects that the Secretary of the Treasury will consult with the Secretary of Transportation in making determinations concerning amounts necessary to meet required expenditures and amounts necessary to ensure the cushion of $2.8 billion.

Effective date.—The provision is effective on April 1, 2012.

CONFERENCE AGREEMENT

The conference agreement provides for expenditure authority through September 30, 2014. The Code provisions governing the purposes for which monies in the Highway Trust Fund may be spent are updated to include the conference agreement bill, MAP–21. Cross-references to the reauthorization bill in the Code provisions governing the Sport Fish Restoration and Boating Trust Fund are also updated to include the conference agreement bill. In general, the provision extends the taxes dedicated to the Highway Trust Fund at their present law rates through September 30, 2016, and for the heavy vehicle use tax, through September 30, 2017.[15]

Effective date.—The provision is effective July 1, 2012.

[1] Except where otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the ''Code'').

[2] This portion of the tax rates was enacted as a deficit reduction measure in 1993. Receipts from it were retained in the General Fund until 1997 legislation provided for their transfer to the Highway Trust Fund.

[3] Secs. 4081(a)(2)(A)(i), 4081(a)(2)(A)(iii), 4041(a)(2), 4041(a)(3), and 4041(m). Some of these fuels also are subject to an additional 0.1-cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund (secs. 4041(d) and 4081(a)(2)(B)).

[5] Sec. 4051.

[6] Sec. 4071.

[7] Sec. 4481.

[8] Sec. 4482(c)(4) and (d).

[9] Sec. 9503. The Highway Trust Fund statutory provisions were placed in the Internal Revenue Code in 1982.

[10] Sec. 9503(e)(1).

[11] The authorizing Acts that currently are referenced in the Highway Trust Fund provisions of the Code are: the Highway Revenue Act of 1956; Titles I and II of the Surface Transportation Assistance Act of 1982; the Surface Transportation and Uniform Relocation Act of 1987; the Intermodal Surface Transportation Efficiency Act of 1991; the Transportation Equity Act for the 21st Century, the Surface Transportation Extension Act of 2003, the Surface Transportation Extension Act of 2004; the Surface Transportation Extension Act of 2004, Part II; the Surface Transportation Extension Act of 2004, Part III; the Surface Transportation Extension Act of 2004, Part IV; the Surface Transportation Extension Act of 2004, Part V; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; the SAFETEA–LU Technical Corrections Act of 2008; the Surface Transportation Extension Act of 2010; the Surface Transportation Extension Act of 2010, Part II; the Surface Transportation Extension Act of 2011; the Surface Transportation Extension Act of 2011, Part II, and the Surface Transportation Extension Act of 2012.

[12] Sec. 9503(b)(1).

[13] The provision also replaces cross-references to the Surface Transportation Extension Act of 2011, Part II, with MAP–21, and replaces April 1, 2012 references with October 1, 2013 in the Code provisions governing the Leaking Underground Storage Tank Trust Fund, and the Sport Fish Restoration and Boating Trust Fund.

[14] The Leaking Underground Storage Tank Trust Fund financing rate of 0.1 cent per gallon also is extended through September 30, 2015.

[15] The Leaking Underground Storage Tank Trust Fund financing rate also is extended through September 30, 2016. The provision also corrects a potential drafting ambiguity regarding the taxable period as reflected in prior legislation. The provision is effective as if included in section 142 of the Surface Transportation Extension Act of 2011, Part II.

PART II—REVENUE PROVISIONS

A. Leaking Underground Storage Tank Trust Fund

(secs. 40301 and 40302 of the Senate amendment, sec. 40201 of the conference agreement and secs. 9503 and 9508 of the Code)

PRESENT LAW

Leaking Underground Storage Tank Trust Fund financing rate

Fuels of a type subject to other trust fund excise taxes generally are subject to an add-on excise tax of 0.1-cent-per-gallon to fund the Leaking Underground Storage Tank (''LUST'') Trust Fund.[16] For example, the LUST excise tax applies to gasoline, diesel fuel, kerosene, and most alternative fuels subject to highway and aviation fuels excise taxes, and to fuels subject to the inland waterways fuel excise tax. This excise tax is imposed on both uses and parties subject to the other taxes, and to situations (other than export) in which the fuel otherwise is tax-exempt. For example, off-highway business use of gasoline and off-highway use of diesel fuel and kerosene generally are exempt from highway motor fuels excise tax. Similarly, States and local governments and certain other parties are exempt from such tax. Nonetheless, all such uses and parties are subject to the 0.1-cent-per-gallon LUST excise tax.

Liquefied natural gas, compressed natural gas, and liquefied petroleum gas are exempt from the LUST tax. Additionally, methanol and ethanol fuels produced from coal (including peat) are taxed at a reduced rate of 0.05 cents per gallon.

The LUST tax is scheduled to expire after June 30, 2012.[17]

Overview of Leaking Underground Storage Tank Trust Fund expenditure provisions

Amounts in the LUST Trust Fund are available, as provided in appropriations Acts, for purposes of making expenditures to carry out sections 9003(h)–(j), 9004(f), 9005(c), and 9010–9013 of the Solid Waste Disposal Act as in effect on the date of enactment of Public Law 109–168. Any claim filed against the LUST Trust Fund may be paid only out of such fund, and the liability of the United States for claims is limited to the amount in the fund.

The monies in the LUST Trust Fund are used to pay expenses incurred by the Environmental Protection Agency (the ''EPA'') and the States for preventing, detecting, and cleaning up leaks from petroleum underground storage tanks, as well as programs to evaluate the compatibility of fuel storage tanks with alternative fuels, MTBE additives, and ethanol and biodiesel blends.

The EPA makes grants to States to implement the program, and States use cleanup funds primarily to oversee and enforce corrective actions by responsible parties. States and EPA also use cleanup funds to conduct corrective actions where no responsible party has been identified, where a responsible party fails to comply with a cleanup order, in the event of an emergency, and to take cost recovery actions against parties. In 2005, Congress authorized the EPA and States to use trust fund monies for non-cleanup purposes as well, specifically for administration and enforcement of the leak prevention requirements of the UST program.[18]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision transfers $3 billion from the LUST Trust Fund to the Highway Trust Fund. The provision also provides that 0.033 cent of the 0.1 cent LUST Trust Fund financing rate is dedicated to the Highway Trust Fund.[19]

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement transfers $2.4 billion from the LUST Trust Fund to the Highway Account of the Highway Trust Fund.

The conference agreement does not include the Senate amendment provision to transfer 0.033 cent of the 0.1 cent LUST Trust Fund financing rate to the Highway Trust Fund.

Effective date.—The provision is effective on the date of enactment.

B. Pension Funding Stabilization

(sec. 40312 of the Senate amendment, sec. 40211 of the conference agreement, Code sec. 430, and ERISA secs. 101(f) and 303)

PRESENT LAW

Minimum funding rules

Defined benefit plans generally are subject to minimum funding rules that require the sponsoring employer generally to make a contribution for each plan year to fund plan benefits.[20] Parallel rules apply under the Employee Retirement Income Security Act of 1974 (''ERISA''), which is generally in the jurisdiction of the Department of Labor.[21] The minimum funding rules for single-employer defined benefit plans were substantially revised by the Pension Protection Act of 2006 (''PPA'').[22]

Minimum required contributions

In general

The minimum required contribution for a plan year for a single-employer defined benefit plan generally depends on a comparison of the value of the plan's assets, reduced by any prefunding balance or funding standard carryover balance (''net value of plan assets''),[23] with the plan's funding target and target normal cost. The plan's funding target for a plan year is the present value of all benefits accrued or earned as of the beginning of the plan year. A plan's target normal cost for a plan year is generally the present value of benefits expected to accrue or to be earned during the plan year.

If the net value of plan assets is less than the plan's funding target, so that the plan has a funding shortfall (discussed further below), the minimum required contribution is the sum of the plan's target normal cost and the shortfall amortization charge for the plan year (determined as described below).[24] If the net value of plan assets is equal to or exceeds the plan's funding target, the minimum required contribution is the plan's target normal cost, reduced by the amount, if any, by which the net value of plan assets exceeds the plan's funding target.

Shortfall amortization charge

The shortfall amortization charge for a plan year is the sum of the annual shortfall amortization installments attributable to the shortfall bases for that plan year and the six previous plan years. Generally, if a plan has a funding shortfall for the plan year, a shortfall amortization base must be established for the plan year.[25] A plan's funding shortfall is the amount by which the plan's funding target exceeds the net value of plan assets. The shortfall amortization base for a plan year is: (1) the plan's funding shortfall, minus (2) the present value, determined using the segment interest rates (discussed below), of the aggregate total of the shortfall amortization installments that have been determined for the plan year and any succeeding plan year with respect to any shortfall amortization bases for the six previous plan years. The shortfall amortization base is amortized in level annual installments (''shortfall amortization installments'') over a seven-year period beginning with the current plan year and using the segment interest rates (discussed below).[26]

The shortfall amortization base for a plan year may be positive or negative, depending on whether the present value of remaining installments with respect to amortization bases for previous years is more or less than the plan's funding shortfall. If the shortfall amortization base is positive (that is, the funding shortfall exceeds the present value of the remaining installments), the related shortfall amortization installments are positive. If the shortfall amortization base is negative, the related shortfall amortization installments are negative. The positive and negative shortfall amortization installments for a particular plan year are netted when adding them up in determining the shortfall

[16] Secs. 4041, 4042, and 4081.

[17] For Federal budget scorekeeping purposes, the LUST Trust Fund tax, like other excise taxes dedicated to trust funds, is assumed to be permanent.

[18] Pub. L. No. 109–58.

[19] As noted above, the Leaking Underground Storage Tank Trust Fund financing rate of 0.1 cent per gallon is also extended through September 30, 2015.

[20] Sec. 412. A number of exceptions to the minimum funding rules apply. For example, governmental plans (within the meaning of section 414(d) and church plans (within the meaning of section 414(e)) are generally not subject to the minimum funding rules. Under section 4971, an excise tax applies to an employer maintaining a single-employer plan if the minimum funding requirements are not satisfied.

[21] Sec. 302 of ERISA.

[22] Pub. L. No. 109–280. The PPA minimum funding rules for single-employer plans are generally effective for plan years beginning after December 31, 2007. Delayed effective dates apply to single-employer plans sponsored by certain large defense contractors, multiple-employer plans of some rural cooperatives, eligible charity plans, and single-employer plans affected by settlement agreements with the Pension Benefit Guaranty Corporation. Subsequent changes to the single-employer plan and multiemployer plan funding rules (including temporary funding relief) were made by the Worker, Retiree, and Employer Recovery Act of 2008 (''WRERA''), Pub. L. No. 110–458, and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (''PRA 2010''), Public Law 111–192.

[23] The value of plan assets is generally reduced by any prefunding balance or funding standard carryover balance in determining minimum required contributions, including for this purpose. A prefunding balance results from contributions to a plan that exceed the minimum required contributions. A funding standard carryover balance results from a positive balance in the funding standard account that applied under the funding requirements in effect before PPA. Subject to certain conditions, a prefunding balance or funding standard carryover balance may be credited against the minimum required contribution for a year, reducing the amount that must be contributed.

[24] If the plan has obtained a waiver of the minimum required contribution (a funding waiver) within the past five years, the minimum required contribution also includes the related waiver amortization charge, that is, the annual installment needed to amortize the waived amount in level installments over the five years following the year of the waiver.

[25] If the value of plan assets, reduced only by any prefunding balance if the employer elects to apply the prefunding balance against the required contribution for the plan year, is at least equal to the plan's funding target, no shortfall amortization base is established for the year.

[26] Under PRA 2010, employers were permitted to elect to use one of two alternative extended amortization schedules for up to two ''eligible'' plan years during the period 2008–2011. The use of an extended amortization schedule has the effect of reducing the amount of the shortfall amortization installments attributable to the shortfall amortization base for the eligible plan year. However, the shortfall amortization installments attributable to an eligible plan year may be increased by an additional amount, an ''installment acceleration amount,'' in the case of employee compensation exceeding $1 million, extraordinary dividends, or stock redemptions within a certain period of the eligible plan year.

amortization charge for the plan year, but the resulting shortfall amortization charge cannot be less than zero (i.e., negative amortization installments may not offset normal cost).

If the net value of plan assets for a plan year is at least equal to the plan's funding target for the year, so the plan has no funding shortfall, any shortfall amortization bases and related shortfall amortization installments are eliminated.[27] As indicated above, if the net value of plan assets exceeds the plan's funding target, the excess is applied against target normal cost in determining the minimum required contribution.

Interest rate used to determine target normal cost and funding target

The minimum funding rules for single-employer plans specify the interest rates and other actuarial assumptions that must be used in determining the present value of benefits for purposes of a plan's target normal cost and funding target.

Present value is determined using three interest rates (''segment'' rates), each of which applies to benefit payments expected to be made from the plan during a certain period. The first segment rate applies to benefits reasonably determined to be payable during the five-year period beginning on the first day of the plan year; the second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial five-year period; and the third segment rate applies to benefits reasonably determined to be payable at the end of the 15-year period. Each segment rate is a single interest rate determined monthly by the Secretary of the Treasury (''Secretary'') on the basis of a corporate bond yield curve, taking into account only the portion of the yield curve based on corporate bonds maturing during the particular segment rate period. The corporate bond yield curve used for this purpose reflects the average, for the 24-month period ending with the preceding month, of yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available. The Internal Revenue Service (IRS) publishes the segment rates each month.

The present value of liabilities under a plan is determined using the segment rates for the ''applicable month'' for the plan year. The applicable month is the month that includes the plan's valuation date for the plan year, or, at the election of the employer, any of the four months preceding the month that includes the valuation date.

Solely for purposes of determining minimum required contributions, in lieu of the segment rates described above, an employer may elect to use interest rates on a yield curve based on the yields on investment grade corporate bonds for the month preceding the month in which the plan year begins (i.e., without regard to the 24-month averaging described above) (''monthly yield curve''). If an election to use a monthly yield curve is made, it cannot be revoked without IRS approval.

Use of segment rates for other purposes

In general

In addition to being used to determine a plan's funding target and target normal cost, the segment rates are used also for other purposes, either directly because the segment rates themselves are specifically cross-referenced or indirectly because funding target, target normal cost, or some other concept, such as funding target attainment percentage (discussed below) in which funding target or target normal cost is an element, is cross-referenced elsewhere.

Funding target attainment percentage

A plan's funding target attainment percentage for a plan year is the ratio, expressed as a percentage, that the net value of plan assets bears to the plan's funding target for the year. Special rules may apply to a plan if its funding target attainment percentage is below a certain level. For example, funding target attainment percentage is used to determine whether a plan is in ''at-risk'' status, so that special actuarial assumptions (''at-risk assumptions'') must be used in determining the plan's funding target and target normal cost.[28] A plan is in at risk status for a plan year if, for the preceding year: (1) the plan's funding target attainment percentage, determined without regard to the at-risk assumptions, was less than 80 percent, and (2) the plan's funding target attainment percentage, determined using the at-risk assumptions (without regard to whether the plan was in at-risk status for the preceding year), was less than 70 percent.[29] In addition, special reporting to the Pension Benefit Guaranty Corporation (''PBGC'') may be required if a plan's funding target attainment percentage is less than 80 percent.[30]

Restrictions on benefit increases, certain types of benefits and benefit accruals (collectively referred to as ''benefit restrictions'') may apply to a plan if the plan's adjusted funding target attainment percentage is below a certain level.[31] Adjusted funding target attainment percentage is determined in the same way as funding target attainment percentage, except that the net value of plan assets and the plan's funding target are both increased by the aggregate amount of purchases of annuities for employees, other than highly compensated employees, made by the plan during the two preceding plan years. Although anti-cutback rules generally prohibit reductions in benefits that have already been earned under a plan,[32] reductions required to comply with the benefit restrictions are permitted.

Minimum and maximum lump sums, limits on deductible contributions, retiree health

Defined benefit plans commonly allow a participant to choose among various forms of benefit offered under the plan, such as a lump-sum distribution. These optional forms of benefit generally must be actuarially equivalent to the life annuity benefit payable to the participant at normal retirement age. For certain forms of benefit, such as lump sums, the benefit amount cannot be less than the amount determined using the segment rates and a specified mortality table.[33] For this purpose, however, the segment rates are determined on a monthly basis, rather than using a 24-month average of corporate bond rates.

The amount of benefits under a defined benefit plan are subject to certain limits.[34] The segment rates used in determining minimum lump sums (and certain other forms of benefit) are also used in applying the benefit limits to lump sums (and the certain other forms of benefit).

Limits apply to the amount of plan contributions that may be deducted by an employer.[35] In the case of a single-employer defined benefit plan, the plan's funding target and target normal cost, determined using the segment rates that apply for funding purposes, are taken into account in calculating the limit on deductible contributions.

Subject to various conditions, a qualified transfer of excess assets of a single-employer defined benefit plan to a retiree medical account within the plan may be made in order to fund retiree health benefits.[36] For this purpose, excess assets generally means the excess, if any, of the value of the plan's assets over 125 percent of the sum of the plan's funding target and target normal cost for the plan year.

PBGC premiums and 4010 reporting

PBGC premiums apply with respect to defined benefit plans covered by ERISA.[37] In the case of a single-employer defined benefit plan, flat-rate premiums apply at a rate of $35.00 per participant for 2012.[38] If a single-employer defined benefit plan has unfunded vested benefits, variable-rate premiums also apply at a rate of $9 per $1,000 of unfunded vested benefits divided by the number of participants. For purposes of determining variable-rate premiums, unfunded vested benefits are equal to the excess (if any) of (1) the plan's funding target for the year determined as under the minimum funding rules, but taking into account only vested benefits, over (2) the fair market value of plan assets. In determining the plan's funding target for this purpose, the interest rates used are segment rates determined as under the minimum funding rules, but determined on a monthly basis, rather than using a 24–month average of corporate bond rates.

In certain circumstances, the contributing sponsor of a single-employer plan defined benefit pension plan covered by the PBGC (and members of the contributing sponsor's controlled group) must provide certain information to the PBGC (referred to as ''section 4010 reporting'').[39] This information includes actuarial information with respect to single-employer plans maintained by the contributing sponsor (and controlled group members). Section 4010 reporting is required if: (1) the funding target attainment percentage at the end of the preceding plan year of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80 percent; (2) the conditions for imposition of a lien (i.e., required contributions totaling more than $1 million have not been made) have occurred with respect to a plan maintained by the contributing sponsor or any member of its controlled group; or (3) minimum funding waivers in excess of $1 million have been granted with respect to a plan maintained by the contributing sponsor or any member of its controlled group and any portion of the waived amount is still outstanding.

Annual funding notice

The plan administrator of a defined benefit plan must provide an annual funding notice to: (1) each participant and beneficiary; (2) each labor organization representing such

[27] Any amortization base relating to a funding waiver for a previous year is also eliminated.

[28] If a plan is in at-risk status, under section 409A(b)(3), limitations apply on the employer's ability to set aside assets to provide benefits under a nonqualified deferred compensation plan.

[29] A similar test applies in order for an employer to be permitted to apply a prefunding balance against its required contribution, that is, for the preceding year, the ratio of the value of plan assets (reduced by any prefunding balance) must be at least 80 percent of the plan's funding target (determined without regard to the at-risk rules).

[30] ERISA sec. 4010.

[31] Code sec. 436 and ERISA sec. 206(g).

[32] Code sec. 411(d)(6) and ERISA sec. 204(g).

[33] Code sec. 417(e) and ERISA sec. 205(g).

[34] Sec. 415(b).

[35] Sec. 404.

[36] Sec. 420. Under present law, a qualified transfer is not permitted after December 31, 2013.

[37] ERISA sec. 4006.

[38] Flat-rate premiums apply also to multiemployer defined benefit plans at a rate of $9.00 per participant. Single-employer and multiemployer flat-rate premium rates are indexed for inflation. The rate of variable-rate premiums is not indexed.

[39] ERISA sec. 4010.

participants or beneficiaries; and (4) the PBGC.[40]

In addition to the information required to be provided in all funding notices, certain information must be provided in the case of a single-employer defined benefit plan, including:

a statement as to whether the plan's funding target attainment percentage (as defined under the minimum funding rules) for the plan year to which the notice relates and the two preceding plan years, is at least 100 percent (and, if not, the actual percentages); and

a statement of (a) the total assets (separately stating any funding standard carryover or prefunding balance) and the plan's liabilities for the plan year and the two preceding years, determined in the same manner as under the funding rules, and (b) the value of the plan's assets and liabilities as of the last day of the plan year to which the notice relates, determined using fair market value and the interest rate used in determining variable rate premiums.

A funding notice may also include any additional information that the plan administrator elects to include to the extent not inconsistent with regulations. The notice must be written so as to be understood by the average plan participant. As required under PPA, the Secretary of Labor has issued a model funding notice that can be used to satisfy the notice requirement.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment revises the rules for determining the segment rates under the single-employer plan funding rules by adjusting a segment rate if the rate determined under the regular rules is outside a specified range of the average of the segment rates for the preceding 25-year period (''average'' segment rates). In particular, if a segment rate determined for an applicable month under the regular rules is less than the applicable minimum percentage, the segment rate is adjusted upward to match that percentage. If a segment rate determined for an applicable month under the regular rules is more than the applicable maximum percentage, the segment rate is adjusted downward to match that percentage. For this purpose, the average segment rate is the average of the segment rates determined under the regular rules for the 25-year period ending September 30 of the calendar year preceding the calendar year in which the plan year begins. The Secretary is to determine average segment rates on an annual basis and may prescribe equivalent rates for any years in the 25-year period for which segment rates determined under the regular rules are not available. The Secretary is directed to publish the average segment rates each month.

The applicable minimum percentage and the applicable maximum percentage depend on the calendar year in which the plan year begins as shown by the following table:

If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
2012	90 percent	110 percent
2013	85 percent	115 percent
2014	80 percent	120 percent
2015	75 percent	125 percent
2016 or later	70 percent	130 percent

Thus, for example, if the first segment rate determined for an applicable month under the regular rules for a plan year beginning in 2012 is less than 90 percent of the average of the first segment rates determined under the regular rules for the 25-year period ending September 30, 2011, the segment rate is adjusted to 90 percent of the 25-year average.

The change in the method of determining segment rates generally applies for the purposes for which segment rates are used under present law, except for purposes of determining minimum and maximum lump-sum benefits,[41] limits on deductible contributions to single-employer defined benefit plans, and PBGC variable-rate premiums.

Effective date.—The provision in the Senate Amendment is generally effective for plan years beginning after December 31, 2011. Under a special rule, an employer may elect, for any plan year beginning on or before the date of enactment and solely for purposes of determining the plan's adjusted funding target attainment percentage (used in applying the benefit restrictions) for that year, not to have the provision apply. A plan is not treated as failing to meet the requirements of the anti-cutback rules solely by reason of an election under the special rule.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with several modifications.

Average segment rates

The change in the method of determining segment rates generally applies for the purposes for which segment rates are used under present law, except for purposes of minimum and maximum lump-sum benefits,[42] limits on deductible contributions to single-employer defined benefit plans, qualified transfers of excess pension assets to retiree medical accounts,[43] PBGC variable-rate premiums,[44] and 4010 reporting to the PBGC.

The special effective date rule is modified under the conference agreement so that an employer may elect, for any plan year beginning before January 1, 2013, not to have the provision apply either (1) for all purposes for which the provision would otherwise apply, or (2) solely for purposes of determining the plan's adjusted funding target attainment percentage (used in applying the benefit restrictions) for that year. A plan is not treated as failing to meet the requirements of the anti-cutback rules solely by reason of an election under the special rule.

Under the conference agreement, if, as of the date of enactment, an employer election is in effect to use a monthly yield curve in determining minimum required contributions, rather than segment rates, the employer may revoke the election (and use segment rates, as modified by the conference agreement provision) without obtaining IRS approval. The revocation must be made at any time before the date that is one year after the date of enactment, and the revocation will be effective for the first plan year to which the amendments made by the provision apply and all subsequent plan years. The employer is not precluded from making a subsequent election to use a monthly yield curve in determining minimum required contributions in accordance with present law.

Annual funding notice

The conference agreement requires additional information to be included in the annual funding notice in the case of an applicable plan year. For this purpose, an applicable plan year is any plan year beginning after December 31, 2011, and before January 1, 2015, for which (1) the plan's funding target, determined using segment rates as adjusted to reflect average segment rates (''adjusted'' segment rates), is less than 95 percent of the funding target determined without regard to adjusted segment rates (that is, determined as under present law), (2) the plan has a funding shortfall, determined without regard to adjusted segment rates, greater than $500,000 and (3) the plan had 50 or more participants on any day during the preceding plan year.

The additional information that must be provided is:

a statement that MAP–21 modified the method for determining the interest rates used to determine the actuarial value of benefits earned under the plan, providing for a 25-year average of interest rates to be taken into account in addition to a 2-year average;

a statement that, as a result of MAP–21, the plan sponsor may contribute less money to the plan when interest rates are at historical lows, and

a table showing, for the applicable plan year and each of the two preceding plan years, the plan's funding target attainment percentage, funding shortfall, and the employer's minimum required contribution, each determined both using adjusted segment rates and without regard to adjusted segment rates (that is, as under present law). In the case of a preceding plan year beginning before January 1, 2012, the plan's funding target attainment percentage, funding shortfall, and the employer's minimum required contribution provided are determined only without regard to adjusted segment rates (that is, as under present law).

As under present law, a funding notice may also include any additional information that the plan administrator elects to include to the extent not inconsistent with regulations. For example, a funding notice may include a statement of the amount of the employer's actual or planned contributions to the plan.

The Secretary of Labor is directed to modify the model funding notice required so that the model includes the additional information in a prominent manner, for example, on a separate first page before the remainder of the notice.

C. Transfer of Excess Pension Assets

(secs. 40310 and 40311 of the Senate amendment, secs. 40241 and 40242 of the conference agreement, and sec. 420 of the Code)

PRESENT LAW

Defined benefit pension plan reversions

Defined benefit plan assets generally may not revert to an employer prior to termination of the plan and satisfaction of all plan liabilities.[45] Upon plan termination, the accrued benefits of all plan participants are required to be 100-percent vested. A reversion prior to plan termination may constitute a prohibited transaction and may result in plan disqualification. Any assets that revert to the employer upon plan termination are includible in the gross income of the employer and subject to an excise tax. The excise tax rate is 20 percent if the employer maintains a replacement plan or makes certain benefit increases in connection with the termination; if not, the excise tax rate is 50

[40] ERISA sec. 101(f). In the case of a multiemployer plan, the notice must also be sent to each employer that has an obligation to contribute under the plan;

[41] The provision does not provide a specific exception for determining maximum lump sum benefits. However, the exception for minimum lump sum benefits applies by cross-reference.

[42] The provision does not provide a specific exception for determining maximum lump sum benefits. However, the exception for minimum lump sum benefits applies by cross-reference.

[43] Another provision of the conference agreement extends to December 31, 2021, the ability to make a qualified transfer. In addition, another provision of the conference agreement allows qualified transfers to be made to provide group-term life insurance benefits.

[44] Another provision of the conference agreement increases PBGC flat-rate and variable-rate premiums.

[45] In addition, a reversion may occur only if the terms of the plan so provide.

percent. Medical benefits and life insurance benefits provided under a pension plan

Retiree medical accounts

A pension plan may provide medical benefits to retired employees through a separate account that is part of a defined benefit plan (''retiree medical accounts'').[46] Medical benefits provided through a retiree medical account are generally not includible in the retired employee's gross income.[47]

Transfers of excess pension assets

In general

A qualified transfer of excess assets of a defined benefit plan, including a multiemployer plan,[48] to a retiree medical account within the plan may be made in order to fund retiree health benefits.[49] A qualified transfer does not result in plan disqualification, is not a prohibited transaction, and is not treated as a reversion. Thus, transferred assets are not includible in the gross income of the employer and are not subject to the excise tax on reversions. No more than one qualified transfer may be made in any taxable year. No qualified transfer may be made after December 31, 2013.

Excess assets generally means the excess, if any, of the value of the plan's assets[50] over 125 percent of the sum of the plan's funding target and target normal cost for the plan year. In addition, excess assets transferred in a qualified transfer may not exceed the amount reasonably estimated to be the amount that the employer will pay out of such account during the taxable year of the transfer for qualified current retiree health liabilities. No deduction is allowed to the employer for (1) a qualified transfer, or (2) the payment of qualified current retiree health liabilities out of transferred funds (and any income thereon). In addition, no deduction is allowed for amounts paid other than from transferred funds for qualified current retiree health liabilities to the extent such amounts are not greater than the excess of (1) the amount transferred (and any income thereon), over (2) qualified current retiree health liabilities paid out of transferred assets (and any income thereon). An employer may not contribute any amount to a health benefits account or welfare benefit fund with respect to qualified current retiree health liabilities for which transferred assets are required to be used.

Transferred assets (and any income thereon) must be used to pay qualified current retiree health liabilities for the taxable year of the transfer. Transferred amounts generally must benefit pension plan participants, other than key employees, who are entitled upon retirement to receive retiree medical benefits through the separate account. Retiree health benefits of key employees may not be paid out of transferred assets.

Amounts not used to pay qualified current retiree health liabilities for the taxable year of the transfer are to be returned to the general assets of the plan. These amounts are not includible in the gross income of the employer, but are treated as an employer reversion and are subject to a 20-percent excise tax.

In order for the transfer to be qualified, accrued retirement benefits under the pension plan generally must be 100-percent vested as if the plan terminated immediately before the transfer (or in the case of a participant who separated in the one-year period ending on the date of the transfer, immediately before the separation).

In order for a transfer to be qualified, there is maintenance of effort requirement under which, the employer generally must maintain retiree health benefits at the same level for the taxable year of the transfer and the following four years.

In addition, the Employee Retirement Income Security Act of 1974 (''ERISA'')[51] provides that, at least 60 days before the date of a qualified transfer, the employer must notify the Secretary of Labor, the Secretary of the Treasury, employee representatives, and the plan administrator of the transfer, and the plan administrator must notify each plan participant and beneficiary of the transfer.[52]

Qualified future transfers and collectively bargained transfers

If certain requirements are satisfied, transfers of excess pension assets under a single-employer plan to retiree medical accounts to fund the expected cost of retiree medical benefits are permitted for the current and future years (a ''qualified future transfer'') and such transfers are also allowed in the case of benefits provided under a collective bargaining agreement (a ''collectively bargained transfer'').[53] Transfers must be made for at least a two-year period. An employer can elect to make a qualified future transfer or a collectively bargained transfer rather than a qualified transfer. A qualified future transfer or collectively bargained transfer must meet the requirements applicable to qualified transfers, except that the provision modifies the rules relating to: (1) the determination of excess pension assets; (2) the limitation on the amount transferred; and (3) the maintenance of effort requirement. The general sunset applicable to qualified transfer applies (i.e., no transfers can be made after December 31, 2013).

Qualified future transfers and collectively bargained transfers can be made to the extent that plan assets exceed 120 percent of the sum of the plan's funding target and the normal cost for the plan year. During the transfer period, the plan's funded status must be maintained at the minimum level required to make transfers. If the minimum level is not maintained, the employer must make contributions to the plan to meet the minimum level or an amount required to meet the minimum level must be transferred from the health benefits account. The transfer period is the period not to exceed a total of ten consecutive taxable years beginning with the taxable year of the transfer. As previously discussed, the period must be not less than two consecutive years.

Employer provided group-term life insurance

Group-term life insurance coverage provided under a policy carried by an employer is includible in the gross income of an employee (including a former employee) but only to the extent that the cost exceeds the sum of the cost of $50,000 of such insurance plus the amount, if any, paid by the employee toward the purchase of such insurance.[54] Special rules apply for determining the cost of group-term life insurance that is includible in gross income under a discriminatory group-term life insurance plan.

A pension plan may provide life insurance benefits for employees (including retirees) but only to the extent that the benefits are incidental to the retirement benefits provided under the plan.[55] The cost of term life insurance provided through a pension plan is includible in the employee's gross income.[56]

HOUSE BILL

No provision.

SENATE AMENDMENT

Extension of existing provisions

The provision allows qualified transfers, qualified future transfers, and collectively bargained transfers to retiree medical accounts to be made through December 31, 2021. No transfers are permitted after that date.

Transfers to fund retiree group-term life insurance permitted

The provision allows qualified transfers, qualified future transfers, and collectively bargained transfers to be made to fund the purchase of retiree group-term life insurance. The assets transferred for the purchase of group-term life insurance must be maintained in a separate account within the plan (''retiree life insurance account''), which must be separate both from the assets in the retiree medical account and from the other assets in the defined benefit plan.

Under the provision, the general rule that the cost of group-term life insurance coverage provided under a defined benefit plan is includable in gross income of the participant does not apply to group-term life insurance provided through a retiree life insurance account. Instead, the general rule for determining the amount of employer-provided group-term life insurance that is includible in gross income applies. However, group-term life insurance coverage is permitted to be provided through a retiree life insurance account only to the extent that it is not includible in gross income. Thus, generally, only group-term life insurance not in excess of $50,000 may be purchased with such transferred assets.

Generally, the present law rules for transfers of excess pension assets to retiree medical accounts to fund retiree health benefits also apply to transfers to retiree life insurance accounts to fund retiree group-term life. However, generally, the rules are applied separately. Thus, for example, the one-transfer-a-year rule generally applies separately to transfers to retiree life insurance accounts and transfers to retiree medical accounts. Further, the maintenance of effort requirement for qualified transfers applies separately to life insurance benefits and health benefits. Similarly, for qualified future transfers and collectively bargained transfers for retiree group-term life insurance, the maintenance of effort and other special rules are applied separately to transfers to retiree life insurance accounts and retiree medical accounts.

Reflecting the inherent differences between life insurance coverage and health coverage, certain rules are not applied to transfers to retiree life insurance accounts, such as the special rules allowing the employer to elect to determine the applicable employer cost for health coverage during the cost maintenance period separately for retirees eligible for Medicare and retirees not eligible for Medicare. However, a separate test is allowed for the cost of retiree group-term life insurance for retirees under age 65 and those retirees who have reached age 65.

The provision makes other technical and conforming changes to the rules for transfers

[46] Sec 401(h) and Treas. Reg. sec. 1.401–1(b).

[47] Treas. Reg. sec. 1.72–15(h).

[48] The Pension Protection Act of 2006 (''PPA''), Pub. L. No. 109–280, extended the application of the rules for qualified transfers to multiemployer plans with respect to transfers made in taxable years beginning after December 31, 2006. However, the rules for qualified future transfers and collectively bargained transfers do not apply to multiemployer plans.

[49] Sec. 420.

[50] The value of plan assets for this purpose is the lesser of fair market value or actuarial value.

[51] Pub. L. No. 93–406.

[52] ERISA sec. 101(e). ERISA also provides that a qualified transfer is not a prohibited transaction under ERISA or a prohibited reversion.

[53] The rules for qualified transfers and collectively bargained transfers were added by the PPA and apply to transfers after the date of enactment (August 17, 2006).

[54] Sec. 79.

[55] Treas. Reg. sec. 1.401–1(b).

[56] Secs. 72(m)(3) and 79(b)(3).

to fund retiree health benefits and removes certain obsolete (''deadwood'') rules.

The same sunset applicable to qualified transfers, qualified future transfers, and collectively bargained transfers to retiree medical accounts applies to transfers to retiree life insurance accounts (i.e., no transfers can be made after December 31, 2021).

Effective date.—The provision applies to transfers made after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision.

D. Exception from Early Distribution Tax for Annuities Under Phased Retirement Program

(sec. 100111 of conference agreement and sec. 72(t) of the Code)

PRESENT LAW

The Code imposes an early distribution tax on distributions made from qualified retirement plans before an employee attains age 59½.[57] The tax is equal to 10 percent of the amount of the distribution that is includible in gross income. The 10–percent tax is in addition to the taxes that would otherwise be due on distribution. Certain exceptions to the early distribution tax apply including an exception for distributions after separation from service with the employer after attaining age 55, or in the form of substantially equal periodic payments from the qualified retirement plan commencing after separation from service at any age. However, there is no exception for annuity payments that commence before separating from service with the employer.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The Senate amendment and the Conference agreement include a new Federal Phased Retirement Program under which a Federal agency may allow a full-time retirement eligible employee to elect to enter phased retirement status in accordance with regulations issued by the Office of Personnel Management (OPM).[58] During that status, generally, the employee's work schedule is a percentage of a full time work schedule, and the employee receives a phased retirement annuity. At full-time retirement, the phased retiree is entitled to a composite retirement annuity that also includes the portion of the employee's retirement annuity attributable to the reduced work schedule. The Conference agreement includes an exception to the early distribution tax for payments under a phased retirement annuity and a composite retirement annuity received by an employee participating in this new Federal Phased Retirement Program.

Effective date.—The provision is effective on the effective date of implementing regulations issued by OPM implementing the Federal Phased Retirement Program.

E. Additional Transfers to the Highway Trust Fund

(sec. 40313 of the Senate amendment, sec. 40251 of the conference agreement, and sec. 9503 of the Code)

PRESENT LAW

Public Law No. 111–46, an Act to restore funds to the Highway Trust Fund, provided that out of money in the Treasury not otherwise appropriated, $7 billion was appropriated to the Highway Trust Fund effective August 7, 2009. The Hiring Incentives to Restore Employment Act (the ''HIRE Act'') provided that out of money in the Treasury not otherwise appropriated, $14,700,000,000 is appropriated to the Highway Trust Fund and $4,800,000,000 is appropriated to the Mass Transit Account in the Highway Trust Fund.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that out of money in the Treasury not otherwise appropriated, the following transfers are to be made from the General Fund to the Highway Trust Fund: $2,183 million in FY 2012, $2,277 million in FY 2013, and $510 million in FY 2014.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement provides that out of money in the Treasury not otherwise appropriated, the following transfers are to be made from the General Fund to the Highway Trust Fund:

	FY 2013	FY 2014
Highway Account	$6.2 billion	$10.4 billion
Mass Transit Account		$2.2 billion

Effective date.—The provision is effective on the date of enactment.

F. Expand the Definition of a Tobacco Manufacturer to Include Businesses Making Available Roll-Your-Own Cigarette Machines for Consumer Use

(sec. 100116 of the Senate amendment, section 100112 of the conference agreement, and sec. 5702(d) of the Code)

PRESENT LAW

Tobacco products and cigarette papers and tubes manufactured in the United States or imported into the United States are subject to Federal excise tax at the following rates:[59]

Cigars weighing not more than three pounds per thousand (''small cigars'') are taxed at the rate of $50.33 per thousand;

Cigars weighing more than three pounds per thousand (''large cigars'') are taxed at the rate equal to 52.75 percent of the manufacturer's or importer's sales price but not more than 40.26 cents per cigar;

Cigarettes weighing not more than three pounds per thousand (''small cigarettes'') are taxed at the rate of $50.33 per thousand ($1.0066 per pack);

Cigarettes weighing more than three pounds per thousand (''large cigarettes'') are taxed at the rate of $105.69 per thousand, except that, if they measure more than six and one-half inches in length, they are taxed at the rate applicable to small cigarettes, counting each two and three-quarter inches (or fraction thereof) of the length of each as one cigarette;

Cigarette papers are taxed at the rate of 3.15 cents for each 50 papers or fractional part thereof, except that, if they measure more than six and one-half inches in length, they are taxable by counting each two and three-quarter inches (or fraction thereof) of the length of each as one cigarette paper;

Cigarette tubes are taxed at the rate of 6.30 cents for each 50 tubes or fractional part thereof, except that, if they measure more than six and one-half inches in length, they are taxable by counting each two and three-quarter inches (or fraction thereof) of the length of each as one cigarette tube;

Snuff is taxed at the rate of $1.51 per pound, and proportionately at that rate on all fractional parts of a pound;

Chewing tobacco is taxed at the rate of 50.33 cents per pound, and proportionately at that rate on all fractional parts of a pound;

Pipe tobacco is taxed at the rate of $2.8311 per pound, and proportionately at that rate on all fractional parts of a pound; and

Roll-your-own tobacco is taxed at the rate of $24.78 per pound, and proportionately at that rate on all fractional parts of a pound.

In general, the excise tax on tobacco products and cigarette papers and tubes manufactured in the United States comes into existence when the products are manufactured and is determined and payable when the tobacco products or cigarette papers and tubes are removed from the bonded premises of the manufacturer. ''Tobacco products'' means cigars, cigarettes, smokeless tobacco (snuff and chewing tobacco), pipe tobacco, and roll your own tobacco. Processed tobacco is regulated under the internal revenue laws but no excise tax is imposed. Tobacco products and cigarette papers and tubes may be exported from the United States without payment of tax.

Manufacturers and importers of tobacco products or processed tobacco are subject to certain permitting, bonding, reporting, and record keeping requirements. ''Manufacturer of tobacco products'' means any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco. There is an exception for a person who produces these products for their own personal consumption or use.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision amends the definition of manufacturer of tobacco products to include any person who for commercial purposes makes available machines capable of making tobacco products for consumer use. This includes making a machine available for consumers to produce tobacco products for personal consumption or use. The addition of this provision is not intended to change the treatment of such machines under present law, or to make taxable the sale, at retail, for a consumer's personal home use, a machine designed to produce tobacco only in personal use quantities, where the machine is not used on the retail premises.

For purposes of imposing the tax liability, the person making the machine available for consumer use is deemed to be the person making the removal with respect to any tobacco products manufactured by the machine.

Effective date.—The provision is effective for articles removed after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment with the following modification. The provision is modified to clarify that a person who sells a machine directly to a consumer at retail for the consumer's personal home use is not a manufacturer of tobacco products under the provision if the machine is not used at a retail establishment and is designed to produce only personal use quantities.

PART III—OTHER ITEMS

A. Small Issuer Exception to Tax-Exempt Interest Expense Allocation Rules for Financial Institutions

(sec. 40201 of the Senate amendment and sec. 265 of the Code)

PRESENT LAW

Present law disallows a deduction for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is exempt from tax.[60] In general, an

[57] Sec. 72(t). The early distribution tax also applies to distributions from section 403(b) plans and IRAs but does not apply to distributions from governmental section 457(b) plans.

[58] See the explanation for section 100111 of the Conference agreement for a description of the new Federal Phased Retirement Program.

[59] Sec. 5701.

[60] Sec. 265(a).

interest deduction is disallowed only if the taxpayer has a purpose of using borrowed funds to purchase or carry tax-exempt obligations; a determination of the taxpayer's purpose in borrowing funds is made based on all of the facts and circumstances.[61]

Financial institutions

In the case of a financial institution, the Code generally disallows that portion of the taxpayer's interest expense that is allocable to tax-exempt interest.[62] The amount of interest that is disallowed is an amount which bears the same ratio to such interest expense as the taxpayer's average adjusted bases of tax-exempt obligations acquired after August 7, 1986, bears to the average adjusted bases for all assets of the taxpayer.

Exception for certain obligations of qualified small issuers

The general rule in section 265(b), denying financial institutions' interest expense deductions allocable to tax-exempt obligations, does not apply to ''qualified tax-exempt obligations.''[63] Instead, as discussed in the next section, only 20 percent of the interest expense allocable to ''qualified tax-exempt obligations'' is disallowed.[64] A ''qualified tax-exempt obligation'' is a tax-exempt obligation that is (1) issued after August 7, 1986, by a qualified small issuer, (2) not a private activity bond, and (3) designated by the issuer as qualifying for the exception from the general rule of section 265(b).

A ''qualified small issuer'' is an issuer that reasonably anticipates that the amount of tax-exempt obligations that it will issue during the calendar year will be $10 million or less.[65] The Code specifies the circumstances under which an issuer and all subordinate entities are aggregated.[66] For purposes of the $10 million limitation, an issuer and all entities that issue obligations on behalf of such issuer are treated as one issuer. All obligations issued by a subordinate entity are treated as being issued by the entity to which it is subordinate. An entity formed (or availed of) to avoid the $10 million limitation and all entities benefiting from the device are treated as one issuer.

Composite issues (i.e., combined issues of bonds for different entities) qualify for the ''qualified tax-exempt obligation'' exception only if the requirements of the exception are met with respect to (1) the composite issue as a whole (determined by treating the composite issue as a single issue) and (2) each separate lot of obligations that is part of the issue (determined by treating each separate lot of obligations as a separate issue).[67] Thus a composite issue may qualify for the exception only if the composite issue itself does not exceed $10 million, and if each issuer benefitting from the composite issue reasonably anticipates that it will not issue more than $10 million of tax-exempt obligations during the calendar year, including through the composite arrangement.

Special rules providing modifications to qualified small issuer exception for certain issues in 2009 and 2010

With respect to tax-exempt obligations issued during 2009 and 2010, the special rules increased from $10 million to $30 million the annual limit for qualified small issuers.

In addition, in the case of a ''qualified financing issue'' issued in 2009 or 2010, the special rules applied the $30 million annual volume limitation at the borrower level (rather than at the level of the pooled financing issuer). Thus, for the purpose of applying the requirements of the section 265(b)(3) qualified small issuer exception, the portion of the proceeds of a qualified financing issue that are loaned to a ''qualified borrower'' that participates in the issue were treated as a separate issue with respect to which the qualified borrower is deemed to be the issuer.

A ''qualified financing issue'' was any composite, pooled, or other conduit financing issue the proceeds of which were used directly or indirectly to make or finance loans to one or more ultimate borrowers all of whom are qualified borrowers. A ''qualified borrower'' meant (1) a State or political subdivision of a State or (2) an organization described in section 501(c)(3) and exempt from tax under section 501(a). Thus, for example, a $100 million pooled financing issue that was issued in 2009 would qualify for the section 265(b)(3) exception if the proceeds of such issue were used to make four equal loans of $25 million to four qualified borrowers. However, if (1) more than $30 million were loaned to any qualified borrower, (2) any borrower were not a qualified borrower, or (3) any borrower would, if it were the issuer of a separate issue in an amount equal to the amount loaned to such borrower, fail to meet any of the other requirements of section 265(b)(3), the entire $100 million pooled financing issue failed to qualify for the exception.

For purposes of determining whether an issuer meets the requirements of the small issuer exception, under the special rules, qualified 501(c)(3) bonds issued in 2009 or 2010 were treated as if they were issued by the 501(c)(3) organization for whose benefit they were issued (and not by the actual issuer of such bonds). In addition, in the case of an organization described in section 501(c)(3) and exempt from taxation under section 501(a), requirements for ''qualified financing issues'' were applied as if the section 501(c)(3) organization were the issuer. Thus, in any event, an organization described in section 501(c)(3) and exempt from taxation under section 501(a) was limited to the $30 million per issuer cap for qualified tax exempt obligations described in section 265(b)(3).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision extends the special rules providing modifications to the qualified small issuer exception to bonds issued after June 30, 2012 and before July 1, 2013.

Effective date.—The provision is effective for obligations issued after June 30, 2012.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

B. Temporary Modification of Alternative Minimum Tax Limitations on Tax-Exempt Bonds (sec. 40202 of the Senate amendment and secs. 56 and 57 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax (''AMT'') on individuals and corporations. AMT is the amount by which the tentative minimum tax exceeds the regular income tax. The tentative minimum tax is computed based upon a taxpayer's alternative minimum taxable income (''AMTI''). AMTI is the taxpayer's taxable income modified to take into account certain preferences and adjustments. One of the preference items is tax-exempt interest on certain tax-exempt bonds issued for private activities.[68] Also, in the case of a corporation, an adjustment based on current earnings is determined, in part, by taking into account 75 percent of certain items, including tax-exempt interest, excluded from taxable income but included in the corporation's earnings and profits.[69]

The American Recovery and Reinvestment Act of 2009 (''2009 Act'') provided that tax-exempt interest on private activity bonds issued in 2009 and 2010 is not an item of tax preference for purposes of the AMTI and interest on tax exempt bonds issued in 2009 and 2010 is not included in the corporate adjustment based on current earnings.

For these purposes, a refunding bond generally is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond). However, the 2009 Act provided that tax-exempt interest on bonds issued in 2009 and 2010 to currently refund a bond issued after December 31, 2003, and before January 1, 2009, is not an item of tax preference for purposes of the AMT and is not included in the corporate adjustment based on current earnings.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that tax-exempt interest on private activity bonds issued after the date of enactment and before January 1, 2013, is not an item of tax preference for purposes of the AMT and interest on tax exempt bonds issued during this period is not included in the corporate adjustment based on current earnings. For these purposes, a refunding bond is treated as issued on the date of the issuance of the refunded bond (or in the case of a series of refundings, the original bond).

Effective date.—The provision applies to interest on bonds issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

C. Issuance of TRIP Bonds by State Infrastructure Banks (sec. 40203 of the Senate amendment)

PRESENT LAW

There are no Code provisions for the issuance of transportation and regional infrastructure project (''TRIP'') bonds.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision amends Title 23 to provide that a State, through a State infrastructure bank, may issue TRIP bonds and deposit the proceeds from such bonds into a TRIP bond account of the bank. A ''TRIP bond'' means any bond issued as part of an issue if (1) 100 percent of the available project proceeds of such issue are to be used for expenditures incurred after the date of enactment for one or more qualified projects pursuant to an allocation of such proceeds to such project or projects by a State infrastructure bank, (2) the bond is issued by a State infrastructure bank and is in registered form (within the meaning of section 149 of the Internal Revenue Code), (3) the State infrastructure bank designates such bond for purposes of the provision and (4) the term of each bond that is part of such issue does not exceed 30 years. A ''qualified project'' means the capital improvements to any transportation infrastructure project of any governmental unit or other person, including roads, bridges, rail and transit systems, ports and, inland waterways proposed and approved by a State infrastructure bank, but does not include costs of

[61] See Rev. Proc. 72–18, 1972–1 C.B. 740.

[62] Sec. 265(b)(1). A ''financial institution'' is any person that (1) accepts deposits from the public in the ordinary course of such person's trade or business and is subject to Federal or State supervision as a financial institution or (2) is a corporation described by section 585(a)(2). Sec. 265(b)(5).

[63] Sec. 265(b)(3).

[64] Secs. 265(b)(3)(A), 291(a)(3) and 291(e)(1).

[65] Sec. 265(b)(3)(C).

[66] Sec. 265(b)(3)(E).

[67] Sec. 265(b)(3)(F).

[68] Sec. 57(a)(5).

[69] Sec. 56(g)(4)(B).

operations or maintenance with respect to such project.

The provision requires a State to develop a transparent and competitive process for the award of funds deposited into the TRIP bond account that considers the impact of qualified projects on the economy, the environment, state of good repair, and equity. The requirements of any Federal law, including Title 23 and Titles 40 and 49, which would otherwise apply to projects to which the United States is a party or to funds made available under such law and projects assisted with those funds shall apply to (1) funds made available under the TRIP bond account for similar qualified projects and (2) similar qualified projects assisted through the use of such funds.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

D. Mass Transit and Parking Benefits (sec. 40204 of the Senate amendment, and sec. 132(f) of the Code)

PRESENT LAW

Qualified transportation fringe benefits provided by an employer are excluded from an employee's gross income for income tax purposes and from an employee's wages for payroll tax purposes.[70] Qualified transportation fringe benefits include parking, transit passes, vanpool benefits, and qualified bicycle commuting reimbursements. No amount is includible in the income of an employee merely because the employer offers the employee a choice between cash and qualified transportation fringe benefits (other than a qualified bicycle commuting reimbursement). Qualified transportation fringe benefits also include a cash reimbursement by an employer to an employee. In the case of transit passes, however, a cash reimbursement is considered a qualified transportation fringe benefit only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the employer to the employee.

Prior to February 17, 2009, the amount that could be excluded as qualified transportation fringe benefits was limited to $100 per month in combined vanpooling and transit pass benefits and $175 per month in qualified parking benefits. All limits are adjusted annually for inflation, using 1998 as the base year (for 2012 the limits are $125 and $240, respectively). The American Recovery and Reinvestment Act of 2009[71] provided parity in qualified transportation fringe benefits by temporarily increasing the monthly exclusion for employer-provided vanpool and transit pass benefits to the same level as the exclusion for employer-provided parking, effective for months beginning on or after the date of enactment (February 17, 2009) and before January 1, 2011. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010[72] extended the parity in qualified transportation fringe benefits through December 31, 2011.

Effective January 1, 2012, the amount that could be excluded as qualified transportation fringe benefits is limited to $125 per month in combined vanpooling and transit pass benefits and $240 per month in qualified parking benefits.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends the parity in qualified transportation fringe benefits for the entirety of 2012. In order for the extension to be effective retroactive to January 1, 2012, it is intended that expenses incurred prior to enactment by an employee for employer-provided vanpool and transit benefits may be reimbursed by employers on a tax free basis to the extent they exceed $125 per month and are less than $240 per month, but only to the extent that such amount has not already been excluded from such employee's taxable compensation.

Effective date.—The provision in the Senate amendment is effective for months after December 31, 2011.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

E. Private Activity Volume Cap Exemption for Sewage and Water Facility Bonds (sec. 40205 of the Senate amendment and sec. 146(g) of the Code)

In general

Subject to certain Code restrictions, interest on bonds issued by State and local government generally is excluded from gross income for Federal income tax purposes. Bonds issued by State and local governments may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons. For this purpose, the term ''nongovernmental person'' generally includes the Federal Government and all other individuals and entities other than State or local governments. The exclusion from income for interest on State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (''qualified private activity bonds'') and other Code requirements are met.

Qualified private activity bonds

Interest on private activity bonds is taxable unless the bonds meet the requirements for qualified private activity bonds. Qualified private activity bonds permit States or local governments to act as conduits providing tax-exempt financing for certain private activities. The definition of qualified private activity bonds includes an exempt facility bond, or qualified mortgage, veterans' mortgage, small issue, redevelopment, qualified 501(c)(3), or student loan bond.[73] The definition of exempt facility bond includes bonds issued to finance certain transportation facilities (airports, ports, mass commuting, and high-speed intercity rail facilities); qualified residential rental projects; privately owned and/or operated utility facilities (sewage, water, solid waste disposal, and local district heating and cooling facilities, certain private electric and gas facilities, and hydroelectric dam enhancements); public/private educational facilities; qualified green building and sustainable design projects; and qualified highway or surface freight transfer facilities.[74]

In most cases, the aggregate volume of these tax-exempt private activity bonds is restricted by annual aggregate volume limits imposed on bonds issued by issuers within each State. Certain types of private activity bonds are exempted from the annual volume limits.

For calendar year 2012, the State volume cap, which is indexed for inflation, equals $95 per resident of the State, or $284,560,000, whichever is greater.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision exempts two types of exempt facility bonds from the annual private activity volume limits. The newly-exempted bonds are exempt facility bonds for sewage and water facilities.

The provision only applies to bonds issued before January 1, 2018.

Effective date.—The provision is effective for bonds issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

F. Dedication of Gas Guzzler Tax to the Highway Trust Fund (sec. 40303 of the Senate amendment and sec. 9503 of the Code)

PRESENT LAW

Under present law, the Code imposes a tax (''the gas guzzler tax'') on automobiles that are manufactured primarily for use on public streets, roads, and highways and that are rated at 6,000 pounds unloaded gross vehicle weight or less.[75] The tax is imposed on the sale by the manufacturer of each automobile of a model type with a fuel economy of 22.5 miles per gallon or less. The tax range begins at $1,000 and increases to $7,700 for models with a fuel economy less than 12.5 miles per gallon.

Emergency vehicles and non-passenger automobiles are exempt from the tax. The tax also does not apply to non-passenger automobiles. The Secretary of Transportation determines which vehicles are ''non-passenger'' automobiles, thereby exempting these vehicles from the gas guzzler tax based on regulations in effect on the date of enactment of the gas guzzler tax.[76] Hence, vehicles defined in Title 49 C.F.R. sec. 523.5 (relating to light trucks) are exempt. These vehicles include those designed to transport property on an open bed (e.g., pick-up trucks) or provide greater cargo-carrying than passenger carrying volume including the expanded cargo-carrying space created through the removal of readily detachable seats (e.g., pick-up trucks, vans, and most minivans, sports utility vehicles, and station wagons). Additional vehicles that meet the ''non-passenger'' requirements are those with at least four of the following characteristics: (1) an angle of approach of not less than 28 degrees; (2) a breakover angle of not less than 14 degrees; (3) a departure angle of not less than 20 degrees; (4) a running clearance of not less than 20 centimeters; and (5) front and rear axle clearances of not less than 18 centimeters each. These vehicles would include many sports utility vehicles.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision requires that amounts equivalent to the gas guzzler taxes received in the Treasury be transferred to the Highway Trust Fund.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

G. Revocation or Denial of Passport in Case of Certain Unpaid Taxes (sec. 40304 of the Senate amendment and new secs. 7345 and 6103(l)(23) of the Code)

PRESENT LAW

The administration of passports is the responsibility of the Department of State.[77]

[70] Secs. 132(f), 3121(b)(2), and 3306(b)(16) and 3401(a)(19).

[71] Pub. L. No. 111–5.

[72] Pub. L. No. 111–312.

[73] Sec. 141(e).

[74] Sec. 142(a).

[75] Sec. 4064.

[76] Sec. 4064(b)(1)(A).

[77] ''Passport Act of 1926,'' 22 U.S.C. sec. 211a, et seq.

State may refuse to issue or renew a passport if the applicant owes child support in excess of $2,500 or owes certain types of Federal debts, such as expenses incurred in providing assistance to an applicant to return to the United States. The scope of this authority does not extend to rejection or revocation of a passport on the basis of delinquent Federal taxes. Issuance of a passport does not require the applicant to provide a social security number or taxpayer identification number.

Returns and return information are confidential and may not be disclosed by the IRS, other Federal employees, State employees, and certain others having access to such information except as provided in the Internal Revenue Code.[78] There are a number of exceptions to the general rule of nondisclosure that authorize disclosure in specifically identified circumstances, including disclosure of information about federal tax debts for purposes of reviewing an application for a Federal loan[79] and for purposes of enhancing the integrity of the Medicare program.[80]

HOUSE PROVISION

No provision.

SENATE AMENDMENT

If the Commissioner of Internal Revenue certifies to the Secretary of the Treasury the identity of persons who have seriously delinquent Federal taxes, the Secretary of Treasury or his delegate is authorized to transmit such certification to the Secretary of State for use in determining whether to issue, renew, or revoke a passport. Applicants whose names are included on the certifications provided to the Secretary of State are ineligible for a passport. The provision bars the Secretary of State from issuing a passport to any individual who has a seriously delinquent tax debt. It also requires revocation of a passport previously issued to any such individual. Exceptions are permitted for emergency or humanitarian circumstances, as well as short term use of a passport for return travel to the United States by the delinquent taxpayer.

A seriously delinquent tax debt generally includes any outstanding debt for Federal tax in excess of $50,000, including interest and any penalties, for which a notice of lien or a notice of levy has been filed. This amount is to be adjusted for inflation annually, using calendar year 2011, and a cost-of-living adjustment. Even if a tax debt otherwise meets the statutory threshold, it may not be considered seriously delinquent if (1) the debt is being paid in a timely manner pursuant to an installment agreement or offer-in-compromise, or (2) collection action with respect to the debt is suspended because a collection due process hearing or innocent spouse relief has been requested or is pending.

Effective date.—The provision is effective on January 1, 2013.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

H. 100 Percent Continuous Levy on Payments to Medicare Providers and Suppliers (sec. 40305 of the Senate amendment and sec. 6331(h) of the Code)

PRESENT LAW

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.[81] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[82] the property is not exempt from levy,[83] and the IRS has provided both notice of intention to levy[84] and notice of the right to an administrative hearing (the notice is referred to as a ''collections due process notice'' or ''CDP notice'' and the hearing is referred to as the ''CDP hearing'')[85] at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.[86] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[87]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[88]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[89]

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997[90] authorized the establishment of the Federal Payment Levy Program (''FPLP''), which allows the IRS to continuously levy up to 15 percent of certain ''specified payments'' by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.[91] The levy (either up to 15 percent or up to 100 percent) generally continues in effect until the liability is paid or the IRS releases the levy.

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by the Department of the Treasury's Financial Management Service (''FMS''), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct FMS to levy the taxpayer's Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

Payments to Medicare Providers

In 2008, the Government Accountability Office (''GAO'') found that over 27,000 Medicare providers (i.e., about six percent of all such providers) owed more than $2 billion of tax debt, consisting largely of individual income and payroll taxes.[92] In one case, a home health company received over $15 million in Medicare payments but did not pay $7 million in federal taxes.[93] As of 2008, the Centers for Medicare & Medicaid Services (''CMS'') had not incorporated most of its Medicare payments into the continuous levy program, despite the IRS authority to continuously levy up to 15 percent of these payments. Thus, for calendar year 2006, the government lost the chance to possibly collect over $140 million in unpaid Federal taxes.[94] The GAO noted that CMS officials promised to incorporate about 60 percent of all Medicare fee-for-service payments into the levy program by October 2008 and the remaining 40 percent in the next several years.

Following the GAO study, Congress directed CMS to participate in the FPLP and ensure that all Medicare provider and supplier payments are processed through it, in specified graduated percentages, by the end of fiscal year 2011.[95]

HOUSE PROVISION

No provision.

SENATE AMENDMENT

The provision allows Treasury to levy up to 100 percent of a payment to a Medicare provider to collect unpaid taxes.

Effective date.—The provision is effective for payments made after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

I. Appropriation to the Highway Trust Fund of Amounts Attributable to Certain Duties on Imported Vehicles (sec. 40306 of the Senate amendment)

PRESENT LAW

Customs duties are deposited into the general fund of the Treasury of the United States. This includes customs duties collected on imported vehicles classified under Chapter 87 of the Harmonized Tariff Schedule of the United States.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision would appropriate from the General Fund and deposit into the Highway Trust Fund amounts equivalent to amounts received in the General Fund, for FY 2012 through FY 2016, on articles classified under subheadings 8703.22.00 and 8703.24.00 of Chapter 87.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

J. Treatment of Securities of a Controlled Corporation Exchanged for Assets in Certain Reorganizations (sec. 40307 of the Senate amendment and sec. 361 of the Code)

PRESENT LAW

The transfer of assets by a transferor corporation to another corporation, controlled (immediately after the transfer) by the

[78] Sec. 6103.

[79] Sec. 6103(l)(3).

[80] Sec. 6103(l)(22).

[81] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

[82] *Ibid.*

[83] Sec. 6334.

[84] Sec. 6331(d).

[85] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

[86] Secs. 6331(e) and 6343.

[87] Sec. 6321.

[88] Secs. 6331(d)(3), 6861.

[89] Sec. 6330(f).

[90] Pub. L. No. 105–34.

[91] Sec. 6331(h)(3). The word ''property'' was added to ''goods or services'' in section 301 of the ''3% Withholding Repeal and Job Creation Act,'' Pub. L. No. 112–56.

[92] Government Accountability Office, *Medicare: Thousands of Medicare Providers Abuse the Federal Tax System* (GAO–08–618), June 13, 2008.

[93] *Ibid.*, p. 4.

[94] *Ibid.*

[95] Medicare Improvement for Patients and Providers Act of 2008, Pub. L. No. 110–275, sec. 189.

transferor or one or more of its shareholders, qualifies as a tax-free reorganization if the transfer is made by one corporation (''distributing'') to a controlled subsidiary corporation (''controlled''), followed by the distribution of the stock and securities of the controlled subsidiary in a divisive spin-off, split-off, or split-up which meets the requirements of section 355, including an active business requirement and a requirement that the transaction is not used principally as a device for the distribution of earnings and profits (''divisive D reorganization'').[96]

No gain or loss is recognized to a corporation if the corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation that is a party to the reorganization.[97] If property other than stock or securities is received (''other property''), the transferor corporation recognizes gain (if any) to the extent the other property is not distributed.[98]

In addition, in a divisive D reorganization, if there is a transfer to the transferor corporation's creditors of money or other property received from the controlled corporation in the exchange in connection with the reorganization, the transferor distributing corporation recognizes gain to the extent the sum of the money and the fair market value of the other property exceeds the adjusted bases of the assets transferred (reduced by the amount of liabilities assumed by the transferee under section 357(c)).[99] Thus, such a transfer to creditors is aggregated with other assumptions of the transferor corporation's liabilities by the transferee, and the transferor corporation recognizes gain to the extent this aggregate amount exceeds the adjusted basis of assets transferred.[100]

For example, if in a divisive D reorganization the controlled corporation either (1) directly assumes the debt of the distributing corporation, or (2) borrows and distributes cash to the distributing corporation to pay the distributing corporation's creditors, such debt assumption or cash distribution is treated as money received by the distributing corporation, and the aggregate amount of such debt assumptions and distributions is taxable to the extent it exceeds the distributing corporation's basis in the assets transferred to the controlled corporation. However, if the controlled corporation issues its own debt securities and such securities are distributed to the creditors of the distributing corporation, the controlled corporation's debt securities are not treated as money or other property received by the distributing corporation. Thus, the distributing corporation could use the controlled corporation's securities to retire the distributing corporation's own debt, recognize no gain, and be in the same economic position as if its debt had been directly assumed by the controlled corporation or as if it had retired its debt with cash received from the controlled corporation. In addition, to the extent that such debt securities of the controlled corporation are permitted to be retained by the distributing corporation, such securities are not treated as taxable property.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, in the case of a divisive D reorganization, no gain or loss is recognized to a corporation if the corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock other than nonqualified preferred stock (as defined in section 351(g)(2)).[101] Thus, under the provision, securities and nonqualified preferred stock are treated as ''other property.''

The transferor corporation's gain on the exchange is recognized to the extent of the sum of money and the value of other property, including securities and nonqualified preferred stock, not distributed in pursuance of the plan of reorganization. A distribution to creditors of the transferor corporation is not treated as a distribution for this purpose.

The value of controlled corporation securities or nonqualified preferred stock transferred to creditors of the distributing corporation is treated in the same manner as a direct assumption of distributing corporation's debt by the controlled corporation, or as a distribution of cash (or other nonqualified property) from the controlled corporation that is paid to the distributing corporation's creditors, so that the distributing corporation recognizes gain on the exchange to the extent that the sum of such amounts exceeds the adjusted bases of the assets transferred

Effective date.—The provision generally applies to exchanges occurring after the date of enactment.

However, the provision does not apply to any exchange in connection with a transaction which is (1) made pursuant to a written agreement which was binding on February 6, 2012 and at all times thereafter, (2) described in a ruling request submitted to the IRS on or before such date, or (3) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

K. Internal Revenue Service Levies and Thrift Savings Plan Accounts (sec. 40308 of the Senate amendment)

PRESENT LAW

In general

Levy is the IRS's administrative authority to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.[102] Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,[103] the property is not exempt from levy,[104] and the IRS has provided both notice of intention to levy[105] and notice of the right to an administrative hearing (the notice is referred to as a ''collections due process notice'' or ''CDP notice'' and the hearing is referred to as the ''CDP hearing'')[106] at least 30 days before the levy is made. A levy on salary or wages is generally continuously in effect until released.[107] A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.[108]

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.[109]

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.[110]

Thrift Savings Plan

Present law includes an anti-alienation rule that provides that the balance of an employee's Thrift Savings Plan (''TSP'') Account is subject to taking only for the enforcement of one's obligations to provide for child support or alimony payments, restitution orders, certain forfeitures, or certain obligations of the Executive Director.[111] The authority for the IRS to levy an employee's TSP Account to satisfy tax liabilities is not mentioned in the anti-alienation rule; TSP Accounts are not specifically enumerated in the Code provisions identifying property that is exempt from levy.

HOUSE PROVISION

No provision.

[96] Secs. 355 and 368(a)(1)(D). Section 355 imposes requirements for a qualified spin-off, split-off, or split-up. Among other requirements, in order for a transaction to qualify under section 355, the distributing corporation must either (i) distribute all of the stock and securities of the controlled corporation that it holds, or (ii) distribute at least an amount of stock constituting control under section 368(c) and establish to the satisfaction of the Secretary of the Treasury that the retention of stock (or stock and securities) was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. Sec. 355(a)(1)(D). Section 355 imposes other requirements to avoid gain recognition at the corporate level with respect to the spin-off, split-up, or split-off, *e.g.*, secs. 355(d) and (e).

[97] Sec. 361(a).

[98] Sec. 361(b).

[99] The last sentence of sec. 361(b)(3).

[100] Sec. 357(c) and the last sentence of sec. 361(b)(3).

[101] Section 351(g)(2) defines nonqualified preferred stock as preferred stock if (i) the holder has a right to require the issuer or a related person to redeem or purchase the stock, which right may be exercised within the 20 year period beginning on the issue date and is not subject to a contingency which, as of the issue date, makes remote the likelihood of redemption or purchase; (ii) the issuer or a related person is required to redeem or purchase the stock (within such 20 year period and not subject to such a contingency); (iii) the issuer or a related person has the right to redeem or purchase the stock (which right is exercisable within such 20 year period and not subject to such a contingency) and as of the issue date, it is more likely than not that such right will be exercised, or (iv) the dividend on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices. There are exceptions for certain rights that are exercisable only on the death, disability or mental incompetency of the holder, or only upon the separation from service of a service provider who received the right as reasonable compensation for services, and for certain situations involving publicly traded stock. Nonqualified preferred stock is treated in the same manner as securities under section 351 and thus is not qualified consideration that may be received tax free by a contributing shareholder. Sections 354(a)(2)(C) and 356(e) treat nonqualified preferred stock as taxable consideration if received in exchange for stock by shareholders of a corporation that itself is a party to a reorganization (except to the extent received in exchange for other nonqualified preferred stock); and section 355 contains a similar rule (sec. 355(a)(3)(D)).

[102] Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

[103] *Ibid.*

[104] Sec. 6334.

[105] Sec. 6331(d).

[106] Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

[107] Secs. 6331(e) and 6343.

[108] Sec. 6321.

[109] Secs. 6331(d)(3) and 6861.

[110] Sec. 6330(f).

[111] 5 U.S.C. sec. 8437(e)(3).

SENATE AMENDMENT

The provision amends the statutory provisions governing the TSP to clarify that the anti-alienation provisions therein do not bar the IRS from issuing a notice of levy on a TSP Account.

Effective date.—The provision is effective upon date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

L. Depreciation and Amortization Rules for Highway and Related Property Subject to Long-Term Leases (sec. 40309 of the Senate amendment and secs. 168, 197, and 147 of the Code)

PRESENT LAW

Depreciation and amortization for highways and related property

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system (''MACRS''), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.[112] The alternative depreciation system (''ADS'') applies with respect to tangible property used predominantly outside the United States during the taxable year, tax-exempt use property, tax-exempt bond financed property, and certain other property. ADS generally requires the use of the straight-line method without regard to salvage value, and requires longer recovery periods than MACRS.

Under MACRS, the cost of land improvements (such as roads and fences) is recovered over 15 years.[113] Land improvements subject to ADS are recovered over 20 years using the straight-line method.[114]

Amortization of intangible property

The cost recovery of many intangible assets is governed by the rules of section 197. In particular, section 197 provides that any amortizable section 197 intangible, including rights granted by a governmental unit and franchise rights, is amortized over a 15–year period.[115]

Private activity bond financing for highways

In general, interest on a private activity bond that is a qualified bond is excludable from taxable income.[116] Under present law, a private activity bond is not a qualified bond, interest on which is tax-exempt, if any portion of the proceeds of the issue of which the bond is a part is used to provide any airplane, skybox, or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.[117]

HOUSE BILL

No provision.

SENATE AMENDMENT

Under this provision, the depreciation for applicable leased highway property is determined under ADS with a statutory 45-year recovery period and requirement to use the straight-line method. Further, this provision requires that any amortizable section 197 intangible acquired in connection with an applicable lease must be recovered over a period not less than the term of the applicable lease.

Under this provision, private activity bonds are not qualified bonds, interest on which is tax-exempt, if the bonds are part of an issue, any portion of the proceeds of which is used to finance any applicable leased highway property.

For purposes of this provision, applicable leased highway property is defined as property subject to an applicable lease and placed in service before the date of such lease. An applicable lease is defined as an arrangement between the taxpayer and a State or political subdivision thereof, or any agency or instrumentality of either, under which the taxpayer leases a highway and associated improvements, receives a right-of-way on the public lands underlying such highway and improvements, and receives a grant of a franchise or other intangible right permitting the taxpayer to receive funds relating to the operation of such highway. As under present law, a contract that purports to be a service contract or other arrangement (including a partnership or other passthrough entity) is treated as a lease if the contract or arrangement is properly treated as a lease.[118]

Effective date.—The provision is effective for leases entered into, and private activity bonds issued, after the date of enactment.

CONFERENE AGREEMENT

The conference agreement does not include the Senate amendment provision.

M. Transfers to Federal Old-Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund

(sec. 40314 of the Senate amendment)

PRESENT LAW

To finance Social Security and Medicare benefits, taxes under the Federal Insurance Contributions Act (''FICA'') are imposed on employers and employees with respect to employee wages.[119] Similar taxes are imposed under the Self-Employment Contributions Act (''SECA'') on self-employed individuals with respect to their self-employment income.[120] These taxes consist of two parts: (1) old-age, survivors, and disability insurance (''OASDI''), which correlates to the Social Security program that provides monthly benefits after retirement, death or disability; and (2) Medicare hospital insurance (''HI'').

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the following amounts are transferred from the General Fund to the OASDI Trust Funds: $27 million in fiscal year 2012, and $82 million in fiscal year 2014.

Effective date.—The Senate amendment provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

N. Modify Rules that Apply to Sales of Life Insurance Contracts

(secs. 100112–4 of the Senate amendment and new sec. 6050X of the Code)

PRESENT LAW

An exclusion from Federal income tax is provided for amounts received under a life insurance contract paid by reason of the death of the insured.[121]

Under rules known as the transfer for value rules, if a life insurance contract is sold or otherwise transferred for valuable consideration, the amount paid by reason of the death of the insured that is excludable generally is limited.[122] Under the limitation, the excludable amount may not exceed the sum of (1) the actual value of the consideration, and (2) the premiums or other amounts subsequently paid by the transferee of the contract. Thus, for example, if a person buys a life insurance contract, and the consideration he pays combined with his subsequent premium payments on the contract are less than the amount of the death benefit he later receives under the contract, then the difference is includable in the buyer's income.

Exceptions are provided to the limitation on the excludable amount. The limitation on the excludable amount does not apply if (1) the transferee's basis in the contract is determined in whole or in part by reference to the transferor's basis in the contract,[123] or (2) the transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.[124]

IRS guidance sets forth more details of the tax treatment of a life insurance policyholder who sells or surrenders the life insurance contract and the tax treatment of other sellers and of buyers of life insurance contracts. The guidance relates to the character of taxable amounts (ordinary or capital) and to the taxpayer's basis in the life insurance contract.

In Revenue Ruling 2009–13,[125] the IRS ruled that income recognized under section 72(e) on surrender to the life insurance company of a life insurance contract with cash value is ordinary income. In the case of sale of a cash value life insurance contract, the IRS ruled that the insured's (seller's) basis is reduced by the cost of insurance, and the gain on sale of the contract is ordinary income to the extent of the amount that would be recognized as ordinary income if the contract were surrendered (the ''inside buildup''), and any excess is long-term capital gain. Gain on the sale of a term life insurance contract (without cash surrender value) is long-term capital gain under the ruling.

[112] Sec. 168.

[113] Rev. Proc. 87–56, 1987–42 I.R.B. 4.

[114] *Ibid.* The longest MACRS recovery period is 50 years and applies to railroad gradings and tunnel bores. Sec. 168(c).

[115] Secs. 197(d)(1)(D) and (F). The 15–year amortization provision does not apply to various types of rights, including any interest in land. Sec. 197(e)(2).

[116] Sec. 141.

[117] Sec. 147(e).

[118] Sec. 7701(e).

[119] Secs. 3101 and 3111.

[120] Sec. 1401.

[121] Sec. 101(a)(1). In the case of certain accelerated death benefits and viatical settlements, special rules treat certain amounts as amounts paid by reason of the death of an insured (that is, generally, excludable from income). Sec. 101(g). The rules relating to accelerated death benefits provide that amounts treated as paid by reason of the death of the insured include any amount received under a life insurance contract on the life of an insured who is a terminally ill individual, or who is a chronically ill individual (provided certain requirements are met). For this purpose, a terminally ill individual is one who has been certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 24 months or less after the date of the certification. A chronically ill individual is one who has been certified by a licensed health care practitioner within the preceding 12–month period as meeting certain ability-related requirements. In the case of a viatical settlement, if any portion of the death benefit under a life insurance contract on the life of an insured who is terminally ill or chronically ill is sold to a viatical settlement provider, the amount paid for the sale or assignment of that portion is treated as an amount paid under the life insurance contract by reason of the death of the insured (that is, generally, excludable from income). For this purpose, a viatical settlement provider is a person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts on the lives of terminally ill or chronically ill individuals (provided certain requirements are met).

[122] Sec. 101(a)(2).

[123] Sec. 101(a)(2)(A).

[124] Sec. 101(a)(2)(B).

[125] 2009–21 I.R.B. 1029.

In Revenue Ruling 2009–14,[126] the IRS ruled that under the transfer for value rules, a portion of the death benefit received by a buyer of a life insurance contract on the death of the insured is includable as ordinary income. The portion is the excess of the death benefit over the consideration and other amounts (*e.g.*, premiums) paid for the contract. Upon sale of the contract by the purchaser of the contract, the ruling concludes that the gain is long-term capital gain, and in determining the gain, the basis of the contract is not reduced by the cost of insurance.

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The provision imposes reporting requirements in the case of the purchase of an existing life insurance contract in a reportable policy sale and imposes reporting requirements on the payor in the case of the payment of reportable death benefits. The provision sets forth rules for determining the basis of a life insurance or annuity contract. Lastly, the provision modifies the transfer for value rules in a transfer of an interest in a life insurance contract that is a reportable policy sale.

Reporting requirements for acquisitions of life insurance contracts

Reporting upon acquisition of life insurance contract

The reporting requirement applies to every person who acquires a life insurance contract, or any interest in a life insurance contract, in a reportable policy sale during the taxable year. A reportable policy sale means the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured (apart from the acquirer's interest in the life insurance contract). An indirect acquisition includes the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract.

Under the reporting requirement, the acquiror of the contract reports information about the acquisition to the IRS, to the insurance company that issued the contract, and to the person or persons receiving a payment. The information reported by the acquiror about the acquisition of the contract is (1) the acquiror's name, address, and taxpayer identification number (''TIN''), (2) the name, address, and TIN of each recipient of payment in the reportable policy sale, (3) the date of the reportable policy sale, (4) the name of the issuer and the policy number of the life insurance contract, and (5) the amount of each payment.

The statement the acquiror provides to any issuer of a life insurance contract is not required to include the amount of the payment or payments for the acquisition of the contract. The statement the acquiror provides to any issuer of a life insurance contract or recipient of a payment in the reportable policy sale also includes the name, address, and phone number of the acquiror's information contact.

Reporting of seller's basis in the life insurance contract

On receipt of a report described above, or on any notice of the transfer of a life insurance contract to a foreign person, each issuer is required to report to the IRS and to the seller or transferor (1) the basis of the contract (i.e., the investment in the contract within the meaning of section 72(e)(6)), (2) the name, address, and TIN of the seller or the transferor to a foreign person, and (3) the policy number of the contract. Notice of the transfer of a life insurance contract to a foreign person is intended to include any sort of notice, including information provided for nontax purposes such as change of address notices for purposes of sending statements or for other purposes, or information relating to loans, premiums, or death benefits with respect to the contract.

The statement the issuer provides to any seller or transferor to a foreign person also includes the name, address, and phone number of the issuer's information contact.

Reporting with respect to reportable death benefits

When a reportable death benefit is paid under a life insurance contract, the payor insurance company is required to report information about the payment to the IRS and to the payee. Under this reporting requirement, the payor reports (1) the payor's name, address, and TIN; (2) the name, address, and TIN of each recipient of payment; (3) the date of each payment; and (4) the amount of each payment. A reportable death benefit means an amount paid by reason of the death of the insured under a life insurance contract that has been transferred in a reportable policy sale.

The statement the payor provides to any payee also includes the name, address, and phone number of the payor's information contact.

Payment

For purposes of these reporting requirements, payment means the amount of cash and the fair market value of any consideration transferred in a reportable policy sale.

Determination of basis

The provision provides that in determining the basis of a life insurance or annuity contract, no adjustment is made for mortality, expense, or other reasonable charges incurred under the contract (known as ''cost of insurance''). This reverses the position of the IRS in Revenue Ruling 2009–13 that on sale of a cash value life insurance contract, the insured's (seller's) basis is reduced by the cost of insurance.

Scope of transfer for value rules

The provision provides that the exceptions to the transfer for value rules do not apply in the case of a transfer of a life insurance contract, or any interest in a life insurance contract, in a reportable policy sale. Thus, some portion of the death benefit ultimately payable under such a contract may be includable in income.

Effective date

Under the provision, the reporting requirement is effective for reportable policy sales occurring after December 31, 2012, and reportable death benefits paid after December 31, 2012. The clarification of the basis rules for life insurance and annuity contracts is effective for transactions entered into after August 25, 2009. The modification of exception to the transfer for value rules is effective for transfers occurring after December 31, 2012.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

O. Authorizing Special Measures against Foreign Jurisdictions, Financial Institutions, and Others that Significantly Impede U.S. Tax Enforcement

(sec. 100201 of the Senate amendment and 31 U.S.C. sec. 5138A)

PRESENT LAW

Cross-border transfers of assets to, and interests held in, foreign bank accounts or foreign entities are subject to reporting requirements under Title 31 (the Bank Secrecy Act) of the United States Code. The Bank Secrecy Act requires both financial institutions and account holders to report information that has ''a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.''[127] Citizens and residents of the United States as well as persons doing business in the United States are required to keep records and file reports that contain the following information ''in the way and to the extent the Secretary prescribes'' if they enter into a transaction or maintain an account with a foreign financial agency: (1) the identity and address of participants in a transaction or relationship; (2) the legal capacity in which a participant is acting; (3) the identity of real parties in interest; and (4) a description of the transaction, as specified by the Secretary.[128] Regulations promulgated pursuant to broad regulatory authority granted to the Secretary in the Bank Secrecy Act[129] provide additional guidance regarding the disclosure obligation with respect to foreign accounts.

As part of a series of reforms directed at international financing of terrorism,[130] the Bank Secrecy Act authorizes the Secretary of Treasury to impose special measures on certain domestic institutions or agencies if, after consultation with the Secretary of State and the Attorney General, the Secretary of Treasury determines that there are reasonable grounds to conclude that a jurisdiction or institution operating outside the United States, or accounts or transactions involving such jurisdictions or institutions, are of primary money laundering concern.[131]

In determining whether a particular jurisdiction is of primary money laundering concern, the Secretary considers multiple factors that may evidence that the jurisdiction lacks adequate transparency and may be a haven for criminal activities. Evidence that groups involved in organized crime, international terrorism or proliferation of weapons of mass destruction have transacted business in that jurisdiction as well as the degree of corruption among high-level officials must be considered. With respect to assessing the fiscal transparency of the jurisdiction, factors include the domestic laws of that jurisdiction and their administration; the reputation of the jurisdiction as an offshore banking haven by credible international organizations; the extent to which the jurisdiction offers regulatory advantages to nonresidents; and whether the United States has a Mutual Legal Assistance Treaty (''MLAT'') with the jurisdiction, and if so, experience of U.S. officials in obtaining information under that agreement.

In determining whether to apply one or more special measure to a particular institution, or with respect to a type of account or transaction, the Secretary considers whether the transactions, accounts or institutions facilitate money laundering through a particular jurisdiction. The Secretary also looks at evidence that organized criminal groups or terrorists have been able to avail

[126] 2009–21 I.R.B. 1031.

[127] 31 U.S.C. sec. 5311.

[128] 31 U.S.C. sec. 5314. The term ''agency'' in the Bank Secrecy Act includes financial institutions.

[129] 31 U.S.C. sec. 5314(a) provides: ''Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency, the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.''

[130] See, e.g., Title III of the USA PATRIOT Act, Pub. L. No. 107–56 (October 26, 2001) (sections 351 through 366).

[131] 31 U.S.C. sec. 5318A.

themselves of such institution, accounts or transactions. The extent to which legitimate business is conducted through the accounts or institutions is also considered.

The selection of the specific measures is made after consultation with other financial regulatory agencies and the Secretary of State.[132] The factors that must be considered in selecting which of the measures to invoke are enumerated and include U.S. national security and foreign policy; the cost and burden of compliance with the measures; whether U.S. financial institutions will be placed at a competitive disadvantages as a result; the impact of the measure on the international payment, clearance and settlement system; and whether any similar sanction has been imposed by another nation or multilateral group. Increased reporting obligations with respect to types of transactions or accounts involving a foreign jurisdiction, mandatory collection of information about beneficial ownership of certain types of accounts, and prohibitions against opening or maintaining payable-through or correspondent accounts with a nexus to foreign jurisdictions are among the measures permitted. These measures may be imposed separately or in combination.

Cross-border payment flows are also subject to reporting obligations for tax purposes.[133] Those reporting obligations and related provisions are commonly referred to as FATCA,[134] which added new Chapter 4, a reporting and withholding regime, to Subtitle A of the Code. Chapter 4 requires reporting of specific information by third parties for certain U.S. accounts held in foreign financial institutions (''FFIs'').[135] Information reporting is encouraged through the withholding of tax on payments to FFIs unless the FFI enters into and complies with an information reporting agreement with the Secretary of the Treasury.[136]

Access to the foreign-based documents necessary to combat money laundering and tax evasion is secured through information exchanges with foreign jurisdictions under the terms of various treaties and international agreements, such as MLAT, tax treaties, or tax information exchange agreements (''TIEA'').[137] International norms regarding fiscal transparency and exchange of information for tax administration purposes are reflected in the standards developed by the Organization for Economic Cooperation and Development (''OECD''). The OECD Standards have been endorsed by the G–20 Ministers of Finance. Whether by tax treaty or TIEA, the OECD Standards require that a jurisdiction (1) exchange information where it is ''foreseeably relevant'' to the administration and enforcement of the domestic laws of a requesting State; (2) not restrict exchanges on the basis of bank secrecy or domestic tax interest requirements; (3) have powers to enforce access to reliable information; (4) respect taxpayer rights; and (5) maintain strict confidentiality of information exchanged.[138]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision expands the special measures powers under the Bank Secrecy Act by authorizing use of the powers based on a finding, made in consultation with the Commissioner of the IRS, the Secretary of State and the Attorney General, that an institution, jurisdiction or international transaction is significantly impeding tax enforcement. In making such a finding, cooperation of an institution or jurisdiction with the implementation of FATCA may be favorably considered. The information and consultations to be considered in making a finding to support use of the special measures on the basis of either money-laundering or tax enforcement concerns are expanded to require consideration of U.S. experience with administrative assistance requests under a tax treaty or tax information exchange agreement. Furthermore, a number of conforming changes are made to the enumeration of considerations to ensure that factors relevant to tax enforcement are considered.

The process for selection of special measures to be taken and the considerations for their selection remain the same as under present law, except for the identity of the persons or agencies to be consulted in the process when the use of special measures is based on a finding that U.S. tax enforcement is being significantly impeded. In that case, the Secretary of Treasury is required to consult only with the Commissioner of IRS, the Secretary of State and the Attorney General. The Secretary of Treasury has sole discretion whether to consult any other agencies.

All special measures under present law are available for both anti-money-laundering and tax enforcement-based findings. The ability to prohibit or impose conditions on the use of correspondent or payable-through accounts is expanded to include the authorization, approval or use in the United States of a credit card, charge card, debit card or other similar financial instrument.

Effective date.—The provision is effective upon date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

P. Delay in Application of Worldwide Interest

(sec. 1801 of the Senate amendment and sec. 864(f) of the Code)

PRESENT LAW

In general

To compute the foreign tax credit limitation, a taxpayer must determine the amount of its taxable income from foreign sources. Thus, the taxpayer must allocate and apportion deductions between items of U.S.-source gross income, on the one hand, and items of foreign-source gross income, on the other.

In the case of interest expense, the rules generally are based on the approach that money is fungible and that interest expense is properly attributable to all business activities and property of a taxpayer, regardless of any specific purpose for incurring an obligation on which interest is paid.[139] For interest allocation purposes, all members of an affiliated group of corporations generally are treated as a single corporation (the so-called ''one-taxpayer rule'') and allocation must be made on the basis of assets rather than gross income. The term ''affiliated group'' in this context generally is defined by reference to the rules for determining whether corporations are eligible to file consolidated returns.

For consolidation purposes, the term ''affiliated group'' means one or more chains of includible corporations connected through stock ownership with a common parent corporation that is an includible corporation, but only if: (1) the common parent owns directly stock possessing at least 80 percent of the total voting power and at least 80 percent of the total value of at least one other includible corporation; and (2) stock meeting the same voting power and value standards with respect to each includible corporation (excluding the common parent) is directly owned by one or more other includible corporations.

Generally, the term ''includible corporation'' means any domestic corporation except certain corporations exempt from tax under section 501 (for example, corporations organized and operated exclusively for charitable or educational purposes), certain life insurance companies, corporations electing application of the possession tax credit, regulated investment companies, real estate investment trusts, and domestic international sales corporations. A foreign corporation generally is not an includible corporation.

Subject to exceptions, the consolidated return and interest allocation definitions of affiliation generally are consistent with each other. For example, both definitions generally exclude all foreign corporations from the affiliated group. Thus, while debt generally is considered fungible among the assets of a group of domestic affiliated corporations, the same rules do not apply as between the domestic and foreign members of a group with the same degree of common control as the domestic affiliated group.

Banks, savings institutions, and other financial affiliates

The affiliated group for interest allocation purposes generally excludes what are referred to in the Treasury regulations as ''financial corporations.''[140] A financial corporation includes any corporation, otherwise a member of the affiliated group for consolidation purposes, that is a financial institution (described in section 581 or section 591), the business of which is predominantly with persons other than related persons or their customers, and which is required by State or Federal law to be operated separately from any other entity that is not a financial institution.[141] The category of financial corporations also includes, to the extent provided in regulations, bank holding companies (including financial holding companies), subsidiaries of banks and bank holding companies (including financial holding companies), and savings institutions predominantly engaged in the active conduct of a banking, financing, or similar business.[142]

A financial corporation is not treated as a member of the regular affiliated group for purposes of applying the one-taxpayer rule to other nonfinancial members of that group.

[132] Section 5318A(4)(A) requires consultation with Board of the Governors of the Federal Reserve System, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, any other appropriate Federal banking agency and any other interested party identified by the Secretary.

[133] Hiring Incentives to Restore Employment Act (''HIRE''), Pub. L. No. 111–147 (2010).

[134] Subtitle A of Title V of the HIRE Act, entitled ''Foreign Account Tax Compliance,'' was based on legislative proposals in the Foreign Account Tax Compliance Act (''FATCA''), a bill introduced in both the House and Senate on October 27, 2009. See H.R. 3933 and S. 1934, respectively.

[135] Under section 1471(c), an FFI must report (1) the name, address, and taxpayer identification number of each U.S. person or a foreign entity with one or more substantial U.S. owners holding an account, (2) the account number, (3) the account balance or value, and (4) except as provided by the Secretary, the gross receipts and gross withdrawals or payments from the account.

[136] The information reporting requirement under the HIRE Act generally applies to payments made after December 31, 2012.

[137] TIEAs are entered into by the Administration, without the advice and consent of the Senate. In contrast to the bilateral tax treaties, TIEAs are generally limited in scope to mutual exchange of information. Since the 1980s, the United States has entered into over 20 such agreements.

[138] Overview of the OECD's Work on International Tax Evasion (A note by the OECD Secretariat), p. 3, March 23, 2009.

[139] However, exceptions to the fungibility principle are provided in particular cases, some of which are described below.

[140] Temp. Treas. Reg. sec. 1.861–11T(d)(4).

[141] Sec. 864(e)(5)(C).

[142] Sec. 864(e)(5)(D).

Instead, all such financial corporations that would be so affiliated are treated as a separate single corporation for interest allocation purposes.

Worldwide interest allocation

In general

The American Jobs Creation Act of 2004 (''AJCA'')[143] modified the interest expense allocation rules described above (which generally apply for purposes of computing the foreign tax credit limitation) by providing a one-time election (the ''worldwide affiliated group election'') under which the taxable income of the domestic members of an affiliated group from sources outside the United States generally is determined by allocating and apportioning interest expense of the domestic members of a worldwide affiliated group on a worldwide-group basis (i.e., as if all members of the worldwide group were a single corporation). If a group makes this election, the taxable income of the domestic members of a worldwide affiliated group from sources outside the United States is determined by allocating and apportioning the third-party interest expense of those domestic members to foreign-source income in an amount equal to the excess (if any) of (1) the worldwide affiliated group's worldwide third-party interest expense multiplied by the ratio that the foreign assets of the worldwide affiliated group bears to the total assets of the worldwide affiliated group,[144] over (2) the third-party interest expense incurred by foreign members of the group to the extent such interest would be allocated to foreign sources if the principles of worldwide interest allocation were applied separately to the foreign members of the group.[145]

For purposes of the new elective rules based on worldwide fungibility, the worldwide affiliated group means all corporations in an affiliated group as well as all controlled foreign corporations that, in the aggregate, either directly or indirectly,[146] would be members of such an affiliated group if section 1504(b)(3) did not apply (i.e., in which at least 80 percent of the vote and value of the stock of such corporations is owned by one or more other corporations included in the affiliated group). Thus, if an affiliated group makes this election, the taxable income from sources outside the United States of domestic group members generally is determined by allocating and apportioning interest expense of the domestic members of the worldwide affiliated group as if all of the interest expense and assets of 80-percent or greater owned domestic corporations (i.e., corporations that are part of the affiliated group, as modified to include insurance companies) and certain controlled foreign corporations were attributable to a single corporation.

Financial institution group election

Taxpayers are allowed to apply the bank group rules to exclude certain financial institutions from the affiliated group for interest allocation purposes under the worldwide fungibility approach. The rules also provide a one-time ''financial institution group'' election that expands the bank group. At the election of the common parent of the pre-election worldwide affiliated group, the interest expense allocation rules are applied separately to a subgroup of the worldwide affiliated group that consists of (1) all corporations that are part of the bank group, and (2) all ''financial corporations.'' For this purpose, a corporation is a financial corporation if at least 80 percent of its gross income is financial services income (as described in section 904(d)(2)(D)(ii) and the regulations thereunder) that is derived from transactions with unrelated persons.[147] For these purposes, items of income or gain from a transaction or series of transactions are disregarded if a principal purpose for the transaction or transactions is to qualify any corporation as a financial corporation.

In addition, anti-abuse rules are provided under which certain transfers from one member of a financial institution group to a member of the worldwide affiliated group outside of the financial institution group are treated as reducing the amount of indebtedness of the separate financial institution group. Regulatory authority is provided with respect to the election to provide for the direct allocation of interest expense in circumstances in which such allocation is appropriate to carry out the purposes of these rules, to prevent assets or interest expense from being taken into account more than once, or to address changes in members of any group (through acquisitions or otherwise) treated as affiliated under these rules.

Effective date of worldwide interest allocation

The common parent of the domestic affiliated group must make the worldwide affiliated group election. It must be made for the first taxable year beginning after December 31, 2020, in which a worldwide affiliated group exists that includes at least one foreign corporation that meets the requirements for inclusion in a worldwide affiliated group.[148] The common parent of the pre-election worldwide affiliated group must make the election for the first taxable year beginning after December 31, 2020, in which a worldwide affiliated group includes a financial corporation. Once either election is made, it applies to the common parent and all other members of the worldwide affiliated group or to all members of the financial institution group, as applicable, for the taxable year for which the election is made and all subsequent taxable years, unless revoked with the consent of the Secretary of the Treasury.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision delays the effective date of the worldwide interest allocation rules for one year, until taxable years beginning after December 31, 2021. The required dates for making the worldwide affiliated group election and the financial institution group election are changed accordingly.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

PART IV—TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the ''IRS Reform Act'') requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the ''Code'') and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that have ''widespread applicability'' to individuals or small businesses.

A. PBGC Premiums (secs. 40221–40222 of the conference agreement and ERISA sec. 4006)

PRESENT LAW

Defined benefit plans subject to ERISA are covered by the Pension Benefit Guaranty Corporation (''PBGC'') insurance program and related premium requirements.

In the case of a single-employer defined benefit plan, flat-rate premiums apply at a rate of $35.00 per participant for 2012. Single-employer flat-rate premium rates are indexed for inflation.

If a single-employer defined benefit plan has unfunded vested benefits, variable-rate premiums also apply at a rate of $9 per $1,000 of unfunded vested benefits divided by the number of participants. Variable-rate premiums are not indexed for inflation. For purposes of determining variable-rate premiums, unfunded vested benefits are equal to the excess (if any) of (1) the plan's funding target for the year, as determined under the minimum funding rules, but taking into account only vested benefits, over (2) the fair market value of plan assets. In determining the plan's funding target for this purpose, the interest rates used are segment rates determined as under the minimum funding rules, but determined on a monthly basis, rather than using a 24-month average of corporate bond rates.

In the case of a multiemployer defined benefit plan, flat-rate premiums apply at a rate of $9.00 per participant for 2012. Multiemployer flat-rate premium rates are indexed for inflation and are expected to increase to $10 for 2013.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement increases PBGC premiums for single-employer plans and multiemployer plans.

Single-employer plan flat-rate premiums are increased to $42 per participant for 2013 and $49 per participant for 2014 with indexing thereafter.

For plan years beginning after 2012, the rate for variable-rate premiums ($9 per $1,000 of unfunded vested benefits) is indexed and the per-participant variable-rate premium is subject to a limit. The limit is $400 for 2013

[143] Pub. L. No. 108–357, sec. 401.

[144] For purposes of determining the assets of the worldwide affiliated group, neither stock in corporations within the group nor indebtedness (including receivables) between members of the group is taken into account.

[145] Although the interest expense of a foreign subsidiary is taken into account for purposes of allocating the interest expense of the domestic members of the electing worldwide affiliated group for foreign tax credit limitation purposes, the interest expense incurred by a foreign subsidiary is not deductible on a U.S. return.

[146] Indirect ownership is determined under the rules of section 958(a)(2) or through applying rules similar to those of section 958(a)(2) to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

[147] See Treas. Reg. sec. 1.904–4(e)(2).

[148] As originally enacted under AJCA, the worldwide interest allocation rules were effective for taxable years beginning after December 31, 2008. However, section 3093 of the Housing and Economic Recovery Act of 2008, Pub. L. No. 110–289, delayed the implementation of the worldwide interest allocation rules for two years, until taxable years beginning after December 31, 2010; section 15 of the Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111–92, delayed the implementation of the worldwide interest allocation rules for seven years, until taxable years beginning after December 31, 2017; and section 551 of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111–126, further delayed implementation of the worldwide interest allocation rules for three years, until taxable years beginning after December 31, 2020.

with indexing thereafter. In addition, the rate for variable-rate premiums per $1,000 of unfunded vested benefits is increased by $4 for 2014 and another $5 for 2015. These increases are applied to the rate applicable for the preceding year (that is, $9 as indexed for the preceding year per $1,000 of unfunded vested benefits) and indexing continues to apply thereafter.

Multiemployer plan flat-rate premiums are increased by $2 per participant for 2013.

B. Improvements of PBGC (secs. 40231–40234 of the conference agreement and ERISA sec. 4002, new sec. 4004 and sec. 4005)—Draft of 6/27/12, 9:00 PM

PRESENT LAW

The Pension Benefit Guaranty Corporation (''PBGC''), which was created by the Employee Retirement Income Security Act of 1974 (''ERISA''), insures benefits provided under defined benefit plans covered by ERISA, collects premiums with respect to such plans, and manages assets and pays benefits with respect to certain terminated plans. PBGC's purposes are to encourage the continuation and maintenance of voluntary private defined benefit plans, provide timely and uninterrupted payment of pension benefits to participants and beneficiaries, and maintain premiums at the lowest level consistent with carrying out its obligations under ERISA.[149]

PBGC is administered by a director, who is appointed by the President with the advice and consent of the Senate. PBGC's board of directors consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce, with the Secretary of Labor serving as chair. An advisory committee has been established for the purpose of advising the PBGC as to various policies and procedures. ERISA contains general provisions as to the board of directors and advisory committee.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

PBGC governance improvement

The conference agreement expands the ERISA provisions relating to the PBGC board of directors, advisory committee, director and other PBGC officials.

With respect to the board of directors, the conference agreement addresses timing and procedures for meetings (including a joint meeting with the advisory committee). It also ensures that the PBGC inspector general has direct access to the board, clarifies the role of the General Counsel, and provides authority to the board to hire its own employees, experts and consultants as may be required to enable the board to perform its duties. The conference agreement includes specific rules on conflicts of interest with respect to the board of directors and the director of PBGC and provides for the PBGC to have a risk management officer. It further clarifies that the PBGC board of directors is ultimately responsible for overseeing PBGC and that the director is directly accountable to the board of directors and can be removed by the board of directors or the president. It also sets the director's term at five years unless removed before the expiration of the term by the President or the board of directors.

The conference agreement states the sense of Congress that (1) the board of directors should form committees, including an audit committee and an investment committee composed of at least two members, to enhance the overall effectiveness of the board, and (2) the advisory committee should provide the board with policy recommendations regarding changes to the law that would be beneficial to the PBGC or the voluntary private pension system.

The conference agreement also directs the PBGC, not later than 90 days after enactment, to contract with the National Academy of Public Administration to conduct a study of the PBGC to include (1) a review of governance structures of organizations (governmental and nongovernmental) that are analogous to the PBGC and (2) recommendations with respect to various topics relating to the board of directors, such as composition, procedures, and policies to enhance Congressional oversight. The results of the study are to be reported within a year of initiation of the study to the Committee on Health, Education, Labor, and Pensions and Committee on Finance of the Senate and the Committee on Education and the Workforce and Committee on Ways and Means of the House of Representatives.

Participant and plan sponsor advocate

The conference agreement establishes a new Participant and Plan Sponsor Advocate. The Advocate is chosen by the Board of Directors from the candidates nominated by the advisory committee. This individual will act as a liaison between the corporation and participants in terminated pension plans. The Advocate will ensure that participants receive everything they are entitled to under the law. The Advocate will also provide plan sponsors with assistance in resolving disputes with the corporation. Each year, the Advocate will provide a report on their activities to the Committee on Health, Education, Labor, and Pensions and Committee on Finance of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Ways and Means of the House of Representatives summarizing the issues raised by participants and plan sponsors and making recommendations for changes to improve the system.

Quality control procedures for the PBGC

The conference agreement states that the PBGC will contract with an outside agency (such as the Social Security Administration) to conduct an annual review of the Corporation's Single-Employer and Multiemployer Pension Insurance Modeling Systems (''PIMS''). The first reviews will be initiated no later than 3 months after the enactment of this Act.

The conference agreement also states that the PBGC will make its own efforts to develop review policies to examine actuarial work, management, and record keeping. Finally, the conference agreement instructs the PBGC to provide a specific report addressing outstanding recommendations made by the Office of the Inspector General (''OIG'') relating to the Policy, Research, and Analysis Department and the Benefits Administration and Payment Department.

Line of credit repeal

The conference agreement repeals section 4005(c) of ERISA, which provides authority for the PBGC to issue notes or other obligations in an amount up to $100,000,000.

Natural resource provisions

Secure rural schools

The conference report includes Senate language that extends by one year, through fiscal year 2012, the Secure Rural Schools program. The program funds county outlays for public schools, road improvement and maintenance projects, and forest restoration and improvement projects in and around National Forests. The conference report clarifies that funds for eligible Title III projects under the program must be obligated by the end of the following fiscal year but not necessarily initiated.

Payment-in-lieu of taxes

The conference report also includes Senate language to extend by one year, through fiscal year 2013, full funding for the Payment in Lieu of Taxes program. The program provides federal payments to local governments to help offset losses in property taxes due to nontaxable federal land within their boundaries.

Gulf coast restoration

The conference report modifies a Senate provision related to Gulf Coast restoration known as the Resources and Ecosystems Sustainability, Tourism Opportunities and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The provision establishes the Gulf Coast Restoration Trust Fund and places in the Trust Fund 80% of all civil penalties paid by responsible parties in connection with the Deepwater Horizon oil spill. Funding may be used to invest in projects and activities to restore the long-term health of the coastal ecosystem and local economies in the Gulf Coast Region, which includes the states of Mississippi, Louisiana, Alabama, Florida, and Texas. A portion of the funds will be allocated directly and equally to the five Gulf Coast states for ecological and economic recovery along the coast. A portion will be provided to the Gulf Coast Ecosystem Restoration Council established by the bill to develop and fund a comprehensive plan for the restoration of Gulf Coast ecosystems. A portion will be allocated among the states using an impact-based formula to implement state plans that have been approved by the Council. Finally, a portion of the fines will be allocated to a Gulf Coast ecosystem restoration, science, observation, monitoring and technology program and for grants to nongovernmental entities for the establishment of Gulf Coast centers of excellence.

Phased retirement

PRESENT LAW

Under current law, Federal agencies may offer part-time employment to retirement-eligible workers, but the employee may not begin receiving accrued pension benefits. Currently, Federal employees face one of three choices upon reaching retirement age: (1) voluntarily retire and collect an annuity based on the pension computation formula, (2) continue to work full time, in most cases increasing the number of service years used in calculating their pension, or (3) voluntarily retire and return to Federal employment as a reemployed annuitant. As a result, most experienced Federal employees elect to retire.

Under Internal Revenue Code section 72(t), certain distributions from a qualified retirement plan prior to age 59½ are subject to an additional tax of 10 percent of the taxable amount of the distribution.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides the Office of Personnel Management the authority to establish a phased retirement program for qualified Federal employees. The amendment allows Federal employees to retire from a portion of their full time employment and receive a prorated pension for that service. During phased retirement, Federal employees may work 20 to 80 percent of their full-time schedule and continue to receive a prorated salary and pension credit for the time worked. At least 20 percent of the time worked must be used to mentor new employees. When the phased retiree fully retires,

[149] ERISA sec. 4002(a).

their annuity would be adjusted, increasing the employee's lifetime retirement income. The Senate amendment excludes from eligibility law enforcement officers, firefighters, nuclear materials couriers, air traffic controllers, customs and border protection officers, or members of the Capital Police or Supreme Court Police.

CONFERENCE REPORT

The conference report follows the Senate amendment with three changes. First, Postal Service employees are exempted from the requirement to spend 20 percent of their time mentoring. Second, the provision provides that certain law enforcement officers such as Customs and Border Protection Officers hired before 2008 (when they were granted law-enforcement type status which makes them ineligible for phased retirement under the Senate Amendment because they are subject to mandatory retirement) are eligible for phased retirement. Finally, the conference agreement provides an exception to the additional tax under section 72(t) of the Internal Revenue Code for distributions from federal retirement plans to qualified phased retirees.

Effective Date—The provision is effective on the date the implementing regulations are issued by the Director of the Office of Personnel Management.

Technical correction to the disaster recovery FMAP provision

The ACA included a provision known as the 'disaster-recovery FMAP' designed to help states adjust to drastic changes in FMAP following a statewide disaster. Once triggered, the policy would provide assistance for as many as seven years following the disaster, as long as the state continued to experience an FMAP drop of more than three percentage points. The Middle Class Tax Relief and Job Creation Act of 2012 corrected the formula. This policy moves the effective date to October 1, 2012 and adjusts the formula for fiscal year 2013.

Ocean freight differential

The United States provides humanitarian food aid to developing countries. This assistance is subject to an additional cargo preference, which requires 75% of food assistance be shipped from U.S. flagged vessels. The Maritime Administration at the Department of Transportation is required to reimburse the U.S. agencies that sponsor food aid shipments for the increased costs associated with the U.S. flag shipping requirement. This proposal would reduce to 50% the incremental ocean freight differential, which would reduce the amount of quarterly payments made by Maritime Administration at the Department of Transportation.

Abandoned mine land

This proposal would cap abandoned mine land (AML) reclamation payments to states that have completed all high-priority abandoned coal mine reclamation projects. Under this proposal, payments to those states (certified states) would be capped at $15 million annually.

Pursuant to the order of the House on April 25, 2012, the Speaker appointed the following conferees from the Committee on Transportation and Infrastructure for consideration of the House bill (except section 141) and the Senate amendment (except secs. 1801, 40102, 40201, 40202, 40204, 40205, 40305, 40307, 40309, 40312, 100112, 100114, and 100116), and modifications committed to conference:

JOHN MICA,
DON YOUNG,
JOHN DUNCAN,
BILL SHUSTER,
SHELLEY MOORE CAPITO,
RICK CRAWFORD,
JAIME HERRERA BEUTLER,
LARRY BUCSHON,
RICHARD HANNA,
STEVE SOUTHERLAND,
JAMES LANKFORD,
REID RIBBLE,
NICK RAHALL,
PETER DEFAZIO,
JERRY COSTELLO,
ELEANOR HOLMES NORTON,
JERROLD NADLER,
CORRINE BROWN,
ELIJAH CUMMINGS,
LEONARD BOSWELL,
TIM BISHOP,

As additional conferees from the Committee on Commerce, for consideration of sec. 142 and titles II and V of the House bill, and secs. 1113, 1201, 1202, subtitles B, C, D, and E of title I of Division C, secs. 32701, 32705, 32710, 32713, 40101, and 40301 of the Senate amendment, and modifications committed to conference:

FRED UPTON,
ED WHITFIELD,
HENRY WAXMAN,

As additional conferees from the Committee on Natural Resources, for consideration of secs. 123, 142, 204, and titles III and VI of the House bill, and sec. 1116, subtitles C, F, and G of title I of Division A, sec. 33009, titles VI and VII of Division C, sec. 40101, subtitles A and B of title I of Division F, and sec. 100301 of the Senate amendment, and modifications committed to conference:

DOC HASTINGS,
ROB BISHOP,
ED MARKEY,

As additional conferees from the Committee on Science, Space, and Technology for consideration of secs. 121, 123, 136, and 137 of the House bill, and sec. 1534, subtitle F of title I of Division A, secs. 20013, 20014, 20029, 31101, 31103, 31111, 31204, 31504, 32705, 33009, 34008, and Division E of the Senate amendment, and modifications committed to conference:

RALPH HALL,
CHIP CRAVAACK,
EDDIE BERNICE JOHNSON,

As additional conferees from the Committee on Ways and Means, for consideration of secs. 141 and 142 of the House bill, and secs. 1801, 40101, 40102, 40201, 40202, 40204, 40205, 40301, 40307, 40309, 40314, 100112, 100114, and 100116 of the Senate amendment, and modifications committed to conference:

DAVE CAMP,
PAT TIBERI,
EARL BLUMENAUER,

Managers on the Part of the House.

BARBARA BOXER,
MAX BAUCUS,
JOHN ROCKEFELLER,
DICK DURBIN,
TIM JOHNSON,
CHUCK SCHUMER,
BILL NELSON,
ROBERT MENENDEZ,
JAMES INHOFE,
DAVID VITTER,
ORRIN HATCH,
RICHARD SHELBY,
KAY BAILEY HUTCHISON,
JOHN HOEVEN,

Managers on the Part of the Senate.

From the Committee on Transportation and Infrastructure, for consideration of the House bill (except section 141) and the Senate amendment (except secs. 1801, 40102, 40201, 40202, 40204, 40205, 40305, 40307, 40309–40312, 100112–100114, and 100116), and modifications committed to conference:

JOHN L. MICA,
DON YOUNG,
JOHN J. DUNCAN, JR.
BILL SHUSTER,
SHELLEY MOORE CAPITO,
ERIC A. ''RICK'' CRAWFORD,
JAIME HERRERA BEUTLER,
LARRY BUCSHON,
RICHARD L. HANNA,
STEVE SOUTHERLAND II,
JAMES LANKFORD,
REID J. RIBBLE,

From the Committee on Energy and Commerce, for consideration of sec. 142 and titles II and V of the House bill, and secs. 1113, 1201, 1202, subtitles B, C, D, and E of title I of Division C, secs. 32701–32705, 32710, 32713, 40101, and 40301 of the Senate amendment, and modifications committed to the conference:

FRED UPTON,
ED WHITFIELD,
HENRY A. WAXMAN,

From the Committee on Natural Resources, for consideration of secs. 123, 142, 204, and titles III and VI of the House bill, and sec. 1116, subtitles C, F, and G of title I of Division A, sec. 33009, titles VI and VII of Division C, sec. 40101, subtitles A and B of title I of Division F, and sec. 100301 of the Senate amendment, and modifications committed to conference:

DOC HASTINGS,
ROB BISHOP,

From the Committee on Science, Space, and Technology for consideration of secs. 121, 123, 136, and 137 of the House bill, and sec. 1534, subtitle F of title I of Division A, secs. 20013, 20014, 20029, 31101, 31103, 31111, 31204, 31504, 32705, 33009, 34008, and Division E of the Senate amendment, and modifications committed to conference:

RALPH M. HALL,
CHIP CRAVAACK,

From the Committee on Ways and Means, for consideration of secs. 141 and 142 of the House bill, and secs. 1801, 40101, 40102, 40201, 40202, 40204, 40205, 40301–40307, 40309–40314, 100112–100114, and 100116 of the Senate amendment, and modifications committed to conference:

DAVE CAMP,
PATRICK J. TIBERI,

Managers on the Part of the House.

BARBARA BOXER,
MAX BAUCUS,
JOHN D. ROCKEFELLER, IV,
RICHARD J. DURBIN,
TIM JOHNSON,
CHARLES E. SCHUMER,
BILL NELSON,
ROBERT MENENDEZ,
JAMES M. INHOFE,
DAVID VITTER,
RICHARD C. SHELBY,
KAY BAILEY HUTCHISON,

Managers on the Part of the Senate.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BERG). Under clause 8 of rule XX, the filing of the conference report on H.R. 4348 has vitiated the motion to instruct conferees offered by the gentlewoman from California (Ms. HAHN) which was debated yesterday and on which further proceedings were postponed.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 7 o'clock and 24 minutes p.m.), the House stood in recess.

□ 2304

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. NUGENT) at 11 o'clock and 4 minutes p.m.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5856, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2013; PROVIDING FOR CONSIDERATION OF H.R. 6020, FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2013; AND PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 4348, MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT

Mr. WEBSTER, from the Committee on Rules, submitted a privileged report (Rept. No. 112–558) on the resolution (H. Res. 717) providing for consideration of the bill (H.R. 5856) making appropriations for the Department of Defense for the fiscal year ending September 30, 2013, and for other purposes; providing for consideration of the bill (H.R. 6020) making appropriations for financial services and general government for the fiscal year ending September 30, 2013, and for other purposes; and providing for consideration of the conference report to accompany the bill (H.R. 4348) to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes, which was referred to the House Calendar and ordered to be printed.

ADJOURNMENT

Mr. WEBSTER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 5 minutes p.m.), the House adjourned until tomorrow, Friday, June 29, 2012, at 9 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XIV, executive communications were taken from the Speaker's table and referred as follows:

6698. A letter from the Secretary, Air Force, Department of Defense, transmitting the 2011 Military Working Dog Disposition Report; to the Committee on Armed Services.

6699. A letter from the Acting Under Secretary, Department of Defense, transmitting a report identifying, for each of the Armed forces (other than the Coast Guard) and each Defense Agency, the percentage of funds that were expended duing the preceding fiscal year for performance of depot-level maintenance and repair workloads by the public and private sectors; to the Committee on Armed Services.

6700. A letter from the General Counsel, Federal Housing Finance Agency, transmitting the Agency's final rule — Prudential Management and Operations Standards (RIN: 2590-AA13) received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6701. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Idaho: Final Authorization of State Hazardous Waste Management Program; Revision [EPR-R10-RCRA-2011-0973; FRL-9684-6] received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6702. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards for Several Counties in Illinios, Indiana, and Wisconsin; Corrections to Inadvertent Errors in Prior Designations [EPA-HQ-OAR-2008-0476; FRL-9682-2] (RIN: 2060-AR56) received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6703. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; State of Florida: New Source Review Prevention of Significant Deterioration: Nitrogen Oxides as a Precursor to Ozone [EPA-R04-OAR-2012-0166; FRL-9687-1] received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6704. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval of Air Quality Implementation Plans; Wisconsin; Disapproval of ''Infrastructure'' SIP with respect to Oxides of Nitrogen as a Precursor to Ozone Provisions and New Source Review Exemptions for Fuel Changes as Major Modifications for the 1997 8-hour Ozone and 24-hour PM2.5 NAAQS [EPA-R05-OAR-2007-1179; FRL-9685-7] received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6705. A letter from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans and Operating Permits Program; Commonwealth of Puerto Rico; Administrative Changes [EPA-R02-OAR-2012-0032; FRL-9675-1] received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6706. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting report prepared by the Department of State concerning international agreements other than treaties entered into by the United States to be transmitted to the Congress within the sixty-day period specified in the Case-Zablocki Act; to the Committee on Foreign Affairs.

6707. A letter from the Secretary, Department of the Treasury, transmitting as required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and pursuant to Executive Order 13313 of July 31, 2003, a six-month periodic report on the national emergency with respect to the Western Balkans that was declared in Executive Order 13219 of June 26, 2001; to the Committee on Foreign Affairs.

6708. A letter from the Secretary, Department of the Treasury, transmitting as required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), a six-month periodic report on the national emergency with respect to North Korea that was declared in Executive Order 13466 of June 26, 2008; to the Committee on Foreign Affairs.

6709. A letter from the Assistant Director for the Legislative Affairs, Consumer Financial Protection Bureau, transmitting the semiannual report on the activities of the Office of Inspector General for the period October 1, 2011 to March 31, 2012; to the Committee on Oversight and Government Reform.

6710. A letter from the Acting Chairman, Federal Deposit Insurance Corporation, transmitting in accordance with the provisions of section 17(a) of the Federal Deposit Insurance Act, the Chief Financial Officers Act of 1990, Pub. L. 101–576, and the Government Performance and Results Act of 1993, the Corporation's 2011 Annual Report; to the Committee on Oversight and Government Reform.

6711. A letter from the Chairman, National Endowment of the Arts, transmitting the Semiannual Report of the Inspector General and the Semiannual Report on Final Action Resulting from Audit Reports, Inspection Reports, and Evaluation Reports for the period October 1, 2011 through March 31, 2012; to the Committee on Oversight and Government Reform.

6712. A letter from the Chairman, National Labor Relations Board, transmitting the Board's semiannual report from the office of the Inspector General for the period October 1, 2011 through March 31, 2012; to the Committee on Oversight and Government Reform.

6713. A letter from the Senior Program Analyst, Department of Transportation, transmitting the Department's final rule — Operations In Class D Airspace [Docket No.: FAA-2011-1396] (RIN: 2120-AK10) received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6714. A letter from the Senior Program Analyst, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments [Docket No.: 30839; Amdt. No. 3476] received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6715. A letter from the Senior Program Analyst, Department of Transportation, transmitting the Department's final rule — Amendment of Area Navigation (RNAV) Route Q-130; UT [Docket No.: FAA-2012-0438; Airspace Docket No. 11-AWP-20] received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6716. A letter from the Senior Program Analyst, Department of Transportation, transmitting the Department's final rule — Amendment of Restricted Area R-2101; Anniston Army Depot, AL [Docket No.: FAA-2012-0510; Airspace Docket No. 12-ASO-17] (RIN: 2120-AA66) received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6717. A letter from the Senior Program Analyst, Department of Transportation, transmitting the Department's final rule — Customs Broker Recordkeeping Requirements Regarding Location and Method of Record Retention [USCBP-2009-0019] (RIN: 1515-AD66) (formerly RIN: 1505-AC12) received June 8, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6718. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Update of Weighted Average Interest

Rates, Yield Curves, and Segment Rates [Notice 2012-43] received June 11, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6719. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Extension of Relief and Procedures Under Notice 2010-30 and Notice 2011-16 for Spouses of U.S. Servicemembers Who are Working In or Claiming Residence or Domicile In a U.S. Territory Under the Military Spouses Residency Relief Act [Notice 2012-4113] received June 11, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6720. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Substantial Business Activities [TD 9592] (RIN: 1545-BK86) received June 11, 2012, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6721. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Surrogate Foreign Corporations [TD 9591] (RIN: 1545-BF47) received June 11, 2011, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. GRAVES of Missouri: Committee on Small business. Semiannual Report on the Activity of the Committee on Small business during the 112th Congress (Rept. 112–554). Referred to the Committee of the Whole House on the State of the Union.

Mr. HALL: Committee on Science, Space, and Technology. Third Semiannual Report of Activities of the Committee on Science, Space, and Technology for the 112th Congress (Rept. 112–555). Referred to the Committee of the Whole House on the State of the Union.

Mr. CAMP: Committee on Ways and Means. Report on the Legislative and Oversight Activities of the Committee on Ways and Means during the 112th Congress (Rept. 112–556). Referred to the Committee of the Whole House on the State of the Union.

Mr. MICA: Committee of Conference. Conference report on H.R. 4348. A bill to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes (Rept. 112–557). Ordered to be printed.

Mr. WEBSTER: Committee on Rules. House Resolution 717. Resolution providing for consideration of the bill (H.R. 5856) making appropriations for the Department of Defense for the fiscal year ending September 30, 2013, and for other purposes; providing for consideration of the bill (H.R. 6020) making appropriations for financial services and general government for the fiscal year ending September 30, 2013, and for other purposes; and providing for consideration of the conference report to accompany the bill (H.R. 4348) to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs, and for other purposes (Rept. 112–558). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. FLAKE:

H.R. 6047. A bill to amend the renewable fuel program under section 211(o) of the Clean Air Act to require the cellulosic biofuel requirement to be based on actual production; to the Committee on Energy and Commerce.

By Mr. TURNER of Ohio (for himself, Mrs. MILLER of Michigan, Mr. WHITFIELD, Mrs. HARTZLER, Mr. TIBERI, Mr. JOHNSON of Ohio, Mr. FRANKS of Arizona, Mr. AKIN, Mr. GOHMERT, Mr. NUNNELEE, Mr. PALAZZO, Mr. CONAWAY, Mr. GOWDY, Mr. CRENSHAW, Mr. LAMBORN, Mr. CHAFFETZ, Mr. BROOKS, Mr. STUTZMAN, Mr. ROKITA, Mr. PRICE of Georgia, Mr. LANKFORD, Mr. ALEXANDER, Mrs. BONO MACK, Mr. MACK, Mr. MARCHANT, Mr. NUNES, Mr. COBLE, Mr. BARTON of Texas, Mr. WOMACK, Mr. SENSENBRENNER, Mr. COFFMAN of Colorado, Mr. TERRY, Mr. PITTS, Mr. MICA, Mr. BUCHANAN, Mr. KELLY, Mr. FITZPATRICK, Mr. LANCE, Mrs. BIGGERT, Mr. POE of Texas, Mr. MCCAUL, Mr. SOUTHERLAND, Mr. LOBIONDO, Mr. HARRIS, Mr. WALBERG, Mr. LUETKEMEYER, Mr. HASTINGS of Washington, Mr. LABRADOR, Mr. CULBERSON, Mr. ROGERS of Kentucky, Mr. CAMPBELL, Mr. HARPER, Mr. CANSECO, Mr. ISSA, Mr. FARENTHOLD, Mr. FLAKE, Mr. BRADY of Texas, Mrs. BLACKBURN, Mr. CRAWFORD, Mr. POMPEO, Mr. YOUNG of Indiana, Mr. SCHILLING, Mr. SCHOCK, Mr. DUFFY, Mrs. ELLMERS, Mr. THORNBERRY, Mr. GINGREY of Georgia, Mr. COLE, Mr. BILBRAY, Mr. BONNER, Mr. LATTA, Mr. GERLACH, Mr. MCKEON, Mr. BARTLETT, Mr. GARRETT, Mr. BASS of New Hampshire, Mr. CASSIDY, Mr. YODER, Mrs. ROBY, Mr. TURNER of New York, Mrs. SCHMIDT, Mr. SMITH of New Jersey, Mrs. MCMORRIS RODGERS, Mr. MANZULLO, Mr. GARY G. MILLER of California, Mr. DIAZ-BALART, Mr. MURPHY of Pennsylvania, Mr. STIVERS, Mr. STEARNS, Mr. SHUSTER, Mr. BROUN of Georgia, Mr. WEST, Mr. KINGSTON, Mr. SHIMKUS, Mr. WESTMORELAND, Mr. WITTMAN, Mr. SCHWEIKERT, Mr. CHABOT, Mr. ROHRABACHER, Mr. CARTER, Mr. DUNCAN of Tennessee, Mr. BILIRAKIS, Ms. BUERKLE, Mr. ROONEY, Mr. HECK, Mr. HUNTER, Mrs. BACHMANN, Mr. POSEY, Mr. WILSON of South Carolina, Mr. NUGENT, Mr. BISHOP of Utah, Mr. PEARCE, Mr. MILLER of Florida, Mr. FORBES, Mr. KINZINGER of Illinois, Mr. LATOURETTE, Mr. SIMPSON, and Mrs. EMERSON):

H.R. 6048. A bill to amend the Internal Revenue Code of 1986 to repeal the individual and employer health insurance mandates; to the Committee on Ways and Means.

By Mr. FILNER:

H.R. 6049. A bill to grant a right of first refusal to the La Jolla Historical Society with respect to the sale of the La Jolla Post Office; to the Committee on Oversight and Government Reform.

By Mr. BECERRA (for himself, Mr. RANGEL, Mr. STARK, Mr. MCDERMOTT, Mr. LEWIS of Georgia, Mr. BISHOP of New York, Mr. HONDA, Ms. NORTON, Ms. BROWN of Florida, and Mr. FILNER):

H.R. 6050. A bill to amend the Internal Revenue Code of 1986 to provide taxpayer protection and assistance, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. BONO MACK:

H.R. 6051. A bill to amend certain provisions of title 49, United States Code, relating to motor vehicle safety, and for other purposes; to the Committee on Energy and Commerce.

By Mr. GRAVES of Missouri (for himself, Mr. JONES, Mr. WESTMORELAND, Mr. LONG, Mr. WOLF, and Mrs. HARTZLER):

H.R. 6052. A bill to prohibit the use of funds for the rule entitled ''Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives'' published by the Department of Homeland Security on April 2, 2012 (77 Fed. Reg. 19902); to the Committee on the Judiciary.

By Mr. MACK:

H.R. 6053. A bill to repeal the provisions of the Patient Protection and Affordable Care Act and the health-related provisions of the Health Care and Education Reconciliation Act of 2010 not declared unconstitutional by the Supreme Court; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, House Administration, Appropriations, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MACK:

H.R. 6054. A bill to prohibit funding to implement any provision of the Patient Protection and Affordable Care Act or of the health-related provisions of the Health Care and Education Reconciliation Act of 2010; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and the Workforce, the Judiciary, Natural Resources, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. REYES (for himself, Mr. CANSECO, Mr. HINOJOSA, Mrs. DAVIS of California, and Mr. GENE GREEN of Texas):

H.R. 6055. A bill to authorize the Commissioner of U.S. Customs and Border Protection to enter into reimbursable fee agreements for the provision of customs services, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STIVERS (for himself and Mr. YARMUTH):

H.R. 6056. A bill to amend the Internal Revenue Code of 1986 to extend the energy efficient appliance credit; to the Committee on Ways and Means.

By Mr. MICA:

H.R. 6057. A bill to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs; to the Committee on Transportation and Infrastructure, and in addition to the Committees on Ways and Means, Natural Resources, Science, Space, and Technology, and Energy and Commerce,

for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MICA:

H.R. 6058. A bill to provide an extension of Federal-aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund pending enactment of a multiyear law reauthorizing such programs; to the Committee on Transportation and Infrastructure, and in addition to the Committees on Natural Resources, and Science, Space, and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CANSECO (for himself, Mr. HINOJOSA, Mr. POSEY, Mr. CUELLAR, Mr. WESTMORELAND, Mr. DIAZ-BALART, and Mr. SESSIONS):

H.J. Res. 113. A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rules submitted by the Department of the Treasury and the Internal Revenue Service relating to the reporting requirements for interest that relates to deposits maintained at United States offices of certain financial institutions and is paid to certain nonresident alien individuals; to the Committee on Ways and Means.

By Mr. ISSA:

H. Res. 711. A resolution recommending that the House of Representatives find Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in contempt of Congress for refusal to comply with a subpoena duly issued by the Committee on Oversight and Government Reform; considered and agreed to.

By Ms. JACKSON LEE of Texas (for herself, Mr. CONNOLLY of Virginia, Mr. JOHNSON of Georgia, Ms. BROWN of Florida, Mrs. MALONEY, Mr. DAVIS of Illinois, and Mr. RANGEL):

H. Res. 712. A resolution recommending that the Speaker of the House of Representatives not move to proceed to the consideration of the House Resolution finding Eric H. Holder, Jr., Attorney General, U.S. Department of Justice, in contempt of Congress pursuant to the report of the Committee on Oversight and Government Reform; to the Committee on Rules.

By Mr. HASTINGS of Florida:

H. Res. 713. A resolution expressing support for the XIX International AIDS Conference (AIDS 2012) and the sense of the House of Representatives that continued commitment by the United States to HIV/AIDS research, prevention, and treatment programs is crucial to protecting global health; to the Committee on Foreign Affairs, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BERMAN (for himself and Mr. KEATING):

H. Res. 714. A resolution expressing support to end commercial whaling in all of its forms and to strengthen measures to conserve whale populations; to the Committee on Foreign Affairs, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KING of New York (for himself, Mr. ISRAEL, Mr. ACKERMAN, Mr. HINCHEY, Mr. TURNER of New York, Mr. RANGEL, Mrs. MCCARTHY of New York, and Mr. BISHOP of New York):

H. Res. 715. A resolution celebrating the 50th anniversary of the Sagamore Hill Historic Site; to the Committee on Natural Resources.

By Mr. SESSIONS (for himself, Mr. BUCHANAN, Ms. BUERKLE, Mr. BUCSHON, Mr. CALVERT, Mr. CANSECO, Mrs. CAPITO, Mr. CARTER, Mr. CASSIDY, Ms. CASTOR of Florida, Mr. CHABOT, Mr. CHAFFETZ, Mr. COBLE, Mr. COFFMAN of Colorado, Mr. COLE, Mr. CONAWAY, Mr. COSTELLO, Mr. CRAVAACK, Mr. CRAWFORD, Mr. CRENSHAW, Mr. CULBERSON, Mr. BURGESS, Mr. DENT, Mr. DIAZ-BALART, Mr. DOLD, Mr. DUFFY, Mrs. ELLMERS, Mrs. EMERSON, Mr. FARENTHOLD, Mr. FLAKE, Mr. FLEISCHMANN, Mr. FLEMING, Mr. FORBES, Mr. FORTENBERRY, Ms. FOXX, Mr. FRANKS of Arizona, Mr. FRELINGHUYSEN, Mr. GARDNER, Mr. GARRETT, Mr. GERLACH, Mr. STIVERS, Mr. SAM JOHNSON of Texas, Mr. BARTON of Texas, Mr. MCCAUL, Mr. FLORES, Mr. NEUGEBAUER, Mr. ROE of Tennessee, Mr. GOHMERT, Mr. FITZPATRICK, Mr. ADERHOLT, Mr. CUELLAR, Mr. GRIFFIN of Arkansas, Mr. CAPUANO, Mr. JOHNSON of Illinois, Mr. SENSENBRENNER, Mr. PALAZZO, Mr. LANDRY, Mr. BOUSTANY, Mr. GALLEGLY, Mr. MCKEON, Mrs. BACHMANN, Mr. UPTON, Mr. CAMP, Mr. HEINRICH, Mr. DREIER, Mr. AMODEI, Mr. AUSTRIA, Mr. BACHUS, Mr. BENISHEK, Mr. BERG, Mrs. BIGGERT, Mr. BILBRAY, Mr. BILIRAKIS, Mr. BISHOP of Utah, Mrs. BLACK, Mrs. BLACKBURN, Mr. BONNER, Mr. BOREN, Mr. BROUN of Georgia, Mr. TERRY, Mr. THOMPSON of Pennsylvania, Mr. THORNBERRY, Mr. TIBERI, Mr. TIPTON, Mr. WALDEN, Mr. WALSH of Illinois, Mr. WALZ of Minnesota, Mr. WAXMAN, Mr. WEBSTER, Mr. WEST, Mr. WESTMORELAND, Mr. WHITFIELD, Mr. MURPHY of Pennsylvania, Mr. NUGENT, Mr. NUNNELEE, Mr. OLSON, Mr. PEARCE, Mr. PITTS, Mr. POMPEO, Mr. POSEY, Mr. PRICE of Georgia, Mr. QUAYLE, Mr. REICHERT, Mr. RENACCI, Mr. RIBBLE, Mr. RIGELL, Mr. RIVERA, Mrs. ROBY, Mr. ROGERS of Alabama, Mr. ROGERS of Michigan, Mr. ROHRABACHER, Mr. ROKITA, Mr. ROSKAM, Ms. ROS-LEHTINEN, Mr. ROSS of Florida, Mr. ROYCE, Mr. RUNYAN, Mr. RUPPERSBERGER, Mr. RYAN of Wisconsin, Mr. SCHILLING, Mrs. SCHMIDT, Mr. SCHOCK, Mr. AUSTIN SCOTT of Georgia, Mr. SERRANO, Mr. SHIMKUS, Mr. SHULER, Mr. SHUSTER, Mr. SIMPSON, Mr. SMITH of Nebraska, Mr. SMITH of New Jersey, Mr. SMITH of Texas, Mr. SOUTHERLAND, Mr. HERGER, Ms. HERRERA BEUTLER, Mr. HUELSKAMP, Mr. HUIZENGA of Michigan, Mr. HUNTER, Mr. HURT, Mr. ISSA, Mr. JOHNSON of Ohio, Mr. JORDAN, Mr. KELLY, Mr. KING of Iowa, Mr. KING of New York, Mr. KINGSTON, Mr. KINZINGER of Illinois, Mr. KLINE, Mr. LABRADOR, Mr. LANCE, Mr. LANKFORD, Mr. LATHAM, Mr. LATOURETTE, Mr. LATTA, Mr. LUETKEMEYER, Mr. LIPINSKI, Mr. LOBIONDO, Mr. LUCAS, Mrs. LUMMIS, Mr. MACK, Mr. MANZULLO, Mr. MARCHANT, Mr. MARINO, Mr. MCCARTHY of California, Mr. MCCLINTOCK, Mr. MCCOTTER, Mr. MCDERMOTT, Mr. MCHENRY, Mr. MEEHAN, Mr. MICA, Mr. MILLER of Florida, Mr. MORAN, Mr. MULVANEY, Mr. GIBBS, Mr. GIBSON, Mr. GOSAR, Mr. GOWDY, Ms. GRANGER, Mr. GRAVES of Missouri, Mr. GRAVES of Georgia, Mr. GRIMM, Mr. GUTHRIE, Mr. HALL, Mr. HARRIS, Mr. HASTINGS of Washington, Ms. HAYWORTH, Mr. HECK, Mr. HENSARLING, Mr. WILSON of South Carolina, Mr. WOMACK, Mr. WOODALL, Mr. YODER, Mr. YOUNG of Florida, Mr. YOUNG of Indiana, Mr. ANDREWS, Mr. STUTZMAN, Mrs. BONO MACK, Mr. BROOKS, and Mr. REHBERG):

H. Res. 716. A resolution expressing support for designation of August 1, 2012, as ''National Eagle Scout Day''; to the Committee on Oversight and Government Reform.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

235. The SPEAKER presented a memorial of the House of Representatives of the State of Michigan, relative to House Resolution No. 215 urging the Congress to reconsider the recommendations of the 2012 Air Force Structure Change Report; to the Committee on Armed Services.

236. Also, a memorial of the House of Representatives of the State of Hawaii, relative to House Resolution No. 167 urging the Armed Forces Committee and Subcomittee on Military Personnel to act favorably on H.R. 2148; to the Committee on Armed Services.

237. Also, a memorial of the House of Representatives of the State of Louisiana, relative to House Concurrent Resolution No. 11 memorializing the Congress to defund and appropriate no future funding to Planned Parenthood; to the Committee on Energy and Commerce.

238. Also, a memorial of the Senate of the State of Louisiana, relative to Senate Concurrent Resolution No. 73 urging the President and the Congress to maintain steadfast support for the State of Israel; to the Committee on Foreign Affairs.

239. Also, a memorial of the House of Representatives of the State of Louisiana, relative to House Concurrent Resolution No. 42 memorializing the Congress to take such actions as are necessary to encourage and enable the United States Army Corps of Engineers to expedite their wetlands permitting process; to the Committee on Transportation and Infrastructure.

240. Also, a memorial of the House of Representatives of the State of Louisiana, relative to House Concurrent Resolution No. 7 memorializing the Congress to take such actions as necessary to assist the the Vermilion Parish Police Jury; to the Committee on Transportation and Infrastructure.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 7 of rule XII of the Rules of the House of Representatives, the following statements are submitted regarding the specific powers granted to Congress in the Constitution to enact the accompanying bill or joint resolution.

By Mr. FLAKE:

H.R. 6047.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8

By Mr. TURNER of Ohio:

H.R. 6048.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section, 8, Clause 1 of the U.S. Constitution, as the Supreme Court of the United States has held that the imposition of the burdensome mandate on hardworking American taxpayers is an action Congress may take under its power to tax, and that

this bill seeks to repeal sections of title 26 U.S.C., the Internal Revenue Code.

By Mr. FILNER:

H.R. 6049.

Congress has the power to enact this legislation pursuant to the following:

The constitutional authority of Congress to enact this legislation is provided by Article I, Section 8 of the United States Constitution (Clauses 7 and 18), which grants Congress the power to establish Post Offices and post Roads and to make all laws necessary and proper to execute these powers.

By Mr. BECERRA:

H.R. 6050.

Congress has the power to enact this legislation pursuant to the following:

The Congress enacts this bill pursuant to Clause 1 of Section 8 of Article I of the United States Constitution and Amendment XVI of the United States Constitution.

By Mrs. BONO MACK:

H.R. 6051.

Congress has the power to enact this legislation pursuant to the following:

Congress has the power to enact this legislation pursuant to clause 3 of section 8 of article I of the Constitution.

By Mr. GRAVES of Missouri:

H.R. 6052.

Congress has the power to enact this legislation pursuant to the following:

Clause 4 of Section 8 of Article I of the Constitution, in creating the authority of the Congress, ''To establish an uniform Rule of Naturalization.''

and

The 14th Amendment of the Constitution stating that, ''All persons born or naturalized in the United States,'' are, ''citizens of the United States and of the State wherein they reside.''

By Mr. MACK:

H.R. 6053.

Congress has the power to enact this legislation pursuant to the following:

Clause 1 of Section 8 of Article I of the United States Constitution.

By Mr. MACK:

H.R. 6054.

Congress has the power to enact this legislation pursuant to the following:

Clause 1 of Section 8 of Article I of the United States Constitution and Clause 7 of Section 9 of Article I of the United States Constitution.

By Mr. REYES:

H.R. 6055.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section. 8.

Clause 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Clause 2: To borrow Money on the credit of the United States;

Clause 3: To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Clause 4: To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

Clause 5: To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Clause 6: To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Clause 7: To establish Post Offices and post Roads;

Clause 8: To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Clause 9: To constitute Tribunals inferior to the supreme Court;

Clause 10: To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

Clause 11: To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Clause 12: To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Clause 13: To provide and maintain a Navy;

Clause 14: To make Rules for the Government and Regulation of the land and naval Forces;

Clause 15: To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Clause 16: To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Clause 17: To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

Clause 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

By Mr. STIVERS:

H.R. 6056.

Congress has the power to enact this legislation pursuant to the following:

Clause 1, Section 8 of Article 1 of the United States Constitution which reads: ''The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts, and provide for the common Defense and General Welfare of the United States; but all Duties and Imposts and Excises shall be uniform throughout the United States.''

By Mr. MICA:

H.R. 6057.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8 of the United States Constitution, specifically Clause 1, Clause 3, Clause 7, and Clause 18.

By Mr. MICA:

H.R. 6058.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8 of the United States Constitution, specifically Clause 1, Clause 3, Clause 7, and Clause 18.

By Mr. CANSECO:

H.J. Res. 113.

Congress has the power to enact this legislation pursuant to the following:

Congress has authority to enact this legislation pursuant to Article I, Section 8, Clause 3 of the constitution. Should this IRS rule go into effect, commerce will likely be significantly impacted as deposits are pulled from U.S. financial institutions, thereby decreasing capital available for lending.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 23: Mr. LEWIS of Georgia and Mr. LIPINSKI.

H.R. 718: Mr. TURNER of New York.

H.R. 719: Mr. BRALEY of Iowa.

H.R. 733: Mr. CHAFFETZ, Mr. WHITFIELD, and Mr. BROOKS.

H.R. 860: Mr. KELLY.

H.R. 1117: Mr. SIMPSON.

H.R. 1219: Mr. LONG.

H.R. 1283: Mr. CHANDLER, Mr. TONKO, and Mr. LAMBORN.

H.R. 1322: Mr. HINCHEY and Mr. HOLT.

H.R. 1327: Mr. REHBERG, Mr. COLE, Mr. AUSTIN SCOTT of Georgia, and Mr. MCGOVERN.

H.R. 1370: Mr. ROHRABACHER and Mr. PEARCE.

H.R. 1464: Ms. ROS-LEHTINEN and Mr. STARK.

H.R. 1475: Mr. VAN HOLLEN.

H.R. 1506: Mr. TURNER of New York.

H.R. 1549: Mr. BROUN of Georgia.

H.R. 1653: Mr. OLSON.

H.R. 1675: Ms. HANABUSA, Mr. DUFFY, Ms. JENKINS, Mr. CAPUANO, and Ms. BALDWIN.

H.R. 1956: Mr. GOHMERT, Mr. FLAKE, and Mr. AUSTIN SCOTT of Georgia.

H.R. 2014: Mrs. CAPPS.

H.R. 2069: Mr. SMITH of Washington.

H.R. 2108: Mr. LANCE.

H.R. 2492: Mr. COFFMAN of Colorado.

H.R. 2580: Mr. RUNYAN.

H.R. 2655: Mr. GIBSON.

H.R. 2698: Mr. ELLISON.

H.R. 2866: Mr. RAHALL.

H.R. 2969: Mr. PAULSEN and Mr. THOMPSON of Mississippi.

H.R. 3017: Mr. FARR.

H.R. 3146: Ms. HERRERA BEUTLER.

H.R. 3187: Mr. CALVERT, Mr. SIMPSON, Mr. BUCSHON, and Mr. UPTON.

H.R. 3269: Mr. MILLER of North Carolina, Mr. LATOURETTE, and Mr. BARLETTA.

H.R. 3343: Mr. GONZALEZ.

H.R. 3458: Mr. JOHNSON of Illinois.

H.R. 3506: Ms. ROYBAL-ALLARD.

H.R. 3510: Mr. GRIFFIN of Arkansas and Mr. LOBIONDO.

H.R. 3511: Mr. NUNNELEE.

H.R. 3591: Ms. KAPTUR and Mr. FATTAH.

H.R. 3612: Ms. JACKSON LEE of Texas.

H.R. 3627: Mr. BARLETTA.

H.R. 3797: Mr. ANDREWS and Mr. SIRES.

H.R. 3798: Ms. RICHARDSON, Mr. DEUTCH, Ms. ROYBAL-ALLARD, Ms. EDDIE BERNICE JOHNSON of Texas, and Mr. QUIGLEY.

H.R. 3803: Mr. BOREN and Mr. REED.

H.R. 3809: Mr. SIRES, Mr. LANCE, Mr. ANDREWS, and Mr. ROTHMAN of New Jersey.

H.R. 3819: Mr. QUAYLE, Mr. FLEMING, Mr. NEUGEBAUER, Mr. DUNCAN of South Carolina, Mr. GRAVES of Georgia, Mr. MULVANEY, and Mr. GOHMERT.

H.R. 3860: Mr. MCDERMOTT.

H.R. 3861: Mr. WALBERG.

H.R. 3993: Mr. GENE GREEN of Texas.

H.R. 4077: Mr. COLE.

H.R. 4155: Mrs. DAVIS of California.

H.R. 4290: Mr. HONDA and Mr. SMITH of Washington.

H.R. 4305: Mr. CONNOLLY of Virginia and Mr. KISSELL.

H.R. 4367: Mr. COBLE, Mr. WITTMAN, Mr. PENCE, Ms. FOXX, and Mr. PRICE of North Carolina.

H.R. 4373: Mr. MANZULLO and Mr. DAVIS of Illinois.

H.R. 4643: Mr. SMITH of Washington.

H.R. 4965: Mr. POE of Texas and Mr. KING of Iowa.

H.R. 5186: Ms. PINGREE of Maine.

H.R. 5542: Mr. TONKO.

H.R. 5707: Ms. RICHARDSON and Mr. COHEN.

H.R. 5719: Mr. KUCINICH.

H.R. 5787: Ms. DELAURO.

H.R. 5796: Mr. SHERMAN.

H.R. 5817: Mr. LONG.

H.R. 5822: Mr. POE of Texas.

H.R. 5848: Mr. HIMES.

H.R. 5850: Mrs. MALONEY.
H.R. 5851: Mr. HONDA.
H.R. 5910: Mr. REICHERT.
H.R. 5911: Mr. PAULSEN.
H.R. 5912: Mr. RIBBLE.
H.R. 5943: Mr. THOMPSON of Pennsylvania.
H.R. 5948: Mr. STIVERS.
H.R. 5952: Mrs. LUMMIS and Mr. POSEY.
H.R. 5953: Mrs. MYRICK and Mr. HUNTER.
H.R. 5955: Mr. COSTELLO.
H.R. 5963: Mr. FRANKS of Arizona, Mr. PAULSEN, Mr. AKIN, and Mr. POSEY.
H.R. 5969: Mr. ROSS of Florida and Mrs. NOEM.
H.R. 5970: Mr. ROSS of Florida and Mrs. NOEM.
H.R. 5975: Mr. BLUMENAUER.
H.R. 5978: Mr. TOWNS and Mrs. NAPOLITANO.
H.R. 5993: Mr. JOHNSON of Illinois.
H.R. 5997: Mr. KING of New York.
H.R. 5998: Mr. PRICE of Georgia.
H.R. 6009: Mr. BISHOP of Utah.
H.R. 6025: Mr. QUAYLE and Mr. CUELLAR.
H.R. 6042: Ms. NORTON.
H. J. Res. 90: Mr. STARK, Mr. CICILLINE, and Mr. SMITH of Washington.
H. Con. Res. 119: Ms. SCHAKOWSKY.
H. Con. Res. 127: Mr. FORBES and Mr. SCOTT of South Carolina.
H. Con. Res. 129: Ms. GRANGER, Mr. COLE, Mr. STIVERS, Mr. CALVERT, Mr. BERG, Mr. GARAMENDI, and Mr. GIBSON.
H. Res. 144: Mr. CLAY.
H. Res. 367: Mr. MILLER of Florida.
H. Res. 609: Mr. CONNOLLY of Virginia.
H. Res. 618: Ms. MCCOLLUM, Mr. COHEN, Mr. SABLAN, Mr. WOLF, Mrs. SCHMIDT, and Mr. MCINTYRE.
H. Res. 623: Mr. MILLER of Florida and Mr. POE of Texas.
H. Res. 689: Mr. ROSS of Arkansas, Mr. DEFAZIO, Mr. ENGEL, Mr. RUSH, Mr. BUTTERFIELD, Mr. CHANDLER, Mr. GARAMENDI, Mr. HONDA, Ms. MATSUI, Ms. BASS of California, Ms. RICHARDSON, Mr. THOMPSON of Mississippi, Mr. SHULER, Mr. SHERMAN, Ms. BERKLEY, Mr. KIND, Mr. PETERSON, Mr. KISSELL, Mr. WALZ of Minnesota, Mr. COHEN, Ms. CHU, Ms. SCHAKOWSKY, Ms. VELÁZQUEZ, Mr. LEWIS of Georgia, Mr. CLEAVER, Mr. LARSON of Connecticut, Mr. GENE GREEN of Texas, Mr. CROWLEY, Ms. SLAUGHTER, Mr. KEATING, Mr. BRADY of Pennsylvania, Mr. MARKEY, Mr. PALLONE, Mr. QUIGLEY, Mr. TOWNS, Mr. LANGEVIN, Mr. DICKS, Mr. OLVER, Mr. PERLMUTTER, Mr. RAHALL, Mr. DOYLE, Mr. THOMPSON of California, Mr. DEUTCH, Mr. SCOTT of Virginia, Mr. WELCH, Ms. SUTTON, Ms. BONAMICI, Mr. KILDEE, Ms. SCHWARTZ, Mr. CRITZ, Mrs. DAVIS of California, Mr. ELLISON, Mr. PIERLUISI, Ms. BALDWIN, Mr. VAN HOLLEN, Mr. LOEBSACK, Mr. SERRANO, and Mr. LUJÁN.
H. Res. 695: Mr. GOHMERT, Mrs. BLACKBURN, Mr. PITTS, Mr. WALBERG, Mr. WILSON of South Carolina, Mrs. LUMMIS, Mr. ROE of Tennessee, Mr. DUNCAN of South Carolina, and Mr. HARRIS.