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Senate

The Senate met at 11 a.m. and was called to order by the Honorable SHERROD BROWN, a Senator from the State of Ohio.

PRAYER

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

Let us pray.

O God, whose mercy exceeds our sins, we thank You for the failures that drive us again and again to You for forgiveness and restoration. May we see in our setbacks opportunities for growth and progress.

Lord, change our lawmakers not from what they were but toward what they really are: generous, wise, and responsible stewards of Your bountiful grace. Keep us from becoming a country that wants to feel good rather than be good, as You empower us to live worthy of our forebears who sacrificed so much for freedom.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SHERROD BROWN led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 20, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SHERROD BROWN, a Senator from the State of Ohio, to perform the duties of the Chair.

PATRICK J. LEAHY,
President pro tempore.

Mr. BROWN of Ohio thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

MODIFICATIONS TO AMENDMENTS—H.R. 1

Mr. REID. Mr. President, I ask unanimous consent that the clerk be authorized to modify the instruction lines on amendments proposed to the substitute amendment No. 3395.

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will resume consideration of H.R. 1, which is the legislative vehicle for the supplemental appropriations bill involving the terrible storm that struck New England. The filing deadline for the first-degree amendments is 1 p.m. today. We will work on an agreement for amendments in order to complete action on the bill.

We are also hopeful that we can complete the extremely important Defense authorization bill today, and we are moving forward on FISA today. We are moving forward one way or the other. I hope we can get an agreement to move forward. If not, we will move forward without an agreement.

We will need everyone to pay attention as they always do but maybe more so today. There are a lot of things going on here, and people need to understand that we have things to do if we want to be able to get home for a few days for Christmas, even though we will be back on the Thursday after Christmas.

TRIBUTES TO DEPARTING SENATORS

JEFF BINGAMAN

Mr. REID. Mr. President, I wish to take a few minutes today to honor my colleague, the senior Senator from New Mexico, JEFF BINGAMAN, as he retires from a long career of service to our country.

For 30 years Senator BINGAMAN has been a dedicated representative of the people of New Mexico, but for 26 of those years he was the junior Senator from New Mexico. The only person I know of who was a junior Senator longer than Senator BINGAMAN was Fritz Hollings. He was a junior Senator for many decades to Strom Thurmond. But 26 years as a junior Senator still makes you a fairly senior Senator. JEFF served alongside Senator Pete Domenici, the longest serving Senator in New Mexico's history. Until 2009 he was the most senior junior Senator.

JEFF BINGAMAN has never been one to get hung up on titles and credits. If there was ever a conscience of this body, it is JEFF BINGAMAN, a man who has been called by others, including Byron Dorgan, a workhorse. That is really true. For three decades he has quietly but diligently fought for the people of New Mexico and this country.

American industrialist Henry Kaiser once gave this bit of advice: ''When your work speaks for itself, don't interrupt.'' And that is JEFF BINGAMAN. That could have been written for JEFF BINGAMAN by Henry Kaiser. That has been JEFF BINGAMAN's motto for years. He is not one for flashy press conferences. Most of the time he is too busy.

JEFF learned humility in the small town of Silver City, NM, where he grew up. His father was a professor and his

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

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mom a teacher, and they instilled in him a love and appreciation for education—and that is an understatement. He got his bachelor's degree from Harvard and his law degree from Stanford. Those are two of the finest educational institutions in the world, and he has a degree from both of them, Harvard and Stanford.

At Stanford, where he was going to law school, he met his wonderful wife Anne. I have such warmth for this woman. We have traveled together. I can remember trips we took on Senate codels; she was always the life of the party. She is a great match for JEFF—JEFF being quiet, subdued; Anne, not always so. I love them both. Anne is a political powerhouse in her own right. She served 3 years as head of the Antitrust Division of the Department of Justice under President Bill Clinton.

After they finished their law degrees, JEFF and Anne returned to New Mexico, and they both entered the private practice of law. There, JEFF spent 6 years in the Army Reserve, and at that time he and Anne had their son John. Senator BINGAMAN served a year as assistant attorney general before being elected attorney general of New Mexico in 1978. Four years later he was elected to the U.S. Senate.

As time evolves here, you see it in the face of our children. I can remember that when I first came to this body, JEFF had already been here 4 years. We had our Senate retreats, and there was little John, and I watched him grow as we did the retreats. I saw him just a short time ago, this handsome young man, now working on his own in New York in a very important job.

In addition to being a committed advocate for the people of New Mexico, JEFF has been a distinguished chairman of the Energy and Natural Resources Committee. As chairman, he has pushed for solutions to perhaps the greatest crisis of our time: global climate change. He has run into brick walls many times. As the Presiding Officer knows, it has been difficult to get much done. But it is not because JEFF BINGAMAN hasn't tried. I am so disappointed that JEFF is leaving that committee with so much unfinished work. Certain Senators have held up hundreds of bills in that committee. What a shame. But that is what has happened.

The Energy Policy Act of 2005—passed thanks to Senator BINGAMAN's leadership—changed the Federal Government's role in energy policy. It created energy efficiency and renewable tax credits that have grown the crucial green energy industry. He led that charge. Two years later JEFF guided Congress to raise vehicle fuel efficiency standards for the first time in 32 years.

Senator BINGAMAN also serves on the Finance Committee. He is tireless there, whether working on ObamaCare—and he was instrumental in the progress of that, working with Senator BAUCUS, Senator CONRAD, and others. He has also served on the Joint Economic Committee. He has been a valued Democratic Member of this body. In the caucus, he has been terrific.

He has been someone I can call upon to ask for advice. Over the years we have served together, he didn't come and visit with me often, but when JEFF BINGAMAN wanted to see me, I knew immediately that he had thought through and knew what he wanted to talk about and knew what he wanted me to help him with. I think so much of him, I admire him, and I appreciate him. I will always remember this good man and the work he has done. I am sorry to see this brilliant, hard-working leader depart this body.

When JEFF announced his retirement a couple years ago, this is what he said:

> It is not easy to get elected to the Senate, and it is not easy to decide to leave the Senate. There is important work that remains to be done. That is true today, and it will be the case at the end of this Congress. It will be true at the end of every future Congress as well.

Again, he hit the mark: There is plenty of important work left to be done. I am only sorry he won't be here to help us do that work.

I congratulate Senator BINGAMAN and his wife Anne on their long, productive careers. I wish them the very best in the years to come.

RECOGNITION OF THE REPUBLICAN LEADER

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

PLAN B

Mr. MCCONNELL. Mr. President, I wish to start out today with a little context.

For more than a year, President Obama and Democrats in Congress have known, as well as I have, that every single taxpayer is scheduled to get slammed with an automatic tax hike on January 1, and for an entire year, they have been running out the clock.

Think about it. For President Obama, there is no better outcome than for taxes to go up on absolutely everybody. Why do I say that? Why does the President want taxes to go up on absolutely everybody? Because, frankly, that is the only way to pay for the big government this President wants. You have to raise taxes on everybody—the super-rich, the rich, the middle class, the lower class—you name it. Everybody has to have a tax increase because if all you do is whack the so-called rich, you only get enough money for about a week of government. If all you do is whack the super-rich, you only get enough money for about a week of government. So let's be clear about this matter. He wants to soak everybody, and there is only one way to do it, and that is exactly what he gets if we do nothing.

If that wasn't obvious before this week, it should be perfectly obvious now. Here we are less than a week before Christmas, and what is the President doing? What is his quarterback here in the Senate, the majority leader, doing? They have been playing Lucy and the football with the American people for months. They have said no to every single proposal that has been offered to avoid this tax hike, including their own. They are running out the clock, moving the goalposts, sitting on their hands. They aren't doing anything.

Well, I say enough. Enough. The time for games is over. The President may want to soak the American people to fund his vision of a social welfare state, but we are not going to let him do it.

Later today Republicans in the House will pass a bill that protects more than 99 percent—99 percent—of Americans from the tax hike Democrats want to slap them with within 2 weeks. The House bill will protect 99 percent of America's taxpayers from the tax hike that is coming in 2 weeks.

As I have said endlessly, we don't want to see taxes go up on anybody or anything. The problem isn't that government taxes too little, it is that it spends too much. The problem isn't that government taxes too little, it is that it spends too much.

But the President is determined to leap off the cliff. Well, we are not going to let him take the middle class with him. We are going to do everything we can to protect the American people from this scheme.

There is no reason in the world that Democrats actually shouldn't join us. I have literally a book of quotes from Democrats saying they want to protect the middle class.

It was the theme of the recently completed campaign. Well, here is your chance. We are at the end of the line. We have one chance to put your money where your mouth is and that is by voting on the bill the House sends over later today.

It will be, obviously, up to the majority leader to act. Will the majority leader act to protect the American taxpayers? Will he sit on his hands and do absolutely nothing? Will the Senate just sit back and watch the tax rates go up or will the Senate act? Enough is enough. Let's get this done. Let's show the American people we are working on their behalf. It is time to act to prevent this tax increase on 99 percent of America's taxpayers.

I yield the floor.

RESERVATION OF LEADER TIME

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

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the

Senate will resume consideration of H.R. 1, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1) making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes.

Pending:

Reid amendment No. 3395, in the nature of a substitute.

Reid amendment No. 3396 (to amendment No. 3395), to change the enactment.

Reid amendment No. 3397 (to amendment No. 3396), of a perfecting nature.

Reid amendment No. 3398 (to the language proposed to be stricken by amendment No. 3395), to change the enactment date.

Reid amendment No. 3399 (to amendment No. 3398), of a perfecting nature.

Reid motion to commit the bill to the Committee on Appropriations, with instructions, Reid amendment No. 3400, to change the enactment date.

Reid amendment No. 3401 (to (the instructions) amendment No. 3400), of a perfecting nature.

Reid amendment No. 3402 (to amendment No. 3401), of a perfecting nature.

Mr. BARRASSO. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

TRIBUTES TO DEPARTING SENATORS

BEN NELSON

Mr. HARKIN. Mr. President, with the retirement of Senator BEN NELSON at the close of the 112th Congress, the Senate will lose one of its most respected members, and a distinguished career in formal public service will come to an end. I use that adjective ''formal,'' because it's hard to imagine BEN NELSON not finding new avenues for public service as a private citizen in the years ahead.

Senator NELSON and I come from neighboring States in the rural, upper Midwest, and we have much in common. But we differ in at least one respect: I come from the small town of Cumming, IA, population 351; BEN comes from the big city, McCook, NE, population 8,000.

Senator NELSON is often described as one of the most conservative Democrats in the Senate, frequently voting with the minority party. I prefer to describe him simply as the most independent Democrat in the Senate, a progressive at heart who—like so many from our part of the country—is also deeply imbued with respect for traditional values and fiscal prudence.

As we all know, Senator NELSON prides himself on reaching across the aisle to get things done. He is a pragmatist, not a partisan. He has never allowed ideology or party to stand in his way of doing what he believes is right for Nebraska and the United States of America.

As my colleague on the Committee on Agriculture, Nutrition, and Forestry, Senator NELSON has been a passionate advocate for family farms and rural America, and he has been a leading advocate for increasing the use of clean, renewable biofuels in order to decrease our Nation's dependence on foreign energy sources.

As a member of both the Committee on Armed Services and the Committee on Veterans Affairs, no one has been a stronger supporter of both active duty and retired servicemembers.

BEN NELSON has been a successful CEO of an insurance company, a popular two-term governor of Nebraska, and, for the last 12 years, an accomplished and effective United States Senator. He has been a wonderful hunting colleague of mine on more than one occasion.

Our friendship, of course, will continue. And I wish BEN and Diane the very best in the years ahead.

JIM WEBB

Mr. President, in these final days of the 112th Congress, the Senate is bidding farewell to a very special member, the junior Senator from Virginia, Senator JIM WEBB.

He came to this body with unique and extraordinary credentials: a graduate of the Naval Academy and first in his class of 243 at the Marine Corps officer school at Quantico, a much-decorated combat veteran of the Vietnam War, and Secretary of the Navy during the Reagan administration.

I would point out one more of his sterling credentials. I guess I can say this now, because he is retiring, and a political opponent will not use it against him: JIM WEBB is an intellectual with a passion for ideas and knowledge. For goodness sake, he writes books, excellent books, the kind that win glowing reviews in the New York Times, and get turned into documentaries on the Smithsonian Channel.

Senator WEBB has put this past experience to superb use here in the Senate as an active member of the Committee on Armed Services, the Committee on Veterans Affairs, and the Committee on Foreign Affairs.

To his great credit, before coming to the Senate, he was an outspoken critic of the invasion of Iraq, warning that it would be a unilateral war with no exit strategy. After the invasion, he was equally outspoken in challenging the Bush administration's conduct of that war.

At the same time, as a member of the Committee on Veterans Affairs, he worked hard to pass legislation to provide enhanced education benefits for veterans, a 21st century GI Bill, for those who have served in the military since the attacks of 9/11.

I admire JIM WEBB as a friend and colleague. I have the greatest respect for his life-long commitment to protecting America's national security, and fighting for economic and social justice here at home. There is no question in my mind that JIM will find other avenues for public service in the years ahead. I certainly wish JIM and Hong Le all the best in the years ahead.

JOE LIEBERMAN

Mr. President, with the close of the 112th Congress, our friend and colleague Senator JOE LIEBERMAN is retiring after nearly a quarter century of dedicated service in this body to the people of Connecticut and the United States.

As we all know, Senator LIEBERMAN is a fiercely independent Senator who prides himself on speaking his conscience and reaching across party lines in order to get things done. He is a pragmatist, not a partisan. Yet he has never allowed his ideology or his party or what is popular to stand in the way of doing what he believes is right for Connecticut and the United States of America.

In the years since Senator LIEBERMAN left the Democratic Party to become an independent, he has sometimes disagreed with his colleagues on this side of the aisle, but he has never been disagreeable. To the contrary, he has been unfailingly decent, gracious, and reasoned. He has been unfailingly a gentleman and a friend, a person with a great sense of humor and always has a smile. It is these sterling personal qualities that are a big reason he will be greatly missed by Senators on both sides of the aisle.

During his four terms in this body, Senator LIEBERMAN has earned a reputation as one of the Senate's most influential and knowledgeable voices on interests of national security. In the wake of the attacks of 9/11, he was the lead sponsor of the bill to establish the Department of Homeland Security. As chairman of Homeland Security and Governmental Affairs, Senator LIEBERMAN has been a vigilant leader in safeguarding America.

Throughout his distinguished tenure in this body—and before that as a Connecticut State senator and attorney general—JOE LIEBERMAN has been a proud and principled progressive with a passion for social and economic justice for all Americans.

To cite just one example: Senator LIEBERMAN deserves enormous credit for introducing and successfully championing legislation to repeal the military's discriminatory don't ask, don't tell policy, which banned patriotic gay and lesbian Americans from serving openly in our Armed Forces.

As we all know, JOE LIEBERMAN is a person of deep faith, a faith that inspires him to public service and informs his progressive vision for America. Last January, when he announced his decision to retire, he said:

I go forward with a tremendous sense of gratitude for the opportunities I have had to make a difference.

With Senator LIEBERMAN's retirement in the days ahead, a truly distinguished career in formal public service will come to an end. I use the adjective formal because it is hard to imagine that JOE LIEBERMAN will not be finding new avenues for public service as a private citizen.

Senator LIEBERMAN's career in this body will end, but our friendship will continue. I know that his smile and his gracious unfailingly gentlemenly ways will also continue. I wish JOE and Hadassah much happiness in the years ahead.

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

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

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

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

Mr. NELSON of Nebraska. First, I want to thank my colleague and neighbor Senator HARKIN for his timely remarks, and particularly for noting that we have been hunting partners. As a matter of fact, that has been in the news today. Not only has Senator HARKIN noted our exploits together, but in this morning's Washington Post the senior Senator from New York noted that I have taken him pheasant hunting in Nebraska as well. I am going to be known not only for my hair but perhaps for hunting as well, so I appreciate that.

Mr. HARKIN. Would the Senator yield?

Mr. NELSON of Nebraska. Of course.

Mr. HARKIN. The Senator has been a great friend. I enjoyed hunting with my friend before, and I read that in the paper before about Senator SCHUMER going out.

Here is a real test for my friend from Nebraska: Aren't I a better shot than CHUCK SCHUMER?

Mr. NELSON of Nebraska. He noted that he learned to shoot at camp and that he was a marksman, so that is probably a dispute I should not get in the middle of.

Mr. HARKIN. No, the Senator doesn't want to get in the middle of that.

Mr. NELSON of Nebraska. I thank the Senator very much for his kind remarks.

It is, obviously, a difficult time to speak about leaving the Senate, and I did that earlier. I leave with a great deal of melancholy and with a lot of friends and a lot of hope for the future of our country.

DAN INOUYE

I rise today to express my support for passage of a 5-year farm bill and call on the House to act on this critical piece of legislation before Congress adjourns this year.

However, first I would like to briefly note how sorry I am at this moment—as I know we all are—about the passing of our good friend, Senator Dan Inouye. I would like to briefly reiterate the sentiments expressed by a number of my colleagues.

Senator Inouye was a man of courage and wisdom. He represented his State and country proudly. He will be sincerely missed.

As everyone knows, today Senator Inouye lies in state just a few steps away from this Chamber. It is an honor the very few—only 31—have ever received. I feel privileged to have had the opportunity to serve with the Senator. I thank him for his friendship and guidance and offer the most sincere condolences to his family.

THE FARM BILL

I appreciate the opportunity to make those remarks, and I would now like to turn to the farm bill, which is a critical piece of legislation in the Senate. We produced a bipartisan bill that cuts spending by $23 billion. Agriculture represents 2 percent of the Nation's budget, and $23 billion represents 2 percent of the spending cuts proposed in the deficit legislation Congress worked on last year but could not pass because of extreme partisanship.

As we work in these final days to reach a deal on how best to reduce spending in government and set a trajectory for the future, I am disappointed that the House was unable, or perhaps unwilling, to follow the example the Senate has given. By moving forward in passing a farm bill, we would save money, create a market-oriented safety net, eliminate direct farm subsidy payments, streamline, simplify, and consolidate programs. It would also create jobs our economy needs to grow.

I am disappointed this is not moving forward. The House's inaction is causing a continuing uncertainty for our Nation's producers as they begin to plan for the next planting year. It also affects our financial institutions which provide lending for our farmers, ranchers, and small-town rural businesses that benefit from the commerce provided by a strong agricultural economy.

Unfortunately, this comes at a time when farms throughout the entire State of Nebraska and across the country are also dealing with the worst drought conditions since the 1930s. The Senate farm bill addresses this crisis through the elimination of subsidies, replacing them with the Agriculture Risk Coverage, or what is known as the ARC, Program. It is a program that provides producers with a market-oriented, straightforward choice to determine how best to manage their operations risks. The safety net is then bolstered by expanded access to profit shares, which serves as the focal point of risk management and will ensure that farmers are not wiped out by severe weather or economic conditions.

The Senate farm bill also reauthorizes the 2008 farm bill permanent disaster relief programs and makes them retroactive to cover producers harmed by the 2012 drought. This includes the Livestock Forage Disaster Program, which provides compensation for the eligible livestock producers who have suffered in critical places such as Nebraska which has been hard hit by the drought and wildfires this summer, not to mention the continuing drought at this time.

I could go on regarding all the major reforms and improvements that the Senate farm bill makes to conservation, rural development, renewable fuels, in addition to the reforms of the commodities and livestock programs. However, without the House acting on any farm bill legislation—let alone the Senate bill which is a solid reform-minded bill, which strikes the right balance between the need to cut spending while maintaining a strong safety net—it will all be for naught. It is disappointing that jobs and our Nation's stable supply of food, feed, fuel, and fiber continues to be put at risk because of inactions spurred on by partisan gamesmanship.

As we seek to find commonsense solutions to the fiscal and legislative challenges before us in Congress, I urge the House to now act on the 5-year farm bill. It will help us achieve savings, bring needed reforms to commodity programs, and provide our Nation's farmers, ranchers, and rural communities the certainty they need to continue to be the world leader in agricultural production.

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

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

The legislative clerk proceeded to call the roll.

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

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

FAREWELL TO THE SENATE

Mr. DEMINT. Mr. President, I would like to give my farewell address. We spent a lot of time in my office writing out a long speech. However, once I read it, I realized it is more emotional than I thought, and we set that speech aside. Last night I made a lot of notes of what I wanted to say, and then I realized this morning that I was just trying to get the last word on a lot of the politics we have been discussing, so I set that aside and decided to speak from my heart.

Certainly, this is much more emotional than I thought, and as I look around this room, the realization that I am standing on the Senate floor speaking for the last time is a lot to digest. It makes me very appreciative of the privilege we have all been given by the American people, and particularly those who have come before us and who have given their lives for us to have the opportunity to settle our differences in a civil and democratic way. This is a great opportunity and privilege to share a few thoughts before I go on to the next phase of my life.

First, I have to give a particular thanks to my wife Debbie, who, for the last 15 years, has spent many days and nights alone as I have tried to change things in Washington. She has often reminded and questioned me how I thought I could change the world when I could not even mow the grass. But she has been a supporter and certainly so important as I left my children, who were still in school when I began serving in the House, keeping them on the right track. I particularly wanted to thank them.

All of those who serve here know that when we sign up for public life, we also sign our families up for public life. In a lot of ways it makes their lives much more difficult. So I want to thank my children, my wife Debbie, and my family for putting up with this and being so supportive of me.

I also have to thank the people of South Carolina who have entrusted me with this job in the Senate for the last 8 years, and in the House 6 years before that. All of us who serve our States know that as we travel around and meet people and tour businesses and speak to groups, it creates a deep love and appreciation for everyone back home.

I look at what we are making in South Carolina in these small businesses. When we drive by we don't know anything is even there, and then we go and find that they are making things and shipping them all over the world. It makes me very proud of what we are doing in South Carolina, and I know everyone here feels the same way about their States.

I am very appreciative that the people of South Carolina have given me this opportunity. I am very grateful to my colleagues whom I have often scrapped with on a lot of issues. I appreciate their patience. I think I can leave claiming to have good friends who are Democrats and Republicans.

I am particularly grateful for a lot of the new Senators. Some are sitting here today. I have had the opportunity to work with the folks in their States around the country. Their respective States have elected some new people to the Senate who are bringing the right ideas and some new voices to those principles that we know have made our country successful. So I feel as I leave the Senate, it is better than I found it, and that our focus now, despite the difficult challenges, is on America and how we turn America around.

I also want to spend some time thanking my staff. I have to say my greatest inspirations have come from the staff who I have had the opportunity to serve with in the House and in the Senate. As all of my colleagues know who are serving here in the Senate, this country is being run by people in their twenties and thirties who get us so busy they have to follow us to meetings to tell us where we are going and what we will be talking about. But it is incredible to see that these young people, particularly those whom I have served with, have such a passion for our country and freedom and they are willing to put it all on the line to make a difference here. They feel a lot like my family, and I am certainly going to miss them, but it is encouraging to watch them moving to other office, taking their ideas and that courage to other places on the Hill.

I want to add my thanks to all the Hill staff, the folks sitting in the front here and those who have worked with us. I know sometimes we have pushed the envelope a little bit on things we were trying to get done, and I have seen a lot of very intelligent, active, and engaged staff all across the Hill, both Democrat and Republican, and I am very thankful for what they do.

About 15 years ago, I started campaigning for the House. I had never run for public office. At that time, I believed—and I think it still holds true today—that there were normal people such as myself and then there were politicians. I was a businessman. I had a small business for about 15 years. I had four children. I was active in my church and in the community. I had begun to see that well-motivated, well-intended government policies were making it harder for us to do the things at the community level we know actually worked. That is what I have always been about here. It really was not about politics. I had no strong political affiliation before I decided to run for office, but I saw ideas from the time I was a young person. Ideas that worked.

I actually saw this statement the other day which I wish to read because it reflects what I think a lot of us know works in our country. This is one thing I will try to read today:

> I do not choose to be a common man. It is my right to be uncommon. If I can seek opportunity, not security, I want to take the calculated risk to dream and to build, to fail and to succeed. I refuse to barter incentive for dole. I prefer the challenges of life to guaranteed security, the thrill of fulfillment to the state of calm utopia. I will not trade freedom for beneficence, nor my dignity for a handout. I will never cower before any master, save my God. It is my heritage to stand erect, proud, and unafraid, to think and act for myself, enjoy the benefit of my creations, to face the whole world boldly and say, ''I am a free American.''

I saw this on a plaque called ''The American Creed.'' In South Carolina, at least, we have adopted this as what we call ''The Republican Creed.'' But it is really not a Republican idea or a political idea, it is an American idea. The ideas in this statement are ideas we all know work, and ideas we would hope for our children and everyone around us. We know there are people all around us who are having difficulty, but this idea of helping them to become independent, self-sufficient, and responsible creates the dignity and fulfillment in their life that we know we want for all Americans. This is not for a small few. This is an American idea, and it is an idea I know has worked in my life, and I have seen it work all around me.

That is what I wish to talk about for a second today; not political ideas but ideas where we can look back through history and all around us today and point to them and say, That is working. I think if we did that more here in the political sphere, we might find a lot more consensus.

As we look around the country today, we can see a lot of things that are working. Sometimes we couch them in our political rhetoric, but I can guarantee my colleagues they are not being done for political reasons at the State level; they are being done because they work and they have to get things to work at the State level.

We saw last week the State of Michigan adopted a new law that gave workers the freedom not to join a union. They didn't do it because it was politically expedient or because they thought it was a good idea. Actually, it probably will get a lot of the politicians in hot water in Michigan. But what they did is looked at 23 other States that had adopted the same idea and saw they were attracting businesses and creating jobs, and these States, without raising taxes, had more revenue to build schools and roads and hospitals. It is just an idea that worked. It is not a political idea to give people the freedom not to join a union; it is an American idea and it is an idea that works.

We can look around the country today—and, again, we make these things political and give them labels that are good or bad, depending on I guess which party one belongs to—and see that a number of States have been very innovative and creative with what they are doing with education. We see what they have done in Florida, creating more choices, and in Louisiana particularly, forced by Hurricane Katrina to start a new system, in effect. They see more choices and opportunities for parents to choose are helping low-income, at-risk kids, minority kids. We can see it working. It is not political. It is an American idea to give parents more choices to put their children in an environment where they can succeed. It is an idea that works.

We can look around the country at States that try to create a more business-friendly environment not because they are for businesses or for any political reason, or they are for special interests, but because they know the only way to get jobs and prosperity and create opportunity is to create an environment where businesses can thrive. We make it political here and we ask our constituents to make choices between employers and employees, but States such as Texas have created a business-friendly environment with lower taxes and less regulation. They have passed some laws that reduce the risk of frivolous lawsuits. What they have seen is businesses moving to their State. They have seen jobs and opportunity created not for the top 2 percent but expanding a middle class, creating

more opportunities and more tax revenues to do the things at the State government level that we all want for everyone who lives there. This is not for a few; this is for 100 percent.

We see specials now on TV comparing California and Texas, businesses moving out and delegations from California going to Texas to try to figure out why businesses are moving and families are moving there. It is not political at all. We make it political and we talk about it in political terms, but creating an environment where businesses can thrive is an American idea and it is an idea that is working. We see it all over the country, where some States are going down one road, with higher taxes, bigger government, and more spending, and they are losing to States such as Texas, and I hope more and more like South Carolina. They are moving to where they can thrive. This benefits every American.

We look at energy development and we talk about that at the national level of how it can create prosperity for our country if we open it up. We don't have to guess at whether it works. We can look at North Dakota, we can look at Pennsylvania—States that have gone around the Federal rules and figured out how to develop their own energy and are creating jobs and tax revenue for their governments. They are able to lower their taxes and use the revenue to improve everything about their States. Here we make it political and partisan, whether our country can develop more energy, but at the State level it is about what works. All we have to do is look at what works.

This is not rocket science. I came to Washington as a novice in politics, believing in the power of ideas, seeing how ideas could revolutionize different industries, can create new products and services, meeting the needs of customers everywhere. That is what I hoped we could do here in Washington. Maybe naively, I went to work in the House, often working with the Heritage Foundation, to create a better product here in Washington. I saw Social Security—and not too many people look below the surface—but we knew it was going broke. We knew people were paying for this Social Security retirement benefit, but we were spending it all. I thought, What an opportunity it would be for future generations—for my children—if we actually saved what people were putting into Social Security for their retirement, and we didn't have to do too much math to see that even for middle-class workers, Americans could be millionaires when they retired if we even kept half of what was put into Social Security for them. It seemed like a good idea to create wealth and independence for individuals in retirement, but we made it a political idea and somehow convinced Americans it was riskier to save their Social Security contribution than it was to spend it.

I am leaving the Senate to work on ideas I know work. I have seen them work all over our country. We can look all over our country and showcase these ideas that are working. I know there is power in ideas. However, I have learned one thing about the political environment: Unless there is power behind the ideas, they will not emerge here in the Congress. There is too much pressure from the outside to maintain the status quo. No matter how much we show it is working, it won't be adopted here unless we are able to win the argument with the American people.

I spent most of my life in research and advertising and marketing and strategic planning. What I hope I can do from this point is to take these ideas and policies I know work—and the Heritage Foundation for 40 years has been creating the research and analyses that show these policies work—and what I hope I can do is to help connect those ideas with real people, real faces, and to show these people that these ideas are not theory, they are not political policies, but they are ideas that are working right in their State or the State right next to them. If we can win the arguments, if we can win the hearts and the minds of the American people with these ideas, I know we can engage them and enlist them to convince all of my colleagues here to set the politics aside, the parties aside, and to adopt those ideas that work. My hope is to make conservative ideas so pervasive, so persuasive across the country that politicians of all parties have to embrace those ideas to be elected.

I am not leaving to be an advocate for the Republican Party. I hope we can create more common ground between the political parties by showing everyone that ideas that work for their constituents and our constituents are right in front of our faces if we are willing to set aside the pressure groups, the special interests, and just focus on what is working.

Over the next few years, we are going to see more and more States doing the right things, becoming more prosperous, creating a better environment for people to live and work. We are going to see some States that will continue to raise taxes, to create more regulations, and make it harder to start businesses and be profitable in those States. They will continue to lose businesses and people. Many of those States will come to Washington and ask us to help them out from their bad decisions.

I hope at that point we can show, by pointing at these States and their right ideas, that we know the solutions at the State level and we also know we can change how we think at the Federal level and make our country work a lot better.

I leave with a lot of respect for my colleagues. I know my Democratic colleagues believe with conviction their ideas, and I know my Republican colleagues do too. But I hope we can look at the facts. I hope we can look at the real world. I hope we can look at what is working and set aside the politics and realize what makes the country great and strong is when we move dollars and decisions out of Washington back to people and communities and States, it works not for 2 percent but for 100 percent of Americans.

I feel our customers in the Senate, at the Heritage Foundation or wherever we go are 100 percent of Americans for whom these ideas can work to build a better future and a stronger America. I am not leaving the fight. I hope to raise my game in my next phase, and I hope I can work more closely with all of you, as well as Governors and State legislators, to take these ideas and to convince Americans, as well as their legislators, their Senators, and their Congressmen, that we have the solutions all around us if we have the courage to adopt them.

I thank you for this opportunity to serve. Certainly, I will miss my relationships. But I hope we will have the opportunity to continue to work together for what is the greatest country in the world, in what I believe is a generation that could be the greatest and most prosperous generation of all if we just look to the ideas that work.

Thank you, Madam President. I thank my colleagues.

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

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Madam President, I ask unanimous consent to speak as in morning business.

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

TRIBUTES TO DEPARTING SENATORS

JOE LIEBERMAN

Mr. MCCAIN. Madam President, one of the most overused quotes about this town is Harry Truman's observation years ago that if you want a friend in Washington, go out and get a dog. I have spent a good many years here now. I suppose there is a little truth in that advice. Some Washington friendships are a little like temporary alliances between nations that for a brief period of time have mutual interests or enemies. But not all friendships here are like that, not all of them.

Today I say a formal fond farewell to a departing colleague whose friendship has been and will always be one of the greatest treasures of my life. My friend Senator JOE LIEBERMAN is retiring from the Senate after 24 years of service. Of course, he is not leaving, nor will he ever leave, the affections of those of us who have come to value him so highly as a statesman and as a friend, but we will not see him around the place as much.

His office will not be near ours. We will not hear him speak from this floor

or in committee hearings. We will not have the daily benefit of his counsel and his example. We will miss his contributions to the Senate. We will miss his good humor, his wisdom, and sincerity, especially in those moments when we find ourselves again wrapped around the axle of partisanship and politics has taken primacy over the Nation's interests, when tempers are frayed and we are consumed with putting each other at a disadvantage. That is when we will miss him the most, on those occasions when JOE's thoughtfulness and patriotism stirred him to remind us again, as he did earlier this week, that the public trust and not our party's fortunes is our most important responsibility.

JOE's presence, his wit and courtesy and kindness have improved the conviviality of our institution. But more than that, he has set an example that I think our constituents surely wish more of us would emulate. It is his conscience and devotion to America, not his party affiliation, that has inspired his work.

He has been a very accomplished legislator and a recognized leader on national security issues. He is a nationally prominent politician, majority leader in his State senate, the attorney general of the State of Connecticut, elected to the Senate of the United States four times, a vice presidential nominee in the year 2000, a candidate for President, and I should probably add nearly a nominee for vice president again.

That he managed to achieve such prominence while being the least partisan politician I know is a credit to his character and to the exemplary quality of his public service and to the public's too often frustrated desire for leaders who seek office to do something, not just to be someone.

He has been a tireless advocate for the rights of the oppressed, the misfortunate, the disenfranchised, and tireless too in his concern for the security of the United States, for the strength of our alliances, the excellence of our Armed Forces, and the global progress of our values. He came here to do justice, to love mercy, and to walk humbly with his God.

It is hard to find anyone here who does not like and admire JOE. He is impossible to dislike, even if one only knows him a little. Most of his detractors seem to be people who do not know him and who tend to view people very strictly through the perspectives of their ideology and partisan identity. The only thing to resent about JOE LIEBERMAN is that he is so damn considerate of everyone that you can find yourself feeling a little ashamed when he catches you raising your voice to someone or behaving in other ways that fall short of his unfailing graciousness.

He is not an easy example to emulate. I have fallen short of his standard more often than I care to concede. But I know, as I suspect most of us know, that our constituents deserve and our country needs more public officials who keep their priorities in the right order, as JOE always has, and who offer their respect for their colleagues without expecting anything in return but our respect.

We spent a lot of time together, JOE and I. We have traveled many thousands of miles together. We have attended scores of international conferences together, met with dozens of world leaders, with human rights activists, and the occasional autocrat. We have visited war zones, shared the extraordinary experience with equal parts gratitude and awe of talking with and hearing from the Americans who risk everything so the rest of us may be secure in our freedom.

I have been able to study JOE at close quarters. He has never failed to impress me as a dedicated public servant, a loyal friend, a considerate gentleman, a kind soul, and very good company. I have also been privileged to witness the sincerity of his faith. I have awaken in the middle of the night on a long plane ride to find JOE in his prayer shawl, talking to the God he tries very hard to serve faithfully every day. I have witnessed the lengths he goes to always keep the Sabbath, and occasionally I have even filled in as his Shabbos goy. I have enjoyed every minute of our travels together. He is a quality human being, and time spent in his company is never wasted.

I have worked with JOE on many issues and opposed him on more than a few. But I have always been just as impressed by him when we disagree as I am when we agree. He is always the same: good natured, gracious, and intent on doing his best by the people who sent him and the country he loves.

He is leaving the Senate, and I am going to miss him a lot. But I doubt any of the many friends he has made here will let him stray far from our attention. We will still rely on his wise counsel and warm friendship. I know I will. I hope we are not done traveling together. I hope to see him in other conferences and meetings abroad. I want to go back on the road and learn from him and just pretend he has not left the place that brought us together. He is as fine a friend as I have ever had and irreplaceable in my life and I cannot let him go.

Thank you, JOE, for all you have done for me; for your many kindnesses, your counsel, your company, and for teaching me how to be a better human being. I will see you again soon.

I yield the floor

The PRESIDING OFFICER. The Senator from Wyoming.

THE FISCAL CLIFF

Mr. BARRASSO. Madam President, for the past several weeks I have come to the floor to talk about the fiscal cliff and the threat it poses to our economy and to our Nation. As the deadline nears, the fiscal cliff has caused a lot of concern and a lot of uncertainty around the country. It appears that too many people in Washington are not serious about real solutions to get us back on solid economic ground. The White House and Democrats in the Senate are still not focused on spending cuts. They continue ignoring the real drivers of Washington's debt.

We know what they are. They are out-of-control entitlement programs: Social Security, Medicare, and Medicaid. Until we find a way to save and strengthen these programs, no amount of tax revenue will be able to match the increases in entitlement spending. According to the latest numbers from the Congressional Budget Office, the problem is actually getting worse.

In its monthly budget review for December, the Congressional Budget Office said the budget deficit for just the first 2 months of this fiscal year was already $292 billion. When we take a look at that and compare this pace, we will record our fifth straight year of a trillion-dollar deficit.

In just October and November alone, which are the first 2 months of this fiscal year, we are already $300 billion in the red. Total outlays for those 2 months were $638 billion. That is an increase of almost 4 percent over the same period 1 year ago. This increase in spending is much faster than the growth we are seeing in our economy. Defense spending is actually down about 2 percent from the first 2 months of last year. That may be the lone bright spot in the CBO's number. The problem is entitlement spending is growing even faster than the rest of government.

Social Security spending is up 6.8 percent. Medicare is up 8.1 percent. Medicaid is up over 9 percent compared to last year. Those are huge increases in just 1 year and they point straight to the problem we face. Those three programs by themselves account for 43 percent of all Washington spending for the first 2 months of this fiscal year.

Some Democrats say we cannot take steps to save and to protect these important programs for future generations. They say we cannot even discuss fixing this out-of-control spending as part of the fiscal cliff negotiations. That is unrealistic, and it is unsustainable. Without reform, we are facing the kinds of increases we see on this chart but getting worse next month and the month after that and then again beyond.

Without reform, it will keep getting worse until we drive our economy into the ground just trying to pay for these programs. There is a potential solution, and one potential solution or at least something that would help would be to adjust how we calculate entitlement benefits for inflation. As it stands now, the Bureau of Labor Statistics calculates two different versions of what is called the Consumer Price Index.

Both of these assume that a consumer buys a certain basket of goods and then they track the total cost of

that basket. A family buys a certain amount of gasoline, so much milk, so many muffins to have for breakfast and so on. The first measure is called the CPI–U, and it is what we consider the headline measure. It is what we read in the papers. It looks like what all urban consumers spend on that market basket of goods. That is why they call it the CPI–U—U is for ''urban.'' It is a number we use to index the tax brackets for inflation. That is how we decide what those brackets will be.

The second way they measure the CPI is called the CPI–W. That includes urban wage earners. The W is for ''wage earners,'' not all consumers. It also includes clerical workers and a few other professions. So it excludes anyone who is unemployed, retired, self-employed, and many other occupations. This is what the government uses for the cost-of-living adjustment to Federal benefits such as Social Security.

So we have one that they use to calculate the CPI for tax purposes and the tax brackets and the other, different, is what they use for Social Security benefits. It is very complicated. Both these systems have several problems. They both overestimate inflation. First, they assume consumers purchase the exact same basket of goods regardless of what happens to prices. So if the price of something such as muffins goes up, the CPI does not account for some consumers who will switch to toast or having something else for breakfast.

All American families understand that people change their behavior when prices change. Our understanding of inflation should take that into account. Another problem is that these versions of CPI cannot easily deal with the introduction of new products into the market. So how does something like the iPod affect consumer spending? How do we account for that, when the iPod was not in the market basket of goods before.

At what point do we start including cell phone bills or Internet access into a family's monthly expenses? It is not happening now. So we have these two different ways to measure inflation. They both have multiple flaws. As I have said, the flaws tend to overestimate the inflation people actually experience when they go to the store and they pay their bills each month.

We can see how this could be a problem over time. When the government increases what it pays based on an exaggerated inflation adjustment, the impact continues to accelerate. If we give someone an extra dollar to make up for inflation but their expenses only went up 75 cents, pretty soon all those quarters add up. It is bad fiscal policy and we actually cannot afford it anymore.

The cost-of-living adjustment should track, as closely as possible, to the actual cost of living. To address those flaws, what the Bureau of Labor Statistics has done is actually come up with a new and an improved measure for inflation.

It is called chained CPI, and it accounts for those changes in consumer choices and for new products and new technology.

If we use this version of CPI to adjust Federal benefits and tax brackets, CBO estimates that we would actually reduce the deficit by $200 billion over the next 10 years—over $200 billion in the next 10 years. That is the benefit of not overcompensating for inflation. The savings would be small at first, but over time they would grow, until 10 years from now we would have saved more than $200 billion. The savings get even bigger beyond the 10 years shown here in the chart, and that is because of the impact of compounding.

Now, with budget deficits of $1 trillion and more this year, last year, the year before, 5 years in a row, this one change to the inflation index—well, it won't wipe out the deficit on its own, but it is a start, and it is something we can do now that will pay big dividends down the road.

Of course, this isn't the only option. There are other ways to slow the increase in Social Security and make sure it is still around to take care of seniors in the future. We need to do something. Setting the cost-of-living adjustment using chained CPI is worth considering.

Now, even some Democrats have been open to this idea. According to Bob Woodward's book ''The Price of Politics,'' the White House was willing to look at changing the CPI as part of the so-called grand bargain last year. The Simpson-Bowles Commission included it as one of their solutions. The President himself reportedly had a version of chained CPI in his latest offer on the fiscal cliff. That is progress. It shows that some Democrats are open to serious ideas and real solutions. Because we need to do something to relieve the burden of Washington's crushing debt, this is something to consider.

More revenue is going to have to be part of the solution, and Republicans have said so. Substantial cuts in spending must be part of the answer as well. Washington does not have a revenue problem, it has a spending problem. That problem is centered on entitlement programs that are growing far too quickly. Switching to the chained CPI is a reasonable first step that we could take now to start to rein in Washington's out-of-control spending, allowing us to save and protect Social Security and Medicare for generations to come.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Madam President, I ask to speak as in morning business.

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

THE FARM BILL

Mr. CASEY. Madam President, I rise today to talk about the farm bill, which is typically a 5-year bill, and we hope we can achieve that once again. We know the Senate passed a farm bill a number of months ago—actually, in June—but the House has yet to bring the bill to the floor of the U.S. House of Representatives. There is really no excuse for that. It doesn't make any sense, first and foremost, because of the impact this bill has on our economy, our farm families, the agricultural sector of our economy, and what it also means to make sure folks have enough to eat. This includes the antihunger and nutrition strategies in the farm bill as well. But, unfortunately, the House has not passed it.

I think the leadership in the House should consider why we need the farm bill to pass, and they should also consider what happened here in the Senate. We had a very bipartisan process, lots of amendments, and plenty of debate, but not some of the harsh debate we have seen in the context of other issues, and it worked very well. Not everyone got everything they wanted, and folks were willing to work together and compromise. We got a bipartisan vote in the Senate, and that is hard to achieve even on something as important as a farm bill.

I wish to commend the work that was done at that time by our chairwoman, Senator STABENOW of the State of Michigan. She led the fight, working with Senator ROBERTS. They worked together not just on the substance, but they worked together in a manner that allowed it to be bipartisan.

In my work representing the people of Pennsylvania, I have made it a priority to keep Pennsylvania's agricultural industry and our rural economy strong to support families in Pennsylvania. Agriculture is our State's largest industry. Pennsylvania's farm gate value, which is another way of describing cash receipts to growers, in the last number that we have, which is a 2010 number, was $5.7 billion.

A lot of people who probably haven't spent much time in Pennsylvania think of it as a State of big cities and small towns, but they may miss the substantial agricultural economy we have. Agribusiness in our State is a $46.4 billion industry, with 17.5 percent of Pennsylvanians employed in the so-called food and fiber system.

One of the questions we have to ask is, What does this all mean? Well, I think it certainly means at least that we need a 5-year farm bill, not a short-term farm bill. We do too much of that around here on other areas of public policy. We should do what we have always done in the Senate, long before I got here—pass 5-year bills with regard to the farm bill. It does create economic opportunities in rural areas, and it sustains the consumers and businesses that rely upon our rural economy.

The Senate-passed farm bill would reduce the deficit by approximately $23 billion through the elimination of some subsidies, the consolidation of programs, and by producing greater efficiencies in the delivery mechanisms in programs.

We are having a big debate about the end of the year and the fiscal challenges we have. When you have those debates, you have to come to the table with deficit reducers, ways to reduce deficit and debt. Passage of the farm bill would be in furtherance of that goal—a $23 billion reduction in the deficit. A short-term extension wouldn't provide the same reforms, nor would a short-term extension provide the cost savings.

When we consider what farmers and farm families have to do every day—I mean, they have to milk cows, and our dairy farmers do it so well and do it every day; they have to just do their job. Sometimes they wonder about Congress when they know we have a job to do and it doesn't get executed. We should follow their example and do our job. The House can lead on this because it is in their court, so to speak, right now, by reauthorizing the farm bill in a responsible way that helps contribute to deficit reduction.

I mentioned dairy farmers in terms of our agricultural economy in Pennsylvania. Dairy is the largest sector of that, so dairy is the largest sector of the biggest part of the Pennsylvania economy, which is agriculture. The industry generates more than $1.5 billion in cash receipts and represents about 42 percent of our total agricultural receipts.

Dairy farmers deserve the best program possible. The Senate bill contains many improvements that I support, but right now dairy farmers don't have any program to manage their risks in a time of low prices. By the first of January, the Department of Agriculture will be obligated to implement for dairy products what we call permanent law. What this means is that prices farmers receive can almost double, but it also means higher costs to the government and consumers, as well as longer term risks of lower consumer demand and increased imports.

So we need to make sure we take steps now to prevent some of the consequences of inaction, some of the consequences of the House not moving a 5-year farm bill through their process in the House.

There are so many other important items. I will just rattle off a few of them in the context of having a 5-year farm bill, not something less.

In the Senate-passed bill, we worked to address the unique concerns of specialty crop farmers, organic farmers, and new farmers—so-called beginning farmers. We did so in a bipartisan way.

Second, I am committed—and I know a lot of folks in this Chamber are committed—to rural communities. Those in my State of Pennsylvania are too numerous to count, the number of communities that are considered rural. Part of that effort that I have to undertake—and all of us should—is to support rural development programs that provide access to capital for rural businesses to provide economic opportunities and create jobs.

We have people take the floor here all the time and talk about small businesses or businesses in general and that Congress isn't responsive enough to businesses. Often, that is true. I would hope they would walk across and give the same speech to their friends in the House that one of the best ways to help rural businesses is to pass the 5-year farm bill right away.

We know farmers are the original stewards of the land and continue to lead the charge in protecting our natural resources. I believe the voluntary conservation programs in the farm bill provide important tools to help farmers comply with Federal and State regulations while keeping farmers in business. Conservation programs are an extremely important resource for many Pennsylvania farmers. We have a great conservation tradition in our State. This bill would enhance and build upon that great record of conservation in Pennsylvania and across the country.

We also wanted to focus on helping those who don't have enough to eat and making sure we are doing everything possible to enhance or improve nutrition by the many strategies in the farm bill that involve nutrition. There is no better opportunity to strengthen nutrition policy in the nutrition programs than through a well-crafted 5-year farm bill.

The people of Pennsylvania and folks across the country deserve certainty, and a 5-year farm bill would help us move in that direction. If the House leadership is serious about a prosperous future for the country, the House must pass the 5-year farm bill right now. I urge the House leadership to appreciate the significance of having a 5-year bill for farmers, for consumers, and for families. If the Senate, as it has done, can pass a bipartisan farm bill the way we did, I have no doubt—no doubt whatever—that the House can do the same.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

REMEMBERING DANIEL K. INOUYE

Mr. BLUNT. Madam President, I wish to talk about the disaster supplemental today, but before I do that, I would like to spend a minute talking about the Senator from Hawaii, Mr. Inouye. We were at the service this morning in the Rotunda of the Capitol, where only 31 Americans in the history of the country have been honored by that opportunity for Americans to think about them as they lie in the center of the Capitol on the catafalque that was used by Abraham Lincoln and others. I was able to place the wreath in the Capitol when Rosa Parks was in that same place.

I want to say how honored I was to get to serve in the Senate with Mr. Inouye. He not only was a hero in so many ways but I think connected all of us to the ''greatest generation,'' as Tom Brokaw titled that generation, and there was no better example of that quiet, purposeful, heroic dedication to service than the Senator from Hawaii, the President pro tem, the chairman of the Appropriations Committee, but most of all just a great American.

Last year when school was out, my youngest son Charlie was here for lunch. In the Senate Dining Room, he saw Mr. Inouye, and he had seen Ken Burns' World War II documentary in which the Senator was being recognized. He said: ''I saw him in the documentary on World War II.'' I asked Senator Inouye to come over to speak to Charlie and his friends, and he did. They were so thrilled to meet him.

Then, when that was over and the Senator walked away, Charlie then told a story from the documentary, which he had only seen once, and it had been about a month before, and he was 7. But he said that during the war, he captured a German soldier, and the German soldier reached in his pocket, and he thought he was going for a weapon, so he knocked him down, and as he fell down, the German soldier's hand—a bunch of pictures fell out. And at that time, young Daniel Inouye picked up the pictures, and they were of the man's family. And Charlie repeated—he said that he saw the pictures, and he said: ''He is a man just like me.'' The greatness of that moment, his courageous actions later in the war, his leadership have often brought to mind—particularly as I sat in the Appropriations Committee and would look down the table and see him sitting there in the middle of the table—the thought that when that man leaves, there won't be anyone quite like him to take his place.

I would say, Madam President, to you and to my colleagues how honored I was to serve with him and how proud I am of the great and dedicated service he gave to the country. I hope we can all learn from his example.

Madam President, let me spend a few minutes talking about the current disaster supplemental.

I believe when disasters exceed the ability of communities and States to deal with them, the Federal Government should help. That has been something we have done for sometime now. I think there are some problems in the system and the way we respond. Unfortunately, in Missouri, we have had too many opportunities in recent years to have experience with disasters and responses. On occasion, they have been disasters we could deal with. And actually, I have told people where I live: No, this is a disaster that really is a bad thing—the tornado hit, it didn't stay for long—but we can deal with this ourselves. I said that last year at an event we had in Branson, MO.

But when we had this devastating tornado in Joplin, MO, following two different floods in the same time period, I said: No, we can't deal with this on our own. We need others to come in and help us, as we will help them when they have a big problem. And that is what this supplemental should be doing.

In my view, the $60 billion supplemental is not the best way to deal with this at this time. I would rather see us deal with this when we know more about the money we need to spend. We have a March 27 deadline when the continuing resolution runs out. One of the questions I would have is: How much money do we need between now and then? There are others who might say, and I could possibly be persuaded, well, let's at least go until the end of the fiscal year. How much money do we need between now and September 30? But this goes beyond that.

When we had the Katrina disaster a few years ago we did at least three supplementals for Katrina. Eventually, we may spend more than $60.4 billion. But my view would be there are probably better ways to approach this than appropriating that money right now as opposed to appropriating it later when we know what it is for.

This bill should not be viewed, either, as an opportunity for Members of Congress to fundamentally alter the disaster funding programs. There is a legislative process to do that. It shouldn't be the disaster funding bill that we use to change the law. We should have that debate at another time, and I hope we will.

In the past, and under the Stafford Act, which is the disaster funding act, we have limited what we can do beyond just replacing what the disaster took away, and we have added a little to it. There is an argument one could make: Well, if the disaster destroys this, and there is a way to put it back within reason that makes it harder to destroy, we should do that. In fact, there was a cap. I think it was 7½ percent was the most we could spend for preventing future things from happening, mitigation. This spends about four times that much, and it changes the law permanently to allow it to spend four times that much. That is not the way this should be done. And my guess is, before we are done, it will not be the way it is done.

For too long I think we have not looked at how we spend money on disasters. We have not only worked in recent times within the Budget Control Act, we had, as I said, disasters in Missouri in 2011 where we had two major floods and we had an E5 tornado that devastated the sizable community of Joplin.

I was in Joplin last week at one of the temporary middle schools. The high school was destroyed, the vocational school was destroyed, the parochial school was destroyed, and I think six elementary schools. I don't mean they were damaged, I mean they were destroyed. To replace those we were able to figure out how to work within the Budget Control Act. We even put some disaster funding in the regular appropriations bills as it became obvious what was going to be necessary beyond what we immediately knew as a country was necessary. And I think we could do that here.

I was so concerned about what happened in 2011 I asked the General Accounting Office to evaluate several things: the disaster declaration process, the standards that FEMA uses to make a declaration, FEMA's management of its disaster relief fund, and the overall costs that were associated with disasters at the State, local, and Federal level.

Madam President, I ask unanimous consent to have printed in the RECORD the GAO report as part of this discussion.

Mr. President, I ask unanimous consent to have printed in the RECORD the Conclusions and Recommendations for Executive Action of the GAO Report ''Federal Disaster Assistance.'' (GAO–12–838)

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

CONCLUSIONS

Disaster declarations have increased over recent decades, and FEMA has obligated over $80 billion in federal assistance for disasters declared during fiscal years 2004 through 2041, highlighting the importance of FEMA's assessment of jurisdictions' capabilities to respond and recover without federal assistance. The PA per capita indicator is artificially low because it does not reflect the rise in per capita personal income since 1986 or 13 years of inflation from 1986, when the indicator was set at $1.00 and adopted for use, to 1999. By primarily relying on an artificially low indicator, FEMA's recommendations to the President are based on damage estimates and do riot comprehensively assess a jurisdiction's capability to respond to and recover from a disaster on its own. For example, on the basis of FEMA's actual and estimated disaster assistance obligations, more than one-third of the 539 major disasters declared during fiscal years 2004 through 2011 are expected to have total DRF obligations of less than $10 million, and more than 60 percent are expected to have total obligations of less than $25 million. Therefore, many of these declarations were for relatively small disasters. At a minimum, adjusting the existing PA per capita indicator fully for changes in per capita income or inflation could ensure that the per capita indicator more accurately reflects changes in U.S. economic conditions since 1986, when the indicator was adopted. Making the appropriate inflation adjustment to the indicator would raise it from $1.35 to $2.07. A change of this size in 1 year could present challenges for jurisdictions, which could find that disasters with PA damage estimates that would now qualify for PA would no longer qualify. Thus, phasing in the adjustment over several years could provide jurisdictions time to take actions, such as increasing any rainy day funds, to adjust to the effects of higher qualifying indicators.

A more comprehensive approach to determine a jurisdiction's capabilities to respond to a disaster would be to replace or supplement the current indicator with more complete data on a jurisdiction's fiscal resources, such as TTR, and would be informed by data on a jurisdiction's response and recovery assets and capabilities. Because FEMA's current approach of comparing the amount of disaster damage with the PA per capita indicator does not accurately reflect whether a jurisdiction has the capabilities to respond to and recover from a disaster without federal assistance, developing a methodology that provides a more comprehensive assessment of jurisdictions' response and recovery capabilities, including a jurisdiction's fiscal capacity, could provide FEMA with data that are more specific to the jurisdiction requesting assistance. For example, developing preparedness metrics in response to the Post-Katrina Act and Presidential Policy Directive–8 could provide FEMA with readily available information on jurisdictions' response and recovery capabilities. Without an accurate assessment of jurisdictions' capabilities to respond to and recover from a disaster, FEMA runs the risk of recommending to the President that federal disaster assistance be awarded without considering a jurisdiction's response and recovery capabilities or its fiscal capacity. As we recommended in 2001, we continue to believe that FEMA should develop more objective and specific criteria to assess the capabilities of jurisdictions to respond to a disaster. Given the legislative and policy changes over the past decade, we believe that including fiscal and nonfiscal capabilities, including available preparedness metrics in its assessment, would allow FEMA to make more informed recommendations to the President when determining a jurisdiction's capacity to respond without federal assistance.

Making informed recommendations to the President about whether cost share adjustments should be granted is important for FEMA and the requesting jurisdictions because every cost share adjustment has financial implications for both entities. A specific set of criteria or factors to use when considering requests for 100 percent cost share adjustments would provide FEMA a decision-making framework and enable more consistent and objectively based recommendations to the President. Also, when FEMA recommends that a cost share adjustment be approved and the President approves it, the federal government assumes the financial burden of paying 15 percent or 25 percent more in PA, which could total millions of dollars. Tracking the additional costs to the federal government because of cost share adjustments would allow FEMA to better understand the financial implications of its recommendations to the President.

FEMA's average administrative costs as a percentage of total DRF disaster assistance obligations have risen for disasters of all sizes. The agency recognized that delivering assistance in an efficient manner is important and published guidance to be used throughout the agency to help rein in administrative costs. However, FEMA has not implemented the goals and does not track performance against them. Over time, reducing administrative costs could save billions of dollars—dollars that could be used to fund temporary housing, infrastructure repairs, and other disaster assistance. Therefore, incentivizing good management over administrative costs by adopting administrative cost percentage goals and measuring performance against these goals would help provide FEMA with additional assurance that it is doing its utmost to deliver disaster assistance in an efficient manner.

RECOMMENDATIONS FOR EXECUTIVE ACTION

To increase the efficiency and effectiveness of the process for disaster declarations, we recommend that the FEMA Administrator take the following four actions:

1. Develop and implement a methodology that provides a more comprehensive assessment of a jurisdiction's capability to respond to and recover from a disaster without federal assistance. This should include one or more measures of a jurisdiction's fiscal capacity, such as TTR, and consideration of the jurisdiction's response and recovery capabilities. If FEMA continues to use the PA per capita indicator to assist in identifying a

jurisdiction's capabilities to respond to and recover from a disaster, it should adjust the indicator to accurately reflect the annual changes in the U.S. economy since 1986, when the current indicator was first adopted for use. In addition, implementing the adjustment by raising the indicator in steps over several years would give jurisdictions more time to plan for and adjust to the change.

2. Develop and implement specific criteria or factors to use when evaluating requests for cost share adjustments that would result in the federal government paying up to 100 percent of disaster declaration costs.

3. Annually track and monitor the additional costs borne by the federal government for the cost share adjustments.

4. Implement goals for administrative cost percentages and monitor performance to achieve these goals.

AGENCY COMMENTS AND OUR EVALUATION

We provided a draft of this report to DHS for comment. We received written comments from DHS on the draft report, which are summarized below and reproduced in full in appendix V. DHS concurred with three recommendations and partially concurred with the fourth recommendation.

Regarding the first recommendation, that FEMA develop and implement a methodology that provides a more comprehensive assessment of a jurisdiction's capability to respond to and recover from a disaster without federal assistance, DHS concurred. DHS stated that a review of the criteria used to determine a state's response, recovery, and fiscal capabilities is warranted and that such a review would include the need to update the per capita indicator as well as a review of alternative metrics. DHS stated that any changes would need to be made through the notice and comment rulemaking process and that, if changes are made to the per capita indicator, FEMA's Office of Response and Recovery will review the feasibility of phasing them in over time. However, the extent to which the planned actions will fully address the intent of this recommendation will not be known until the agency completes its review and implements a methodology that provides a more comprehensive assessment of a jurisdiction's capability to respond and, if the per capita indicator continues to be used, adjusts the per capita indicator to accurately reflect annual changes in the U.S. economy since 1986. We will continue to monitor DHS's efforts.

Mr. BLUNT. In the response portion of the report we will file, the GAO said a third of the disasters over the last 8 years cost the Federal Government less than $10 billion. They also said the level of loss necessary to declare a disaster hasn't changed in a couple of decades.

My concern was—and the report leveled it out—that when we do have a big disaster, such as Sandy, we have almost always spent all the money because it was pretty easy to have a Governor ask for a disaster and the President to declare it and then the money is gone.

FEMA primarily relied on the per-capita damage indicator as the criteria rather than whether the local community had the resources to deal with this on its own. There was no specific criteria at FEMA to decide at what point we paid various percentages up to 100 percent coming from the Federal Government. The FEMA administrative costs from 1989 to 2011 had doubled. It had increased from 9 percent of every disaster to an average of 18 percent of every disaster. So GAO recommended we do several things: that FEMA develop a methodology to more accurately assess what a jurisdiction was able to do; that we develop criteria to know when the Federal Government should accept all of the obligation—100 percent of the adjusted cost—and that we implement new goals to track why these costs of administering disasters were going up so dramatically.

Hopefully, we can do that, and we can look at the law at the right time in the right way. I know my colleague Senator COATS has led the way to propose an alternative to the $60 billion supplemental bill. His alternative of about $24 billion would provide the money necessary to be spent by good calculations between now and the end of March. This could be the right step for us to take now. I suspect, as we deal with the House of Representatives, it ultimately will be closer to the step we take. I just think we shouldn't use this bill as a time to change the law so we can spend money in ways the law currently doesn't allow. We shouldn't use this bill to speculate on what costs will be when we will know what those are. At the same time, I understand and appreciate this is a disaster where we should step in. We absolutely should step in and help people and the communities devastated by this disaster get back on their feet. We should do that, and I am going to do everything I can to see we do that. I just hope we do it in the best possible way instead of using this as an opportunity to do things that don't have anything to do with Sandy but may have some other goals that should be achieved in a more appropriate way.

With that, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER (Mrs. MCCASKILL). The Senator from Virginia.

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

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

DANIEL INOUYE

Mr. WARNER. Madam President, I rise to speak about a subject which I know I and the Presiding Officer and a number of our colleagues have spent an enormous amount of time on; that is, the challenges of our fiscal circumstances. Before I start, I wish to join with so many of my other colleagues who have come to the floor in the last few days to celebrate the legacy of our departed colleague Senator Inouye. I didn't know him as long as many of our colleagues did, but in the 4 years I have served in this body, he was truly someone who was always a gentleman and represented the best of what I think the Senate is all about.

THE FISCAL CLIFF

I wish to, as I mentioned, spend this time to speak about the need in our country to have a balanced deal on the debt and deficit and to avoid the fiscal cliff. We have witnessed these conversations going back and forth between the President and the Speaker, hoping—I think speaking for many—they would reach some deal. I am very disappointed by the recent actions of the Speaker and his so-called Plan B—a plan that would do nothing to make a significant dent in our fiscal challenges. I think many of us on our side, and I imagine many on the Republican side, realize it is not an approach that will get us where we need to go.

There have been many of us in this body who have been working on this issue for a number of years. I think the American public is probably growing fairly tired of hearing about the fiscal cliff and why this has all come about and why all of a sudden we are only now focusing on this issue.

The fact is our Nation has been on an unsustainable fiscal path for some time. We are currently $16 trillion in debt. Every day we do nothing, we add $3 billion to that total—debt that will at some point have to be paid by our children and, because it has gotten larger, by our grandchildren. The reality is this is debt we are going to have to deal with, those of us who serve in this body now, and we have got to start paying for it.

The remarkable thing as we look at this debt is there is nothing about it that is self-correcting. Time alone will not solve this problem. What I hear from around Virginia, and I am sure the Presiding Officer hears around Missouri, is: How did we get to be in such a dramatic, difficult position in the last 12 years, when 12 years ago our country was looking at surpluses? I think as a former business guy, looking at what our Nation has done—and mechanically both parties have been responsible for this—it is not too hard to understand why we are in such a deep hole.

Over the last 12 years, we have done a series of things that have put us in an unsustainable position. On the revenue side, we cut taxes by $4.5 trillion over 10 years, the largest tax cuts in American history. If we had simply cut taxes $4.5 trillion over 10 years and done nothing else on the spending side, we might have been able to sustain that. But at the very time we took this dramatic decrease in our revenues, we did five things on the spending side—again, things that for the most part were bipartisanly supported—that would ultimately make our financial situation unsustainable.

First, in the aftermath of 9/11, we doubled our defense spending. Second, also in the aftermath of the challenges we faced in a very dangerous world after 9/11, we created a whole new category of government spending called homeland security; again, much of it necessary. Third, we did something

that in American history was unprecedented. Our Nation went to war not once but twice without asking Americans for any level of sacrifice beyond our military and their families, and the cost of those wars didn't even go through the normal appropriations process; they simply went on the credit card.

The fourth thing we did was we recognized in our country that our parents and grandparents were having increasing burdens with the high cost of prescription drugs, so we created a brand new entitlement program, bipartisanly supported, called Medicare Part D; but, again, we didn't pay a dime for it. On top of all that—and this is one of the biggest challenges we have and this is actually a blessing—we are all living a lot longer than anyone would have anticipated. The guy who originally set 65 as a retirement age was Bismarck, when he was Premier of Germany in the 1870s, and he set it there because average life expectancy was mid-fifties. In this country, we are blessed to live to an average age of 80. A healthy woman in America has a life expectancy of 100. That is a blessing, but it means the math that goes into our entitlement programs no longer makes sense.

What does this fiscal cliff mean? It means the gap between our revenues and our spending is clearly unsustainable. We need to find a solution before our unsustainable debt swallows our economy.

Some folks argue we don't need a solution now; we have time and space, and we should stimulate the economy with more deficit spending. I think an appropriate measure of additional stimulus activity makes some sense, so I do support investing in our infrastructure, in research and development, and workforce investments. As a former business guy, those are characteristics any strong business would invest in and any strong country should invest in if we are going to continue to grow. But that alone is not enough, and our problems, which only continue to accrue and grow over the long term, must be dealt with. The U.S. Government, similar to any large enterprise, takes time to turn. The sooner we start that turn the better. As this crisis evolves and as we get into the final days before Christmas, we need a real deal now—one that addresses these problems in the long run and starts by phasing in improvements that will start to address our problems on the spending side, revenue side, and, yes, entitlement side, over the course of the next 10, 15, and 20 years.

Some people look to Europe and say austerity there is not working, and I agree. An austerity program that is too quick can only make our problems worse. But I also see parts of Europe that have said by simply kicking the can down the road they can ignore their problems, and the only thing worse than austerity is the bond markets forcing a crisis upon the economy—forcing a crisis that would require a spike in interest rates and make this divide between spending and revenues even more unsustainable. So if we wait 3 years, 5 years, 10 years, 12 years from now, we will be unable to safely deal with these problems. That is why we need a balanced and responsible deal now.

After the election, many of my colleagues, particularly those on the Republican side, have somewhat publicly acknowledged that we need new revenue and it has to be a part of the solution. Candidly, I believe that even some of the numbers the President has put forward dealing with revenue goals are too modest in terms of what is needed to be put back into the revenue stream—not to grow the size of government, but to simply pay our bills. It is critically important this new revenue is quantifiable, scorable, and maintains the progressive nature of our Tax Code.

I, as do many on my side, appreciate those on the Republican side for their willingness to accept this reality. At the same time, we must acknowledge that every serious, bipartisan group that has looked at the issue of our fiscal circumstances understands that if we are going to put our fiscal house in order, in addition to achieving additional revenue, we are going to have to find additional places to cut government spending and take on the question of entitlement reform.

I understand many of our entitlement programs are a critical lifeline for our seniors and those who are the most vulnerable among us, but we need to ensure these programs are able to continue not just for the current beneficiaries but for our kids and grandkids alike. We must realize entitlement reform has to be part of any long-term response to our fiscal challenges.

Members come to the floor all the time and throw out lots of facts about the challenges around entitlements. I wish to cite just two which show that while, for example, Medicare and Social Security have been remarkably successful and must be preserved, the current math around both of these programs doesn't work. In Medicare, for example, an average couple, over their lifetime, would pay in about $113,000 in payroll taxes. As they hit retirement and go on Medicare, they would receive back $380,000 in benefits over their lifetime. Obviously, this gap can't be maintained.

How were we able to do it for so long?

Well, for a long time in our country there were a lot more folks paying in than there were folks paying out. When I was a child, there were 16 people working for every one individual on Medicare or Social Security. Today that ratio has gone down to three folks working for every one retiree. In about 10 to 12 years, that ratio will go down to two people working for every one person on Medicare or Social Security.

Think: again, paying in an average of $113,000 in payroll taxes; taking out $380,000 in health care expenses. Folks, the math just does not work. So we must have a real, balanced, and responsible approach to deal not only with this fiscal cliff but to make sure the promise of Medicare, the promise of Social Security, is maintained.

But this is where we run into problems, and I fear we may not get to the solution we need. Knowing that we need both new revenue, that we have to find places to cut spending, and reform our entitlement programs to bring them back into sustainability, we have to have a solution that looks at both sides of our balance sheet, and Members of both parties must come together to support it.

It is remarkable that in this body there are still Members who believe there is going to be a Republican-only solution to this problem. We sometimes see those activities coming out of the House. But, just as there is not going to be a Republican-only solution, there is not going to be a Democratic-only solution as well. And one of the most remarkable things I have found in my 4 years of service in this Senate—and I think again about the Presiding Officer, who has taken on so many challenges—for those of us who have tried time and again to work across the aisle, there is very little reinforcement effort in this town for Members to do the right thing. In fact, in many cases, opposite forces dominate.

On both sides—both the left and the right—a number of stakeholders use scare tactics to preserve their own portion of the status quo. They dress up and use misinformation to scare the American people and run ads against politicians who would dare to break with their orthodoxy, in order to drive Americans apart.

In the last week or 10 days, we have started to take a look at some of the ads that have started to run in all of the Hill press and periodicals. Every day I get groups that come in—as I am sure the Presiding Officer does—and they all say: Senator, thanks for trying to work on this fiscal cliff problem. Thanks for trying to work in a bipartisan way. Try to get it done, just don't touch mine.

Let me give you a little bit of a sampling:

One ad we have seen recently has to do with the mortgage interest deduction. It is terribly important. Anybody who says tax reform has to take place, says it is going to generate more revenues; unfortunately, however, mortgage interest is one of the biggest tax expenditures in our Tax Code.

I like this one—Congress: Let's fight fraud first.

Well, who has not heard and said that the solution to all of our problems is if we can get rid of the waste and fraud? That may be part of the solution set, but that is not going to solve $16 trillion in debt.

Next we hear: Who cares if Medicare and Medicaid are cut?

Well, this is from the hospitals. I know what great job hospitals across

Virginia, across Missouri, and across America do. But if we wall off these, where are we going to find the additional resources?

Next we see this: Graduate medical education.

It is very important, something I have fought for as Governor, something I want to preserve. In this debate, as we look to try to expand health care in America, we have to train more doctors to make sure those who have been uninsured can receive the health care they need. But, again, one more program: Do not touch mine.

We could go all day with additional posters.

But here again: Let's make sure airlines do not pay any more; let's make sure we avoid sequester; let's make sure we do not touch charitable donations; let's make sure defense is not touched.

Well, everyone wants to solve the problem. Everyone says: Atta-boy. But they then turn around to say: Atta-boy, but do not touch mine. That is not how the real world works. That is not what the Founders set up when they created this unique experiment in democracy.

One of the most remarkable things about the American government was they set up an institution that was slightly dysfunctional on purpose—an independent House, an independent Senate, an independent Presidency. The only way things got done was if all groups worked together.

For the past 2 months, there has been—not just the past 2 months, but for many, many months—there has been lots of talk about the forces of division and reflexive ideology. I think we all are tired of those groups that go around and ask politicians: Sign this pledge, not a dime of new revenue. It is one I find one of the most repulsive.

And we have seen, and I believe, that additional revenues are needed. Let me assure you, frankly, if there is any deal, they will be part of the deal. And while we are not there yet, the President and the Speaker have come to an agreement that additional revenue must be part of the deal.

But that is not the end of the story. If we—those of us on the Democratic side—say we have an extra trillion dollars of revenue, that we can then walk away from this problem now and say we were victorious, well, if we do that, all we are doing is simply kicking the can. The truth is—and this is from economists from left to right—if we do not have a deal that is at least a minimum of $4 trillion in deficit reduction over the next 10 years—and that is at the low end—then we will not start to drive our debt-to-GDP ratio back into a sustainable position. The only way we are going to get there is, yes, counting the cuts we have already made, yes, looking for additional revenue, but also finding additional spending cuts and entitlement reform.

The President gets this, and he knows we cannot kick the can down the road. What I think has been remarkable is, as the President has laid out his plan and his vision, he has acknowledged that he has been willing to be open to hard choices, including reforms to our entitlement programs. One of which he has said he would be open to, with the appropriate protections, the so-called chained CPI. But once this was even mentioned, some groups, progressive groups that I have been proud to have the support of, have said that any change—any change—to Social Security or Medicare or anything that is as sinister as chained CPI cannot be a part of any deal. For these groups, they say any single dollar of what they consider to be a benefit cut in these entitlement programs is unacceptable, even if it helps ensure the sustainability of Social Security or Medicare.

This is not a path to a successful deal. This is not the path, the kind of compromise and balance that will make sure we actually do preserve Medicare and Social Security for the long term.

I have to say, it is surprising to me, when I hear some in my own party who come down and rightfully call out those on the other side who deny the science around climate change, that those very same folks sometimes then deny the math around entitlement reform.

I wish to take a moment to talk about this so-called chained CPI. Chained CPI, as certified by our official scorekeeper, the Congressional Budget Office, is an alternative measure of inflation that takes into account how people change the mix of products and services they buy or substitute as prices change.

What does that mean in English? It means in the old days, the way we used to measure how much inflation was taking place was if the price of bananas went up, well, you would not buy bananas. This says, in a more realistic estimation, if the price of bananas goes up, well, you might, instead of buying bananas, buy apples.

What does that affect? It means the chained CPI ''. . . provides an unbiased estimate of changes in the cost of living from one month to the next.'' Is it a perfect formula? Absolutely not. But there is no perfect formula to measure inflation.

What is remarkable about this debate—and this is just one small piece of any kind of comprehensive reform—is that experts on the left and right agree that this new measurement formula is more accurate and more appropriate. And it does mean that the rate of inflation will be measured as slightly less. It actually says that it will cut the rate of increase by roughly three-tenths of one percent.

I have heard Members come out here and say this will account for changes and dramatic cuts of 10, 15, 20 percent. This is cuts of three-tenths of one percent.

Who supports this so-called chained CPI? It must be only those forces on the right. And, yes, groups such as the Heritage Foundation and the American Enterprise Institute have come together and said this is a more accurate measure. What has not been emphasized is that groups that have bona fides on the Democratic side that are unquestioned—the Center for American Progress, the Center on Budget and Policy Priorities, the Washington Post editorial board, the President's fiscal commission, the Bipartisan Policy Center—have all said this ought to be one of the tools we use as we look at trying to make sure Medicare, Social Security, and other entitlement programs are reformed and made sustainable.

Now why do economists support chained CPI? Because it honors the commitment to maintain the purchasing power of spending and revenue policies. It provides savings across the budget, not just in entitlement programs but across other areas. It also raises revenues, and it contributes meaningfully to the long-term fiscal sustainability of the programs we want to protect. Because across the government we have indexed things to inflation. The Tax Code, the entitlement programs, all are indexed. They rise and decrease based upon inflation.

So again, this tool, while not perfect, all these groups have said needs to be part of any reform. This is not a new idea—I know, perhaps, it is on this floor—but this is an idea that has been discussed, debated, and endorsed by these groups from left to right for over the last 10 years. It does, as I mentioned, both increase revenues and lower spending. Because, again, it is a more accurate measure of policy adjustments that Congress has already decided to make.

There are some who say: Well, what will this do to Social Security? That is an important part of this conversation. I for one believe Social Security needs to be reformed, and I believe Social Security reform ought to take a separate path from debt and deficit reform. I understand for many seniors, Social Security is a lifeline and it is without question the greatest social program in the history of our country. We as legislators need to protect that program.

But what we do not hear from those who come out and advocate for Social Security is the recognition that Social Security is on a path toward insolvency. If we do nothing about this wonderful program, under current law it will basically run out of money, which will mean a 25-percent across-the-board cut in benefits as early as 2033. And that number—as we continue to grow older, the actuaries keep coming up each year and making it earlier and earlier.

Now 2033 sounds like a long time away. What it means is, for some of our folks who work here, if you are 46 years old today, that would mean at age 67 you would see your benefits cut by more than a quarter—again, unless we act. This is not a self-correcting problem.

There are other things we need to do around Social Security, such as raising the cap on the amount of income that is taxed. But those who say we should put off questions about Social Security or Medicare to some other day refuse to also recognize the reality that none of this self-corrects, and the sooner we start down the path of reform, the sooner we can make sure the promise of these programs will last.

But, again, instead of worrying about the potential of a 25-percent cut in Social Security benefits for folks who today are 46 years old, they talk about the fact that, yes, there may be some slight cutback in immediate benefits—not, though, 20 percent, not 3 percent, not 1 percent, but a decrease of three-tenths of 1 percent in the amount of increase each year.

There are ways that if we use this tool, to make it more fair and balanced. Because we must make sure that we protect the most vulnerable in our society.

I was part of a group the Presiding Officer, I believe, supported, the so-called Gang of 6, which built on the President's Commission on Fiscal Responsibility, that said if we are going to do something like chained CPI, we also need to make sure we ensure protections for the most vulnerable. Which basically included things such as raising the minimum benefit for that bottom 20 percent of folks on Social Security; for making sure, as we add our aging population, that those individuals who outlive their pensions—the fastest growing group of Americans are folks above the age of 85—that they would receive an additional bump up as well.

We must also recognize, if we are looking at something like chained CPI, that we have special obligations to protect our veterans and the least fortunate among us. So any use of this tool ought to have special rules and include exclusions for veterans and SSI beneficiaries.

As I mentioned before, I personally believe raising the cap on the payroll tax is another part of the tools that we ought to use. But too many of the groups that are attacking this or any other effort to look at a balanced approach of, yes, additional revenue; yes, additional cuts; and, yes, reforms to our entitlements, do not mention that there are ways to mitigate some of these challenges.

It is also important to mention, with these ideas, at least from my position, every dime of impact that chained CPI would have on Social Security, those savings would have to remain in Social Security to make the program more solvent.

But this discussion about chained CPI is just the current flashpoint. The bigger issue is how we are going to get to that question of what I believe is, at minimum, a $4 trillion deal. Any budget deal between the Speaker and President, I believe, will probably contain enough things that everyone will look at it and find a lot to dislike. If not, they probably have not done their job. To single out any one thing and to be absolutely opposed to a deal, regardless of the other parts of the package, to me, would be the height of irresponsibility.

Again, I know there are others who say this whole debate about the fiscal cliff is imaginary and simply created by politicians. Well, I have to acknowledge, as somebody who spent 20 years in business and a number of years now in elective office, I do not know for sure what the effect would be if we go over the cliff and see taxes go up on all Americans, to see these across-the-board cuts take place.

But I do know this: If the chance is only 5 or 10 or 15 percent that going over the cliff would throw this economy back into a deep recession, there would be nothing that would rob more Americans, and hurt our most vulnerable citizens more, than having their house go back underwater because of a rise in interest rates, or the potential that a job disappears because an employer decides to end up—no longer to play, or unemployment benefits not get extended because we chose to punt rather than to deal with this issue.

Again, if we go over a cliff, and if the chances are only 10 percent that it throws us back into a deep recession, unlike in the past, unlike the fiscal crisis in 2008, we do not have extraordinary measures of stimulus or the Fed being able to dramatically lower interest rates.

So I believe we do need this balanced, responsible—at least a $4 trillion deal; a deal, again, that I believe counts the cuts we have already made, that adds additional real revenue.

Again, as I mentioned earlier, I think the President has started too low in terms of the amount of revenue we need. We took $4½ trillion out of the revenue stream over the last 10 years. I think to say that putting back at least one-third or 40 percent of that would be much more appropriate than what is being discussed right now.

It does mean that all of us need to make some hard choices about spending, and make sure the entitlement programs which have been so successful are sustained.

In closing, let me make a few final comments. I believe any final deal must ask those of us who have done well—and I have been blessed in this country to do very well—to pay their fair share. Beyond that, we have to look at a tax reform package that will actually make our Tax Code simpler, fairer, and generate more revenue than even what has been suggested in the current conversation.

It means, though, recognizing that we cannot solve this problem with budget cuts alone, it means Medicare and other entitlement reform must be serious and part of the conversation; that we honor our commitment not only to those beneficiaries who receive these important benefits now, but to make sure that 20-year-old, 40-year-old, and 50-year-old is going to have those benefits as well.

No matter what we do, we cannot only cut and tax our way out of this problem. It must include a growth agenda. Finally, as I know the Presiding Officer has made points time and again, it must contain real protections for the most vulnerable amongst us.

The President and Speaker are still working. I am hopeful they will get a deal. We, as Americans, and as legislators, owe them the space to make a deal, the opportunity to combine things people on each side might not like, in isolation, with policies that address these greater concerns. But now is not the time to be against things without knowing the critical details about how and where they will work.

It is not time to confuse the true facts or the actual math involved, regardless of which side to which you belong. I have spent the last 2½ years in this body trying to work with folks on both sides to get us to a deal. I believe there is nothing that will do more to generate job growth and economic activity than making sure we have a real deal that does not kick the can and actually passes muster.

I have to acknowledge at times I, like I know many of my colleagues, grow very frustrated with the back and forth. Clearly, what is going on in the House right now is not a serious effort to address this problem.

I see the new chair of the Appropriations Committee here. I will wrap up. I want to commend the Senator from Maryland, my good friend, for her new position. I believe she will lead us back to a path where we have regular order to make sure we appropriately look at how we spend the resources we receive. But we must no longer punt on this issue.

At moments of greatest frustration—and there are many for me as I know there are for many Americans, as they get tired of hearing about the back-and-forth and the Kabuki dance going on right now. It is in moments of greatest frustration, that I always fall back on that wonderful Winston Churchill quote:

> You can always count on the Americans to do the right thing, after they have tried everything else.

Well, it seems to me, in this debate we have tried everything else. We have accused back and forth. We have been unwilling to recognize the reality for the need for revenues or the recognition that we have to make sure our entitlement programs are sustainable. I hope and pray as we move closer to this Christmas season that our leaders, and then all of us from both sides, can come together and make sure that we address this issue; which I believe that until we address it, we will not be able to address the host of issues which confront our country.

I yield the floor.

Ms. MIKULSKI. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER (Mr. SANDERS.) The pending business is H.R. 1.

Ms. MIKULSKI. Mr. President, I rise and ask unanimous consent to speak for 3 minutes as in morning business.

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

APPROPRIATIONS COMMITTEE CHAIRMANSHIP

Ms. MIKULSKI. Mr. President, I just wanted to come to the floor—I know other Senators are speaking—to say to the rest of my colleagues and to many people who have expressed interest, the Democratic caucus has just confirmed me to be the full chair of the U.S. Senate Appropriations Committee.

I take the floor today to announce that with great humility. I am filling the footsteps of Senator Danny Inouye, who was indeed a giant among men, a war hero, and an advocate for social justice, national security, and a compassionate government.

I want to just say to my colleagues, as I assume this chairmanship, I look forward to working with each and every Member of the Senate, both within my own caucus and across the aisle, to have a committee that functions on a bipartisan basis.

The Appropriations Committee is a constitutionally mandated committee. The Appropriations Committee is governed by the Constitution of the United States, by the laws of the land, and by the rules of the Senate. Under the Constitution, the Founding Fathers said every year there should be a review of the annual Federal expenditures. That is what our committee will do. We will bring forward legislation that will show what are the expenditures of the United States Government, what we propose to be ratified by the full Senate.

We will do it, first of all, on a bipartisan basis. One of the first calls I received when I knew this honor would come to be chair was to reach across the aisle to Senator RICHARD SHELBY of Alabama, my good friend and colleague who is now the ranking member on the Appropriations Committee, to reach out to him, as I did in a phone call. And I say publicly today that when we look at how we are going to spend the money and how we are going to meet our national security needs—but our compelling human needs in this country, and public investment in our children, in our future, and how to promote our economy—we need to do it on a bipartisan basis. I want to thank Senator SHELBY because he assured me of his cooperation to do so.

Our committee will function in a way that is open, transparent, and we wish to follow the regular order. What we want to do in following the regular order is to ask our colleagues to join with us so that we move the urgent supplemental which so many American people are depending on us to pass, this legislation to meet the needs of individual assistance to restore homes, lives and livelihoods.

It is going to be a new day in the Appropriations Committee, but we are going to follow old-school values of the men who went before us: Dan Inouye, Ted Stevens, men who fought in World War II to defend America. They stood on this Senate floor to defend the Constitution. They spoke for their States. That is what we are going to do. I want everyone to know, we also will want to ensure that our spending reflects our values to protect our country, to protect vulnerable populations, and to also prepare America for the future.

I will have more to say about all of this at a later time. I just wanted to say, I take this not as an honor but as a great responsibility. I am so appreciative of the caucus that confirmed me. I am very appreciative of the way Members of the other side of the aisle also reached out.

If we take the time to listen to each other, to respect each other and listen to the needs of the people, we can work to get more bang out of the buck, get more value for the dollar. We can have a strong economy, a safer country. We can be frugal without being heartless.

At the same time, we can assure the taxpayers we have heard them. They want us to do a better job with our spending, but at the same time they want to see it in an open process. I just wanted to come to the floor to say that.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

JON KYL

Mr. MCCONNELL. I rise to pay tribute to a dear friend and an extraordinary public servant, Senator JON KYL. For the past 18 years, it has been my honor to serve alongside JON in the Senate, and it has been my great privilege to get to know him personally and to work with him as closely as I have.

JON has built a well-earned reputation as one of the great policy minds of our time. He has an encyclopedic knowledge of domestic and a keen interest in foreign policy, and we all know he is one of the hardest working Members of Congress.

He has been a leader on his own State's interests, and he has emerged as one of the strongest leaders in our entire party on the issues of nuclear strategy and arms control. JON has explained to an entire generation of Republicans President Reagan's enduring philosophy of peace on strength and then applied it.

JON has been a zealous proponent of a strong missile defense, and more than any other Senator he helped ensure that the United States had a working nuclear arsenal after the Cold War had ended because, in his view, a strong America that can deter a threat is always the best avenue to peace.

Over the past decade, JON has applied that same standard to the war on terror, and no one, no one has worked harder to explain the threat of Islamist terrorism or helped equip our Nation with the tools we need to confront and defeat it than JON KYL.

Not enough thought has been given to the role of nuclear weapons in American foreign policy and how strategy will evolve as our conventional military is drawn down due to a diminishing investment and how nuclear weapons will be employed to support the articulated strategic pivot to the Asian Pacific theater. The Senate and the country will be well served by JON's thoughts on these challenges over the coming years. Fortunately, he has thought ahead by encouraging others to step into the void after he leaves.

Throughout his time in Washington, JON has been guided, as he explained in eloquent detail yesterday, by a profound belief in and commitment to the expansion of freedom and the three primary areas where that commitment plays out in the public square: growth-oriented economics, the social policies that make limited government possible, and any policy that emphasizes a strong and sovereign America. These three pillars have been JON's guidepost, and we have all benefited tremendously over the years as a party and as a nation from his faithful application and patient explanation of the enduring importance of all three.

In short, JON is whip smart, and he is a passionate believer and defender of American exceptionalism. But besides all this, he is also a fantastic individual, with a peerless reputation on both sides of the aisle as a man of principle and integrity. I have personally benefited from JON's policy mind and advice countless times, and, JON, I want to say how grateful I am for your steady hand and wise counsel over the years.

I always knew I could throw JON into the middle of any fight, confident our team would own the field. He wasn't just prepared, he was eager to take on the most thankless tasks, and he never ever let me down.

One suspects the seeds of JON's wisdom and equanimity were planted in his upbringing in the Midwest. As a young boy growing up in Nebraska and Iowa, he learned the value of hard work. His dad led the local chamber of commerce and worked as a high school principal and superintendent. Later on, he joined JON's uncle in the clothing business—and eventually he served six terms in Congress.

It was a stable, happy, middle-class childhood centered on work, family, and service. It laid a solid foundation for JON's later successes. ''It was very important to Dad,'' JON once said, ''that we recognize that even though we weren't rich, we still had an obligation to get involved and give back to the country.''

After graduating from high school, JON enrolled at the University of Arizona, where he was very much the bundle of energy that anybody who has ever walked more than 10 feet with him is familiar with. Incidentally, I am told that you don't want to go on a hike with JON unless you are a trained Olympian. He hikes up Camelback Mountain almost every weekend he is home, and there are two routes; one is somewhat challenging and the other one is akin to a Stairmaster. JON takes the Stairmaster because it is faster. He climbs up without stopping, and then as soon as he gets to the top, he comes right back down. Most people stop to eat an apple or look at the vista—not JON. He powers right back to the bottom. There is too much work to be done.

During his college years, JON got involved in debate, politics, and a number of service organizations, graduating with honors in 1964. It was also during his college years that JON fell in love with Arizona, its red sunny vistas, big skies and warm inviting people. It is there that he fell in love with Caryll Collins, whom he met at church one Sunday and who has been his constant companion and his anchor ever since.

I know JON would agree that without Caryll's support, patience, and understanding he would never have been able to accomplish all he has over the years. JON and Caryll have been married nearly 50 years. They have raised two great kids, Kristine and John. They have seven grandchildren. They have been blessed.

After college, JON went on to earn a law degree from the University of Arizona College of Law, where he was editor of the Law Review. He must have had some great teachers because it is hard to imagine anyone who loves the study and the application of the law as deeply as JON KYL.

JON practiced at a firm in Phoenix for 20 years when he decided to follow his father's footsteps instead and take a turn toward public service. As one long-time friend described it:

> [Jon] sat down with . . . Caryll, who is really his partner, and decided it was time. . . . He could have been a rich man. But he decided this was more important.

JON ran for Congress in Arizona's Fourth District and won handily, serving eight terms before winning his Senate seat in 1994.

One way to illustrate how hard JON has worked over the years is to look at the coverage he got then versus the coverage he gets now. When he first ran for office, one unfriendly paper called him an enigma. But by 2006, that same paper would describe him as a ''national, political figure . . . and one of the five most powerful Senators in Washington . . . a man who most everyone says is a hardworking, keenly intelligent, humble, civilized gentleman who seems always to be doing what he believes is best for America.'' Most of us couldn't get that out of our own press secretaries, let alone the hometown paper.

But it says everything we need to know about JON KYL. His work ethic is legendary. For 15 years, JON labored mostly behind the scenes on one of the most complicated and sensitive issues in Arizona politics, settling American Indian claims to Colorado and Gila River water and resolving an intergovernmental dispute about how much money Arizona should pay for the Central Arizona Project, completed in 1993.

These were longstanding, thorny, legal, and political issues in Arizona. Some thought a settlement was impossible. They didn't know JON well enough. By 2004, he had succeeded in passing the Arizona Water Settlement Act, simultaneously resolving the outstanding Indian lawsuits and resolving the issue of Arizona's reimbursement rate to the Federal Government.

According to one political commentator, ''It was the most far-reaching Indian water settlement in history,'' and it ''wouldn't have happened without the hard work and keen legal mind of JON KYL.''

As JON himself put it:

> It was one of the hardest things I've ever done, but I was in a position to be the catalyst. There wasn't anybody else who could do that water deal. And it had to be done.

JON's work on water settlements carries a lesson for all of us. Similar to any true leader, he saw the need to do something, not just for the folks who elected him but for the generations of Arizonans to come. He thought ahead, and now the people of Arizona can go about their daily lives without having to worry about water at all for generations to come. It will be a huge part of his legacy—and it went more or less unnoticed by most folks in Washington. That is why JON truly embodies the old maxim, popularized by President Reagan, who had it placed on his desk, that there is no limit to what a man can do or where he can go if he doesn't mind who gets the credit. He almost seems to relish the thankless task. A lot of people don't know this, but JON actually volunteered to serve on the supercommittee.

At press conferences, JON has even been known to lean up against a wall so others get noticed instead of him, which, as we all know, is pretty unthinkable to most of the folks around here.

JON's intelligence and personal humility are just two of the reasons he has been so good at persuading people to his view. He persuaded his colleagues to oppose President Clinton's Comprehensive Nuclear Test Ban Treaty. He has used his immense powers of persuasion literally countless times as minority whip, and he has done all this without ever offending anybody.

He is that rare politician who manages to always stand on principle without ever damaging a relationship. I mean it when I say that to the degree I have had any success at all in my role, it has been only because JON KYL has been my partner, counselor, and friend.

JON always tells folks he is serious because the issues he deals with are serious, and I can't tell you how grateful I am that we have had him for as long as we did and how much I will miss having JON KYL around when the gavel falls on the 112th Congress.

One last point. People who know JON well know he is a huge NASCAR fan. He knows the drivers. He knows the lingo. He goes to two big races every year in Phoenix and nothing, I mean nothing, can keep him from going.

Why do I mention this? As a young lawyer, JON used to volunteer to be the lookout guy on the hill around the track. This is a guy who keeps a lookout for oil on the track. His view was it might not be the most glamorous work but that it was essential to maintain the safety and the integrity of the race to have someone up there on the lookout. I can't think of a better way to sum up his service in Washington.

JON has been that serious, behind-the-scenes legislator who always did what needed to be done. He was happy to do the work while others took the credit, and he was happy to explain any issue to anyone and to provide not only the intellectual explanation for the right policy but the elbow grease to get it enacted into law. What mattered to JON was the good of the country.

He has been a model public servant. And, JON, I can't tell you how grateful we all are that you were. Thank you for everything, my friend. I truly hate to see you go.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I will just say thank you to my leader. There is a lot that is enjoyable, some not so enjoyable, about serving here in the Senate. But my time as whip in particular has been one of the most enjoyable things I have done, both because it is in behalf of our colleagues here, helping to get things done, but also because I have been able to work alongside a great leader in Republican leader MITCH MCCONNELL. I will treasure that always, and I am deeply grateful for the comments he made today.

Thank you.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Mr. President, before Senator KYL leaves the floor, I would like to join the Republican leader in congratulating him on his public service. He and I came to the Congress the same year, after the 1986 elections—we are part of the 100th Congress—and we became friends. I couldn't agree more with the Republican leader and his example of following your convictions with the highest degree of integrity in the work you have done. I had a chance to serve with you on the Judiciary Committee, and I can tell you that you added greatly to the respect for that committee and our respect for the process and for the rule of law and for civil liberty issues. And most recently, with the work you did on the Magnitsky bill, the Republican leader

is absolutely right—you did not seek the headlines on that legislation, but it could not have been done without your direction and your help.

I just want to thank you for what you have done to advance the reputation of the Senate and public service, standing by your convictions, yet doing so in a way that we could work together, respecting everyone's right to be heard and our right to work together. You are indeed a model Senator, and it has been an honor to serve with you in the Senate.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would respond by saying thank you very, very much. I would just add one other thing. In this Senate family, although we may be of different parties, we make good friendships, and it should not go unnoticed that our spouses also make good friendships. This is a case where my wife and Senator CARDIN's wife are very good friends, which necessarily draws us closer together, and for that we should both be grateful as well.

I thank my colleague.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Senator KYL is absolutely right. I get my best information from Myrna as to what is going on in the Senate. So I appreciate his comments.

HUNGARY

Mr. CARDIN. Mr. President, as the Senate chair of the Helsinki Commission, I have a longstanding interest in Central Europe. For many years the Helsinki Commission was one of the loudest and clearest voices to speak on behalf of those oppressed by communism and to call for democracy, human rights, and freedom from Soviet oppression. It has been a great triumph and joy to see the peoples of this region free from dictatorship.

Over the past two decades I have been profoundly heartened as newly freed countries of Central Europe have joined the United States and NATO and have become our partners in advocating for human rights and democracy around the globe. Leadership on those issues may be especially important now as some countries in the Middle East undertake transition, the outcome of which is far from certain. Even in Europe, in the western Balkans, there is a crying need for exemplary leadership, not backsliding.

Americans know from our own history that maintaining democracy and promoting human rights are never jobs that are finished. As my friend and former colleague Tom Lantos said, ''The veneer of civilization is paper thin. We are its guardians, and we can never rest.''

For some time I have been concerned about the trajectory of developments in Hungary, where the scope and nature of systemic changes introduced after April 2010 have been the focus of considerable international attention.

At the end of November, Hungary was back in the headlines when Marton Gyongyosi, a member of the notorious extremist party Jobbik and also vice chairman of the Parliament's Foreign Affairs Committee, suggested that Hungarian Jews are a threat to Hungary's national security and those in government and Parliament should be registered. The ink was barely dry on letters protesting those comments when another Hungarian member of Parliament, Balazs Lenhardt, participated in a public demonstration last week where he burned an Israeli flag.

The fact is that these are only the latest extremist scandals to erupt in Budapest over the course of this year. In April, for example, just before Passover, a Jobbik MP gave a speech in Parliament weaving together subtle anti-Roma propaganda with overt anti-Semitism blood libel. After that, Jobbik was in the news when it was reported that one of its members in Parliament had requested and received certification from a DNA testing company that his or her blood was free of Jewish or Romani ancestry.

At issue in the face of these anti-Semitic and racist phenomena is the sufficiency of the Hungarian Government's response and its role in ensuring respect for human rights and the rule of law. And the government's response has been, to say the least, wanting.

First, it has been a hallmark of this government to focus on blood identity through the extension of Hungarian citizenship on a purely ethnic basis. The same Hungarian officials have played fast and loose with questions relating to its wartime responsibilities, prompting the U.S. Holocaust Memorial Museum to issue a public statement of concern regarding the rehabilitation of fascist ideologues and political leaders from World War II.

I am perhaps most alarmed by the government's failure to stand against the organized threats from Jobbik. For example, in late August a mob estimated at 1,000 people terrorized a Roma neighborhood in Devecser, taunting the Romani families to come out and face the crowd. There were reportedly three members of Parliament from the Jobbik party participating in that mob, and some people were filmed throwing bricks or stones at the Romani homes. The failure to investigate, let alone condemn such acts of intimidation, makes Prime Minister Orban's recent pledge to protect ''his compatriots'' ring hollow.

Of course, all this takes place in the context of fundamental questions about democracy itself in Hungary.

What are we to make of democracy in Hungary when more than 360 religious organizations are stripped of their registration overnight and when all faiths must now depend on the politicized decisionmaking of the Parliament to receive the rights that come with registration?

What are we to make of the fact that even after the European Commission and Hungary's own Constitutional Court have ruled against the mass dismissal of judges in Hungary's court-packing scheme, there is still no remedy for any of the dismissed judges?

What is the status of media freedom in Hungary, let alone the fight against anti-Semitism, if a journalist who writes about anti-Semitism faces possible sanction before the courts for doing so?

What are we to make of Hungary's new election framework, which includes many troubling provisions, including a prohibition on campaign ads on commercial radio and TV, onerous new voter registration provisions, and limits on local election committees, which oversee elections?

I find it hard to imagine that Jews, Roma, and other minorities will be safe if freedom of the media and religion, the rule of law, the independence of the Judiciary, and the checks and balances essential for democracy are not also safeguarded. With that in mind, I will continue to follow the overall trends in Hungary and the implications for the region as a whole.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

(The Remarks of Mr. DURBIN are printed in today's RECORD under ''Morning Business.'')

ESTABLISHING THE DATE FOR THE COUNTING OF ELECTORAL VOTES

Mr. DURBIN. Mr. President, I ask unanimous consent the Senate proceed to the consideration of H.J. Res. 122, received from the House and at the desk.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res 122) establishing the date for the counting of the electoral votes for President and Vice President cast by the electors in December 2012.

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

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

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

The joint resolution (H.J. Res. 122) was ordered to a third reading, was read the third time, and passed.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT Continued

The PRESIDING OFFICER. The Senator from Alabama.

REMEMBERING DANIEL K. INOUYE

Mr. SHELBY. Mr. President, earlier today a lot of us, Members of the Senate, joined the family and friends of our great colleague who passed away earlier in the week, as they brought his body into the U.S. Capitol. I rise here this afternoon to extend some of the tributes that we have made to the memory and to the life of Senator Inouye.

For the past 26 years I was privileged to serve alongside Senator Inouye in this Chamber. I came to know him as a wise counselor, a skilled legislator, a formidable negotiator, and a trusted friend. His unassailable reputation as an American hero, however, had been forged long before any of us here ever met him.

Senator Inouye did not demand respect. He commanded it. The reasons for this are many. In 1941, he witnessed firsthand the horror at Pearl Harbor. As a Red Cross volunteer, he cared for his fellow citizens injured in the attack. Not long thereafter, he joined the 442nd Regimental Combat Team. He was determined to serve his country despite the fact that he, like all Japanese-Americans, had been deemed an ''enemy alien'' when the U.S. declared war on Japan.

As a young military officer in 1945, Daniel Inouye led his unit in a successful attack against a Nazi fortification in northern Italy. The valor, courage, selflessness, and determination he displayed during the battle are the stuff of legend, and would later earn him the Medal of Honor. During this attack he sustained serious permanent injuries that served as constant reminders of his sacrifice for our country.

Senator Daniel Inouye began his political career as a member of Hawaii's Territorial House of Representatives in 1954. Almost immediately, his colleagues tapped him as the majority leader of that body. His tremendous leadership ability was already apparent. He then ascended to the Territorial Senate in 1958, and became Hawaii's first U.S. Congressman upon the granting of statehood in 1959. Only 3 years later, Daniel Inouye became a U.S. Senator. He was elected to a staggering 9 consecutive terms, continuing to serve until his passing. It is a testament to his effectiveness as a Senator and his devotion to his State that no challenger ever mounted a serious threat for his seat.

Through his hard work in the U.S. Senate, Senator Inouye helped to ensure that Hawaii's economy and people prospered. As a member, and later chairman, of the Appropriations Committee, Senator Inouye skillfully secured myriad infrastructure, natural resource, cultural, job training, and agriculture projects for his State. As a member of the Appropriations Committee I learned valuable lessons by observing Senator Inouye over the years. He understood the art of the deal, always operating out of mutual respect toward shared interests. And I can not recall a time when he did not deliver for the people of Hawaii. While he never lost focus on the interests of his State, he also maintained eternal vigilance on matters of national security. As a war hero, his attention to veteran affairs and military needs was unsurpassed.

In addition, Senator Inouye served as the first chairman of the Select Committee on Intelligence. As a former Chairman of this committee, I was honored to carry forward the rigorous oversight example he set. By the time his career ended, Senator Inouye had become the second longest serving senator in U.S. history.

His list of accomplishments and honors is seemingly unending. In fact, it is among the most impressive compiled by any who ever set foot in this Chamber.

Senator Inouye never talked about any of this. He was not brash or boastful or domineering. Rather, he carried himself with quiet reserve and firm resolve.

Senator Inouye's life story speaks for itself and demonstrates a faith in and devotion to our country second to none. He was one of the most decent and inspiring people I have ever known. I am proud to have served with this great man and to have called him a friend. I offer my deepest condolences to his wife and family during this difficult time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MORAN. I ask unanimous consent I may speak on the Senate floor as in morning business.

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

SENATE RULES CHANGES

Mr. MORAN. Mr. President, the Senate, of which I am a new Member, was at one time called the world's greatest deliberative body. Its rules have remained largely unchanged since the origin of the Senate. This Chamber's distinguishing attribute has undoubtedly been its right of unlimited debate and its greatest protections are the rules put in place to defend that right of debate.

I am worried about the talk now of destroying any Senator's ability to filibuster, to delay consideration of a bill, because it is a fundamental right of all Senators to express their opposition to legislation even when that Senator stands alone—when you are the only one who opposes that legislation. This is an important right, protecting a Senator's right to object and a Senator's right to represent his or her own constituency.

Something tells me the desire to curb this unlimited debate of the Senate doesn't really come from a failure of the Senate's rules but, rather, a desire by some to see that an agenda can be pushed through by ignoring that minority right, by overriding the objections of an individual Senator on behalf of his or her constituents.

The rules of the Senate should not be targeted for change until we look at what the problems are in the way we conduct our business currently. For so long—again, I have only been here 2 years, but for the 2 years I have been here, it seems to me that often the majority has obstructed the ideal of unlimited debate and put undue stress on the rules of our Chamber. The practice of the majority party has prevented me and my colleagues from contributing to the legislative process in several ways. Rather than encourage debate and compromise by welcoming amendments, often, as we say here, ''the tree has been filled,'' or, in the way we would say it in Kansas, we fill up the opportunity for amendments with certain amendments that then preclude other amendments being considered, that being the amendments of the rest of us.

In addition to that, the majority leader has filed cloture more than 100 times on the very day the measure was first raised on the Senate floor, which basically ends debate on that day.

We get compromise whenever everyone, the majority and minority, have the opportunity to present their points of view. Then we sit down and try to figure out the difference, how we can make things work among ourselves. We have seen rule XIV used to bypass committee work nearly 70 times in the last 6 years.

I am honored to serve on a long list of committees in the Senate and I attend many committee meetings and we hold hearings. We listen to our constituents, we listen to the experts, and we try to reach a conclusion as to what is best in a piece of legislation. When that process is bypassed, we lose that opportunity to gain from that insight.

In so many instances the committee process is bypassed. I am a member of the Senate Appropriations Committee, with the example of our inability to have appropriations bills and no budget. I am a member of the Banking Committee on which we have lots of hearings but very few markups. I think it undermines the ability for each of us to do our jobs on behalf of America.

I think we have been forced away from what is most valuable here—discussions. Not that any of us gets our own way. That is not the nature of this place. It is not the nature of America. But we each have our own voice, and by being able to express ourselves we have the opportunity to flesh out the best ideas and ultimately to require people to come together and reach an agreement—that word that sometimes is not said often enough—compromise.

I recognize this as a Member of the Senate representing the State of Kansas. I consider my State often in the

minority. We are very rural. The issues we care about are different than those of places in the rest of the country. I represent a small population and many of my colleagues represent large urban areas with large populations. In the absence of rules protecting me as a Senator representing a minority, I think my ability to represent that minority is diminished. I recognize that I do not always have the right answer to every question. I have great respect for everyone's opinion. I was never ordained by God to have all the answers to every problem, but I think we find answers by having respect and listening to others, and to sort out what we think is the best of our ideas and the best of other ideas to see that good things happen on behalf of America.

We need to make certain that Republicans and Democrats have the opportunity to defend their opinions and then come together. We need to make certain the legislative process works in the committee and we need to make certain that we are not precluded from standing here, day after day, in opposition to legislation that we believe is bad for America. It is the Senate that has the opportunity to keep bad things from happening.

Again, I worry that as a result of the lack of function of the Senate over the last years that we are going to make dramatic changes in the rules that change the nature of this body, who we are and what we can accomplish, what our purpose is.

We need to work together, no doubt about it, but the idea of changing the rules, in my view, diminishes the need to do so. Our constituents expect us to represent them and their best interests and that means that we have the right—the necessity—of participating in the legislative process. I owe that to Kansas. I owe them nothing less. Without the right to use the filibuster to stop consideration of a bill until all ideas, all issues are heard, we risk the loss of that dissenting voice for a minority—no matter what party may be in power.

Previous Members of the Senate have understood the importance of protecting the minority's rights and have spoken out in defense of unlimited debate as it exists in the Senate today. I worry that the Senate is becoming a different place. As I studied history, there was always the voice of the institution, the Senator who had been here for a long time. There was the collective wisdom that, yes, we are in the minority now—or we are in the majority now—but that someday it will be the reverse, and we want the rules to apply no matter what the position. It seems to me that in the past, Members of the Senate would speak out—whether a Democrat or Republican—for the institution of the Senate and what it means to the American people and the Constitution of the United States.

The late Senator Byrd once said this about the design of the Senate:

> The Senate was intended to be a forum for open and free debate and for the protection of political minorities. As long as the Senate retains the power to amend and the power of unlimited debate, the liberties of the people will remain secure.

When then-Senator JOE BIDEN was a part of this Chamber, he once said in defense of the filibuster:

> At its core, the filibuster is not about stopping a nominee or a bill, it is about compromise and moderation.

In 2005, when Republicans controlled the Senate and President Obama was a Senator, he said:

> If the majority chooses to end the filibuster—if they choose to change the rules and put an end to democratic debate—then fighting and bitterness and the gridlock will only get worse.

I think this statement applies today. I am tired of the fighting, bitterness, and gridlock. The American people do not want to see even more partisan bickering in Washington, DC. They want us to work together and solve our Nation's problems. They want us to get things done.

Preserving the rules of the Senate is not a partisan issue, but it is about protecting the nature of the Senate and the rights of the minority. Without the ability to compromise or debate on the floor of the Senate, I fear the greatest deliberative body will be drastically changed for the worse.

The original design of the Senate enables each Senator to be equal to one another no matter the party label, and each has the right to protect using the filibuster. If we choose to silence the Senators in the minority now for the sake of political expediency and lower the number of votes needed for a bill to pass without dissent, then we risk changing the very nature of the Senate.

I see this as a former Member of the House of Representatives. I am accustomed—after 14 years—to having these words spoken: I yield to the gentleman from Kansas 60 seconds.

The Senate is different from the House. We are entitled to more than 60 seconds of being able to speak in support or in opposition to issues before the Senate. If that filibuster were to be destroyed, and if the last protection of the rights of the minority were to be disregarded, then the Senate would become substantially no different from the House. It would be marked by limited debate where the majority runs against the basic nature of the Senate rules based largely upon population.

When the Republicans were in control of the Senate in 2005, Senator REID, our majority leader, said:

> The threat to change the Senate rules is a raw abuse of power and will destroy the very checks and balances our Founding Fathers put in place to prevent absolute power by any one branch of government.

It is my belief that the Senate still exists today in the form that the Framers intended and that we must put a stop to this raw abuse of power. The Senate represents the embodiment of freedom of speech, and we should encourage the full exercise of our hard-won freedoms and unlimited debate. This tradition stands as a testament to the sacrifices of generations of early Americans and Americans throughout the history of our country. This freedom is one that will certainly be fought for in this Congress and the next.

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

The PRESIDING OFFICER (Mrs. SHAHEEN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Wisconsin.

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

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

TRIBUTES TO DEPARTING SENATORS

HERB KOHL

Mr. JOHNSON of Wisconsin. Madam President, I rise to pay tribute to a man who has been generous with his time, his treasure, and his heart, to his friends, his family, the State of Wisconsin, and to America, Senator HERB KOHL.

America and Wisconsin have always been defined by immigrants arriving in this country seeking freedom, opportunity, and a better life for themselves and their families. Such was the case for Senator KOHL's father Max, an immigrant from Poland, and his mother Mary, an immigrant from Russia. Their family's story was just one among the many millions of stories of fulfillment of the American dream.

Max and Mary's son Herb attended Washington High School in the Sherman Park neighborhood of Milwaukee. He graduated from the University of Wisconsin Madison in 1956 and went on to earn an MBA from Harvard Business School in 1958.

Senator KOHL's service to his country started at a young age. He enlisted in the U.S. Army Reserve after receiving his MBA and served in the military for 6 years. After his military service, he began contributing to our Nation not in government but in the private sector. During the 1970s, he managed his family's well-known retail businesses. The stores built by the Kohl family remain the legacy that all Wisconsin respects and appreciates.

When Wisconsin's NBA team, the Milwaukee Bucks, was considering moving out of the State for financial reasons, Citizen Kohl stepped in and purchased the franchise. He prevented the team from leaving and preserved professional basketball as an integral part of Wisconsin's strong sports tradition. Suffice it to say, Citizen Kohl had established himself as a very successful member of this Nation's business community. But he didn't hoard his financial success; he shared it and he shared it generously.

Senator KOHL's philanthropy was widespread, but he particularly seemed to enjoy directing his generosity to

helping Wisconsin students and educators. In 1990, he established the HERB KOHL Educational Foundation Achievement Award Program. This program provides a total of $400,000 to hundreds of students, teachers, and schools throughout the State of Wisconsin each and every year. In 1995, Senator KOHL continued his generosity to education and sports in our State by donating $25 million to the University of Wisconsin Madison for a new sports arena. The Kohl Center, as it is now known, is the home for the school's basketball and hockey teams.

Senator KOHL was first elected in 1988 and even though his duties required him to spend time in Washington, his heart has always been with the people of Wisconsin. For the past 24 years, he has maintained a strong passion for Wisconsin's children, seniors, farmers, and manufacturers.

As a man whose life has been distinguished by generosity, it is worth noting that his final speech on the floor of the Senate was not a long list of his many accomplishments; instead, it was a short heartfelt speech of gratitude to those who made him the generous man he is today, those he served with, and those he represented in the Senate for four consecutive terms. Now it is our turn to thank Senator KOHL for the honorable 24 years he has served his State and this Nation.

During his first election, the slogan of Senator KOHL's campaign was ''Nobody's Senator but Yours.'' There can be no doubt in anyone's mind that he has lived up to that promise each and every day.

On behalf of all the citizens of Wisconsin, I wish to thank Senator HERB KOHL for his generous spirit and his many years of service to Wisconsin and America.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

DANIEL AKAKA, JEFF BINGAMAN, SCOTT BROWN, KENT CONRAD, JIM DEMINT, KAY BAILEY HUTCHISON, HERB KOHL, JON KYL, JOSEPH LIEBERMAN, RICHARD LUGAR, BEN NELSON, OLYMPIA SNOWE, AND JIM WEBB

Mr. REED. Madam President, at this time, I wish to take a few minutes to salute my colleagues who are retiring at the end of this year with the conclusion of the 112th Congress: DANIEL AKAKA of Hawaii, JEFF BINGAMAN of New Mexico, SCOTT BROWN of Massachusetts, KENT CONRAD of North Dakota, JIM DEMINT of South Carolina, KAY BAILEY HUTCHISON of Texas, HERB KOHL of Wisconsin, JON KYL of Arizona, JOSEPH LIEBERMAN of Connecticut, RICHARD LUGAR of Indiana, BEN NELSON of Nebraska, OLYMPIA SNOWE of Maine, and JIM WEBB of Virginia. They have all worked ceaselessly to give their constituents the best representation and give the country the benefit of their views, their wisdom, and their experience. They are men and women who are committed to the Nation, and they have every day in different ways contributed to this Senate and to our great country.

I wish to thank them personally for their service, and, in so many cases, their personal kindness to me; for listening to my points and for, together, hopefully, serving this Senate and this Nation in a more positive and progressive way.

In particular, let me say a few words about some of the Members with whom I have had the privilege to work more closely.

Senator DANIEL AKAKA, like his colleague, the late and revered Senator Daniel Inouye, proudly served our Nation during World War II. I am stepping into the huge shoes of DANNY AKAKA as the cochair of the Army Caucus. From one soldier to another, I salute him.

He has also been an extraordinarily forceful advocate not just for active-duty personnel but for veterans and, of course, for the men and women of his beloved Hawaii.

JEFF BINGAMAN has distinguished himself through his work on the Energy and Natural Resources Committee to improve our Nation's energy policy, particularly improving our energy efficiency. He has the vision and knowledge which he has displayed so many times to deal with the difficult issues that face us with respect to the appropriate use of energy.

He has also focused on some of the greatest challenges facing our educational system, including preventing dropouts and promoting the use of education technology.

SCOTT BROWN has drawn from his over 30 years of experience in the National Guard to advocate for our servicemembers. I am particularly pleased we were able to work together to create the new Office of Service Member Affairs at the Consumer Financial Protection Bureau.

I have had the honor of serving with KAY BAILEY HUTCHISON on the West Point Board of Visitors, and I am also grateful that she joined with me on a bill to improve care for children who survive cancer.

JOE LIEBERMAN and I have worked many hours to protect the submarine industrial base that is crucial not only to our strategic posture but also to our local economies. He has done it with great vision and great energy, and I thank him for that.

RICHARD LUGAR is one of the most decent and thoughtful individuals ever to serve in this body. We will miss his wisdom and his voice, particularly on nuclear nonproliferation and arms control. I am also pleased to have joined him on so many other issues, and he leaves an extraordinary mark on this institution.

I have also had the privilege to work closely with another Member of this body, my colleague and friend, OLYMPIA SNOWE of Maine. Her willingness to reach across the partisan divide to advance legislation to benefit the Nation and the Senate and her State of Maine is, in my view, legendary. I was pleased to work with her when it came to supporting our fishermen and lobstermen, who are critical to our local economies. She and I have worked closely together on a host of other issues, including supporting strong investments in LIHEAP and our Nation's libraries.

JIM WEBB, a decorated combat veteran, is someone whose love for this Nation was manifested very early, as he led marines in combat in Vietnam. His extraordinary courage is only matched by his quiet demeanor and his calm sense of confidence that project outward in every different capacity.

Of course, he has taken it upon himself to make sure we do not forget our veterans. He was the architect of the post-9/11 GI bill and, in doing so, he has enriched the lives of so many who were willing to risk their lives for this Nation. I, again, salute him for all he has done.

KENT CONRAD is an extraordinary budget chairman. No one knows more about the intricacies of the budget and no one brings to that very difficult debate more of an innate sense of fairness and decency than KENT CONRAD.

I could go on with all of my colleagues, just thanking them for their friendship, for their camaraderie, and for their commitment to the Nation and the Senate. As they depart, they have left an extraordinary legacy. Now it is our responsibility to carry on in so many different ways, and I hope we measure up to what they have done. If we do, then we can go forward confidently.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

JOE LIEBERMAN

Ms. AYOTTE. Madam President, I wish to say a few words about my friend JOE LIEBERMAN, the gentleman from Connecticut.

Shortly after I arrived in the Senate, Senator LIEBERMAN was assigned to serve as my mentor—someone from the other side of the aisle who would be a source of wisdom and guidance as I made my way in my first term in the Senate.

I considered myself extremely fortunate that he agreed to mentor me. We are both from New England. We both had the privilege of serving our State as attorney general and have a deep respect for the rule of law. And we are both deeply concerned about issues impacting the security of our country.

Over the last 2 years, I have been able to work with Senator LIEBERMAN more closely, and I have personally seen his character, his courage, and his conviction. Both in tone and in substance, Senator LIEBERMAN has been one of the most respected and effective statesmen in the history of this institution—someone who transcended politics to stand up for what he believed in

and what he believed was right on behalf of our country.

Senator LIEBERMAN understands that neither party has a monopoly on good ideas and that the American people expect Members of both parties to work together to get things done on behalf of our country.

Senator LIEBERMAN understands that our children will not ask us whether we were Democrats or Republicans and how good we were at that, at being a member of a party; they will ask us whether we were willing to make the tough decisions necessary to ensure that they continue to enjoy prosperity and freedom in the greatest country on Earth.

What I admire about my friend JOE LIEBERMAN is that he is someone who always puts country first above all else. For Senator LIEBERMAN, this has been especially true in the area of national security and homeland security.

As our Nation has encountered difficult economic headwinds at home—over $16 trillion in debt—there have been Members of both parties who have argued for excessive cuts to our military and that we disengage from the rest of the world. Yet, in the great traditions of Presidents Truman, Kennedy, and Reagan, Senator LIEBERMAN has made the compelling case that the United States best promotes its values and protects its citizens when we remain engaged around the world, maintaining our military strength, having the best military in the world.

Having had the chance to work with Senator LIEBERMAN on the Senate Armed Services Committee, his commitment to our men and women in uniform has been inspiring. He has shown a deep commitment to make sure they have the best equipment they need and that we remain the strongest military in the world; and that when our soldiers come home, they receive the support they need. He has been such an amazing advocate for the military and their families.

I also appreciate that like Winston Churchill, Senator LIEBERMAN understands the value of alliances between democracies and has spoken with moral clarity regarding the enemies of freedom. He has not hesitated to call terrorism an evil by its name and to speak out for dissidents and freedom fighters around the world.

I will never forget a trip I had the privilege of taking with him to Asia, where we had the opportunity to meet individuals who were imprisoned. And they spoke with tears in their eyes of the work Senator LIEBERMAN and Senator MCCAIN and others had done to speak up on their behalf.

Senator LIEBERMAN has spoken for those who have been oppressed around the world time and time again, and he has left his legacy on this institution in making sure that America stands for our values and for people around the world who are struggling for basic human rights and freedom.

In this Chamber, he will also, of course, be remembered for the incredibly important work he did as a strong and resolute member of the Senate Armed Services Committee but also as the chairman of the Homeland Security and Governmental Affairs Committee. He helped to lead the Federal Government's response to September 11, to those horrible attacks on our country, and every American is safer because of the work JOE LIEBERMAN did as chairman of that committee, and the work he did on the Senate Armed Services Committee in this body—and the work I know he will continue to do when he leaves the Senate.

My friend JOE LIEBERMAN represents the very best of public service. He has stood firm for freedom, international engagement, and American military strength. He will be remembered among Members of this body not only for his accomplishments but for the way he has conducted himself. Always a gentleman, he has conducted himself with great decency, civility, and humility.

At a time when our country faces great challenges, his quiet and effective leadership and commitment to working across party lines will be sorely missed in this body. He will certainly continue to serve as a model for all of us who remain serving in the Senate, and I know in future endeavors I will certainly seek him out to seek his advice and counsel, as we face great challenges not only here at home but also in terms of our military and the role America plays in the world.

We all admire his leadership here, and it has been a true privilege for me to have had him mentor me the last 2 years. I have learned so much from him. And, again, I think he serves as a model public servant of what it means to be committed to doing the right thing for your country.

Thank you, Madam President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

REMEMBERING DANIEL K. INOUYE

Ms. CANTWELL. Mr. President, I rise to salute my colleague, Senator Dan Inouye, and remember him for his great service to our country. Like so many of my colleagues, I come down to the Senate floor with a great deal of sadness but also admiration for the incredible life that Danny Inouye led.

He certainly was a giant among Senators, and for the work he did—everything from investigating Watergate to fighting for Native Hawaiian rights, to everything he did in the United States every day—he will be remembered as a man who fought for justice. When I think about Danny Inouye and the mentoring he has done for me and my colleague Senator MURRAY and for the State of Washington, I can tell you he will be sorely missed.

We know something about long-term Senators in the State of Washington. Certainly, Danny Inouye and Scoop and Maggie were all friends. He was also a friend to Washington State. He forged a great relationship with Scoop and Maggie. That started when Scoop Jackson actually championed statehood for Hawaii starting as early as the late 1940s. He played a key role in supporting it and passing it into the Hawaii Statehood Act. That is something Danny Inouye was so appreciative of. They forged a great relationship.

Senator Inouye and Senator Maggie were great friends and mentors. I had the opportunity many years ago to hear both of them at Senator Magnuson's house in Seattle reminisce about their days together. Some of those stories I could share on the floor; some I could not. But they were longtime friends.

The one story that is written about in Warren Magnuson's biography by Shelby Scates is a story about how, when Mount St. Helens blew up, Senator Magnuson went to Senator Inouye and said: We need about $1 billion to help for the cleanup of Mount St. Helens.

You can imagine in 1980 what a tremendous amount of money that would be. Senator Inouye said: Senator Magnuson, we have volcanoes blowing up all the time in Hawaii, and we never get a dime.

Magnuson responded: Just wait, it will be your turn soon.

So these are two incredible individuals who forged a relationship and, along with Jackson, were some of the big giants of our day in the Senate. We in the State of Washington certainly benefited greatly from Senator Inouye's incredible help and support. I know he traveled to our State many times at my request and participated in many different events. Probably one of the most important things he did for us in the State of Washington was the Puyallup land claim settlement and how Senator Inouye led the fight as the chairman of the Indian Affairs Committee to make sure the right thing was done.

Together with Congressman NORM DICKS, we had a very difficult situation. The Puyallup Tribe, the Port and the City of Tacoma, and others all had a difficult dispute going on. The end result was the second largest Native American land claim settlement in U.S. history. The deal led to tremendous economic growth for the tribe, for the port, and for the surrounding committees.

Senator Inouye, as I said, was the chairman of the Select Committee on Indian Affairs in 1980 when the Puyallup Tribe successfully sued to assert

its claim for land around its reservation. This land included the Port of Tacoma, many parts of downtown Tacoma, and the towns of Fife and Puyallup. Because of his strong commitment to Native American rights, the Puyallup Tribe trusted Senator Inouye to serve as an intermediary between the parties involved in the negotiation to try to resolve this dispute. He made around a dozen trips to Washington State at key moments of this negotiation.

If you can imagine, a Senator who has to represent his State, be a leader on the Appropriations Committee, and who would spend so much time on one particular dispute.

During one tense session at a Tacoma hotel, Senator Inouye described his role as ''messenger boy,'' running between tribal negotiators on the second floor and non-Indian negotiators on the fifth floor. By his own estimate, he shuttled between those two floors 21 times. His tireless commitment and work helped keep the negotiations moving along. Finally, in 1988, a deal was struck and the settlement was passed into law in 1989.

The tribe relinquished claims to land it originally held. In exchange, they received $162 million that included 200 acres of disputed land. Of this total, $77 million were Federal funds, which Senator Inouye and Congressman DICKS worked to obtain.

When Senator Inouye was asked about the Federal Government's contribution toward the settlement, he replied: ''I got my training from Magnuson.''

For the Puyallup Tribe, the results have been dramatic. Today the tribe is one of the largest employers in Pierce County, and it is moving forward with its port development partnership. The Puyallups have become a prominent leader for other tribes in important areas such as protecting natural resources, providing law enforcement, and improving health care.

As for the Port of Tacoma, the results have been impressive as well. With the settlement, the port was able to tear down the Blair Bridge and open the waterways to the world's largest container ships. Removing the uncertainty of land ownership and relocating Highway 509 also unlocked land in the upper Blair Waterway for development, and a lot of new development occurred.

According to the port, these improvements provided 43,000 jobs in Pierce County. The volume of cargo at the port has nearly doubled, growing from 782,000 containers in 1988 to nearly 1.5 million containers in 2011. Now the Port of Tacoma handles more containers than its friendly rival to the north, the Port of Seattle, so it is something they very much take with great pride.

Senator Inouye has stood with Washingtonians on an issue that was so important to us and has led to so much growth and economic development, and only his leadership provided the necessary oversight to navigate this thorny issue. He also has helped us on many other issues, protecting salmon and our other fisheries, fighting for Native Americans and supporting strong defense and veterans' issues.

He certainly will be remembered in the Northwest as a true friend. Our Nation's veterans had no greater friend than Senator Inouye. But when it came time to pass national legislation recognizing the Japanese-American veterans' contributions to our country during World War II, he let others take the lead, knowing he, himself, would also be an honorary recipient of this award.

During a ceremony in November of 2001, with the other Nisei veterans at his side, Senator Inouye accepted the Congressional Gold Medal on behalf of the 100th Infantry Battalion, the 442nd Regimental Combat Team, and the Military Intelligence Service.

In his remarks, Senator Inouye said, ''Seventy years ago, we were enemy aliens, but today, this great Nation honors us in this special ceremony.'' I can tell you because there were many Nisei veterans from the Pacific Northwest who traveled to our Nation's Capital to participate in that event. Their families were so honored to be there with their parents and to honor them in this great ceremony. It would not have happened if it had not been for Senator Inouye's incredible leadership.

He also successfully fought to honor the veterans who served in the Commonwealth Army of the Philippines on the side of the United States during World War II. Because of a law passed in 1946, their service was not recognized. They were denied access to health care and given only half the disability and death compensation of U.S. veterans.

Senator Inouye changed that. Over the years, he secured nearly $200 million in compensation for Filipino veterans, and he fought to grant Filipino veterans the same access as U.S. veterans to VA hospitals.

Senator Inouye's strong sense of honor and justice drove him to fight for the recognition of these veterans' service. He was fond of saying ''justice is a matter of continuing education.''

For that reason, he also made sure injustices endured by U.S. citizens and permanent residents of Japanese ancestry during World War II will never be forgotten. He led passage of the Civil Liberties Act of 1988, which acknowledged their forced internment and provided compensation for those surviving detainees. Senator Inouye also understood that recognizing and honoring the service of these veterans meant helping them prosper as they were entering civilian life.

I was proud to work with Senator Inouye and my colleague Senator MURRAY on the VOW to Hire Heroes Act of 2011. Because of the act, businesses that hire qualified veterans can get tax credits up to $9,600. Back in April of this year, Senator Inouye and I visited a company in Seattle, VECA, which hires primarily veterans, and I can tell you they were so happy to meet him. They were so excited to see one of our Nation's true heroes and to honor him by talking about the service they were trying to give back to our country.

From the battlefields of World War II to the Halls of Congress, Senator Inouye brought grace, charm, and an unbelievable sense of duty to our country. He truly was a giant of a statesman, not just in Hawaii but in the State of Washington.

A few years ago, Senator Inouye was visiting some underprivileged children in Hawaii to see the digital media center he helped support. One of the students he met said, ''I feel like I met one of the most important people in the world.''

I couldn't agree more. Senator Inouye's legacy and impact cannot be overstated. He was an old-school Senator who was always courteous, respectful to his colleagues no matter what the circumstances, and he will not be forgotten.

I join our Nation in praying for his wife Irene, his son Ken, and daughter-in-law Jessica, his stepdaughter Jennifer, and his granddaughter Maggie. I hope they understand how much we appreciate them sharing him with us and all he did.

His service to our country will not be forgotten, and it certainly will be impossible to match.

I yield the floor.

Mrs. FEINSTEIN. Mr. President, it is with great sadness that I come here today to talk about my friend: Senator Danny Inouye. Danny was a friend of mine since I came to the Senate 20 years ago. He had a unique ability to connect with people, to befriend them. I know. He always helped me. He was smart, able and someone that over 20 years I grew to love.

He was a war hero who fought bravely in World War II, even at a time when many in this country actively discriminated against Japanese-Americans.

And he served in this body for 50 years—the second longest serving Senator of all time.

Danny and I worked closely together on the Appropriations Committee for many years. I often sought his counsel, and he was always an advocate for me.

I want to say something personally to his beloved wife Irene: You were married to a truly wonderful man and an American hero. Death of a loved one is hard. I know. I have been through it. But, Irene, the love does remain. I know you were so proud to be his wife, to help him share his dreams through these years.

I want you to know that you have many friends here, who now want to help you through this most difficult part of life.

Danny, you will be greatly missed.

Thank you for your service, thank you for your friendship.

Mr. JOHNSON of South Dakota. Mr. President, it was with great sadness on

Monday that we learned of the passing of a member of our Senate family, Senator Daniel Inouye. My deepest sympathy goes out to his wife, Irene, his son, Kenny, and to all of his family. I also extend my sympathy to the great people of Hawaii, who have lost one of their champions.

Over the past few days, I have heard my colleagues pay tribute to this wonderful man. They have used words such as statesman, public servant, hero, patriot, leader, mentor, and champion. Each of these tributes is without a doubt deserved. I echo all of these accolades, but above all I was honored to call Senator Inouye ''friend.''

Senator Inouye and I served on two committees together, with him serving as my Chairman on both of those committees: Indian Affairs and Appropriations. The lessons I learned from him will forever be with me. His commitment to American Indians, Alaska Natives, and Native Hawaiians was unparalleled. In our home States, we both have large populations of Native people and his leadership on these issues has taught me that our work is never done when it comes to bettering the lives of our first people. I had the opportunity to work with him on a number of important issues impacting South Dakota Natives over the years, and I very much appreciated his visit to South Dakota in 2002 to conduct a hearing in Rapid City on Native issues.

A man of quiet reflection, Danny was a giant among men. A Medal of Honor recipient for his efforts in World War II and recipient of two Purple Hearts, he was a true American hero. His acts of valor during the war are nothing short of legendary. His care for veterans rivals that of any past or present Member of this body.

To put Senator Inouye's service into perspective, eight Members of this Chamber had not even been born when Danny was sworn into his first term as the third Senator from the State of Hawaii. Not many Senators in the history of this Chamber have done more for their home States than what Senator Inouye did for his beloved Hawaii. His legacy is spread far and wide throughout the Hawaiian Islands.

Senator Inouye will be greatly missed in this Chamber. His mark on this body and on his home State of Hawaii shall be felt for generations to come. Aloha, my friend.

Ms. KLOBUCHER. Mr. President, I rise today to speak in remembrance of an incredible statesman and American hero, Senator Daniel Inouye of Hawaii. Senator Inouye passed away Monday evening, and to say that his leadership will be missed would be a tremendous understatement—not only of his influence as a policymaker but of his iconic status as a pillar of the Senate.

In terms of political longevity, he follows only Robert Byrd as the second longest serving Member in Senate history. This is significant because second place never came naturally for Senator Inouye. He was, after all, the face of so many ''firsts'' for our country and for his State. In 1959, he became the first ever Asian American to serve in the United States Congress, elected during Hawaii's first ever federal election cycle, representing the State as part of its first ever congressional delegation.

He almost added another impressive ''first'' to his résumé, when Minnesota's own Hubert Humphrey put Dan at the top of his short list for running mates in the 1968 presidential election.

But perhaps the greatest legacy Senator Inouye will leave behind is his record of standing up for our men and women in uniform. As Chairman of the Appropriations Committee and the Defense Appropriations Subcommittee, he revolutionized the way our country serves those who have served for us—not just on the battlefield, but also here at home in the form of stronger benefits for veterans and better support for military families.

Senator Inouye knew a thing or two about service. He enlisted in the Army after the attack on Pearl Harbor and fought for our country on the front lines during World War II. He did it despite our government's decision to place his own people, Japanese Americans, in internment camps because he believed that he and his family owed the United States an ''un-repayable debt.'' I would argue that he paid back that debt and much, much more.

To this day, the unit of all Japanese-American soldiers that he served with is the most decorated in history for its size and length of commitment. Senator Inouye himself earned a Bronze Star, a Distinguished Service Cross and, eventually, the Congressional Medal of Honor.

The story of how he earned it—and how he lost his right arm—is the stuff of legend. A grenade exploded near his right elbow during a firefight in Italy, shredding his arm and severing his hand just as he was preparing to throw a grenade of his own. Afraid the weapon might detonate in his nearly severed right first, Senator Inouye used his left hand to pry it out and throw it towards enemy lines. He was, and is, a true America hero.

From his decorated military career to his long-time service for Hawaii, Senator Inouye was a dedicated public servant. Humble to the end, Senator Inouye was and always will be known as a true gentleman in the Senate. Aloha, Senator Inouye.

Ms. COLLINS. Mr. President. With his family at his side, the last word spoken by Senator Daniel Inouye in this life was ''aloha.'' To the people of Hawaii, it is a word with a meaning far beyond simply ''hello'' or ''goodbye.'' It is a word of profound significance, one that describes a spirit of service to others, of compassion, and reverence.

It is the best possible epitaph for my cherished friend and colleague.

Dan Inouye lived that spirit every day of a long and remarkable life. When Pearl Harbor was attacked on December 7, 1941, he was there, serving as a medical volunteer in the most horrific and dangerous circumstances. When the ban on Japanese Americans serving in the U.S. military was lifted in 1943, he immediately enlisted. In the closing days of World War II, when his platoon came under intense enemy fire, Second Lieutenant Inouye led the attack, despite grievous wounds.

That extraordinary heroism earned Dan Inouye the Medal of Honor but cost him his right arm and his dream of becoming a surgeon. In the true ''Aloha Spirit,'' he found another way to serve, first as a member of the Hawaii Territorial Legislature, and then, when statehood was achieved in 1959, as Hawaii's first Member of Congress.

In 1962, Dan was elected to the Senate, beginning a half century of contributions, accomplishments, and leadership on behalf of this institution and our Nation. He was the first Japanese American elected to the Congress and a stalwart champion of civil rights for all. He was a decorated hero who fought for the rights and benefits of all veterans. From his daily work in the Senate to his exceptional service on the Watergate and Iran-Contra committees, Dan approached every task with the determination to do what was best for our country.

I was privileged to serve with Dan on the Appropriations Committee and honored to join him in the Gang of 14 to preserve the tradition of open debate in the Senate. No matter how difficult the issue, he always conducted himself with dignity and civility.

In this time of sorrow, I offer my deep condolences to the Inouye family. I hope they will find comfort in knowing that this great patriot and public servant leave a legacy that will inspire Americans for generations to come. And to Senator Daniel Inouye I say, aloha pumehana, my friend. Farewell with my deepest regards and affection.

Mr. ENZI. Mr. President, I appreciate having this opportunity to join my colleagues in expressing not only my great sadness on the passing of Senator Inouye but my great appreciation of his lifetime of service to his beloved Hawaii and to our Nation. Danny Inouye lived a full and active life, and his great gifts enabled him to make a difference that will continue to be felt for a long time to come.

I had the honor of introducing Danny Inouye during one of our Prayer Breakfasts earlier this year. Even though I thought I knew him pretty well, as I read the interviews and personal reflections he had shared on his life, I realized more than before the importance of the role he had played over the years as he worked so very hard to make Hawaii all that it is today.

Danny learned at an early age all about the importance of observing the great values that served to help direct his life—love of country, love of family, service to all those who needed his help, and, equally important, service to God. Over the years those great principles helped to make him a leader in

every sense of the word as people looked to him for his leadership in difficult times of both war and peace.

Over the years, he was often asked about his experience during World War II and the impact it had on him. Danny would begin his reflections when he was a young man, still in high school and pursuing his dream of a career in medicine. As so often happens in our lives, his life was changed forever in a moment that began one morning as he was getting ready for church. He heard a report on his radio that Pearl Harbor was being attacked. Without hesitation, Danny headed over to the base to see what he could do to help those who had been injured. Danny had learned a great deal about first aid, and his skills were put to good use to help those who had been injured that day.

That was just the first part of Danny's story and his experience with the war effort of those years. In the days to come it would present him with one of the toughest challenges that anyone could have ever faced as he played an important role in the effort to protect our Nation and restore peace to the world.

As he would continue with his story, Danny's war experiences told a powerful and compelling story about what so many of our Nation's veterans have experienced in battle. That is why Danny will always be known as one of our great war heroes. Even with that standard, however, there was something special about him and the courage and bravery he showed on the battlefield. His efforts were so extraordinary they were recognized with a Medal of Honor, one of our Nation's highest awards. They place him on the roster of our most distinguished heroes, and they remind us all of the great sacrifices that he and so many of our veterans have made over the years to keep our Nation strong and free. Thanks to Danny and those with whom he served, we were able to emerge from that world war victorious and bring peace and freedom to those nations that had been overrun by an evil alliance led by a ruthless dictator in Germany.

That was just the start of Danny's life, but it had taken a heavy toll from him that would change it forever. With the loss of his arm, it was no longer possible for him to complete his dream of being a surgeon. Those who knew him and his great caring heart urged him to find another field in medicine to pursue. He decided to follow another path, and as we are told in the Bible, God had a hand in helping to direct his steps.

As soon as he could, Danny attended George Washington University, my alma mater, and earned his law degree. He then became a part of the effort that would lead Hawaii to statehood. Danny knew the result would bring great changes to his home State and increase the opportunities available to the people who lived there. Thanks in part to Danny, those efforts to achieve statehood were successful, and they resulted in the addition of Hawaii to the roster of our States—and placed another star on the American flag he loved so dearly.

Danny knew that statehood would not be the end, it would be just the beginning of the next great chapter in the history of Hawaii. Danny wanted to be a part of that effort, too, so he was encouraged to run to serve as Hawaii's first Representative in the House. He was successful, and his election to the Congress gave him an opportunity to take on another leadership role—crafting the future of his beloved home State. Once again, it brought out the best in him, as he dedicated himself to making Hawaii a better place for all those who called that special place their home.

It wasn't long before Danny then ran for and won his election to the U.S. Senate. It began a Senate career that was to enable him to make a difference in more ways than we will ever know. As he served here, he did more than observe history or participate in it—he helped to write it day by day, chapter by chapter.

Danny's career has been so active, so full, and so productive, it would be impossible to list all his achievements that make up his legacy of service both here in the Senate and back home in Hawaii. One thing will always stand out in my mind, however—Danny's great loyalty to all those with whom he served. In every sense Danny was a gentleman and a gentle man. He had a quiet and understated way of doing his work day by day. He was man of great kindness, and he shared that kindness with everyone he knew or worked with. His service as a Member of the Senate provided us with a great example of how we should all approach our duties and our work together, putting our country, our God, our family, and our home States first.

That is why Senators on both sides of the aisle have come to respect and appreciate him and his character so very much. I will long remember the great friendship and close working relationship he had with Ted Stevens. They shared such a strong bond that they often referred to each other as brothers. He had strong and supportive friendships with other Senators, too, and that is why we will all miss him so very much in the days and months to come.

I know I will never forget that Prayer Breakfast and all Danny had to share with us that day. He had a great and powerful faith in God and the special relationship they had built up over the years. It helped strengthen him on the battlefield. It helped to guide his efforts when he was called to serve the people of Hawaii. It gave him a source of inner strength that firmed his resolve as he worked to serve the people of our Nation.

By any and all standards, Danny Inouye lived a life we would all be proud of. He packed more into each day than some people experience in a lifetime. Although we had him with us for so many years, it still feels like he was taken from us all too soon.

Now we come together to say goodbye to our colleague—confident in the knowledge that he has made a difference in Hawaii and in Washington that will continue to have an impact for many years to come. It is often said but always bears repeating that one person can make a difference in the world that will equal their determination to do so. Danny is the proof of that, and his memory will continue to inspire all those who knew him or will read about him and his great love for the United States of America.

As a grandfather, I will also long remember that day just a few years ago when Danny became a grandfather, too—for the first time. It was a day he had long anticipated and looked forward to. It reminded me of how much it means to all grandfathers to hold the next generation of their family in their arms and to be reminded of the great circle of life and all that it means as the memories of the past give way to our hopes for the future. Now that grandchild will proudly carry the legacy Danny Inouye leaves behind to all those who knew and loved him. It is more than a record of great achievements, it is a challenge he leaves to all those who will follow him to dare to try to do even greater things than Danny Inouye has done.

God bless and be with you, Danny. Thanks for your service, but most especially thanks for your friendship. Our faith reminds us that we will be parted for only a short time and the day will come when we will see you again. Until that time, you will be greatly missed and you will never be forgotten. Diana and I will keep your family in our prayers. May God bless and be with them all.

TRIBUTES TO DEPARTING SENATORS

KENT CONRAD

Mr. LEVIN. Mr. President, there are many people in this town who say they are worried about the deficit. But all too often, those claiming the mantle of ''deficit hawk'' are pretty dovish about making the hard decisions required to reduce the budget deficit and bring down the national debt. Some use the deficit to argue for damaging important programs that provide for the safety and well-being of Americans. Others, in a brazen bit of obfuscation now decades-old, make the disproven claim that the budget-busting tax cuts they prefer would actually reduce the deficit.

In this maze of distortion and debunked arguments, KENT CONRAD is like a clean prairie breeze. He cares deeply about the fiscal health of our Nation, and for more than two decades, he has been dismantling faulty arguments and fuzzy budget math with facts and figures and with charts, yes, charts. In naming Senator CONRAD one of the 10 best Senators in 2006.

Time magazine reported that the support staff here in the Senate had become so overwhelmed by Senator CONRAD's chart requests that they gave up and gave him his own printing equipment. KENT CONRAD doesn't just know the facts. He wants you to know them too—and in bright colors.

Behind the flash charts are deep substantive knowledge and a rigorous approach that eschews wishful thinking. Senator CONRAD knows that the way out of our deficit problem, the path that avoids the fiscal cliff, means looking at our entire budget picture, both the spending that goes out and the revenue that comes in. He laid out the facts recently here on the Senate floor, saying:

> The public understands we face both a spending and a revenue problem. Spending is near a 60-year high, as this chart shows. The red line is the spending line; the green line is the revenue line. But for those who say it is just a spending problem, I don't think the facts bear that out, because the revenue is near a 60-year low. I think most logical people would say we have to work both sides of this equation.

This logical approach makes Senator CONRAD a strong ally. I have been proud to join with him on efforts to end some of the many distortions and loopholes that increase the deficit and make our Tax Code less fair to working families. Earlier this year, he and I introduced the CUT Loopholes Act, which would reduce the deficit by $155 billion over 10 years through elimination of several offshore tax loopholes, and through elimination of the stock-option loophole, which forces American taxpayers to subsidize the large stock-option packages regularly awarded to corporate executives. In March, we were joined by Senator WHITEHOUSE in advocating for inclusion of a portion of the CUT Loopholes Act in the Senate's surface transportation bill, and our amendment was adopted by the Senate. It did not become law, but the Senate's action represented real progress in the fight against tax loopholes.

Senator CONRAD and I have worked together on another important issue—the effort by many multinational corporations to secure a ''repatriation'' tax break for some of the billions of dollars they hold offshore. That was tried once, in 2004, and as Senator CONRAD accurately notes, that repatriation holiday was ''a complete and utter failure at job generation.''

He also has been a forceful advocate for the need to address the tax rates on capital gains and dividend income. The low rates on these forms of income is a driver of our budget deficits and of rising income inequality. As Senator CONRAD said in a recent interview about the need to address tax rates:

> It's very clear to me. You do have to have rate increases, especially on capital gains and dividends it's needed and fair.

Not just needed, he said—fair. And that is what I think we should keep in mind about Senator CONRAD's work to address the deficit in an honest and forthright way. Yes, he knows the facts and figures, knows them as well as anyone. But knowing the numbers is not enough. Budget math is not an academic exercise. We are not here to represent numbers on spreadsheets. We represent people—actual human beings, with dreams and ambitions and hope. And always, KENT CONRAD has marshaled the facts and figures in support of real people. He knows the toll that out-of-control deficits can have on generations to come. He recognizes the need to address rapidly rising entitlement spending—but also the need to preserve important programs that have made so much of a difference in the lives of Americans, especially the most vulnerable.

He and his wonderful wife Lucy have been dear friends to my wife Barbara and me. The four of us have hosted dinners together to deepen our understanding of both the pressing issues of the day and of transcendent issues such as the origins of matter and the universe.

Senator CONRAD is leaving the Senate, but the need for his kind of rigorous approach and concern for the impact of our policies is not going away. I hope we can learn from and follow his example as we move forward to confront our Nation's challenges.

BEN NELSON

Mr. President, there are few issues we deal with on the Armed Services Committee in which the stakes are so high or the policy questions so complex as in dealing with our Nation's strategic forces and capabilities. The fearsome power of our strategic weapons, the urgency of avoiding mistakes, the difficult strategic calculations they require, the advanced technologies involved, all of these combine to make strategic forces complicated and of paramount importance.

It has also been the signature issue for Senator BEN NELSON during his service on the Armed Services Committee. Chairman of the Strategic Forces Subcommittee since 2009, Senator NELSON has long been one of the Senate's most thoughtful voices on issues related to our nuclear arsenal, space programs, missile defense and other strategic issues. As he prepares to leave the Senate, we are losing an outstanding contributor to our nation's strategic thinking and decision-making.

Certainly the presence of Offut Air Force Base and U.S. Strategic Command in Senator NELSON's home State give him first-hand evidence of the importance of these issues. And appropriately, he brings a common-sense Nebraska viewpoint to our consideration of them.

Senator NELSON's efforts were important to the Senate's 2010 aproval of the New START treaty, a significant step forward in our nuclear arms reduction efforts. He made it clear in that debate that he is a firm believer in the need to ensure that the Department of Energy's nuclear weapons laboratories are modernized and able to support the existing nuclear stockpile so that we do not have to return to nuclear testing.

His common-sense approach has been especially noticeable in issues involving management of the nuclear weapons laboratories as they balance the science behind stockpile stewardship and meeting day-to-day problems with the deployed nuclear forces.

As Chairman of the Strategic Forces Subcommittee, he has helped ensure strong oversight of and support for the development, testing and deployment of effective ballistic missile defenses, including the Phased Adaptive Approach to missile defense in Europe that is already providing protection for our forward deployed forces, our allies and partners against Iran's current and emerging ballistic missiles.

He has been an advocate for improving our deployed and planned homeland ballistic missile defense capabilities, including efforts to understand and correct the problem that led to a flight test failure of the Ground-based Midcourse Defense system in December of 2010. In this regard, he has supported rigorous and operationally realistic testing of our missile defense systems.

Of course, strategic issues are not Senator NELSON's only concern. On the Armed Services Committee, before he chaired Strategic Forces, he was chairman of the Personnel Subcommittee, demonstrating a keen understanding of the issues and a deep concern for the men and women of our military and their families. He has been a tireless advocate for the National Guard and for Nebraska's farm families, and a fighter for working families across America, advocating for a reasonable minimum wage and for important workplace protections. And he has been among our most passionate voices for an end to the partisan gridlock that has marked Washington, and the Senate, for far too long.

None of these issues are simple. All of them are vitally important. Senator NELSON's thoughtful, careful contributions have without question made our Nation safer, made our military forces more effective, our use of precious taxpayer dollars more effective. He has earned the respect and affection of the people of Nebraska, and he will be sorely missed on the Armed Services Committee and in the Senate. Barb and I wish all the best for Ben and Diane as they continue their efforts to serve their State and our Nation.

JIM WEBB

Mr. President, JIM WEBB has served our Nation in ways that few Americans can match. He is a decorated combat veteran of the Vietnam War, where he was awarded the Navy Cross, the Silver Star, two Bronze Star Medals, and two Purple Hearts. His experiences in Vietnam helped him shape a series of novels for which he has received justified critical praise and which helped readers understand the experience of war and those who fight it. He served as the first Assistant Secretary of Defense for

Reserve Affairs, and later as Secretary of the Navy. He won enormous praise for his television coverage of the Marine mission to Beirut in the 1980s, and later for ''Born Fighting,'' a history of Scots-Irish immigrants to America.

For the last 6 years, he has been serving his Nation in the capacity we in the Senate have seen firsthand, as United States Senator from Virginia. It has been my privilege to serve with him on the Armed Services Committee, and as chairman, I have benefitted greatly from his intelligence, his experience, and his dedication to the men and women who wear the uniform of our military. Let me reflect on a few of the ways in which I have seen up close Senator WEBB's dedication to service.

Senator WEBB is rightly recognized for his work on national security, but that has not been his only concern in the Senate. He has been a welcome voice here on issues of economic fairness. Soon after his election to the Senate, he wrote in the Wall Street Journal of an urgent need to address growing economic inequality. He wrote:

[T]he current economic divisions in society are harmful to our future. It should be the first order of business for the new Congress to begin addressing these divisions, and to work to bring true fairness back to economic life.]

And he has acted on those words, fighting for a tax system that is more equitable to working families; for trade policies that recognize not just the benefits, but the costs, of free trade; and for education policies that give all Americans, including those already in the workforce, the skills and opportunities to prosper.

An issue on which I have been able to work closely with Senator WEBB is the posture of U.S. military forces in the Asia-Pacific region and, in particular, the plan to realign Marine forces in the Pacific. I traveled with him to Okinawa and Guam, and even the island of Tinian, and saw firsthand his extraordinary knowledge and understanding of the issues. I have benefitted greatly, as I know Senator MCCAIN has, from his insights on this complex and difficult issue, which involves pressing strategic issues, enormous budget pressures, and the concerns of our close ally Japan. Senator WEBB's hard work on this issue has helped resolve the impasse that was blocking progress on the plan to move some of the marines off of Okinawa and move us closer to an achievable, affordable plan for Marine realignment that will benefit the people of Japan and the United States while better serving our national strategic and security interests in this important region.

But what is perhaps most notable about Senator WEBB's service in the Senate is the way that he has joined three of his concerns—America's national security, the need for greater economic fairness, and his affection for the men and women of our military.

This is perhaps best expressed by the post-9/11 GI bill, legislation he introduced on his first day in office, and whose passage he pursued with great determination. When signed into law in 2008, the post-9/11 GI bill provided the largest expansion of educational benefits for veterans since World War II. Just as the original GI bill honored the service of World War II veterans and helped pave the way for millions of servicemembers to earn college degrees, so, too, has Senator WEBB's legislation honored the generation that has served in Iraq and Afghanistan and elsewhere. The impact of this legislation, in improving the lives of our veterans and in its benefits for our Nation as a whole, will be large and long lasting.

Senator WEBB has been a tireless advocate for the men and women of our military, and in particular for our junior enlisted troops. As chairman of the Subcommittee on Personnel, he has fought for adequate pay and benefits, and against the unscrupulous who would seek to profit by taking advantage of these young men and women. Senator WEBB speaks eloquently of the great strains of more than a decade of high operational tempo on these men and women and their families, and of the ''moral contract'' between our Nation and the troops who defend us. He speaks as the descendant of veterans, as a veteran himself, and as the father, father-in-law and brother of veterans. The Senate, and the Nation, have been better off the last 6 years having that voice in the Senate. I have been grateful for his counsel, and I am sorry we soon will no longer have the benefit of his service on the Armed Services Committee or in the Senate. But even though we will miss him, I have no doubt JIM WEBB's service to our Nation will long continue, and I wish him every success.

JON KYL

Mr. President, if success in the United States Senate depended only upon working alongside those with whom we agree, this would be a pretty uncomplicated and uninteresting place. We are a large and complex Nation, made up of people with varying interests, preferences and beliefs. This is where the representatives of a diverse Nation come to try to resolve those differences into coherent national policy. And success in this body depends on the efforts of Senators of differing beliefs and backgrounds who labor to discover common ground.

This is on my mind as I consider the career of Senator JON KYL, who is leaving the Senate at the end of his third term representing the people of Arizona. We have differed many times here in the Senate. And we also have sought common ground. These efforts are totally consistent.

In the wake of the 2001 terror attacks, our Nation's response took many forms. Our military, intelligence and security agencies were obviously essential to that response, but importantly, we did not neglect a less obvious need: the need to cut off terrorist financing. Senator KYL played an important role in this. He was a co-sponsor with me of legislation to give financial regulators important new authorities to act against terror financing.

We found common ground on the need to speak out in strong and clear opposition to the repressive regime in Iran. Last year, he and I were part of a bipartisan group that offered a resolution calling for an end to the violent repression Iran's government has carried out against its own people, urging international action to support the people of Iran, and reaffirming America's commitment to universal freedoms.

I was proud to work with Senator KYL on these and other important issues before the Senate. I respect and deeply appreciate his commitment to protecting our Nation and to the universal standards of human rights that are such an important part of America's legacy. I wish Senator KYL and his family every success and happiness as he returns to Arizona.

DANIEL K. AKAKA

Ms. COLLINS. Mr. President in his farewell message to the people of Hawaii, Senator DANIEL AKAKA wrote that his dream was always to work in a job in which he could help people. In his 36 years in Congress—14 in the House of Representatives and 22 here in the Senate—DANNY AKAKA has done that job exceedingly well.

He has done it with statesmanship and perseverance. As just one example, just a few weeks ago, President Obama signed into law landmark legislation to better protect Federal employees who come forward to disclose government waste, fraud, abuse, and other wrongdoing. The Akaka-Collins Whistleblower Protection Enhancement Act would not have passed without DANNY's determination to help both our dedicated Federal workers and the citizens they serve.

Serving with DANNY on the Homeland Security and Governmental Affairs Committee, I appreciate the priority he always placed on making the Federal Government more efficient and transparent, and on advancing policies to attract, recruit, and retain the skilled workforce needed to meet today's challenges. From safeguarding our Nation against terrorist attacks to supporting the first responders in our communities, DANNY has been a great ally and a true leader.

It also has been an honor to work with DANNY on the Armed Services Committee. As a World War II veteran, he brought to the committee a deep and personal understanding of the sacrifices made by our men and women in uniform, and by their families. He is a champion of efforts to ensure that our Active National Guard and Reserve personnel have the equipment and training to remain the best fighting force in the world, and he is dedicated to providing our veterans with the services they earned and deserve.

DANNY AKAKA has been described as the ''Aloha Senator.'' To most of us,

that multi-purpose word can mean anything from ''hello'' to ''goodbye.'' To the Hawaiian people, it is a word of deep spirituality and profound meaning.

The late Reverend Abraham Akaka, DANNY's oldest brother and one of Hawaii's most beloved clergymen, defined the ''Aloha Spirit'' this way: ''God first, others second, yourself last.'' As a patriot and statesman, Senator DANIEL AKAKA embodies that spirit through his desire to promote the true good of others and to help people. Aloha pumehana, Senator AKAKA, farewell with my deepest regards and affection. Thank you for your friendship and for your service to our country.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I would like to speak on an amendment to the pending bill—an amendment I will not be able to offer because I understand the majority filled the amendment tree so that we cannot make amendments pending at this time. So I would like to take some time, though, to inform Members about the importance of my amendment and why it ought to be included.

I think it is simply about smart government. It is about ensuring that taxpayers' dollars are spent wisely, while at the same time guaranteeing Federal law enforcement agencies that face challenges following Hurricane Sandy have the resources they need to get the job done.

On December 7, the White House Office of Management and Budget transmitted a legislative proposal to Congress seeking supplemental appropriations for disaster mitigation relating to Hurricane Sandy. By all accounts, this action was a normal response to a Federal disaster and one that nearly all Members have supported for various disasters that have occurred in our home States. However, this request was unusual in several respects. For example, a large portion of the funds included in the President's request are unrelated, or at least extremely remote to the damage caused by the storm. This includes funding for fisheries in Alaska, funding for increased Amtrak capacity, and funding to be spent years into the future. Further, the funding request sent up by the President does not include any recommendation whatsoever for offsetting the spending. So, long story short, this request means more deficit spending.

There is one part of the request that causes me particular concern—and the purpose of my amendment—because it relates to my work as the ranking member of the Committee on Judiciary. In the President's request, there are specific line items for repairing and replacing Federal vehicles damaged by Hurricane Sandy. Specifically, the Justice Department requested $4 million for the Federal Bureau of Investigation, $1 million for the Drug Enforcement Administration, $230,000 for the Bureau of Alcohol, Tobacco, Firearms and Explosives, and $20,000 for vehicles for the Department of Justice inspector general. Among other things, these funds are largely to repair and replace Federal vehicles damaged by water from the storm.

The Department of Homeland Security requested $300,000 for the Secret Service, $855,000 for Immigration and Customs Enforcement. Again, this funding is largely for repairing or replacing damaged motor vehicles. The President requested this funding in an effort to replace these damaged vehicles. He cited operational use of these vehicles by law enforcement agencies as the reason they need to be replaced.

Now, I understand that vehicles are a very important part of the work that these Federal law enforcement agencies undertake and are critical to ongoing operations in the field. However, I am concerned about simply providing funding for replacement vehicles in the field because the way the government operates, this funding will not reach the agencies immediately. Even when it does, it will take time for replacement vehicles to be located, purchased, and prepared for use. But given that this is an emergency spending bill, we can assume that these agencies need vehicles for immediate operational use.

As such, my amendment seeks to place these vehicles into the hands of the agents in the field as fast as possible. Instead of simply providing funding, my amendment requires that, within 7 days, the Department of Justice and the Department of Homeland Security identify and relocate vehicles based at the Washington, DC, headquarters of the Department of Justice and the Department of Homeland Security that are used for nonoperational purposes. The vehicles identified will then be used to replace those damaged by Hurricane Sandy that are used by the FBI, DEA, ATF, ICE, and the Secret Service.

The amendment limits the funding provided for these vehicle purchases until a report is produced to Congress identifying the vehicle relocations. I think it is a very good government amendment and one that actually achieves the goal of replacing operational vehicles used by Federal law enforcement actually faster than in the underlying bill.

Since we are told this funding is absolutely necessary for these agencies—so necessary as to warrant emergency funding that is not offset with spending reductions—this amendment actually improves the bill by getting vehicles to law enforcement immediately.

The agencies who will likely oppose this will argue that this is unnecessary and that we should just write a check for the new cars. That is a ridiculous position to take, and we see the damage on television so you know there is a purpose for the underlying bill. But if this is an emergency for these vehicles, these agencies can spare some of the vehicles they have sitting around at their headquarters for nonoperational purposes.

These vehicles are given to employees in offices such as legislative affairs, budget, facility managers, and chief information officers and chief financial officers who may get cars to drive to and from work. Many may even sit unused for periods of time. Those are not operational needs.

Just last year, there was an article in the Wall Street Journal titled ''Free Ride Ends for Marshals,'' which addressed how 100 headquarters employees of the U.S. Marshals Service returned government-owned vehicles to the motor pool instead of using them to commute to and from work. The article described how in recent years the proliferation of take-home vehicles for headquarter employees had exploded.

While the article focused on reducing take-home cars at the Marshals Service, it is clear that the same argument can be made for reducing take-home cars at other agencies. In the case of this supplemental, if this is actually an emergency worthy of millions of taxpayer dollars, these agencies can inconvenience nonoperational personnel at headquarters to get these vehicles out to the fields and end the fringe benefits. In fact, according to inventory numbers provided to the Appropriations Committee, the Justice Department has 3,225 vehicles at the Washington, DC, headquarters of their agency alone. Surely, the Justice Department can find a handful of vehicles out of these 3,225 vehicles that could be sent to the field to replace the damaged vehicles—and get it done a heck of a lot faster than appropriating this money and going through a process that would not get them out there for a longer time.

On top of that, my amendment would allow the funds to replace these nonoperational vehicles after they are relocated. So my amendment would at most create a very small inconvenience for these nonoperational staff for a short time. This amendment makes sense by modifying a request that, quite honestly, doesn't make a lot of sense. If this is an emergency, as we are told, the agencies should have no problem doing what my amendment asks.

We owe it to the American taxpayers to spend their tax dollars wisely. This amendment doesn't go as far as we could, which would be to strike the provision outright. Instead, it gives the administration the benefit of the doubt that this is a true emergency and that these cars are needed. However, it forces the agencies to make a decision to temporarily inconvenience a few employees in Washington, DC, while ensuring the operational law enforcement elements in the field have the equipment they need.

So I urge my colleagues to support a commonsense, good-government amendment, and I hope it can be considered somewhere along the line before we pass this final legislation. If I could say just a few words on the issue as a whole, I would like to take that opportunity.

There is no doubt in my mind that every dollar that Sandy victims and local communities and infrastructure are entitled to, if it comes under existing law, they ought to have. Our country is always having disasters. That is a foregone conclusion. Throughout any year, there are always disasters to appropriate money for. Then, on a specific disaster, these problems go on for years after the money is appropriated—and it is years before some of the money is spent. All I have to do is look at Cedar Rapids, IA, and how they are fighting with FEMA after a 2008 flood to get some money as an example.

So let's just understand in this body, so that there is no mistake, that New York and surrounding areas will get their money because the principle of FEMA money—and probably other disaster money as well—is simply this: At the beginning of a year, you have some money in FEMA. You never know what the disasters are going to be throughout the next 12 months, but when a disaster is declared there is money there to flow. When that disaster money runs out, as far as I know it has always been replaced—whether there is an earthquake in California or a hurricane in the Gulf of Mexico, or tornadoes like we have in the Midwest, and Sandy as the most recent example.

As far as I know, there has never been any dispute under the laws at that time—and those laws don't change very often—that they do get the money out to the people who need it. Then when that fund goes dry, it is replenished by Congress.

Unless somebody is seeking money in some way other than disasters that have been taken care of in this particular instance—and I don't know that they are, other than what has been pointed out that ought to be done through the appropriations process and not really an emergency. But for the emergency, I don't hear anybody wanting money for Sandy any different than any other emergency.

I hope nobody is saying that Sandy ought to be treated differently than an earthquake in California or a hurricane in the South or tornadoes in the Midwest or wherever they might happen. I haven't surmised that is what they are trying to do. But if they are, they shouldn't say that Sandy ought to be treated differently than another disaster because generally a disaster is a disaster—whether it is an earthquake, hurricane, tornado, or Sandy.

So the money is going to be there, and it will be there on time. You don't know 1 month after a disaster exactly how much money is needed. In fact, they asked for $80 billion from the Governors of those States. The President sent up $64 billion. Some people of expertise on this in our caucus have said there are certain things that aren't authorized, so that shouldn't be expended.

Then I point out about some vehicles that can't be purchased right now to do the good they are supposed to do.

We ought to be comforted that there is an attitude in this Senate, over decades, that the Federal Government is an insurer of last resort for disasters, whatever kind of disaster you have, at least disasters as described by existing law. New York will get its money and it doesn't necessarily have to be the $64 million; it is just to make sure there is money there for what is needed tomorrow and the next day and the next day. But we are not going to have a final figure on this for a long time. So we ought to move with some money to make sure it is there for what can be spent right now.

I yield the floor.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

TRIBUTE TO JANICE SHELTON

Mr. REID. Mr. President, I rise today to honor a woman by the name of Janice Shelton for her friendship and 32 years of dedication as an employee of this body, the Senate. Twenty-five of those years Janice worked as my executive assistant. She has demonstrated sincere dedication to me, my office, my family, and this body, the Senate. It is an understatement to say she will be sorely missed. She will be. She has always been kind and thoughtful to me, to my wife Landra, all my children, and to everyone with whom she comes in contact. If there is a problem, everyone knows: Go to Janice. No one has had my ear over the past 25 years like Janice Shelton has.

She has spent her professional career creating order where there could easily be chaos. Over the course of her productive career with the Army, the White House, and the Senate, each benefited from her unique expertise, professionalism, and hard work.

She began her professional life at the Department of the Army as secretary to the Chief of the Personnel and Training Division Headquarters. Her gift of completing tasks quickly and with ease, all while maintaining a positive outlook, served her well when she moved on to a position of trust at the White House. It is not merely her professionalism but the equally valued personal qualities she has brought to the job: graciousness, unflagging energy, and a willingness to take on any task, large or small, that made her so treasured to everyone who came in contact with her.

From the White House she transited to the Senate with Senator Hawkins and Senator MIKULSKI and, as I said, for the last 25 years has been a source of calm and order in my office, despite the often long hours and the endless to-do lists that come with working with me. I say with certainty that had it not been for Janice, my office would not have functioned nearly as smoothly as it has over the years.

She is also a woman of tremendous faith and her life revolves around her family. She has been married to Robert Lee Shelton for 58 years. They have two daughters, Robin LeCroy and Laurie Nelson. She has eight grandchildren and one great-grandson. I know four of her grandchildren. I got up every Sunday to see what happened in Shelton's college football game. Shelton was big. He was an offensive lineman—played at the college level. He must have weighed 300 pounds of muscle.

I followed Shelton's little brother—little brother?—6 foot 3 or 4, a big, strapping, left-handed pitcher; also a college baseball player. And then I had two of her granddaughters who worked for us as pages, Rebecca and Holly.

She spends long hours at her desk. I do not go home early but I could call and she would be there at 9, 10 clock at night, and that is no exaggeration. But when she is not at that desk, Janice was usually in Georgia or North Carolina with her children or grandchildren.

She has probably been a little bit political, but I think she has gotten a little more political working for me. She has made sure each of her grandchildren understands the importance of their political voice. During the recent election she called those eligible to vote to make sure they had voted. I did not press very hard, but she may have urged them how they should vote.

While Janice's professional accomplishments deserve great recognition, it is really Janice herself who will be missed so dearly. She has served not only as a deeply trusted and committed assistant to me, but as a mentor to many who have worked with her. I know I am not the only one who will note her absence. She has been so wonderful to my family. During times of crisis, my boys know: Call Janice. They can always get through to me through Janice. She has given them advice. She has counseled them. My wife Landra is a dear friend of Janice and conversely the case, Janice is her good friend. She has helped Landra in so many different ways—social events that Landra has committed to take care of here, because of what I do, and other reasons.

During Landra's very bad accident Janice was always there. She was the one who walked to my desk and said to me: Landra has been hurt pretty bad. You have to stop doing what you are doing—and we were trying to do a health care bill. During Landra's battle with breast cancer she has helped her in so many different ways. I am so indebted to Janice for how she has treated my family in addition to how she has treated me and everyone who comes in contact with her.

At our Christmas party last night, we gave Janice a little present. I told everyone there that she and I had shed all the tears that we were going to. I guess it was not true.

She combined an unflinching honesty with a generous and kind nature. One always trusts she has one's best interests at heart. Her charm causes even the hardest cases, many times, to crack a smile. And her quick wit often brings a grin or a smile, sometimes a laugh. These traits, more so even than her skill and dedication, have made her successful.

I will miss her both as an employee and as a person. Today is her last day—just a few more hours to work here.

On the back of my desk I have a picture of my mentor, Michael O'Callahan. In fact, I have two pictures on my credenza right behind my desk. He was my mentor and my best friend. He taught me something that I have always remembered: You can buy a resume, you can buy good looks, education, experience, but the one thing you cannot buy is loyalty. There is no one who has ever been more loyal to me than Janice Shelton.

I congratulate her on her service to the Senate and wish her the best in her retirement, along with her dear husband Bobby, who is also my friend and always will be.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Delaware.

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

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

REMEMBERING DANIEL K. INOUYE

Mr. COONS. Mr. President, this has been a hard week in the Senate as we have said goodbye. As we have just seen in the remarks of the majority leader, retirements are very difficult. Parting with the company of honored and treasured colleagues in the Senate is as hard as it is anywhere in the world, but we have had some particularly difficult moments earlier today. We assembled in the Rotunda of this great building of the Capitol to celebrate the life of one of our greatest colleagues, Senator Dan Inouye of Hawaii. His desk sits draped in black, and his chair has a lei that was flown in from his home State of Hawaii.

This week we have all felt and known the change in the Chamber. The Senate has lost a giant and America has lost a hero. Danny Inouye was truly a great man, and I feel blessed in my 2 years here to have had the opportunity to sit with him over a private lunch, to joke with him occasionally in the anteroom, and to learn something of his spirit and his personality. He had such a big heart and a wonderfully gracious spirit.

Most of the Senators I have had the honor to come to know in these 2 years I only knew from a great distance as a local elected official or as someone in the business community at home in Delaware. When I asked Senator Inouye to lunch, I was intimidated. As a Congressional Medal of Honor winner, as a giant in the Senate, as the chairman of the Appropriations Committee, and the President pro tempore of this Senate, frankly, I trembled to sit with him at a lunch and was delighted to discover a person who was so approachable, so warm, so human, so hard working, so loyal, so spirited, and so passionate. In the minutes ahead, I would like to share, if I can, a few insights about a dozen other Senators who are retiring from this body and a few among them whom I have had the joy of getting to know in the last 2 years.

We don't often see the level of humanity in the Senate that we have seen this week, but it is important to know that the people who work in this building can be better than the passing politics that sometimes dominates, and Senator Danny Inouye knew that. His enduring friendship with Senator Ted Stevens, a Republican from Alaska, was legendary. He believed passionately that it was important for us to work together and to get past party affiliation and the picayune matters and get together to do right for our country.

Of the many speeches I heard in this Chamber and the remarks we heard earlier today in the Capitol Rotunda, one thing leaps out at me about Danny Inouye: Even when he was declared an enemy alien—as were all of his ancestry at the outset of one of the greatest conflicts this world has known—Senator Inouye volunteered for service in Europe. He was a member of our most decorated military unit, the 442nd Combat Battalion. He engaged in the fields of Europe and the hill country of Italy in a moment of such personal sacrifice and remarkable bravery as to humble any who hear its details.

In his service over decades after that moment, he proved what he showed forth on that battlefield: that Danny Inouye believed in America even before America believed in him. Even in a moment of such immense injustice, which was bitterly unreal to thousands of people across this country of Japanese ancestry, this man's great heart, aloha spirit, and embrace of the American dream led us forward. He pulled us into the greatness that was meant for this country.

The star of Senator Inouye may have dimmed in this Chamber that is surrounded in its boarder by stars, but as I share the honor as the Presiding Officer over this Chamber, I will—in the days and months and years ahead—look to our flag and remember this Senator. He represented the 50th State, the State of Hawaii, from its very first moment of joining the stars on our flag in statehood. He has shown ever more brightly in his decades of service here, and that example of service pulls us forward into an ever brighter commitment to human dignity, decency, and the respect for all in this country that his lifelong service challenged us to believe in.

There are so many other Senators I want to speak about today, but let me turn to a few, if I might, and give some insight for the folks who only see Members of this Chamber on cable TV shows or in the give-and-take of election season or who only know them as the cutout and caricatures that the public thinks of as Senators. If there is a common thread between them, it is that they share that loyalty, work ethic, and humility that so characterized Senator Inouye in his decades here.

DICK LUGAR

I had the honor to serve with Senator DICK LUGAR of Indiana on the Foreign Relations Committee. He subscribes to the same philosophy. Over the 35 years he served in the Senate, he applied the practical perspective that experience as the mayor of Indianapolis gave him. He worked to make the world a safer place for all of us.

Along with nine of our colleagues, Senator LUGAR will retire from this Chamber this month after a remarkable career. He knew the stakes were too high to let partisan politics and personality prevent progress. He partnered with Senator JOHN KERRY, Senator Sam Nunn, and then-Senator JOE BIDEN of Delaware on the Foreign Relations Committee. Because of their work together, there are thousands fewer nuclear weapons in our world. Serving with DICK LUGAR these last 2 years has been a tremendous honor.

JIM WEBB

Serving with Senator JIM WEBB of Virginia has also been an honor. He, too, is also a member of the Foreign Relations Committee. As a retiring colleague, he knows there are things in this world and in our lives more important than our politics. He was a decorated marine, a celebrated author, a former Secretary of the Navy, and now a respected Senator. His tireless work has helped to make the world safer, our veterans stronger, and our criminal justice system more fair. I will truly miss his company.

KENT CONRAD

There are a few more retiring Senators I would like to share some more detailed stories about today, and I will start with the chairman from the Budget Committee, Senator CONRAD. Senator KENT CONRAD of North Dakota is a Senator I met many years ago. But if I am going to talk about him, I believe I have to have a chart. I really cannot speak to KENT CONRAD's service and record in the Senate without a chart.

For decades Senator CONRAD tackled the challenge of educating the men and women of the Senate and the people of this country about the very real fiscal and budgetary challenges facing our country. As we can see, especially after the debut of Microsoft Excel, and then after he was named Budget Committee chair, the steady increase and usage of floor charts by Senator CONRAD has paved a path which few of us can hope to find.

Senator CONRAD is a budget wonk after my own heart. He is a numbers guy. He is not afraid to get into the weeds and to project in a clear and legible format the minutia and magnifying details of the complex Federal budget. I am not sure I have met anyone in the Senate so passionately serious about the numbers and getting them right as my friend, Senator CONRAD.

The first time I met him was more than 15 years ago. He had come to Wilmington for an event that then-Senator BIDEN hosted at the Delaware art museum. There were 200 folks in a big auditorium. I will never forget Senator BIDEN introducing Senator CONRAD as the most thoughtful and detailed budget leader in Washington.

Senator CONRAD stood up and fired up the overhead projector, the lights dimmed, and he launched into a lengthy discourse on the minutia of the Federal budget and deficit. After 30 minutes and more than 40 slides later, the lights came back up, and I think there were maybe 20 of us left in the auditorium. Everyone else wandered outside for the cocktails.

I was enthralled by his presentation, the clarity of his thinking, and his dedication to get things right for the American people. Today I am on the Budget Committee, and I have enjoyed serving with Senator CONRAD as my chairman. It was, for this budget nerd, a dream come true to have the chance to show up on time and know that this Budget Committee chairman was the other member of the committee who always showed up on time. It gave us a moment to reflect on the challenges we faced and the very real solutions he has offered over these many years of service.

Senator CONRAD has earned the deserved respect of his colleagues the old-fashioned way: through hard work, attention to detail, and thoughtful leadership. He has been trying and working hard for many years to get us to make the tough choices in the Senate that we need to make to deal with our national debt. He has not given up, and I don't intend to either. I am grateful for his friendship and service.

JEFF BINGAMAN

Another full committee chairman with whom I have had the honor to serve these past 2 years is Senator BINGAMAN of New Mexico, chairman of the Energy Committee. He is one of the kindest, smartest, gentlest people I have ever met. He has been a pleasure to work with on the Energy and Natural Resource Committee.

I remember we were both speaking at a conference on advanced energy research last year out at National Harbor. Thousands of scientists, investors, and entrepreneurs were there. I pulled up in front of the massive convention hall, and right out in front was a Prius with New Mexico plates. Sure enough, Chairman JEFF BINGAMAN jumped out of the driver's seat with no staff.

Here was the chairman of the Energy Committee and a Senator for nearly 30 years driving himself to a major policy speech in his Prius. He practiced what he preached as he prepared to deliver an important speech in a moment that showed his humility.

As unassuming a man as Senator BINGAMAN is, when he speaks, you listen. He is living proof that the value of one's words can and should exceed their volume. On that day at National Harbor, Senator BINGAMAN delivered a message similar to one he had given a decade earlier in a report entitled ''Rising Above the Gathering Storm.'' Senator BINGAMAN saw that this country was falling behind in the race for innovation and investment in research and education. These are things that lay the foundation for long-term competitiveness. This vision and concern haunted him, so he teamed up with our great colleague from Tennessee, LAMAR ALEXANDER, and challenged the National Academy of Sciences to study this trend and offer recommendations. From that challenge, we got the Seminole study, ''Rising Above the Gathering Storm.''

It asked what it would take for America to continue to lead in innovation. That led to the America COMPETES Act and the creation of ARPAE, the Advanced Research Projects Agency for Energy. The very conference at which we had been speaking was the ARPAE annual conference. Both of these important accomplishments played vital roles in our future competitiveness. They are focused on nurturing innovation and creating a political system where political, scientific, and economic forces work together and not against each other.

That is JEFF BINGAMAN. That is his sweeping, long-range vision, and one we should all heed. His commitment to thoughtful and forward-looking service on our Nation's long-term competitiveness will be sorely missed. But even more, I know many of us will miss his reserved, dignified passion.

HERB KOHL

I had a similar experience with Senator HERB KOHL, my colleague on the Judiciary Committee. I remember in my first few months there that Senator KOHL spoke so rarely that when I first heard him speak at an event on the manufacturing extension partnership—one of his passions, and mine—I was struck by the power and reach of his voice. It is because he uses it so sparingly, but his example speaks even louder. He never sought the spotlight here but worked tirelessly to make a difference fighting for the little guy on antitrust issues in the Judiciary Committee.

He believes, as do I, if an American entrepreneur has a great idea, we should help protect that idea by preventing trade secret theft and other intellectual property threats. We also share a deep commitment to the idea that higher education should be more accessible and affordable to every student who wants to pursue it. I am honored to have the opportunity to take up from Senator KOHL's work on these and other important issues.

Outside this Chamber Senator KOHL has just as strong a voice and broad an impact with his philanthropy, but we would never hear him speak about it; that is just not his style. He has earned my abiding respect with his unassuming grace and his determined leadership.

JOE LIEBERMAN

Those who adhere to the Jewish faith around the world are inspired by the ancient concept of ''tikkun olam''—''to heal the world''—to challenge each of us who seek to serve each other and our communities. Like Senator KOHL, my dear friend Senator JOE LIEBERMAN has certainly risen to that challenge. He is a man deeply committed to his faith, which has significantly influenced his career and his drive to serve, and it is something I share with Senator LIEBERMAN.

On my very first congressional delegation, my first trip as a Senator just a few months after being sworn in, I visited Pakistan, Afghanistan, Jordan, and Israel. Senator LIEBERMAN was on a different codel, and our paths crossed and we got to share a shabbat dinner at the David Citadel Hotel in Jerusalem one night. As he was crossing the room for us to sit, I realized he could be elected mayor of Jerusalem.

As we sat and broke bread and shared, it was a great comfort for me. Earlier that day I had gotten word that Delaware had lost one of our great leaders, Muriel Gilman, a personal friend and a remarkable leader and a person of kindness and spirit. She was a pioneer for women in my State and personified this spirit of tikkun olam. So over dinner that night in Jerusalem, Senator LIEBERMAN and I talked about Muriel, about what I had seen in Jordan and in Israel, Afghanistan and Pakistan, and my experience on my first trip as a Senator. It was a remarkable moment. Senator LIEBERMAN was engaging and warm, interesting and passionate as we wove between talk about policy and faith, and he reflected with me on the point of his own life when his religion became his faith, when he really took ownership of the religion of his birth and how that faith and its lessons have shaped his public service. For me as a young Senator, it was a formative moment.

His passion for the stability of the world and the security of the United States and our vital ally, Israel, and his dedicated work for the clarity of the air we breathe and his tireless advocacy for the equality of all Americans regardless of whom they love have been an inspiration. His desire to work together and find responsible compromise has been motivating.

I am deeply grateful to JOE LIEBERMAN for his service, his counsel, his friendship, and his lesson that no matter what faith tradition we are from, we can use our service in this Chamber as an opportunity to repair our world.

So here we are, 5 days before my family celebrates Christmas and 12 days

before the new year and the beginning of the so-called fiscal cliff. Our politics have paralyzed this Chamber and this town. But what the example of all of these remarkable Senators has shown us, what it has taught me is that we can still be better than our politics.

The humanity of this place, too often shoved aside by the politics of the moment, shows us that we can do better. One by one, these Senators, in delivering their farewell addresses to this Chamber, stood at their desks and each in turn urged us to find a way to return to the days when Senators knew each other and worked together. What will it take to get us to that point again—a horrific tragedy in an elementary school, a dangerous economic cliff, some devastating attack, a cyber assault on America?

Our retiring colleagues are each telling us, each in turn, that it is not too late to restore the humanity of this Chamber and make a positive difference in the lives of all we serve. Will we heed their call? I hope and pray we will because we can do better. We must do better. And in the spirit of each of these departing colleagues, I will do my level best. I hope we all can commit to doing the same.

Thank you, and I yield the floor.

The PRESIDING OFFICER. The Senator have Louisiana.

TOO BIG TO FAIL

Mr. VITTER. Mr. President, as we continue to face enormous economic challenges and uncertainty, I rise to join with others in continuing to express concern about too-big-to-fail—a policy we saw clearly in large measure coming out of the 2008 crisis and a policy many of us think continues to this day and puts the American taxpayer and the American economy at great risk.

This isn't a Republican concern or a Democratic concern; it is not just a conservative concern or a liberal concern. A lot of us on both sides of the aisle have this concern. A good example is a Democratic colleague I have been working closely with on these ideas—Senator SHERROD BROWN of Ohio. We both serve on the Banking Committee. We disagree on a lot of issues outside and within the Banking Committee's jurisdiction, but we agree on some things too, including real concern about too-big-to-fail institutions and the continuation of the implicit policy of too-big-to-fail. That is why he and I have come together on a number of fronts related thereto, including legislation we can pass this week before we end this Congress that would simply authorize a study. It is an important GAO study about too-big-to-fail and those institutions.

The idea is very simple. We would ask the GAO—a clearly nonpartisan, clearly expert entity with a lot of smarts, with a lot of ability to do valid, unbiased research—to study whether there is an implicit policy of too-big-to-fail with regard to our largest financial institutions and, if so, what benefits that implicit taxpayer guarantee gives those institutions.

Specifically, it would look at bank holding companies with $500 billion or more of consolidated assets, and it would look specifically at three things, among others: first, the favorable pricing of the debt of those institutions resulting from the perception that those institutions would again be bailed out during times of financial stress as they were during 2008; second, any favorable funding or economic treatment they received from increased credit ratings directly resulting from perceived government support; and third, the favorable economic benefit of the 2008 bailouts and existing safety nets of the Federal Reserve and FDIC. I think these questions are very legitimate, and having an unbiased, academic look at that would be very helpful in terms of our continuing work on these issues.

We talk about this and debate this all the time. Wouldn't it be useful to have an unbiased, apolitical, expert source look at these questions: Do these big institutions with $500 billion or more in consolidated assets—are they considered too-big-to-fail by the market, and does that perception give them advantages, such as favorable pricing of debt, such as favorable funding or economic treatment from their increased credit ratings, et cetera?

There is a lot at stake. It would be very helpful to have factual, unbiased answers to these questions.

First of all, there is a whole question of too-big-to-fail continuing to exist, and I believe it does. This would put nonpartisan eyes on the question and give us a good sense of, do we have more work to do if, in fact, we want to get rid of too-big-to-fail, which we, virtually to a person in this Chamber, profess we want to get rid of. Secondly, to the extent too-big-to-fail continues as a policy and/or a perception, is it giving advantages to these institutions, market advantages, market distortions—which, by the way, if they are the winners, there also by definition have to be losers, which are the smaller institutions that are at a competitive disadvantage because of these market distortions, because of these advantages that too-big-to-fail gives these mega-institutions.

So I hope this is pretty much a no-brainer. It is a study. It doesn't mandate any actions, and it asks valid questions to which getting unbiased answers would be very helpful in our continuing work. That is why Senator SHERROD BROWN and I have come together in a bipartisan way to ask these questions. We have developed legislation mandating this GAO study, and we are trying to get what we consider to be very noncontroversial legislation passed before the end of the year.

As it stands now, we have cleared this legislation on the Republican side. Every Republican Member is perfectly willing to let this pass by unanimous consent. That process has just begun on the Democratic side. I urge all of my colleagues to follow the lead of SHERROD BROWN to allow us to ask and get unbiased answers to these very legitimate questions. I urge everyone on that side to clear it themselves, to join us on our side in clearing it so we can pass it through the Senate and get this passed in the House, hopefully on the consent calendar, which we are already working on. That clearing process will take a little bit of time, but I look forward to coming back and having it cleared by UC. I will probably ask for a live UC at some appropriate point tonight or tomorrow when everyone has clearly had a chance to look at the study legislation.

I look forward to our coming together, I think in a very sound way, asking these legitimate questions, asking a nonpolitical expert entity to give us valid answers to these questions so we can move forward with the proper policymaking.

Thank you, Mr. President. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from North Carolina.

Mrs. HAGAN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. HAGAN. I ask unanimous consent to speak for up to 15 minutes as in morning business.

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

REMEMBERING OUR ARMED FORCES

Mrs. HAGAN. Mr. President, just a few months ago I spoke on the Senate floor about the men and women of our Armed Forces who are deployed overseas. Particularly, I spoke about remembering the men and women who give selflessly of themselves, who died for the good of our Nation; these souls who live lives illuminated by purpose and who travel long roads paved with sacrifice. They are the important 1 percent, the tiny fraction who go wherever in the world our country asks them to go, who honorably shoulder the burden of fear and sacrifice for the rest of us because they love this country and believe in defending it.

Today, as we prepare to celebrate the holiday season with our family and loved ones, I once again wish to ask each and every one of my colleagues to remember these men and women, these great souls whose belief in this country is so great they willingly and without qualification put life and limb on the line so that 99 percent of us don't have to spend our days and nights wondering if our loved ones are safe.

Remember that we are still a nation at war, that there are over 170,000 members of our Armed Forces deployed, many of them in harm's way, and many of them are from my home State of North Carolina. This year these deployed servicemembers will not be celebrating with those near and dear to them because they will be on watch protecting the very freedoms

and the way of life we hold so dear. Our service men and women don't ask for anything from us, but please think of them, remember them, thank them, and please keep them in your prayers.

Remember the sacrifices endured by so many of our military families who are at home now without their dad, mom, brother, sister, husband, or wife. And most importantly at this time of year and always, remember that there are many servicemembers who will never come home. While many families miss their loved ones now, especially during the holiday season, some will endure that loss for the rest of their lives. These husbands and wives, moms and dads, brothers and sisters, sons and daughters did not bargain for the pain of waking up each and every day without their partner, a child, a friend, or the person who used to tuck them into bed each night. They did not ask to spend the rest of their lives missing someone so important to them. Remember them as you do your holiday shopping, go to parties, exchange gifts, and otherwise get caught up in the spirit of the season.

SGT JUSTIN C. MARQUEZ

Remember the family of SGT Justin Z. Marquez, U.S. Army, from Aberdeen, NC. Justin died this past October 6 from small arms fire wounds he received while on foot patrol in Wardak Province, Afghanistan, just 1 month after he arrived in theater. Justin was 25 years old.

I spoke with Justin's mom Terry. She told me that as a boy, Justin questioned authority—a lot. But she said it was always because he was standing up for what he thought was right, defending someone else against an injustice or prejudice.

Justin was a good son. He believed in helping others, standing up for others. He was a kid other parents trusted and a big brother to many—a neighborhood guardian, if you will. His house was the weekend hangout. Younger kids would come over. When his mom questioned when the younger kids should go home, her son told her: Mom, don't worry. They are happy being here. Not everyone has the fairytale life like our family does.

Justin's family was a little surprised when he announced that he wanted to join the Army at 18. They wanted him to finish school, to continue growing up, but Justin had other plans. He wanted to go out in the world and make a difference for others, and the Army was how he was going to do this. He was eager to do his part—to stand for our country, our government, our people, and our way of life. He understood how precious our freedoms are and how fortunate he was to be an American.

Justin's life was cut short, tragically so, but his dad, mom, and twin brother got to see him grow from a boy to a man. He made their lives full and challenged them to be better people. According to Terry, his mom, as Justin grew up in the Army, he was like a fine wine: he just kept getting better with age.

Justin understood that the freedoms we enjoy as citizens of our great Nation are precious and valuable. He believed in protecting others. He believed in making the world a better place. He believed in standing so that others might not have to.

Interestingly, Justin's mom brought Justin and his twin brother Drew to Washington, DC, when they were in middle school. They sat in the gallery in this very Chamber. I think it is fitting that we remember and honor him here.

SGT Justin Marquez was a dedicated soldier. He had found his purpose. He believed in what he was doing. We must remember how fortunate we are to have countrymen like him—people committed to fighting for the freedoms we so often take for granted.

Mrs. Marquez shared with me that she does not worry about Justin anymore. He is taken care of and is safe now. But because of him, she now worries for all the other soldiers. We all need to keep these men and women in mind too and support them and stand with them and their families.

CORPORAL DANIEL L. LINNABARY

We also need to remember the family of Cpl Daniel L. Linnabary, U.S. Marine Corps, from Hubert, NC. Daniel died on August 6 at the age of 23 while conducting combat operations in Helmand Province, Afghanistan.

Dan always wanted to be a marine. He made his decision at the early age of 4 and wanted to be a marine until the day he died. He was the third generation of his family to serve in the Marine Corps, and for 46 years there has been at least one Linnabary in the Marine Corps. No wonder he knew he wanted to be a marine at such a young age.

Dan loved the Corps, but more than that he loved his wife of just a year, Chelsea, and baby daughter Rosalie. I spoke with Dan's wife Chelsea, and she impressed upon me that Dan was much more than a marine. She needed me to know that he was first and foremost a good husband and a good father, just a really great guy who loved his wife and loved being a dad.

Dan's baby girl Rosalie just turned 7 months old this past weekend. Dan got to spend only 7 weeks with her before deploying—3 of those weeks an extra blessing because baby Rosalie was in such a hurry to meet her dad that she arrived 3 weeks early. From the minute Dan first held his tiny daughter, he and everyone else knew that he was made to be a dad, that he would always love and do whatever was necessary to care for his family. Now Rosalie will grow up with only photos of her dad, but she will always have a connection to him through those who served with him.

The men of 2nd Tank Battalion have told Dan's wife that they look forward to meeting baby Rosalie when they get back from their deployment early next year. That is just what these men and women do. They look out for one another and the families who are left behind. Yes, they are servicemembers, but first and foremost they are human beings putting others before themselves. We need to follow their lead.

Another thing Chelsea shared with me is that Dan loved her enough to be honest with her always. He did not sugarcoat things. He prepared her as much as anyone could for any eventuality. But how much can you really prepare someone to live the rest of their life without their soulmate? To raise their daughter without her dad? To explain to her that dad gave his life to protect others—especially when too many of us are not even aware of these sacrifices?

Dan was a marine. He was doing what he believed in. His wife knew that it was a dangerous job and that the worst could happen because Dan told her. She just never thought it would be on this, his first deployment, or in this war. He died fighting for our freedoms and lived by a code that most of us will never understand but for which we must be thankful.

As you spend time with your loved ones this season, remember Cpl Dan Linnabary and thank him.

This is a time of year about belief. Different cultures and different faiths have different beliefs. And this is what makes our country the greatest Nation on Earth. Be it faith, politics, or other things, we are all free to believe what we choose. And we must remember that there are special men and women in this world, oftentimes strangers to us, who are willing to give their lives for our right to believe in what we choose. But one thing we should all agree upon is that we must—we must—stand behind and beside the men and women who are willing to pay a debt they do not owe so that other Americans do not have to.

Our servicemembers are from our small towns, our big cities, and our rural areas. They are our neighbors, they are our fellow Americans, and they are my fellow North Carolinians. Justin Marquez, Daniel Linnabary—just a couple of the heroes who lived among us. We must remember them and honor them now and always.

So at this time of the year, I wish to extend my warmest wishes of the holiday season to our servicemembers, both those serving now and those who have gone before us, and to the families and friends who cannot be with their loved ones.

Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MORAN. Mr. President, I ask unanimous consent to address the Senate as in morning business.

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

TRIBUTE TO ROGER BARTA

Mr. MORAN. Mr. President, there are certainly so many serious issues that we face in this country, and so many tragedies have occurred. I was on the floor earlier this week paying tribute to the lost lives in Connecticut and the two police officers killed in the line of duty in Topeka, KS, this week and the death of our colleague—certainly serious issues that we face—and now awaiting the House to pass legislation in regard to the fiscal cliff.

This is perhaps a lighter subject. I want to pay tribute to something that is such a great tradition in our State of Kansas and really across the country. Football is something that is important to communities across my State. On Friday nights, in the fall of each year, thousands of Americans gather at their local high school football fields to cheer on their favorite teams. This tradition has stood strong for decades on the Kansas prairie, but it is especially true in a little town not too far from my hometown, in the town of Smith Center.

There are few if any high school football fans in our State who are unaware of Smith Center's reputation. Coach Roger Barta and his Redmen football team have won more than 320 games and 8 State championships—5 of them in a row. They are even known here in Washington, DC.

A few years ago, when they were on their 79-game winning streak, people would come to me and ask me if I had ever heard of Smith Center, KS. And I would say: Certainly. Yes. What is the story? And they had read on the sports page that Smith Center had scored 74 points on another team in the first quarter. It turned out to be my hometown of Plainville. Mr. President, 74 points in the first quarter—this is an amazing team.

Under the leadership of Coach Barta, the Redmen football team has set State and national records. That 79-game winning streak is a remarkable achievement, and it caught the attention of the New York Times. In fact, a New York Times sportswriter, Joe Drape, moved his family from New York City to Smith Center, KS, and lived there for an entire school year to chronicle the team's achievements and to write about the community. He tells their story in his best-selling book called ''Our Boys: A Perfect Season on the Plains with the Smith Center Redmen.''

There are many reasons for this team's success that would, in fact, bring a New York Times reporter to this small town, but I think the community of Smith Center would agree with me that perhaps the greatest reason behind their success is their head coach—Coach Roger Barta. The coach's 323 victories place him among the top 5 coaches on the alltime Kansas football coaching wins list, and in 2007 he was named the Gatorade National Coach of the Year. But this season, after 35 years of coaching, Coach Barta announced he is ready to hang up his whistle and retire.

I have had the opportunity to participate in several pregame coin flips with Coach Barta and his team over a number of seasons, including their 2009 State title game. Each time, I watched a very talented and sportsmanlike football team and a very spirited set of fans from Smith Center and across the region. Yet all the success this team has enjoyed on the field is not what makes them so remarkable. The truly exceptional work being done on the plains of Kansas is the development of character in the boys of the Smith Center football team. It is the respect the athletes learn to have for their teammates and opponents on the field. It is the integrity the boys are expected to have both on and off the field. And it is the hard-working spirit they take with them when they graduate.

As a member of the Redmen football team, the athletes are not expected to just excel on the field but in the classroom and the community as well. From school plays to school concerts, the Redmen do more than simply play football. And Coach Barta serves more than just to coach football—he serves as a role model and mentor for young men and the community.

I remember a story in the book that says when one of the team members violates a team rule—young fourth grade students in Smith Center, KS, have a player card, and that football team member who violates a rule has to go to the fourth grade member and explain his error in violation of the team rule and apologize to the fourth grader.

Coach Barta's wife had this to say about her husband's commitment to the Redmen:

> Roger likes everything about football, but what he loves most are the practices, the camaraderie, and watching the boys learn a little more. He lets them know how much he wants them to succeed.

In the book about the Redmen, the writer Joe Drape extols the virtues we in America hold so dear. Humility, sacrifice, and unwavering commitment are all characteristics that are exemplified by the Redmen and their fans.

But perhaps Coach Barta's greatest legacy as he leaves the coaching field in Smith Center is within the Smith Center city limits: former Redmen who left town for college or work but eventually returned home.

Broch Hutchison, one of the Coach Barta's former players, is now an assistant coach, and he had this to say about working alongside Coach Barta:

> We've all had opportunities, but this is where we've learned to love one another and work hard and build a community. If we can have an impact on a kid's life like Coach Barta, we want to do it in our hometown.

This attitude exemplifies the teaching, coaching, and parenting philosophy of rural America. Our populations are dwindling and our communities are aging, but our commitment to raising responsible children and preparing them to be successful in life is something that will never leave us. I am thankful that Coach Barta and his staff understand this, and I am proud to come from a part of the country that remains committed to that way of life.

Coach Barta summed it up best when he said this about his coaching philosophy:

> What we do real well around here is raise kids. . . . None of this is really about football. What we're doing is sending kids into life who know that every day means something.

Congratulations to Coach Barta for his outstanding achievements over the last three decades. But most importantly, thank you, coach, for your investment in the lives of young men of Smith Center. Their lives are forever changed because of you.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. AKAKA. Mr. President, I ask unanimous consent to speak as in morning business.

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

NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT

Mr. AKAKA. Mr. President, I rise as my friend, my colleague, my brother, Danny Inouye lies in state in the Capitol Rotunda just a few yards from where I stand now. In life, he received our Nation's highest military honor, the Medal of Honor. Today he is receiving a tribute reserved for just a handful of American heroes such as Abraham Lincoln.

I come to the floor to speak about an important piece of legislation I developed and worked with Dan Inouye on for over 12 years. Today, in Senator Dan Inouye's honor, for all the people of Hawaii, I am asking the Senate to pass the Hawaiian Government Reorganization Act.

Dan and I developed our bill to create a process that could address the many issues that continue to persist as a result of the legal overthrow of the Kingdom of Hawaii in 1893.

As you know, Dan Inouye was a champion for Hawaii and worked every day of his honorable life to solve problems and help our island State.

Dan also served on the Indian Affairs Committee for over 30 years and chaired it twice. He was an unwavering advocate for the United States' government-to-government relationships with native nations. He constantly reminded our colleagues in the Senate about our Nation's trust responsibilities and our treaty obligations to America's first peoples. Dan believed that through

self-determination and self-governance, these communities could thrive and contribute to the greatness of the United States.

When asked how long the United States would have a trust responsibility to native communities, he would quote the treaties between the United States and native nations, which promised care and support as long as the Sun rises in the east and sets in the west.

Dan Inouye's sheer determination to improve the lives of this country's indigenous peoples and make good on the promises America made to them led him to introduce more than 100 pieces of legislation on behalf of American Indians, Alaska Natives, and Native Hawaiians.

Senator Dan Inouye secured passage of the Native Hawaiian Health Care Improvement Act, the Native Hawaiian Education Act, the Hawaiian Home Lands Recovery Act, and the Native Hawaiian Homeownership Opportunity Act.

He was instrumental in helping me to enact the apology resolution to the Native Hawaiian people for the suppression of their right of self-determination. It was enacted on the 100th anniversary of the overthrow of the Kingdom of Hawaii.

In 1999, Dan and I worked together to develop the Native Hawaiian Government Reorganization Act to give parity to Native Hawaiians. For over 12 years now, we worked together to pass the bill to ensure that Native Hawaiians have the same rights as other native peoples, and an opportunity to engage in the same government-to-government relationship the United States has already granted to over 560 native nations throughout this country, across the continental United States, and in Alaska, but not yet in Hawaii.

Over the years, people have mischaracterized the intent and effect of our bill, so let me be plain. For me, as I know it was for Dan, this bill is about simple justice, fairness in Federal policy, and being a Nation that acknowledges that while we cannot undo history, we can right past wrongs and move forward. To us, this bill represented what is ''pono'' in Hawaii, what is just and right.

Our bill is supported by President Barack Obama and the U.S. Departments of Justice and Interior. It has the strong support of Hawaii's Governor, the State legislature, and a large majority of the people of Hawaii. Our bill has the endorsement of the American Bar Association, the National Congress of American Indians, the Alaska Federation of Natives, and groups throughout the Native Hawaiian community.

As a Senator and senior statesman, Senator Dan Inouye advocated that Congress do its job and legislate where native communities were concerned. Dan Inouye believed that a promise made should be a promise kept.

In the days since my dear friend Dan's passing, there has been a tremendous outpouring of love from Hawaii and every other State in the Union. Native American communities across the country are mourning the loss and paying tribute to their great champion. Dan Inouye's absence will be felt in this Chamber and the Nation for many years to come. May his legacy live on for generations of Native Americans and inspire all Americans to always strive toward justice and reconciliation.

I urge my colleagues to pass the Native Hawaiian Government Reorganization Act in the memory of Senator Daniel K. Inouye and his desire to provide parity to the Native Hawaiian people he loved so much.

To Dan, I say: Aloha 'oe and a hui hou, my brother.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

NATIVE AMERICAN AFFAIRS

Ms. MURKOWSKI. Mr. President, I was watching my friend and colleague Senator Akaka as he was delivering his comments earlier about Senator Inouye and the legislation that both he and our dear friend and former colleague have worked so hard on over the years, and I wanted to come to the floor this evening and tell my friend that I am deeply appreciative of the words he has delivered as the chairman of the Senate Committee on Indian Affairs. I would certainly hope the Senate would respect the thinking the Senator has outlined as it relates to the Native Hawaiian Government Reorganization Act.

As the Senator knows well, I have long been a supporter of that act. It is indeed an honor to have worked with him on it, as well as our dear friend and late colleague, Senator Inouye.

This legislation has been going on for some 12 years now, and I think it is fair to say that it truly has been a bipartisan effort, not only here in Washington, DC, but in Hawaii as well.

For several years, when Governor Lingle was Governor of Hawaii, she was back here helping on the Republican side of the aisle.

I firmly believe this cause of Native Hawaiians is just. The native people of Hawaii are similarly situated to the native people of Alaska. Both are aboriginal peoples from former territories. Yet the fact is that the two peoples are not treated the same for purposes of Federal Indian law. The native people of Alaska are recognized as among the first peoples of the United States. Their tribes appear on the Interior Department's list of federally recognized Indian tribes, and they have access to important Federal Indian programs that truly have improved the quality of life for Alaska natives.

The native people of Hawaii, however, are not federally recognized among the first peoples of the United States. For more than a decade now, efforts to provide Federal recognition have been filibustered, and I would suggest unjustly so.

Senator Inouye and Senator AKAKA have worked valiantly to create programs for Native Hawaiians that parallel those available to American Indians and Alaska Natives, but this is not enough. Justice demands that the native people of Hawaii earn the Federal recognition that is rightfully theirs.

The time to provide parity and justice for Hawaii's native people is now. The Native Hawaiian Government Reorganization Act, which has passed out of the Senate Committee on Indian Affairs, I think is a responsible bill. It is a constitutional vehicle to accomplish this objective.

We began our mourning paying tribute to our friend and former colleague Senator Inouye. As we think about Hawaii and its peoples, and as we remember the contributions of Senator Inouye, and as we recognize Senator AKAKA as he departs from this body after years and years of honorable service, I would hope that within this body we would not forget the efforts they have worked on so valiantly.

I will commit to my friend, Senator AKAKA, that the cause the Senator has taken up, that he has worked on so hard with Senator Inouye, will not die until justice for the native people of Hawaii is achieved. I thank the Senator for his leadership.

Mr. President, I was going to yield the floor, but I would like to take a moment to provide my remarks regarding Senator AKAKA and his contribution here, if I may.

DANIEL K. AKAKA

Mr. President, I rise to speak on behalf of my friend, my colleague, Senator DANIEL AKAKA, who is set to retire after 22 years of dedicated service in the Senate. He has been a personal friend to me, he has been a personal friend to my family, and to my parents. He and his wife Millie, a wonderful, beautiful woman, have been leaders on behalf of the people of Hawaii and have long been friends and partners to the people of Alaska.

Senator AKAKA has served our Nation and the great State of Hawaii honorably for nearly 70 years. That is an incredible contribution. His service began in 1943, immediately following his graduation from the Kamehameha School for Boys in Honolulu. The Japanese attack on Pearl Harbor had taken place a year earlier, only 5 miles from his dormitory steps. In the hours immediately following that attack, Senator AKAKA, who was a 17-year-old ROTC cadet, helped his classmates search for paratroopers in the fields above his school grounds. Like so many others of his generation, Senator AKAKA answered the call of duty, joined the U.S. Army, first with the Corps of Engineers as a mechanic and a

welder, and later as a noncommissioned officer.

In 1952, Senator AKAKA used the GI bill to earn his degree in education from the University of Hawaii and began his lifelong dedication to our Nation's students, first as a teacher, then as a principal at a high school in Honolulu, and later with the Department of Health, Education and Welfare.

Senator AKAKA was first elected to the U.S. House of Representatives in 1976 and then went on to win six more elections. It was clearly evident to the people of Hawaii within that second congressional district they valued his passion and his dedication for the office. In 1990, after the death of Senator Spark Matsunaga, Senator AKAKA was appointed and then subsequently elected to the seat in the Senate that he has held for 22 years now.

Senator AKAKA's fortitude and his determination have not waned in these 70 years. As the first Native Hawaiian ever to serve in the Senate, and the only indigenous person currently serving in the Senate, he is a proven champion for American Indians, Alaska Natives, and Native Hawaiians. It was just in October of this year that Senator AKAKA came to Alaska and was honored by the Alaska Federation of Natives with the Denali Award. This award is presented to an individual who is not an Alaska Native for their contributions to the growth and development of the Alaska Native community's culture, economy, and health. Senator AKAKA has done that repeatedly over the years.

The efforts he has worked on, whether it was bigger initiatives or whether to ensure the people in King Cove had access to an airport so their lives weren't threatened in a medical emergency and they could get out, Senator AKAKA has stepped up to ensure the people of Alaska are cared for.

It has truly been a pleasure to work with Senator AKAKA over these past 10 years on the Senate Indian Affairs Committee. The chairmanship he has administered has been admired and appreciated by all of us who are on that committee.

Senator AKAKA's leadership, wisdom, and grasp of issues has helped us work together toward many visions and goals that we shared. The Save Native Women Act—a bill to help protect native women and children across our 565 federally recognized tribes—was largely incorporated into the Senate version of the 2012 Violence Against Women Act. We need to make sure that legislation passes. And again, as we think about the statistics that so many of our native peoples face, we need to make certain we are making appropriate gains and strides to help address them, and Chairman AKAKA has worked with us on that. We fought to ensure the preservation of native languages not only in our communities but within our classrooms.

As I mentioned, I have long supported the concept that Senator Inouye and Senator AKAKA have championed with regard to Federal recognition of Native Hawaiians.

But Senator AKAKA is also special to two other constituencies—our Federal employees and our veterans. He is one of this body's leading experts on some of the more arcane laws that apply to Federal civil service. Alaska's Federal employees clearly appreciate his leadership on the Non-Foreign AREA Act, which made them eligible for locality pay that counts toward retirement. This is an issue in my State that took some time to negotiate and to move through, but the Federal employees in Alaska—as they are seeing the benefits of that locality pay—owe thanks and gratitude to the work of Senator AKAKA. And of course he knows well the laws that govern the U.S. Postal Service probably as well as anyone in this body.

During Senator AKAKA's tenure as chairman of the Senate Veterans' Affairs Committee, this body has made great progress in ensuring that the VA had a budget commensurate with its needs. His contributions to ensuring that post-9/11 veterans had access to critically needed health and education resources will endure.

As neighbors in the Pacific, Alaska and Hawaii have always shared a very special bond, not only because of our geography and our time differences. Every time I endure a 12-hour flight across the country to go home—and home is four time zones away—I am reminded that it takes Senator AKAKA a couple hours more and one time zone more to get home. But it is not only our geography that binds us; we have many other similarities: our indigenous peoples, the relative youth of our States, our unique landscapes, and for years our delegations have worked together across the aisle for the good of our people.

Senator AKAKA's bipartisan approach, his willingness to work toward success, will be missed by myself and so many of our colleagues. And, of course, I don't think Senator AKAKA would call it bipartisanship. He would call it aloha. We work in the aloha spirit.

With that, I wish to tell my friend and my colleague, mahalo. From the bottom of my heart, mahalo. I am going to miss you, Senator AKAKA. I am going to miss your wife Millie and your entire extended family. But as you return home to your beloved Hawaii, know that you have left an impression on so many.

With that, Mr. Chairman, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RULES CHANGES

Mr. MERKLEY. Mr. President, I rise to talk about the challenge of this Chamber being a Chamber that can deliberate and decide issues, the big issues facing America.

I don't think it will come as a surprise to anyone that the Senate, once famed as the world's greatest deliberative body, has become paralyzed. At the heart of that paralysis is a change in the use of the filibuster. ''Filibuster'' is a term I believe comes from the Dutch, and it refers to piracy. In this context, it is about someone taking over this Chamber—taking over the normal process by which we debate issues and decide issues by majority vote.

In the past, when everyone understood the very heart of what we do is to make decisions by majority vote, the filibuster—the takeover of this Chamber, the objection to a simple majority vote—was very rare. People did this only once or twice in a career for some issue of profound personal values or of extreme concern to an issue in their State, and it was most often small factions who would do this.

In 1916, there was a debate—a debate that went on about whether to put weaponry on our commercial shipping. This was pre-World War I. In the course of that debate, there was a small faction who said: We are going to interrupt and we are going to object to the simple majority because we strongly oppose the United States putting any defenses on its merchant vessels, even though those vessels were being sunk by the Germans as they went over to Europe.

This was enormously frustrating to President Woodrow Wilson, and it was enormously frustrating to the Members of this Chamber who said: We must complete debate and make a decision and only a small number want to block us from making that decision.

The following year, in 1917, they adopted a rule that we could close debate if we had two-thirds of this Chamber voting to close debate. That is called cloture. Cloture continued to be an instrument that in situations where there was an individual or a small group who stretched the limits of the courtesy of full debate, then the Chamber as a whole could say: Enough is enough. We need to bring this debate to an end and make a decision.

Over time, things have changed. This objection to a simple majority—which makes it impossible for the Chamber to end debate—has grown from its occasional use to a routine instrument of legislative destruction. It is used on virtually every debatable motion.

A single bill can have as many as seven or so steps where you have a debatable motion. In that situation, then an objection to a simple majority can be done multiple times. Each one of those objections wastes a week of the Senate's time on this floor, which means the Senate not only cannot decide the issue at hand, it runs out of

the time to debate and deliberate on the other issues that we should be doing on the floor.

As I will show in a chart later, we can measure this in part by the action on appropriations bills. We have an expectation of—it used to be 13 appropriations bills; now it is 12. In the last 2 years we have done exactly 1, 1 out of 24—totally unacceptable in terms of this Chamber fulfilling its responsibility just in that one area of appropriations, decisions about how to spend moneys in different parts of the government.

I know when people hear the word ''filibuster'' they do not think of simply a silent objection. Yet that is what is in the rules, a silent objection to a simple majority. They think of someone taking the floor and making their case on an issue of deep principle or deep concern to their State. They might be thinking a little bit about a picture that looks a little like this.

This is that famous scene from ''Mr. Smith Goes to Washington.'' Jimmy Stewart is on the floor. He talks through the night, making his case. He is fighting for fairness and justice in the face of corruption. That is what people think of when they think of a filibuster.

But the way it works today, it is a simple objection. We ask for a unanimous consent request, meaning do all 100 Senators agree to go to final vote, and someone says: I object. That is all that is required. That is all it ever meant. But in the past, that objection to the heart of democracy, to the simple majority, meant you felt honor bound to come to the floor of the Senate and make your case while you stood in the way of the decisionmaking of this august Chamber. But that sense of honor-bound responsibility to make your case before your colleagues, make your case before the American people, has disappeared. Indeed, instead of the filibuster being something done by an individual or a small group, it is now used as an instrument of party warfare.

The minority party, be it the Democrats or be it the Republicans, say: You know, we can slow down the majority by eating up their time. We can do it by filing an objection on every debatable motion, and we will simply eat up the calendar and prevent them from getting their work done. Then we will say how incompetent they are, that they can't get their work done—after we have caused them to be unable to do it.

I thought I would go through the enormous expansion of this tool of legislative destruction in many different categories in the years since 1970. Before we do that, by the way, every now and then someone says: You know, the Senate was designed as a supermajority body. Indeed, that could not be further from the truth. There are specific cases where our forefathers said a supermajority makes sense; for example, in the case of overriding a Presidential veto, in the case of approving a treaty, in the case of having a constitutional amendment. But they viewed that these legislative Chambers, like every legislative chamber in the world, would make decisions by simple majority.

In fact, they addressed this in the Federalist Papers. Here we have Alexander Hamilton and his commentary on supermajority decisionmaking that was fierce. He said—and this is just a small part of his diatribe about how destructive it would be to have this Chamber tied up in a supermajority. He referred to it as driving ''tedious delays; continual negotiation and intrigue; contemptible compromises of the public good.''

We have seen some of those tedious delays, we have seen some of those contemptible compromises, and certainly he was looking into a crystal ball and accurately summarizing the situation.

He was not alone. Here we have compatriot James Madison, also in the Federalist Papers. He noted ''the fundamental principle of free government would be reversed.''

By ''fundamental principle,'' he is talking about the fact that when you make a decision by simple majority, you make the decision that most people think is the right direction in which to go. But when you make a decision by supermajority, and a minority can block it, you are making the decision the smaller number thinks is the right decision. In that sense, you have a series of worst decisions rather than a series of best decisions. So the wisdom of the group tapping into the expertise of colleagues who came from many directions, many walks of life, is not realized.

Let's take a look at what has happened in this use of the objection to a simple majority, otherwise known as a filibuster. Here we are evaluating it in terms of the cloture motions that are filed. These are motions that are designed to drive a vote on whether to close debate. It is one way of measuring the number of filibusters. How about nominations? We can see that basically the first filibusters on nominations were in about 1970. I was about 14 years old. I was starting high school. That is when this started to be done. We can see that as time passed, we have an enormous increase in the number of filibusters on nominations. Over here, in 2012–24. It is a situation where these are only cloture motions. So many other nominations were blocked because of threatened filibusters.

We have this vast number of positions in the executive branch, this vast number of judge positions that are unfilled. The advice and consent clause in the Constitution that gives this Chamber, the Senate, the chance to weigh in has been turned, through the expanded use of the filibuster, into a tool that damages the other branches of government. It prevents the President from having his team that he would like to have, and that blocks us from getting the judges onto the courts so we can have the sort of speedy criminal justice system we envision and promise.

That was just nominations. Let's take a look at some other areas. The motion to proceed is the very first step for a bill. It is just a motion to get the bill on the floor to debate. That was virtually never filibustered. We have one time down here in 1932, until we are in the 1960s, and then early 1970s. It takes off. We see this massive expansion that makes no sense unless you are just trying to paralyze the system because these filibusters are not in any way construed to enhance debate.

These are to prevent debate, prevent us from getting to a bill to debate it, prevent an agenda from ever being considered by this body. Here we have over 30, and over 20—in recent years just a huge number of efforts to prevent these bills from ever coming to the floor to be debated. How can we weigh in and address the big issues facing our Nation if we cannot get the bill on the floor to begin with? Again, in recent times, and enormous change in strategy used by the minority to prevent debate.

Here we have amendments. The first time, about 1962, the filibuster was used on an amendment because people envisioned the filibuster as something to be used at the end of the process on a bill when all the different pieces have been put in place, and you say: Is their a core principle compromise after I have fought and won or fought and lost? But then folks got the clever idea: We can do this on any debatable motion, including an amendment. So the number of filibusters on amendments also grew enormously from the early 1970s forward.

Final passage? This is where we see the traditional role of the filibuster, one or two or three a year over these many years from the 1920s on through the 1960s. Stop the chart right here in the middle. That is what the filibuster was, very occasional battles over core principles. Then we have 1970 and look what happened. We had this explosion of 25—that was 1974. What happened as a result?

In 1975 there was a big battle on this floor about changing the rules because this abuse was preventing the Senate from doing its business. So in 1975 we have this enormous battle. There are three votes in which a simple majority says, yes; we can change the rules by simple majority, and we intend to do so. The majority leader who opposed this finally said: OK, I get the message. A simple majority is prepared to change the rules if we do not address the paralysis of the Senate, and they changed the rules.

The compromise was to change it from 67 required to close debate down to 60, from two-thirds down to three-fifths. You can see the number of filibusters then dropped off, and they were resolved more easily.

But what do we have? Again, this enormous explosion until 2012, 35 filibusters. We are deeply afflicted. This is

why we are having this conversation over how to save the Senate from itself, from this instrument of the objection to a simple majority that is being used to thwart the ability of the people's elected leaders from addressing the issues our Nation faces.

After a bill has gone through passage, it goes over to the House or the House bill comes to the Senate. When both Chambers have passed the same bill in different forms, then you need to get it to negotiation. That is done through a conference committee. It used to be nobody filibustered a conference committee. Here we have in 1972 the first filibuster on a conference committee.

Why would you object to getting the three motions done that are required to get a bill into negotiation with the House? That doesn't facilitate debate in any conceivable way. But it was an instrument to eat up the time of this Chamber so they could not address other issues. It is like walking knee deep in molasses. You just cannot get very far very quickly.

Then we see this huge explosion in using this filibuster, the objection to a simple majority, in the latter part of this last decade. The result has been this: We have basically given up on conference committees. It is too hard to get to conference. So we have informal negotiation, or we have kind of a process called ''pinging,'' where we change the House bill after we pass our own version, we change it, send it back over, they change it, send it back over to us—not a very effective way to negotiate a compromise that can pass in the same form. And until and unless it passes both Chambers in the same form, it cannot get to the President. So this was a huge change as well.

Then we have, after conference committee, reports coming back from conference. Now you have the same version; it normally has not changed very much. Again, we see this explosion—once, basically, in about 1945, and then about 1970 an explosion, and then we see the dropoff in part because we just started giving up on conference committees.

In each one of these debatable motions we have a problem, a problem that has grown enormously from 1970 forward, the last 40 years. This is something I have witnessed within my own lifetime. I came here in 1976 as an intern for Senator Hatfield. I was assigned to the Tax Reform Act of 1976. In those days there was no camera on this floor and there was no e-mail, so essentially the only way the Senator had to monitor a bill was that he or she would meet with a staff member outside these doors where the elevators are.

I would sit up in the staff gallery and monitor the debate on the Tax Reform Act, and I would rush down with each vote, meet Senator Hatfield coming out of the elevators, and brief him on the details of the amendment. There were sometimes a couple of layers of motions, and I would proceed to say: Here is what the folks are thinking about back home; here is what folks back home are thinking about this issue.

He would come back to vote, and I would rush back upstairs and see how he voted, how everyone else voted, how it came out.

I would rush back and start making notes on the next debate. Well, this Chamber deliberated on amendment after amendment. When one amendment was done, then a series of folks near the Chamber would raise their hand and call on the Presiding Officer. Whoever the Presiding Officer called on—and according to the rules, the Presiding Officer is supposed to call on the first person he or she hears—and that person would present the next amendment and then the debate would begin. They would debate for an hour, hour and a half, and then they would vote.

These amendments were germane and relevant to the issue. They had to do with different aspects of the Tax Code: Was it Employee Stock Ownership Plan, ESOPs. That was something Senator Hatfield cared a great deal about. Was it the change in a provision regarding teachers' home offices? It seemed that was something every teacher in Oregon was writing us about. We debated these issues, we decided these issues, and it was a simple majority. That is the way the Senate deliberated and decided on issues over our history until the last 40 years when this massive expansion of the use of the objection to the simple majority has paralyzed this body.

I thought it was interesting to see this cartoon. It says: I will tell you all the reasons we shouldn't reform the filibuster. I assume it is depicting a Senator on the floor of the Senate. And it says, No. 1, it will restrict my ability to frivolously stymie everything. And then the Senator says, No. 2—well, the Senator thinks about it, grimaces, frowns, and cannot think of any other reason that we should not reform the filibuster other than the ability to frivolously stymie everything. Finally the Senator says: How long do I have to keep talking? A little farther down here it says: You can read recipes for paralysis.

Well, that is what we have in the Senate right now. Due to the extraordinary abuse of the filibuster, we have a recipe for paralysis.

It is time to do something about that. The first thing we should do is eliminate the filibuster on the motion to proceed. That was the first step in the process I showed in the earlier chart. It doesn't make sense to debate whether to debate. We should be able to vote on whether the bill comes to the floor. Let's have a couple of hours to debate that. Then we have a simple majority vote. Either we decide we are taking up that bill or nomination or we are not taking up that bill or nomination, and we go on to the next order of business. We should not waste a week of Senate time trying to decide whether we are going to have a debate on a bill or nomination.

Those listening may wonder why there is a week of wasted time. Well, it works like this: First of all, we have the motion and then we have debate that takes place and we think we will wrap it up, but we don't. Then we think we have a motion to close debate, but to do that there has to be a petition signed by 16 Senators. So on day three we get the petition. Then the petition has to ripen, which means it has to sit over on intervening days. So we start the debate on Monday, sign the petition on Tuesday, and now we cannot vote on whether to close debate until Thursday. Then if we are able to vote and get 60 votes, we have to have 30 hours of postcloture debate. Now the week is gone. The 30 hours wipes out Friday.

If that is done multiple times on a bill, it means multiple weeks are wiped out with nothing productive. There is no productive conversation on this floor, no point and counterpoint, no insights with people's life experience, no questions asked or questions answered. Nothing productive gets accomplished.

If we want to sum up all of the filibusters on all of these different motions, here is one way to compare it. Lyndon Johnson was the majority leader for 6 years. During those 6 years, he had to file one petition. Technically it is called a motion, but actually 16 people have to sign a petition. He had one motion to end debate in 6 years.

Now we have HARRY REID who has been the majority leader for 6 years. As this poster says, ''387 and counting.'' I think the number today is 391. There have been 391 1-week delays in 6 years. How many weeks are there in 6 years? Well, that would be about 312 weeks. Is that right? Yes, 312. So that is 312 weeks, and as it says here, ''387 and counting''—390 weeks wasted.

No wonder we don't get things done, such as our nominations for the executive branch or the judiciary, our appropriations bills, our authorizing bills, or the policy changes that are going to make a big impact on the challenges we face in America. As we can see here it is 1 versus 387. This is now a couple of days old, so it is 391 and counting. We cannot allow this to continue. We have a responsibility to the people who elected us to be a seasoned, deliberative body.

Some say: Well, this is what the Senate is all about. There is a story recited by historians that says that is apocryphal. It is a story about President Washington and Thomas Jefferson. They are having a discussion. Washington says the Senate is meant to be the cooling saucer. Just as we poured our hot tea out of our cup and into our saucer to let it cool so we can drink it, the Senate is meant to be a cooling saucer. Well, perhaps the Senate was meant to be a cooling saucer, but it was not meant to be a deep

freeze. The cooling saucer concept is that the Senate is a little more detached from the immediate fashion of the moment. It is a little more detached because we are elected for 6-year terms, not 2-year terms. It is a little more detached because we are staggered so some have been here 2 years, some 4 years, and some 6 years. After their first term, then they will be here many years thereafter. It is supposed to have a little more distance on the immediate trends because in the beginning we were indirectly elected by State legislators. Of course, we changed that. We changed that in the early 1900s because of the abuses that occurred and went to directly electing Senators.

The idea was longer terms, a little bit more deliberation, a smaller body of folks in the Senate, two per State. That was so we could deliberate thoughtfully, not so we could not deliberate. There is a big difference. This is unacceptable. If this majority leader were a Republican and the Democrats were doing this, it would be unacceptable. It is unacceptable for either minority party to devise and execute a strategy that prevents this body from doing its work.

The thing that is diabolical about the filibuster is that in the procedural sense it is invisible. So we have this unanimous consent request—this courtesy—is everyone ready? Should we vote? When the Senate was a small Senate, and prior to 1970, virtually the answer was always yes, except for those rare moments on issues of deep values. But now it is done as a minority party strategy to obstruct, and it is done on virtually every motion. And because it is an objection to a vote, it has never required people to talk on the floor. Of course, we all believed someone would talk on the floor because that is the way it was done. If someone violated the majority principle, that person had the courage and principle to come to this floor and explain that to colleagues and the American people. That is no longer true. Now there is no courage. It is in hiding.

I will give an example. We had a bill on the floor in 2010. It was called the DISCLOSE Act. The DISCLOSE Act said that for every donation, the public should know where it comes from. If it comes from ranchers, people should know about it; if it comes from Oklahoma, people should know about it; if it comes from the tobacco industry, people should know it. The people have a right to understand who is financing the ads they are seeing or who is financing the literature they are seeing. That is part of a transparent and accountable democracy.

We had 59 folks on the floor of the Senate say: Yes, we have debated enough, let's close debate, and we could not get the 60th vote. Not because there was more to be said, but no one among those who were voting for additional debate would want to be seen debating. They didn't want to be seen defending secrecy. They didn't want to be seen defending the creation of vast pools of cash that flowed freely between super PACs and dumped into campaigns at the last second with nobody knowing where it came from. They didn't want anyone to know where vast pools of money were going under deliberately misleading names. Maybe it was a group that wanted to keep some polluting factory open, but they called themselves the Blue River Coalition or the Blue Skies Coalition because the money could not be traced. No one wanted to come here and debate that, but they voted for a debate. That is the silent secret filibuster that has wiped out accountability to colleagues and accountability to the American public. We need to end that.

Right now the minority leader has come down and said several times he doesn't like this idea. He doesn't like it at all. He has called those of us who promoted transparency and accountability sophomoric. Well, I didn't think that was particularly a polite thing to say, but let's say we have a difference of opinion. I am out here advocating for this Chamber to be able to do its responsibility before the American public. I am out here advocating that if someone votes for more debate, they have to have the courage of their convictions to make their case before their colleagues and come to the floor. If they don't have the courage, then we go ahead with the simple majority vote. It is that straightforward.

There are some folks who say: We can already have a talking filibuster under current rules. We don't need to change the rules. I found this interesting because the fact is that all of the writing about the theory and historical efforts—I will say one thing, and that is that over any length of time it is impossible for the majority to keep a filibustering minority talking. Why is that? It is because it takes the majority of 51 Senators to create a quorum and force 1 filibustering Senator on the floor. That has been a myth that some of my colleagues have been perpetrating. I thought I would go over it a little bit more. There was a recent book by two very well-steeped scholars. Richard Arenberg was one of those scholars. Richard Arenberg was an aide to Senator CARL LEVIN as well as to Senator Tsongas and majority leader George Mitchell, so he has had a long career of experience here on the floor of the Senate. The other scholar is Robert Dove. Who is Robert Dove? He was a Parliamentarian in this Chamber. He spent his time working here from 1966 until 2001. In the chapter of their book entitled ''Bring in the Cots,'' they explained how this works. Here are a couple of passages between pages 146 and 152 that I thought summed it up:

Those who call for forcing the filibusterers to talk either ignore or are unaware of the fact that for a sizable organized minority, and certainly for a minority of forty-one senators or more, lengthy sessions are a little more than exercises in scheduling.

The filibusterers are able to take turns holding the floor, and since they can demand the presence of a quorum at virtually any moment, it is the majority that carries the heavier burden because they need to keep fifty-one senators nearby. If the filibusterers call for a quorum and it is not produced, under the rules the Senate must adjourn.

So they lay out the theory, and they go on for several pages doing this. They also quote some other experts. One of those they quote is Franklin Burdette. He was a scholar who wrote ''Filibustering in the Senate.'' It is referred to as the classic text on the filibuster. Franklin Burdette said this:

> Any experienced maneuverer in the Senate knows that a determined group of filibusterers, before they are themselves exhausted, can usually manage to wear out the patience and endurance of the majority.

Dove and Arenberg go on to quote commentator Elizabeth Drew and she says this:

> Many people now insist that those who use filibusters should actually be made to stand up and talk through the night, but there's a reason that doesn't happen anymore. In the 1970s, Majority Leader Mike Mansfield realized that the real punishment was not to the small band of all-night speakers, but to the majority party, which had to keep a quorum on hand, sleeping on the famous cots near the Senate floor, lest the person conducting the filibuster suddenly make a motion to adjourn the Senate, thus defeating the purpose of keeping them talking.

Then Elizabeth Drew quotes Historian Ritchie who says:

> The all night filibuster wore down the majority much faster than it did the minority, and majority leaders haven't used the tactic since.

But then Dove and Arenberg go on to cite the historical record, go through the different filibusters that have been on this floor, and one of the examples they cite is majority leader Lyndon Johnson's 1960 effort to defeat a civil rights filibuster:

> Senator Johnson's effort did not work. . . . Civil rights supporter Senator William Proxmire, Democrat from Wisconsin, described the scene.

Now we are quoting Proxmire. He said:

> We slept on cots in the old Supreme Court chamber and came out to answer quorum calls. It was an absolutely exhausting experience. The southerners who were doing the talking were in great shape, because they would talk for two hours and leave the floor for a couple of days.

Then Arenberg and Dove proceed to take a look at other cases, including majority leader Robert Byrd's 1988 effort to break a filibuster against campaign finance reform:

> Senator Alan Simpson frustrated this effort for much of the time, simply by repeatedly requesting quorum calls. . . . The bottom line is the bill never passed. The minority that was blocking the bill was able to sustain their filibuster through a record eight cloture votes. In the end, Majority Leader Byrd had to back down.

In most theory and practice, we can't sustain a process of having those who are filibustering actually debate what they voted to debate. So what many of us are proposing is that we change the rule and say that if a Senator votes to debate, then that takes a minimum of 41 saying, yes, we want more debate, and of those 41, at least 1 has to be on the floor talking. This is only fair to the American people. They turn on C–SPAN and they see quorum calls. They see silence, and they wonder why the Senate isn't working on that jobs bill they had on the floor a few days before. They don't know it is still on the floor, but the silent secret filibuster is being used to prevent the Senate from proceeding and nobody is even willing to talk because they don't want to be seen in public defending their position. That needs to end. This process in which Senators do not have the courage to come down and make their case before the American people has to end because only if folks make their case on the floor can the public weigh in, can colleagues weigh in and say: Yes; you are a hero. Thank you for your filibuster because you are defending some core principle I too share or you are defending some key interest for my State that I too care about or they can weigh in and say: You know what. You are a bum. You aren't making any points. You haven't described any position. You are simply paralyzing the Senate or, worse yet, I disagree with you. You are defending big, vast pools of secret funds used to corrupt the American political system. Why would you do that? Why don't you, my Senator, join the next cloture vote to close debate and get on with solving this problem of vast pools of secret funds or some other key issue.

The Presiding Officer and I have been here just 4 years. Had I not been here as a young man and seen this Chamber as one that deliberates and decides, I wouldn't feel so passionately because I wouldn't understand what we had lost. What we have lost is something that started with a constitutional vision of the design of this Senate, including the courtesy of hearing everyone out before making decisions, and what we lost in losing the deliberative, decisionmaking body was everything—everything in terms of this body upholding its responsibility to address the big problems facing America.

When we come into session on January 3, we are going to have a debate over rules. There are some who say let's get rid of the debate on the motion to proceed, the filibuster on the motion to proceed. We know what happens then. We get a double down in the paralysis at the later stage at which a bill goes through. At a minimum, we must change this dynamic of the secret silent filibuster and say if a Senator votes for more debate, a Senator must make their case on this floor.

I encourage citizens around this country—citizens who have watched this Chamber decline and be broken and fail to address the issues we should address—to weigh in with their Senators and their home States and let all the Senators know it is irresponsible and unacceptable for us to continue the current procedures in which we are so paralyzed and incapable of fulfilling the work that needs to be done.

Thank you. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR NOS. 834, 835, AND 877

Mr. REID. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, after consultation with the Republican leader, the Senate proceed to executive session to consider the following nominations: Calendar Nos. 834, 835, and 877; that there be 30 minutes for debate equally divided in the usual form; that following the use or yielding back of time, the Senate proceed to vote without intervening action or debate on Calendar Nos. 834, 835, and 877, in that order; that the motions to reconsider be considered made and laid upon the table, with no intervening action or debate; that no further motions be in order; that any related statements be printed in the RECORD; that President Obama be immediately notified of the Senate's action and the Senate then resume legislative session.

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

UNANIMOUS CONSENT AGREEMENT—H.R. 4310

Mr. REID. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, after consultation with the Republican leader, the Senate proceed to the consideration of the conference report to accompany H.R. 4310, the Department of Defense Authorization Act for Fiscal Year 2013; and that there be up to 1 hour of debate equally divided between the two leaders or their designees prior to a vote on adoption of the conference report.

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

CRITICAL JOB PROGRAMS

Mrs. GILLIBRAND. Mr. President, I would like to engage my colleague, the Senator from Iowa, in a colloquy.

I would first like to take this opportunity to commend Senator HARKIN, Senators Inouye and COCHRAN and the rest of the Members of the Senate Appropriations Committee for crafting a responsible, commonsense and critical supplemental appropriations bill to allow New York, New Jersey, Connecticut, and other impacted areas recover from the devastation left by Superstorm Sandy.

I would like to highlight an important aspect of the recovery effort, and that is addressing the employment and workforce crisis following the storm that has exacerbated the already chronically high unemployment rates in many of the impacted areas in New York and beyond.

The human, infrastructure, and economic devastation that Superstorm Sandy inflicted upon New York has been crippling and only comparable most recently to the tragedy of the September 11 terrorist attacks. While it will be months before the economic impact of Sandy can be fully assessed, particularly as it relates to the dislocation of workers, initial figures clearly indicate a long economic recovery for businesses and employees, particularly given that the most densely populated region of the United States was at the center of the storm. In fact, the U.S. Bureau of Labor Statistics reports that four of the five counties with the highest number of labor force participants per square mile were among those hardest hit by Sandy. In addition, all 26 of the counties designated as major disaster areas are among the top 10 percent of U.S. counties in terms of labor force density, highlighting the sheer number of workers impacted by Sandy.

Preliminary estimates are that Sandy destroyed 265,000 businesses in New York State and 189,000 businesses in New Jersey, the two hardest hit States. To put these figures in perspective, it is estimated that 18,700 businesses were impacted by the devastation of Hurricane Katrina in 2005. The estimated 265,000 New York businesses impacted employed approximately 3.8 million workers with over $264 billion in annual wages. It is also worth noting that preliminary estimates point to the fact that 90 percent of the impacted firms are small businesses. Worth noting is also the surge in applications for jobless benefits increasing by 78,000 to 439,000 in the week of November 10, the highest since April 2011, mostly because a large number of applications were filed in States damaged by the storm. Given these staggering numbers, we can only assume that the recovery efforts of our impacted businesses and displaced workers will be long and difficult, demanding investment in government programs that can effectively help get businesses back on their feet and put people back to work.

While all levels of government have been very responsive in addressing the immediate emergency needs, it is essential to understand the lessons of previous catastrophic events when designing and implementing appropriate, long-term strategies for the impacted region's recovery. In particular, business closures and layoffs resulting from the storm's devastation could prolong the economic distress Sandy has caused without a dynamic, immediate, and comprehensive workforce initiative to head off these impacts.

It is well recognized that small- and medium-sized business are the backbone of our economy, employing half of private sector workers and accounting for the creation of two out of three new jobs in the United States. Immediate support and stabilization is critical to full recovery of small businesses, which, as noted, make up about 90 percent of the 265,000 estimated New York firms impacted by Sandy. Business continuation, including keeping the doors open while loans, insurance payments and other incentives are realized, is essential. One Federal investment worthy of consideration is temporary employment support, which will help maintain both business operations and help prevent the loss of jobs through the recovery, reducing the need for unemployment and other Federal benefits.

In addition to Federal investment in workforce retention programs, rapid response in identifying and servicing impacted businesses and unemployed workers is required. As recovery efforts move forward, Federal, State, and local authorities should look for ways to invest in and partner with the extensive networks of community-based organizations, economic development groups, as well as organized labor and affiliated management to deliver workforce development services, including outreach for job opportunities, job training, and placement for in-demand occupations and other related reemployment activities.

For example, the Consortium for Worker Education, CWE, a nonprofit agency specializing in workforce preparation, industry specific training, and employment services has partnered in the past with all levels of government and other community based organizations to deliver job placement services and temporary employment support programs to ensure worker retention in the aftermath of disasters. Their efforts alone have helped train and put back to work thousands of people during similar workforce crisis situations as New York finds itself in now following Sandy.

By investing in innovative programs like CWE's, workforce recovery efforts will more effectively take into account the unique needs of each impacted area and deliver tailored services to impacted businesses and displaced workers alike.

Mr HARKIN. Mr. President, let me commend the Senator from New York for highlighting the critical employment and workforce needs in the areas impacted by Superstorm Sandy. Now more than ever, Congress must give our States and localities that have been hard hit by Sandy the tools and resources that help dislocated workers return to their jobs or, if necessary, find new, good-paying employment. The supplemental appropriations for disaster assistance bill's funding for dislocated workers is just one step in the recovery process, but an important one to help workers get back on their feet.

As New York, New Jersey, and the other impacted areas move forward with their recovery, I will continue to work with Senator GILLIBRAND so that the short- and long-term needs of impacted workers are addressed.

Ms. COLLINS. Mr. President, I rise today to engage my colleague, Senator TESTER, in a colloquy regarding language he authored in this bill that would amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This language would authorize chief executives of federally recognized tribes to submit a request for a major disaster or emergency declaration directly to the President of the United States.

The principal effect of this language would be to eliminate the current requirement that tribal chief executives submit such requests to the Governor of the State in which the tribal reservation is located; tribal chief executives would be permitted to submit such requests to the President without first obtaining the Governor's approval.

The tribes of Maine—the Penobscot, the Passamaquoddy, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmacs—have a jurisdictional relationships with the State of Maine which is unique among the 50 States. Although, based on my analysis, this language would not in any way affect the relationship between the State of Maine and the tribes of Maine, to make this clear, I would like to pose some questions to the Senator regarding the intent of the language.

The jurisdictional relationship between the tribes of Maine and the State of Maine is set forth in the Maine Indian Claims Settlement Act and the Maine Implementing Act, the latter having been enacted by the Maine State Legislature and ratified and approved by Congress when it enacted the Maine Indian Claims Settlement Act.

If the language the Senator authored was to be enacted into law, would this in any way change the relationship of the State of Maine and the tribes of Maine?

Mr. TESTER. No. I understand that the Maine Indian Claims Settlement Act not only recognized the uniqueness and significance of that jurisdictional arrangement but specifically provided that, following the enactment of the Settlement Act, no future congressional legislation would in any way alter or affect that arrangement unless Congress specifically so provided. This requirement is set forth in Title 25, Section 1735, of the United States Code.

Ms. COLLINS. Did the Senator take Section 1735 into account in his drafting of this legislation?

Mr. TESTER. Yes. I understood that, given the requirement that Section 1735 imposed on Congress, this provision would not and should not apply within or to the State of Maine unless Congress specifically so provided. Knowing that Section 1735 operated to that effect, I did not include specific language making this legislation inapplicable to Maine, as such language was unnecessary. Our Senate colleagues should understand that this legislation in no way supersedes Section 1735.

Ms. COLLINS. Did my colleague also consider the unique foundation for the Maine Indian Claims Settlement Act and the Maine Implementing Act, as well as the subsequent acts for the Houlton Band and the Aroostook Band?

Mr. TESTER. Yes, I understood that the Maine Indian Claims Settlement Act and the Maine Implementing Act constitute statutory settlement documents. Therefore, our colleagues should understand that the current legislation respects the intent of the parties to Maine's historic and complex settlement and does not in any way disturb the settlement agreement or the statutory construct on which that settlement rests.

The intent of this legislation is to improve communication, response times, and recovery of disasters in Indian Country while better respecting tribal sovereignty. I understand that tribes in Maine have a unique relationship with the State of Maine and nothing in this Act should be interpreted to change or degrade that relationship.

This legislation, if enacted into law, would in no way change the relationship between the State of Maine and the tribes of Maine. That means that, even after the enactment of this legislation, if any of the tribes of Maine wished to obtain a declaration from the President that a major disaster existed, they would have to bring their request to the Governor of Maine, who would have to consider the request in accordance with existing standards and procedures but who would retain the discretion to deny that request.

Ms. COLLINS. I appreciate the time and attention of my colleague from Montana, Senator TESTER, regarding the intent of this language, as well as the care that he took in crafting this legislation.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

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

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

TRIBUTE TO SHERIFF MEARL JUSTUS

Mr. DURBIN. Mr. President, my home county of St. Clair, IL, lost a dedicated public servant this week. Mearl Justus—aptly named ''justice''—passed away Tuesday at the age of 81. He had retired only 1 week earlier after serving eight terms as St. Clair County sheriff.

Mearl Justus was a legend. He was funny, he was innovative, and he was a creative thinker who was always looking for new and better ways to run his department. Above all, he was deeply dedicated to the people he served in the county.

An editorial in the Belleville News-Democrat described him as ''a 6 feet 2 inch teddy bear with a sailor's vocabulary and a hero's heart. He was gruff. He was endearing. He was a champion, rescuing us from the bad guys for 60 years.'' What an epitaph.

He got off to a rocky start in life. He was 19 months old when his dad died, and he was raised by his grandparents. He was a high school dropout in 1953 when the mayor of Cahokia, IL, suggested he join the local police force. That is how the aptly named Mr. Justus began his nearly 60-year-long career in law enforcement.

He started as a part-time officer in the Cahokia Police Department. He earned his GED and went on to earn an associate's degree at Southwestern Illinois College in Belleville and then earned a bachelor's degree in criminal justice. He advanced quickly up the ranks and served as Cahokia's police chief for 22 years. He ran for sheriff of St. Clair County in 1983 and won—his first run for elective office. He would be reelected seven times, never losing an election, and nobody came close.

Sheriff Justus loved his job and loved having fun. One of the most legendary tales of his years as sheriff was when he sent notices to several hundred fugitives from justice telling them they had won a free pair of sneakers from the fictional Nabbir Shoestore. When the scofflaws turned up to claim their sneakers, the sheriff's department locked them up. The department made over 50 arrests that day and 1 the next despite the fact that the prior day's arrests had been widely reported in the news.

He closed up shop with a sign that read: ''Closed. Catch ya next time.'' He once explained to a reporter, ''In this business, to keep from going off the deep end, you need that humor.''

Mearl Justus didn't drink or smoke and rarely carried a gun because he said it was bulky and ''it tears my clothes up.''

He sold advertising space on patrol cars and put public service announcements on their fenders. He provided jail inmates with a garden to grow vegetables. The prisoners grew their produce and gave any extra to local nursing homes.

Sheriff Justus was so dedicated to his work that he and his wife Audrey lived for years in a three-bedroom apartment above the county jail. He said he figured that is where he was needed. At first, the couple found the routine cell checks a little disturbing, but they grew fond of their living arrangement and even raised a granddaughter in their apartment.

Over the course of his six decades of public service, Mearl Justus established several programs for local schools, including Stranger Danger awareness training. He also introduced the D.A.R.E. Program in the St. Clair schools long before others had it.

Sheriff Justus's success and dedication were widely admired by his peers, who elected him president of the Illinois Sheriffs' Association. He was also chairman of the board of his region's Major Case Squad.

In recent years Sheriff Justus led efforts to combat crime and vandalism on MetroLink trains, the county's light rail transit system, making the system safer for those who depend on it. That is where I came to know him. You see, this MetroLink is a light rail train service that has been one of the most popular things that has happened in that region. I grew up in that region. I used to kid my friends from St. Louis that I grew up in a suburb known as East St. Louis, and they all laughed because nobody considers Illinois to be part of St. Louis.

Well, it turned out that station in East St. Louis for MetroLink was a critical part of the political agreement that led to the creation of this important light rail system. But we had a problem. East St. Louis has been notoriously dangerous for years, and there was a question: How in the world could we expect anybody to wait at the train station with all the dangerous street crime in East St. Louis?

Mearl Justus stepped up. His St. Clair County Sheriff's Department provided the protection that was needed to establish that MetroLink station in my hometown of East St. Louis and to give people the peace of mind that if they wanted to board or leave a train or park their car there, there would always be reliable law enforcement. Mearl Justus showed the way for many of us when we couldn't think of how to resolve this quandary. That is the kind of problemsolver he was.

Mearl Justus had an amazing sense of humor. For many years, his own Web site featured the sheriff wearing a sombrero and a boast that any local event featuring Mearl Justus as the master of ceremonies would draw twice as many people.

He cared deeply about the people. He hosted ''Slumber in the Slammer'' fundraisers for a women's crisis center, allowing people to sleep in the jail in exchange for a donation to the local crisis center. He once arranged cataract surgery for a woman whose savings had been stolen.

He said he looked forward to coming to work every day and wanted people to think of him as an honest, people-oriented public official. He is going to be remembered for that and so much more. Mearl Justus made St. Clair County not just a safer place but a better place. I am honored to have known him. He was a fun person to be around, but you knew that when it came to his job, he took it very, very seriously.

My wife Loretta and I send our condolences to his wife Audrey, his daughters Kay and Debra; and his three granddaughters and three great-grandchildren.

RETIREMENT OF ILLINOIS STATE SENATOR JEFFREY M. SCHOENBERG

Mr. DURBIN. Mr. President, I rise today to honor my friend, Illinois State Senator Jeff Schoenberg, on his more than two decades of service in the Illinois General Assembly.

Jeff was elected to the Illinois House in 1990 at the age of 30. He served six terms there before being elected to the Illinois Senate in 2003, where he rose through the ranks, serving as assistant majority leader, chairman on the Commission on Government Forecasting and Accountability, and vice chairman of the Appropriations Committee. More importantly, Jeff Schoenberg has been a dedicated public servant to his constituents in Evanston and to the people of Illinois for 22 years.

During his time in the Illinois General Assembly, Jeff sponsored a bill that would provide better access to quality health care and give consumers the opportunity to make better choices for their health. He also secured more than $5 billion in Federal funds for safety net hospitals such as Mount Sinai, Mercy, and Holy Cross.

Jeff Schoenberg supported the Illinois Safe Choice Zones Act, which helped pave the way for Illinois' pioneering work in stem cell research, and insisted on greater accountability and oversight at the Illinois State Toll Highway Authority.

A father of two himself, Jeff was critical to the passage of a measure allowing schools to keep and administer epinephrine for anaphylactic shock following the death of a 13-year-old girl from Chicago who had an allergic reaction to peanut oil while at school.

Jeff also understood foreign policy issues, including support for legislation to divest State pension funds from foreign countries doing business with Iran and drawing attention to the genocide in Cambodia. Jeff visited Cambodia last month as part of a delegation representing the U.S. Holocaust Memorial Museum.

Incoming State Senator Daniel Biss will have large shoes to fill given how well Jeff has served the Illinois Senate's Ninth District. Since the outset of his political career, Jeff has been inspired by the likes of Congressman and Federal Judge Abner Mikva and U.S. Senator PAUL SIMON, for whom he and I both worked.

Jeff's dedication to service now takes on a new focus in improving the lives

of children and families through an expanded role advising the J.B. and M.K. Pritzker Family Foundation on its philanthropic endeavors. His approach to this work is made clear by something he said just last year:

My position in the Senate is only one point of entry into public service.

As Jeff moves into his new role, I can only say to him: Thanks for being my friend and my ally in so many good causes. While you may be retiring from the Illinois State Senate, your constituents and I know that you will never retire from working for the public good.

Thanks to Jeff Schoenberg and his family for all they have given to our State.

MAYOR JOHN REDNOUR

Mr. DURBIN. Mr. President, I wish to take a moment to wish Mayor John Rednour of Du Quoin, IL, a happy 78th birthday and to thank him as he prepares to retire after so many great years of public service to his town and Illinois.

John Rednour, known to most people as simply Rednour, has served as mayor of Du Quoin since 1989. Public service was his third career. He started work as an ironworker, a member of the United Ironworkers. He worked on projects in St. Louis and in Chicago and served as site superintendent during construction of the U.S. Federal penitentiary in Marion.

In 1970 John moved to Du Quoin with his wife Wanda and three kids. In the early 1980s John began his second career when he and some local shareholders took control of the Du Quoin State Bank, converting it into a community bank that served downstate Illinois. Today the bank stands as one of the strongest in our State, and John remains the bank's chairman.

But it was John Rednour's work as mayor of Du Quoin that really distinguished his public service. In his 23 years as mayor, he focused on balancing the city's budget and investing in its infrastructure. His legacy to Du Quoin includes construction of the Poplar Street overpass—a major thoroughfare for travel on Highway 51 through southern Illinois—improved water service and the development of an industrial park. He managed to do all of this with a balanced budget, creating new opportunities for his community even in tough times.

He is a member of the five-person Illinois State Police Merit Board and a proud Democrat, I might add, but he knows there are some things that need to be done on a bipartisan basis. He has made it his habit to meet with the Du Quoin city council members and offered to take advice from each and every one of them. He told them to always vote for what is good for Du Quoin.

Loretta and I consider ourselves lucky to count John and Wanda Rednour among our friends. We have many happy memories of State fair parties at the Rednour home during our trips to the Du Quoin State Fair. Loretta and I have been regular visitors to Rednour's home and have warm memories of staying overnight after the fair party and having Wanda greet us at breakfast with her so-called Texas pancakes—and they could fit in the State of Texas.

As a labor leader, businessman, mayor, husband, and father, John Rednour has contributed enormously to Du Quoin, downstate Illinois, and to our entire State and Nation. While his day-to-day presence in city hall is going to be missed, residents of Du Quoin can take comfort in knowing that John Rednour's leadership is still in their community, with a strong foundation and a bright future.

In addition to three children, John and Wanda are blessed with five grandchildren and five great-grandchildren, who I am sure are going to be glad to have more time with John and Wanda now.

I thank John for his many years of distinguished public service. Loretta and I wish him and his family all the best in retirement. We look forward to many more stories and more pancakes in the years to come.

THE S.S. BADGER

Mr. DURBIN. Mr. President, Chicagoans were asked in a recent poll to identify the one asset in the city of Chicago that meant the most to them. The overwhelming vote was for Lake Michigan—not surprising.

Lake Michigan is the primary source of drinking water for more than 10 million people—not just in my State of Illinois but in Wisconsin, Indiana, and Michigan. It supports a multibillion-dollar fishing industry that is important to local economies. And it is beautiful. It is a recreational asset for swimming, kayaking, boating, or just taking a walk along the beach. It is a gorgeous lake.

I always look forward to getting up to Chicago. We have a condo that overlooks Lake Michigan that I consider to be a great place to sit and just look at this beautiful lake and what happens on it, whether I am drinking a cup of coffee in the morning with my wife or a glass of wine in the evening.

But, unfortunately, the health of our great Lake Michigan is threatened every summer when a coal-burning ferry boat dumps tons of coal ash into the lake every day, all summer long.

Meet the S.S. Badger. Many people have fond memories of this boat, the S.S. Badger, steaming from its homeport of Ludington, MI, to Manitowac, WI, every summer. But they need to be reminded of one thing: The S.S. Badger is the last coal-fired ferry in the United States, and there is a reason it is the last one.

Every year, based on the estimates given to us by the company, this boat dumps 600-plus tons of coal ash into Lake Michigan—600-plus tons every year since 1953. That is their record. What does that do to Lake Michigan? In the 59 years the S.S. Badger has been in operation, it has discharged a conservative estimate of 35,400 tons of coal ash into Lake Michigan. That is enough to coat the entire floor of Lake Michigan with a layer of ash 2½ inches thick.

A recent article in the Chicago Tribune did a comparison of the amount of coal ash discharged from the Badger to the dry cargo residue discharged by all other vessels operating on Lake Michigan. Here is what they found:

Fifty U.S. ships and 70 Canadian ships on Lake Michigan are responsible for a combined total of 89 tons of solid waste dumped every year. That is 120 ships, 89 tons in a year. The Badger by itself is responsible for almost 6 times more waste than these 120 vessel combined, even when using the most conservative estimate of what the Badger dumps overboard during the course of a summer.

Yesterday the EPA vessel general permit that has enabled the coal-fired car ferry S.S. Badger to discharge coal ash into Lake Michigan expired. The owner of the Badger insists that the coal ash is basically just sand. We know better.

Scientists are concerned about coal ash because it contains such things as arsenic, lead, and mercury. Once in the lake, these chemicals enter the food chain through the water we drink and the fish we eat, and then they accumulate in our bodies and are associated with cancer and reproductive and neurological damage. We know how dangerous mercury contamination in fish is to human health.

Well, it is time for the S.S. Badger to stop adding to the problem and either clean up its operation or close it down. If the Badger's owners had only recently realized that dumping coal ash was a problem, it might be OK to cut them some slack. But the Badger's owners have a long history of avoiding the steps needed to clean up their act.

Most other vessels of the Great Lakes converted from coal to diesel fuel before the Badger made its first voyage. In 2008, when conversion to a new fuel was way overdue, the Bush administration granted the ferry a waiver to continue dumping coal ash through 2012. That was 5 years too many of toxic dumping by this boat, but to make matters worse, the Badger's owners still have not made any reasonable efforts to stop dumping coal ash in the lake.

Now they are attempting to persuade the EPA to give them just 5 more years to take a look at this problem. After I came out in opposition to this 5-year extension, the Badger's owner asked to meet me in my office. I, of course, agreed. He said he was applying for an EPA permit to continue dumping coal ash while he looks for ways to convert the Badger to run on liquefied natural gas. He wanted to make the Badger, he

said, the greenest vessel on the Great Lakes. What a great idea, I thought. But it turns out it isn't even close to being realistic.

Today there are few suppliers of liquefied natural gas in the area. There are no shipyards in the United States that are qualified to convert passenger vessels to run on liquefied natural gas. And it would take close to $50 million just to develop the infrastructure on the land needed to transport fuel to the dock for the Badger.

One day, all the boats on Great Lakes might be powered by natural gas, but that isn't a realistic plan right now or within the next few years. It is just another delaying tactic from the owners of the S.S. Badger. These owners were given a deadline to convert the ship's fuel or dispose of the ash in a responsible way 5 years ago. The Badger has blatantly avoided complying with these EPA regulations.

There has been an effort in the House of Representatives to provide a special exemption for this filthy boat on Lake Michigan forever. They want them declared some sort of a national historic monument or something and say that it shouldn't be governed by environmental regulations.

These are Congressmen whose districts are on Lake Michigan. I have to ask them, what do you think about the lake and its future, when this boat is responsible for six times the solid waste of all the other ships that use Lake Michigan in commerce on an annual basis? Six times. That to me is a horrible thing to continue.

They have had plenty of time to clean up their act and they failed. Now we have to get serious. I am hoping the EPA decides very quickly that it is time to end the coal-fired ferry tradition of the S.S. Badger. This is a vessel that generates and dumps 5 tons of coal ash laced with mercury, lead, and arsenic into Lake Michigan every single day. This great lake cannot take any more toxic dumping, no matter how historic or quaint the source may be.

LETTERS FROM THE SECRETARY OF HEALTH AND HUMAN SERVICES RE: MEDICAL DEVICE USER FEE PROGRAM

Mr. HARKIN. Mr. President, I ask unanimous consent that, pursuant to Public Law 112–144, the Food and Drug Administration Safety and Innovation Act, the following letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives be printed into the RECORD.

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

MDUFA PERFORMANCE GOALS AND PROCEDURES

The performance goals and procedures agreed to by the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER) of the United States Food and Drug Administration (''FDA'' or ''the Agency'') for the medical device user fee program in the Medical Device User Fee Amendments of 2012, are summarized below.

FDA and the industry are committed to protecting and promoting public health by providing timely access to safe and effective medical devices. Nothing in this letter precludes the Agency from protecting the public health by exercising its authority to provide a reasonable assurance of the safety and effectiveness of medical devices. Both FDA and the industry are committed to the spirit and intent of the goals described in this letter.

I. PROCESS IMPROVEMENTS

A. Pre-Submissions

FDA will institute a structured process for managing Pre-Submissions. Pre-Submissions subject to this process are defined in Section VIII, Definitions and Explanations of Terms. The Agency will continue to improve the Pre-Submission process as resources permit, but not to the detriment of meeting the quantitative review timelines and statutory obligations. FDA will issue a draft guidance document and final guidance document on Pre-Submissions.

Upon receipt of a Pre-Submission that requests feedback through a meeting or teleconference, FDA intends to schedule the meeting or teleconference to occur within a timely manner. In the Pre-Submission, the applicant will provide at least three suggested dates and times when the applicant is available to meet.

It is FDA's intent that within 14 calendar days of receipt of a request for a meeting or teleconference, FDA will determine if the request meets the definition of a Pre-Submission, and will inform the applicant if it does not meet the definition. FDA will also determine if the request necessitates more than one meeting or teleconference. A determination that the request does not meet the definition of a Pre-Submission will require the concurrence of the branch chief and the reason for this determination will be provided to the applicant. If the request meets the definition of a Pre-Submission, FDA and the applicant will set a mutually agreeable time and date for the meeting.

At least 3 business days prior to the meeting, FDA will provide initial feedback to the applicant by email, which will include: written responses to the applicant's questions; FDA's suggestions for additional topics for the meeting or teleconference, if applicable; or, a combination of both. If all of the applicant's questions are addressed through written responses, to the applicant's satisfaction, FDA and the applicant can agree that a meeting or teleconference is no longer necessary and the written responses provided by email will be considered the final written feedback to the Pre-Submission.

Meetings and teleconferences related to Pre-Submission will generally be limited to 1 hour. A longer meeting or teleconference time can be scheduled by mutual agreement by the applicant and FDA.

Applicants will be responsible for developing draft minutes for a Pre-Submission meeting or teleconference, and provide the draft minutes via email to FDA within 15 calendar days of the meeting. The minutes will summarize the meeting discussions and include agreements and any action items. FDA will provide any edits to the draft minutes to the applicant via email within a timely manner. These minutes will become final 15 calendar days after the applicant receives FDA's edits, unless the applicant indicates that there is a disagreement with how a significant issue or action item has been documented. In this case, within a timely manner, the applicant and FDA will conduct a teleconference to discuss that issue with FDA. At the conclusion of that teleconference, within a timely manner FDA will finalize the minutes either to reflect the resolution of the issue or note that this issue remains a point of disagreement.

FDA intends that feedback the Agency provides in a Pre-Submission will not change, provided that the information submitted in a future investigational device exemption (IDE) or marketing application is consistent with that provided in the Pre-Submission and that the data in the future submission do not raise any important new issues materially affecting safety or effectiveness. Modifications to FDA's feedback will be limited to situations in which FDA concludes that the feedback does not adequately address important new issues materially relevant to a determination of safety or effectiveness. Such a determination will be supported by the appropriate management concurrence consistent with applicable guidance and SOPs.

B. Submission Acceptance Criteria

To facilitate a more efficient and timely review process, FDA will implement revised submission acceptance criteria. The Agency will publish guidance outlining electronic copy of submissions (e-Copy) and objective criteria for revised ''refuse to accept/refuse to file'' checklists. FDA will publish draft and final guidance prior to implementation.

C. Interactive Review

The Agency will continue to incorporate an interactive review process to provide for, and encourage, informal communication between FDA and applicants to facilitate timely completion of the review process based on accurate and complete information. Interactive review entails responsibilities for both FDA and applicants. As described in the guidance document, *Interactive Review for Medical Device Submissions: 510(k)s, Original [Premarket Approvals] PMAs, PMA Supplements, Original BLAs, and BLA Supplements*, both FDA and industry believe that an interactive review process for these types of premarket medical device submissions should help facilitate timely completion of the review based on accurate and complete information. Interactive review is intended to facilitate the efficient and timely review and evaluation by FDA of premarket submissions. The interactive review process contemplates increased informal interaction between FDA and applicants, including the exchange of scientific and regulatory information.

D. Guidance Document Development

FDA will apply user fee revenues to supplement the improvement of the process of developing, reviewing, tracking, issuing, and updating guidance documents. The Agency will continue to develop guidance documents and improve the Guidance Development process as resources permit, but not to the detriment of meeting the quantitative review timelines and statutory obligations.

FDA will update its website in a timely manner to reflect the following:

1. The Agency's review of previously published device guidance documents, including the deletion of guidance documents that no longer represent the Agency's interpretation of, or policy on, a regulatory issue, and notation of guidance documents that are under review by the Agency;

2. A list of prioritized device guidance documents (an ''A-list'') that the Agency intends to publish within 12 months of the date this list is published each fiscal year; and

3. A list of device guidance documents (a ''B-list'') that the Agency intends to publish, as the Agency's guidance-development resources permit each fiscal year.

The Agency will establish a process allowing stakeholders an opportunity to:

1. Provide meaningful comments and/or propose draft language for proposed guidance topics in the ''A'' and ''B'' lists.

2. Provide suggestions for new or different guidance documents; and

3. Comment on the relative priority of topics for guidance.

E. Third Party Review

The Agency will continue to support the third party review program and agrees to work with interested parties to strengthen and improve the current program while also establishing new procedures to improve transparency. The Agency will continue to improve the third party review program as resources permit, but not to the detriment of meeting the quantitative review timelines and statutory obligations.

F. Patient Safety and Risk Tolerance

FDA will fully implement final guidance on the factors to consider when making benefit-risk determinations in medical device premarket review. This guidance will focus on factors to consider in the premarket review process, including patient tolerance for risk, magnitude of the benefit, and the availability of other treatments or diagnostic tests.

Over the period of MDUFA III, FDA will meet with patient groups to better understand and characterize the patient perspective on disease severity or unmet medical need.

In addition, FDA will increase its utilization of FDA's Patient Representatives as Special Government Employee consultants to CDRH to provide patients' views early in the medical product development process and ensure those perspectives are considered in regulatory discussions. Applicable procedures governing conflicts of interest and confidentiality of proprietary information will be utilized for these consultations.

G. Low Risk Medical Device Exemptions

By the end of FY 2013, FDA will propose additional low risk medical devices to exempt from premarket notification. Within two years of such proposal, FDA intends to issue a final rule exempting additional low risk medical devices from premarket notification.

H. Emerging Diagnostics

FDA will work with industry to develop a transitional In Vitro Diagnostics (IVD) approach for the regulation of emerging diagnostics.

II. REVIEW PERFORMANCE GOALS—FISCAL YEARS 2013 THROUGH 2017 AS APPLIED TO RECEIPT COHORTS

The overall objective of the review performance goals stated herein is to assure more timely access to safe and effective medical devices.

A. Original Premarket Approval (PMA), Panel-Track Supplements, and Premarket Report Applications

The performance goals in this section apply to all Original Premarket Approval, Panel-Track Supplements, and Premarket Report Applications, including those that are accepted for priority review (previously referred to as expedited).

FDA will communicate with the applicant regarding whether the application has been accepted for filing review within 15 calendar days of receipt of the application. This communication consists of a fax, email, or other written communication that (a) identifies the reviewer assigned to the submission, and (b) acknowledges acceptance/rejection of the submission based upon the review of the submission against objective acceptance criteria outlined in a published guidance document.

If the application is not accepted for filing review, FDA will notify the applicant of those items necessary for the application to be considered accepted for filing review.

For those applications that are accepted for filing review, FDA will communicate the filing status within 45 calendar days of receipt of the application.

For those applications that are not filed, FDA will communicate to the applicant the specific reasons for rejection and the information necessary for filing.

If the application is filed, FDA will communicate with the applicant through a Substantive Interaction within 90 calendar days of the filing date of the application for: 65% of submissions received in FY 2013; 75% of submissions received in FY 2014; 85% of submissions received in FY 2015; and 95% of submissions received in FY 2016 through FY 2017.

When FDA issues a major deficiency letter, that letter will be based upon a complete review of the application and will include all deficiencies. Any subsequent deficiencies will be limited to issues raised by the information provided by the applicant in its response, unless FDA concludes that the initial deficiencies identified do not adequately address important new issues materially relevant to a determination of safety or effectiveness. Such a determination will be supported by the appropriate management concurrence consistent with applicable guidance and SOPs. Issues related to post-approval studies, if applicable, and revisions to draft labeling will typically be addressed through interactive review once major deficiencies have been adequately addressed.

For submissions that do not require Advisory Committee input, FDA will issue a MDUFA decision within 180 FDA Days for: 70% of submissions received in FY 2013; 80% of submissions received in FY 2014 and FY 2015; and 90% of submissions received in FY 2016 and FY 2017.

For submissions that require Advisory Committee input, FDA will issue a MDUFA decision within 320 FDA Days for: 50% of submissions received in FY 2013; 70% of submissions received in FY 2014; 80% of submissions received in FY 2015 and FY 2016; and 90% of submissions received in FY 2017.

If in any one fiscal year, the number of submissions that require Advisory Committee input is less than 10, then it is acceptable to combine such submissions with the submissions for the following year(s) in order to form a cohort of 10 or more submissions, upon which the combined years' submissions will be subject to the performance goal for the fiscal year in question. If the number of submissions that require Advisory Committee input is less than 10 for FY 2017, it is acceptable to combine such submissions with the submissions in the prior year in order to form a cohort of 10 or more submissions; in such cases, FDA will be held to the FY 2017 performance goal for the combined years' submissions.

To facilitate an efficient review prior to the Substantive Interaction, and to incentivize submission of a complete application, submission of an unsolicited major amendment prior to the Substantive Interaction extends the FDA Day review clock by the number of FDA Days that have elapsed. Submission of an unsolicited major amendment after the Substantive Interaction extends the FDA Day goal by the number of FDA Days equal to 75% of the difference between the filing date and the date of receipt of the amendment.

For all PMA submissions that do not reach a MDUFA decision by 20 days after the applicable FDA Day goal, FDA will provide written feedback to the applicant to be discussed in a meeting or teleconference, including all outstanding issues with the application preventing FDA from reaching a decision. The information provided will reflect appropriate management input and approval, and will include action items for FDA and/or the applicant, as appropriate, with an estimated date of completion for each party to complete their respective tasks. Issues should be resolved through interactive review. If all of the outstanding issues are adequately presented through written correspondence, FDA and the applicant can agree that a meeting or teleconference is not necessary.

In addition, information about submissions that miss the FDA Day goal will be provided as part of FDA's Performance Reports, as described in Section VI.

B. 180-Day PMA Supplements

FDA will communicate with the applicant through a Substantive Interaction within 90 calendar days of receipt of the submission for: 65% of submissions received in FY 2013; 75% of submissions received in FY 2014; 85% of submissions received in FY 2015; and 95% of submissions received in FY 2016 through FY 2017.

FDA will issue a MDUFA decision within 180 FDA Days for: 85% of submissions received in FY 2013; 90% of submissions received in FY 2014 and FY 2015; and 95% of submissions received in FY 2016 through FY 2017.

C. Real-Time PMA Supplements

FDA will issue a MDUFA decision within 90 FDA Days for: 90% of submissions received in FY 2013 and FY 2014; and 95% of submissions received in FY 2015 through FY 2017.

D. 510(k) Submissions

FDA will communicate with the applicant regarding whether the submission has been accepted for review within 15 calendar days of receipt of the submission. For those submissions that are not accepted for review, FDA will notify the applicant of those items necessary for the submission to be considered accepted.

This communication includes a fax, email, or other written communication that a) identifies the reviewer assigned to the submission, and b) acknowledges acceptance/rejection of the submission based upon the review of the submission against objective acceptance criteria outlined in a published guidance document. This communication represents a preliminary review of the submission and is not indicative of deficiencies that may be identified later in the review cycle.

FDA will communicate with the applicant through a Substantive Interaction within 60 calendar days of receipt of the submission for: 65% of submissions received in FY 2013; 75% of submissions received in FY 2014; 85% of submissions received in FY 2015; and 95% of submissions received in FY 2016 through FY 2017.

Deficiencies identified in a Substantive Interaction, such as a telephone/email hold or Additional Information Letter, will be based upon a complete review of the submission and will include all deficiencies. Any subsequent deficiencies will be limited to issues raised by the information provided by the applicant in its response, unless FDA concludes that the initial deficiencies identified do not adequately address important new issues materially relevant to a determination of substantial equivalence. Such a determination will be supported by the appropriate management concurrence consistent with applicable guidance and SOPs.

For submissions received in FY 2013, FDA will issue a MDUFA decision for 91% of 510(k) submissions within 90 FDA Days.

For submissions received in FY 2014, FDA will issue a MDUFA decision for 93% of 510(k) submissions within 90 FDA Days.

For submissions received in FY 2015 through FY 2017, FDA will issue a MDUFA decision for 95% of 510(k) submissions within 90 FDA Days.

For all 510(k) submissions that do not reach a MDUFA decision within 100 FDA

Days, FDA will provide written feedback to the applicant to be discussed in a meeting or teleconference, including all outstanding issues with the application preventing FDA from reaching a decision. The information provided will reflect appropriate management input and approval, and will include action items for FDA and/or the applicant, as appropriate, with an estimated date of completion for each party to complete their respective tasks. Issues should be resolved through interactive review. If all of the outstanding issues are adequately presented through written correspondence, FDA and the applicant can agree that a meeting or teleconference is not necessary.

In addition, information about submissions that miss the FDA Day goal will be provided as part of FDA's Performance Reports, as described in Section VI.

E. Clinical Laboratory Improvement Amendments (CLIA) Waiver by Application

FDA will engage in a Substantive Interaction with the applicant within 90 days for 95% of the applications.

During the pre-submission process, if the applicant informs FDA that it plans to submit a dual submission (510(k) and CLIA Waiver application), FDA will issue a decision for 90% of such applications within 210 FDA days.

For ''CLIA Waiver by application'' submissions FDA will issue a MDUFA decision for 95% of the applications that do not require Advisory Committee input within 180 FDA days.

For ''CLIA Waiver by application'' submissions FDA will issue a MDUFA decision for 95% of the applications that require Advisory Committee input within 330 FDA days.

To provide greater transparency, FDA will issue guidance regarding review and management expectations throughout the entire submission process.

F. Original Biologics Licensing Applications (BLAs)

FDA will review and act on standard original BLA submissions within 10 months of receipt for 90% of submissions.

FDA will review and act on priority original BLA submissions within 6 months of receipt for 90% of submissions.

G. BLA Efficacy Supplements

FDA will review and act on standard BLA efficacy supplement submissions within 10 months of receipt for 90% of submissions.

FDA will review and act on priority BLA efficacy supplement submissions within 6 months of receipt for 90% of submissions.

H. Original BLA and BLA Efficacy Supplement Resubmissions

FDA will review and act on Class 1 original BLA and BLA efficacy supplement resubmissions within 2 months of receipt for 90% of submissions.

FDA will review and act on Class 2 original BLA and BLA efficacy supplement resubmissions within 6 months of receipt for 90% of submissions.

I. BLA Manufacturing Supplements Requiring Prior Approval

FDA will review and act on BLA manufacturing supplements requiring prior approval within 4 months of receipt for 90% of submissions.

III. SHARED OUTCOME GOALS

The program and initiatives outlined in this document are predicated on significant interaction between the Agency and applicants. FDA and representatives of the medical device industry agree that the process improvements outlined in this letter, when implemented by all parties as intended, should reduce the average Total Time to Decision for PMA applications and 510(k) submissions, provided that the total funding of the device review program adheres to the assumptions underlying this agreement. FDA and applicants share the responsibility for achieving this objective of reducing the average Total Time to Decision, while maintaining standards for safety and effectiveness. Success of this program will require the cooperation and dedicated efforts of FDA and applicants to reduce their respective portions of the total time to decision.

FDA will be reporting total time performance quarterly as described in Section VI. FDA and industry will participate in the independent assessment of progress toward this outcome, as described in Section V above. As appropriate, key findings and recommendations from this assessment will be implemented by FDA.

A. PMA

Beginning in Fiscal Year 2013, FDA will report on an annual basis the average Total Time to Decision as defined in Section VIII.G for the three most recent closed receipt cohorts. For submissions received beginning in Fiscal Year 2013, the average Total Time to Decision goal for FDA and industry is 395 calendar days. For submissions received beginning in Fiscal Year 2015, the average Total Time to Decision goal for FDA and industry is 390 calendar days. For submissions received beginning in Fiscal Year 2017, the average Total Time to Decision goal for FDA and industry is 385 calendar days.

B. 510(k)

Beginning in Fiscal Year 2013, FDA will report on an annual basis the average Total Time to Decision as defined in Section VIII.G for the most recent closed receipt cohort. For submissions received beginning in Fiscal Year 2013, the average Total Time to Decision goal for FDA and industry is 135 calendar days. For submissions received beginning in FY 2015, the average Total Time to Decision goal for FDA and industry is 130 calendar days. For submissions received beginning in FY 2017, the average Total Time to Decision goal for FDA and industry is 124 calendar days.

IV. INFRASTRUCTURE

A. Scientific and Regulatory Review Capacity

The Agency will apply user fee revenues to reduce the ratio of review staff to front line supervisors in the Pre-Market review program and to enhance and supplement scientific review capacity by hiring device application reviewers and leveraging external experts needed to assist with the review of device applications.

The Agency will seek to obtain streamlined hiring authority for all MDUFA-related positions prior to and during the MDUFA III period.

During MDUFA III, FDA will also work with industry to benchmark best practices for retaining employees (both financial and non-financial).

B. Training

Prior to the commencement of MDUFA III, CDRH will implement its Reviewer Certification Program. FDA commits to holding a minimum of two medical device Vendor Days each year.

CDRH will apply user fee revenues to supplement the following training programs:

1) Management training for Branch Chiefs and Division Directors.

2) MDUFA III Training Program for all staff.

3) Reviewer Certification Program for new CDRH reviewers. FDA will publish the curriculum of this program and other course offerings. FDA will consider comments from stakeholders when making updates to courses and determining course offerings.

4) Specialized training to provide continuous learning for all staff.

C. Tracking System

FDA will continue efforts to improve its IT systems with a future expectation of facilitating availability of real-time status information for submissions.

V. INDEPENDENT ASSESSMENT OF REVIEW PROCESS MANAGEMENT

FDA and the device industry will participate in a comprehensive assessment of the process for the review of device applications. The assessment will include consultation with both FDA and industry. The assessment shall be conducted in two phases under contract to FDA by a private, independent consulting firm capable of performing the technical analysis, management assessment, and program evaluation tasks required to address the assessment scope described below. For Phase 1, FDA will award the contract no later than the end of the second quarter of FY13. Findings on high-priority recommendations (i.e., those likely to have a significant impact on review times) will be published within six months of award; final comprehensive findings and recommendations will be published within 1 year of contract award. FDA will publish an implementation plan within 6 months of receipt of each set of recommendations. For Phase 2 of the independent assessment, the contractor will evaluate the implementation of recommendations and publish a written assessment no later than February 1, 2016.

The assessment will address FDA's premarket review process using an assessment framework that draws from appropriate quality system standards, including, but not limited to, management responsibility, document controls and records management, and corrective and preventive action.

The scope of the assessment will include, but not be limited to, the following areas:

1. Identification of process improvements and best practices for conducting predictable, efficient, and consistent premarket reviews that meet regulatory review standards.

2. Analysis of elements of the review process (including the Pre-Submission process, IDE, 510(k) and PMA reviews) that consume or save time to facilitate a more efficient process. This includes analysis of root causes for inefficiencies that may affect review performance and total time to decision. This will also include recommended actions to correct any failures to meet MDUFA goals. Analysis of the review process will include the impact of combination products, companion diagnostics products, and laboratory developed tests on the review process.

3. Assessment of FDA methods and controls for collecting and reporting information on premarket review process resource use and performance.

4. Assessment of effectiveness of FDA's Reviewer Training Program implementation.

5. Recommendations for ongoing periodic assessments and any additional, more detailed or focused assessments.

FDA will incorporate findings and recommendations, as appropriate, into its management of the premarket review program. FDA will analyze the recommendations for improvement opportunities identified in the assessment, develop and implement a corrective action plan, and assure its effectiveness. FDA also will incorporate the results of the assessment into a Good Review Management Practices (GRMP) guidance document. FDA's implementation of the GRMP guidance will include initial and ongoing training of FDA staff, and periodic audits of compliance with the guidance.

VI. PERFORMANCE REPORTS

The Agency will report its progress toward meeting the goals described in this letter, as

follows. If, throughout the course of MDUFA III, the Agency and Industry agree that a different format or different metrics would be more useful, the reporting will be modified accordingly as per the agreement of both FDA and Industry.

1. Quarterly reporting at the CDRH Division level/CBER Center level (in recognition of the significantly smaller number of submissions reviewed at CBER):

1.1. For 510(k) submissions, reporting will include:

i. Average and quintiles of the number of calendar days to Substantive Interaction

ii. Average, and quintiles of the number of FDA Days, Industry Days, and Total Days to a MDUFA decision

iii. Average number of review cycles.

iv. Rate of submissions not accepted for review

1.2. For PMA submissions, reporting will include:

i. Average and quintiles of the number of calendar days to Substantive Interaction for Original PMA, Panel-Track PMA Supplement, and Premarket Report Submissions

ii. Average and quintiles of the of FDA Days, Industry Days, and Total Days to a MDUFA decision

iii. Rate of applications not accepted for filing review, and rate of applications not filed

1.3. For Pre-Submissions, reporting will include:

i. Number of all qualified Pre-Submissions received

ii. Average and quintiles of the number of calendar days from submission to meeting or teleconference (if necessary)

iii. Number of Pre-Submissions that require a meeting

1.4. For IDE applications, reporting will include:

i. Number of original IDEs received

ii. Average number of amendments prior to approval or conditional approval of the IDE (this information will be provided beginning no later than the quarter that starts 10/1/2013)

2. CDRH will report quarterly, and CBER will report annually, the following data at the Center level:

2.1. Rate of NSE decisions for 510(k) submissions

2.2. Rate of withdrawals for 510(k) and PMA submissions

2.3. Rate of Not Approvable decisions for PMA submissions

2.4. Key product areas or other issues that FDA identifies as noteworthy because of a potential effect on performance, including significant rates of Additional Information requests

2.5. Specific topic or product area as it relates to performance goals, agreed upon at the previous meeting

2.6. Number of submissions that missed the goals and the total number of elapsed calendar days broken down into FDA days and industry days

2.7. Newly released draft and final guidance documents, and status of other priority guidance documents

2.8. Agency level summary of fee collections

2.9. Independent assessment implementation plan status

2.10. Results of independent assessment and subsequent periodic audits and progress toward implementation of the recommendations and any corrective action

2.11. Number of discretionary fee waivers or reductions granted by type of submission

3. In addition, the Agency will provide the following information on an annual basis:

3.1. Qualitative and quantitative update on how funding is being used for the device review process, including the percentage of review time devoted to direct review of applications

3.2. How funding is being used to enhance scientific review capacity

3.3. The number of Premarket Report Submissions received

3.4. Summary information on training courses available to CDRH and CBER employees, including new reviewers, regarding device review and the percentage of applicable staff that have successfully completed each such course. CDRH will provide information concerning any revisions to the new reviewer training program curriculum.

3.5. Performance on the shared outcome goal for average Total Time to decision

3.6. For 510(k) submissions, reporting will include:

i. Number of submissions reviewed by a Third Party

ii. Number of Special Submissions

iii. Number of Traditional Submissions

iv. Average and number of days to Accept/Refuse to Accept

v. Number of Abbreviated Submissions

3.7. For PMA submissions, reporting will include the number of the following types of PMA submissions received:

i. Original PMAs

ii. Priority PMAs

iii. Premarket Reports

iv. Panel-Track PMA Supplement

v. PMA Modules

vi. 180-Day PMA Supplements

vii. Real-Time PMA Supplements

3.8. For De Novo Classification Petitions, reporting will include:

i. Number of submissions received

ii. Average number of calendar days to a MDUFA decision

3.9. For CLIA waiver applications, reporting will include:

i. Number of CLIA waiver applications received

ii. Average and quintiles of the number of calendar days to Substantive Interaction

iii. Average and quintiles of the number of FDA Days, Industry Days, and Total Days to a MDUFA decision and a discussion of any trends in the data

VII. DISCRETIONARY WAIVER

The Agency will seek authority to grant discretionary fee waivers or reductions in the interest of public health. Notwithstanding any fee waivers or reductions granted by the Agency under this discretionary authority, FDA remains committed to meeting the goals described in this letter. Any submission subject to a fee waiver or reduction under this discretionary authority shall not be subject to the goals specified in this letter and shall be reviewed by the Agency as resources permit. This discretionary authority will expire at the end of MDUFA III.

VIII. DEFINITIONS AND EXPLANATIONS OF TERMS

A. Applicant

Applicant means a person who makes any of the following submissions to FDA: an application for premarket approval under section 515; a premarket notification under section 510(k); an application for investigational device exemption under section 520(g); a Pre-Submission; a CLIA waiver application.

B. Electronic Copy (e-Copy)

An electronic copy is an exact duplicate of a paper submission, created and submitted on a CD, DVD, or in another electronic media format that FDA has agreed to accept, accompanied by a copy of the signed cover letter and the complete original paper submission. An electronic copy is not considered to be an electronic submission.

C. FDA Days

FDA Days are those calendar days when a submission is considered to be under review at the Agency for submissions that have been accepted (510(k)) or filed (PMA). FDA Days begin on the date of receipt of the submission or of the amendment to the submission that enables the submission to be accepted (510(k)) or filed (PMA).

D. MDUFA Decisions

Original PMAs: Decisions for Original PMAs are Approval, Approvable, Approvable Pending GMP Inspection, Not Approvable, Withdrawal, and Denial.

180-Day PMA Supplements: Decisions for 180-Day PMA Supplements include Approval, Approvable, and Not Approvable.

Real-Time PMA Supplements: Decisions for Real-Time PMA supplements include Approval, Approvable, and not Approvable.

510(k)s: Decisions for 510(k)s are substantially equivalent (SE) or not substantially equivalent (NSE).

Submissions placed on Application Integrity Program Hold will be removed from the MDUFA cohort.

E. Pre-Submission

A Pre-Submission includes a formal written request from an applicant for feedback from FDA which is provided in the form of a formal written response or, if the manufacturer chooses, a meeting or teleconference in which the feedback is documented in meeting minutes. A Pre-Submission meeting is a meeting or teleconference in which FDA provides its substantive feedback on the Pre-Submission.

A Pre-Submission provides the opportunity for an applicant to obtain FDA feedback prior to intended submission of an investigational device exemption or marketing application. The request must include specific questions regarding review issues relevant to a planned IDE or marketing application (e.g., questions regarding pre-clinical and clinical testing protocols or data requirements). A Pre-Submission is appropriate when FDA's feedback on specific questions is necessary to guide product development and/or application preparation.

The following forms of FDA feedback to applicants are not considered Pre-Submissions. However, if the requested feedback meets the criteria for a Pre-Submission, outlined above, FDA will contact the sponsor, and with the concurrence of the sponsor, may convert the request to a Pre-Submission.

General information requests initiated through the Division of Small Manufacturers, International and Consumer Assistance (DSMICA)

General questions regarding FDA policy or procedures

Meetings or teleconferences that are intended to be informational only, including, but not limited to, those intended to educate the review team on new device(s) with significant differences in technology from currently available devices, or to update FDA about ongoing or future product development, without a request for FDA feedback on specific questions related to a planned submission

Requests for clarification on technical guidance documents, especially where contact is recommended by FDA in the guidance document. However, the following requests will generally need to be submitted as a Pre-Submission in order to ensure appropriate input from multiple reviewers and management: recommendations for device types not specifically addressed in the guidance document; recommendations for nonclinical or clinical studies not addressed in the guidance document; requests to use an alternative means to address recommendations specified in a guidance document.

Phone calls or email messages to reviewers that can be readily answered based on a reviewer's experience and knowledge and do

not require the involvement of a broader number of FDA staff beyond the routine involvement of the reviewer's supervisor and more experienced mentors.

Interactions requested by either the applicant or FDA during the review of a marketing application (i.e., following submission of a marketing application, but prior to reaching an FDA Decision).

F. Substantive Interaction

Substantive Interaction is an email, letter, teleconference, video conference, fax, or other form of communication such as a request for Additional Information or Major Deficiency letters by FDA notifying the applicant of substantive deficiencies identified in initial submission review, or a communication stating that FDA has not identified any deficiencies in the initial submission review and any further minor deficiencies will be communicated through interactive review. An approval or clearance letter issued prior to the Substantive Interaction goal date will qualify as a Substantive Interaction.

If substantive issues warranting issuance of an Additional Information or Major Deficiency letter are not identified, interactive review should be used to resolve any minor issues and facilitate an FDA decision. In addition, interactive review will be used, where, in FDA's estimation, it leads to a more efficient review process during the initial review cycle (i.e., prior to a Substantive Interaction) to resolve minor issues such as revisions to administrative items (e.g., 510(k) Summary/Statement, Indications for Use statement, environmental impact assessment, financial disclosure statements); a more detailed device description; omitted engineering drawings; revisions to labeling; or clarification regarding nonclinical or clinical study methods or data.

Minor issues may still be included in an Additional Information or Major Deficiency letter where related to the resolution of the substantive issues (e.g., modification of the proposed Indications for Use may lead to revisions in labeling and administrative items), or if they were still unresolved following interactive review attempts. Both interactive review and Substantive Interactions will occur on the review clock except upon the issuance of an Additional Information or Major Deficiency Letter which stops the review clock.

G. Total Time to Decision

Total Time to Decision is the number of calendar days from the date of receipt of an accepted or filed submission to a MDUFA decision.

The average Total Time to Decision for 510(k) submissions is calculated as the trimmed mean of Total Times to Decision for 510(k) submissions within a closed cohort, excluding the highest 2% and the lowest 2% of values. A cohort is closed when 99% of the accepted submissions have reached a decision.

The average Total Time to Decision for PMA applications is calculated as the three-year rolling average of the annual Total Times to Decision for applications (for example, for FY2015, the average Total Time to Decision for PMA applications would be the average of FY2013 through FY2015) within a closed cohort, excluding the highest 5% and the lowest 5% of values. A cohort is closed when 95% of the applications have reached a decision.

H. BLA-related Definitions

Review and act on—the issuance of a complete action letter after the complete review of a filed complete application. The action letter, if it is not an approval, will set forth in detail the specific deficiencies and, where appropriate, the actions necessary to place the application in condition for approval.

Class 1 resubmitted applications—applications resubmitted after a complete response letter that includes the following items only (or combinations of these items):

(a) Final printed labeling

(b) Draft labeling

(c) Safety updates submitted in the same format, including tabulations, as the original safety submission with new data and changes highlighted (except when large amounts of new information including important new adverse experiences not previously reported with the product are presented in the resubmission)

(d) Stability updates to support provisional or final dating periods

(e) Commitments to perform Phase 4 studies, including proposals for such studies

(f) Assay validation data

(g) Final release testing on the last 1–2 lots used to support approval

(h) A minor reanalysis of data previously submitted to the application (determined by the Agency as fitting the Class 1 category)

(i) Other minor clarifying information (determined by the Agency as fitting the Class 1 category)

(j) Other specific items may be added later as the Agency gains experience with the scheme and will be communicated via guidance documents to industry

Class 2 resubmitted applications—resubmissions that include any other items, including any item that would require presentation to an advisory committee

PDUFA REAUTHORIZATION PERFORMANCE GOALS AND PROCEDURES FOR FISCAL YEARS 2013 THROUGH 2017

The performance goals and procedures of the FDA Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER), as agreed to under the fifth authorization of the prescription drug user fee program, are summarized below.

Unless otherwise stated, goals apply to cohorts of each fiscal year (FY).

I. REVIEW PERFORMANCE GOALS

A. NDA/BLA Submissions and Resubmissions[1]

Note: [1] Refer to Section II.A.4 for a description of the review program for NME NDAs and original BLAs.

1. Review and act on 90 percent of standard NME NDA and original BLA submissions within 10 months of the 60 day filing date.

2. Review and act on 90 percent of priority NME NDA and original BLA submissions within 6 months of the 60 day filing date.

3. Review and act on 90 percent of standard non-NME original NDA submissions within 10 months of receipt.

4. Review and act on 90 percent of priority non-NME original NDA submissions within 6 months of receipt.

5. Review and act on 90 percent of Class 1 resubmitted original applications within 2 months of receipt.

6. Review and act on 90 percent of Class 2 resubmitted original applications within 6 months of receipt.

B. Original Efficacy Supplements

1. Review and act on 90 percent of standard efficacy supplements within 10 months of receipt.

2. Review and act on 90 percent of priority efficacy supplement within 6 months of receipt.

C. Resubmitted Efficacy Supplements

1. Review and act on 90 percent of Class 1 resubmitted efficacy supplements within 2 months of receipt.

2. Review and act on 90 percent of Class 2 resubmitted efficacy supplements within 6 months of receipt.

D. Original Manufacturing Supplements

1. Review and act on 90 percent of manufacturing supplements requiring prior approval within 4 months of receipt, and review and act on 90 percent of all other manufacturing supplements within 6 months of receipt.

E. These review goals are summarized in the following tables:

ORIGINAL AND RESUBMITTED APPLICATIONS AND SUPPLEMENTS

Submission cohort	Standard	Priority
NME NDAs and original BLAs	90% in 10 months of the 60 day filing date.	90% in 6 months of the 60 day filing date
Non NME NDAs	90% in 10 months of the receipt date.	90% in 6 months of the receipt date
Class 1 Resubmissions	90% in 2 months of the receipt date.	90% in 2 months of the receipt date
Class 2 Resubmissions	90% in 6 months of the receipt date.	90% in 6 months of the receipt date
Original Efficacy Supplements	90% in 10 months of the receipt date.	90% in 6 months of the receipt date
Class 1 Resubmitted Efficacy Supplements	90% in 2 months of the receipt date.	90% in 2 months of the receipt date
Class 2 Resubmitted Efficacy Supplements	90% in 6 months of the receipt date.	90% in 6 months of the receipt date

	Prior approval	All other
Manufacturing Supplements	90% in 4 months of the receipt date.	90% in 6 months of the receipt date

II. NEW MOLECULAR ENTITY NDA AND ORIGINAL BLA PERFORMANCE GOALS

A. Program for Enhanced Review Transparency and Communication for NME NDAs and Original BLAs

To promote greater transparency and improve communication between the FDA review team and the applicant, FDA will establish a review model (hereafter referred to as ''the Program'') that will apply to all New Molecular Entity New Drug Applications (NME NDAs) and original Biologics License Applications (BLAs), including applications that are resubmitted following a Refuse-to-File action, received from October 1, 2012, through September 30, 2017.[2] The goal of the Program is to improve the efficiency and effectiveness of the first cycle review process and decrease the number of review cycles necessary for approval, ensuring that patients have timely access to safe, effective, and high quality new drugs and biologics. The Program shall be evaluated by an independent contractor with expertise in assessing the quality and efficiency of biopharmaceutical development and regulatory review programs. The parameters of the Program are as follows:

Note: [2] The decision as to whether the application is included or excluded from the Program is distinct from FDA's determination as to whether the drug product contains a ''new chemical entity,'' as defined under 21 CFR 314.108(a). Determinations regarding

new chemical entity exclusivity are made at the time of approval of an application.

1. Pre-submission meeting: The applicant is strongly encouraged to discuss the planned content of the application with the appropriate FDA review division at a pre-NDA/BLA meeting

a) The pre-NDA/BLA meeting should be held sufficiently in advance of the planned submission of the application to allow for meaningful response to FDA feedback and should generally occur not less than 2 months prior to the planned submission of the application.

b) At the pre-NDA/BLA meeting, the FDA and the applicant will agree on the content of a complete application for the proposed indication(s), including preliminary discussions on the need for risk evaluation and mitigation strategies (REMS) or other risk management actions. This meeting will be attended by the FDA review team including appropriate senior FDA staff. The agreement and discussions will be summarized at the conclusion of the meeting and reflected in the FDA meeting minutes.

c) At the meeting, the FDA and the applicant may also reach agreement on submission of a limited number of application components not later than 30 calendar days after the submission of the original application. These submissions must be of a type that would not be expected to materially impact the ability of the review team to begin its review. Any such agreement that is reached on delayed submission of application components will be summarized at the conclusion of the meeting and reflected in the FDA meeting minutes.

(1) Examples of application components that may be appropriate for delayed submission include updated stability data (e.g., 15-month data to update 12-month data submitted with the original submission) or the final audited report of a preclinical study (e.g., carcinogenicity) where the final draft report is submitted with the original application.

d) Major components of the application (e.g., the complete study report of a Phase 3 clinical trial or the full study report of required long-term safety data) are expected to be submitted with the original application and are not subject to agreement for late submission.

2. Original application submission: Applications are expected to be complete, as agreed between the FDA review team and the applicant at the pre-NDA/BLA meeting, at the time of original submission of the application. If the applicant does not have a pre-NDA/BLA meeting with FDA, and no agreement exists between FDA and the applicant on the contents of a complete application or delayed submission of certain components of the application, the applicant's submission is expected to be complete at the time of original submission.

a) All applications are expected to include a comprehensive and readily located list of all clinical sites and manufacturing facilities included or referenced in the application.

b) Any components of the application that FDA agreed at the pre-submission meeting could be submitted after the original application are expected to be received not later than 30 calendar days after receipt of the original application.

c) Incomplete applications, including applications with components that are not received within 30 calendar days after receipt of the original submission, will be subject to a Refuse-to-File decision.

(1) Applications that are subject to a Refuse-to-File action, and are subsequently filed over protest, will not be subject to the procedures of the Program, but will instead be subject to the 6 and 10 month review performance goals for priority and standard applications, respectively, as described in Section I.

d) Since applications are expected to be complete at the time of submission, unsolicited amendments are expected to be rare and not to contain major new information or analyses.

(1) Review of unsolicited amendments, including those submitted in response to an FDA communication of deficiencies, will be handled in accordance with the guidance ''Good Review Management Principles and Practices (GRMPs) for PDUFA Products.'' This guidance includes the underlying principle that FDA will consider the most efficient path toward completion of a comprehensive review that addresses application deficiencies and leads toward a first cycle approval when possible.

3. Day 74 Letter: FDA will follow existing procedures and performance goals (see Section III) regarding identification and communication of filing review issues in the ''Day 74 letter.'' For applications subject to the Program, the timeline for this communication will be within 74 calendar days from the date of FDA receipt of the original submission. The planned review timeline included in the Day 74 letter for applications in the Program will include the planned date for the internal mid-cycle review meeting. The letter will also include preliminary plans on whether to hold an Advisory Committee (AC) meeting to discuss the application.

4. Review performance goals: For NME NDA and original BLA submissions that are filed by FDA under the Program, the PDUFA review clock will begin at the conclusion of the 60 calendar day filing review period that begins on the date of FDA receipt of the original submission. The review performance goals for these applications are as follows:

a) Review and act on 90 percent of standard NME NDA and original BLA submissions within 10 months of the 60 day filing date.

b) Review and act on 90 percent of priority NME NDA and original BLA submissions within 6 months of the 60 day filing date.

5. Mid-Cycle communication: The FDA Regulatory Project Manager (RPM), and other appropriate members of the FDA review team (e.g., Cross Discipline Team Leader (CDTL)), will call the applicant, generally within 2 weeks following the Agency's internal mid-cycle review meeting, to provide the applicant with an update on the status of the review of their application. Scheduling of the internal mid-cycle review meeting will be handled in accordance with the GRMP guidance. The RPM will coordinate the specific date and time of the telephone call with the applicant

a) The update should include any significant issues identified by the review team to date, any information requests, information regarding major safety concerns and preliminary review team thinking regarding risk management, proposed date(s) for the late-cycle meeting, updates regarding plans for the AC meeting (if an AC meeting is anticipated), and other projected milestones dates for the remainder of the review cycle.

6. Discipline Review (DR) Letters: The FDA review team will follow existing guidance on issuance of DR Letters.

a) Since the application is expected to be complete at time of submission, FDA intends to complete primary and secondary discipline reviews of the application and issue DR letters in advance of the planned late-cycle meeting. In cases where a DR letter is not issued in advance of the planned late-cycle meeting, substantive issues identified to date from that discipline will be communicated in the brief memorandum described in 7(b)(1).

7. Late-Cycle meeting: For all applications included in the review Program, a meeting will be held between the FDA review team and the applicant to discuss the status of the review of the application late in the review cycle.

a) FDA representatives at the late-cycle meeting are expected to include the signatory authority for the application, review team members from appropriate disciplines, and appropriate team leaders and/or supervisors from disciplines for which substantive issues have been identified in the review to date.

b) For applications that will be discussed at an Advisory Committee (AC) meeting, the late-cycle meeting will occur not less than 12 calendar days before the date of the AC meeting. FDA intends to convene AC meetings no later than 3 months (standard review) or no later than 2 months (priority review) prior to the PDUFA goal date.

(1) The Agency briefing package for the late-cycle meeting will consist of the Agency's background package for the AC meeting, which will be sent to the applicant not less than 20 calendar days before the AC meeting, any discipline review letters issued to date, current assessment of the need for REMS or other risk management actions, and a brief memorandum from the review team outlining substantive application issues including potential questions and/or points for discussion for the AC meeting. FDA intends to provide final questions for the AC to the sponsor and the AC 2 calendar days in advance of the AC meeting.

c) For applications that will not be discussed at an AC meeting, the late-cycle meeting will generally occur not later than 3 months (standard review) or two months (priority review) prior to the PDUFA goal date.

(1) The Agency background package for the late-cycle meeting, which will be sent to the applicant not less than 12 calendar days before the meeting, will consist of any discipline review letters issued to date, current assessment of the need for REMS or other risk management actions, and a brief memorandum from the review team outlining substantive application issues.

d) Potential topics for discussion at the late-cycle meeting include major deficiencies identified to date; issues to be discussed at the AC meeting (if planned); current assessment of the need for REMS or other risk management actions; information requests from the review team to the applicant; and additional data or analyses the applicant may wish to submit.

(1) With regard to submission of additional data or analyses, the FDA review team and the applicant will discuss whether such data will be reviewed by the Agency in the current review cycle and, if so, whether the submission will be considered a major amendment and trigger an extension of the PDUFA goal date.

8. Inspections: FDA's goal is to complete all GCP, GLP, and GMP inspections for applications in the Program within 6 months of the date of original receipt for priority applications and within 10 months of the date of original receipt for standard applications. This will allow 2 months at the end of the review cycle to attempt to address any deficiencies identified by the inspections.

9. Quality System: As part of a quality system approach to managing review in the Program, FDA will implement a tracking system that will document review team performance of the key milestones for each of the applications reviewed under the Program.

a) These milestones include: conduct of pre-NDA/BLA meeting and agreement on content of complete application; submission

of any components of the application within 30 calendar days of original application submission (as per pre-NDA/BLA meeting agreement); issuance of the 74-day letter; completion of mid-cycle communication with sponsor; completion of primary and secondary reviews; DR letters issued; exchange of late cycle meeting package; and conduct of late-cycle meeting.

b) The process tracking information will support review management, and inform the subsequent analysis to be conducted by an independent third party (see below). The performance information generated by the tracking system will also be summarized and reported in the PDUFA annual performance report.

B. Assessment of the Program

The Program described in Section IIA shall be evaluated by an independent contractor with expertise in assessing the quality and efficiency of biopharmaceutical development and regulatory review programs. The statement of work for this effort will be published for public comment prior to beginning the assessment. The assessments will occur continuously throughout the course of the Program. Metrics for the assessments will include adherence by the applicant and FDA to the current GRMP guidance, submission of a complete application at the time of original submission, number of unsolicited amendments submitted by the applicant, timing and adequacy of Day 74 letters, mid-cycle communications, provision of late-cycle meeting memorandum outlining potential issues and questions for AC meeting consideration and discipline review letters; specific milestones of the Program as described in Section IIA; time to approval; percentage of applications approved on the first review cycle; and the percentage of application reviews extended due to major amendments. Following issuance of an FDA regulatory action at the completion of the first review cycle, the independent contractor will assess the completeness and thoroughness of the submitted application, Day 74 letter, mid-cycle communication, discipline review letters and late-cycle meeting. This assessment will include interviews of the sponsor and members of the review team, as appropriate.

1. Interim Assessment: An interim assessment of the Program will be published by March 31, 2015, for public comment. By June 30, 2015, FDA will hold a public meeting during which public stakeholders may present their views on the success of the Program to date including: improving the efficiency and effectiveness of the first cycle review process; decreasing the number of review cycles ultimately necessary for new drugs and biologics that are approved; and helping to ensure that patients have timely access to safe, effective, and high quality new drugs and biologics. During the public meeting, FDA will discuss the findings of the interim assessment, including anonymized aggregated feedback from sponsors and FDA review teams resulting from independent contractor interviews. FDA will also address any issues identified to date including actions proposed to improve likelihood of success for the program.

2. Final Assessment: A final assessment of the Program will be published by December 31, 2016, for public comment. FDA will hold a public meeting by no later than March 30, 2017, during which public stakeholders may present their views on the success of the Program, including improving the efficiency and effectiveness of the first cycle review process and decreasing the number of review cycles ultimately necessary for new drugs and biologics that are approved. During the public meeting, FDA will discuss the findings of the final assessment, including anonymized aggregated feedback from sponsors and FDA review teams resulting from independent contractor interviews and discuss any issues identified and plans for addressing these issues.

III. FIRST CYCLE REVIEW PERFORMANCE

A. Notification of Issues Identified during the Filing Review

1. Performance Goal: For original NDA/BLA applications and efficacy supplements, FDA will report substantive review issues identified during the initial filing review to the applicant by letter, teleconference, facsimile, secure e-mail, or other expedient means.

2. The timeline for such communication will be within 74 calendar days from the date of FDA receipt of the original submission.

3. If no substantive review issues were identified during the filing review, FDA will so notify the applicant.

4. FDA's filing review represents a preliminary review of the application and is not indicative of deficiencies that may be identified later in the review cycle.

5. FDA will notify the applicant of substantive review issues prior to the goal date for 90% of applications.

B. Notification of Planned Review Timelines

1. Performance Goal: For original NDA/BLA applications and efficacy supplements, FDA will inform the applicant of the planned timeline for review of the application. The information conveyed will include a target date for communication of feedback from the review division to the applicant regarding proposed labeling, postmarketing requirements, and postmarketing commitments the Agency will be requesting.

2. The planned review timeline will be included with the notification of issues identified during the filing review, within 74 calendar days from the date of FDA receipt of the original submission.

3. The planned review timelines will be consistent with the Guidance for Review Staff and Industry: Good Review Management Principles and Practices for PDUFA Products (GRMPs), taking into consideration the specific circumstances surrounding the individual application.

4. The planned review timeline will be based on the application as submitted.

5. FDA will inform the applicant of the planned review timeline for 90% of all applications and efficacy supplements.

6. In the event FDA determines that significant deficiencies in the application preclude discussion of labeling, postmarketing requirements, or postmarketing commitments by the target date identified in the planned review timeline (e.g., failure to demonstrate efficacy, significant safety concern(s), need for a new study(ies) or extensive re-analyses of existing data before approval), FDA will communicate this determination to the applicant in accordance with GRMPs and no later than the target date. In such cases the planned review timeline will be considered to have been met. Communication of FDA's determination may occur by letter, teleconference, facsimile, secure e-mail, or other expedient means.

7. To help expedite the development of drug and biologic products, communication of the deficiencies identified in the application will generally occur through issuance of a DR letter(s) in advance of the planned target date for initiation of discussions regarding labeling, postmarketing requirements, and postmarketing commitments the Agency may request.

8. If the applicant submits a major amendment(s) (refer to Section XVI.B for additional information on major amendments) and the review division chooses to review such amendment(s) during that review cycle, the planned review timeline initially communicated will generally no longer be applicable. Consistent with the underlying principles articulated in the GRMP guidance, FDA's decision to extend the review clock should, except in rare circumstances, be limited to occasions where review of the new information could address outstanding deficiencies in the application and lead to approval in the current review cycle.

If the review division determines that the major amendment will result in an extension of the PDUFA review clock, the review division will communicate to the applicant at the time of the clock extension a new planned review timeline, including a new review timeline for communication of feedback on proposed labeling, postmarketing requirements, and any postmarketing commitments the Agency may request.

In the rare case where the review division determines that the major amendment will not result in an extension of the PDUFA review clock, the review division may choose to retain the previously communicated planned review timeline or may communicate a new planned review timeline to the applicant.

The division will notify the applicant promptly of its decision regarding review of the major amendment(s) and whether the planned review timeline is still applicable.

For original NME NDA and original BLA applications, the new planned review timeline will include a new planned date for the internal mid-cycle review meeting if appropriate depending on when during the course of review the major amendment(s) is accepted for review.

C. Report on Review Timeline Performance

1. FDA will report its performance in meeting the goals for inclusion of a planned review timeline with the notification of issues identified during the filing review in the annual PDUFA performance report.

2. FDA will report its performance in meeting the planned review timeline for communication of labeling comments, postmarketing requirements, and postmarketing commitment requests in the annual PDUFA performance report. The report will include the percentage of applications for which the planned target dates for communication of labeling comments, postmarketing requirements, and postmarketing commitment requests were met. The report will also note how often the planned review timeline was met based on communication of labeling comments, postmarketing requirements, and postmarketing commitment requests by the target date, and how often such communication did not occur due to FDA's determination that significant deficiencies in the application precluded communication of labeling comments, postmarketing requirements, and postmarketing commitment requests at the time initially projected. Communication of labeling comments, postmarketing requirements, and postmarketing commitment requests, or communication of FDA's determination that significant deficiencies preclude initiation of such discussions that occurs within 7 calendar days of the target date stated in the planned review timeline will be considered to have met the target date. FDA will also report the number of times that the review timelines were inapplicable due to the Agency's decision to review an unsolicited major amendment or a solicited major amendment that did not result in an extension of the review clock (unless the review division chose to retain the previously communicated planned review timeline).

IV. REVIEW OF PROPRIETARY NAMES TO REDUCE MEDICATION ERRORS

To enhance patient safety, FDA will utilize user fees to implement various measures to

reduce medication errors related to look-alike and sound-alike proprietary names and such factors as unclear label abbreviations, acronyms, dose designations, and error prone label and packaging design.

A. Review Performance Goals—Drug/Biological Product Proprietary Names

1. Proprietary names submitted during IND phase (as early as end-of-phase 2)

a) Review 90% of proprietary name submissions filed within 180 days of receipt. Notify sponsor of tentative acceptance or non-acceptance.

b) If the proprietary name is found to be unacceptable, the sponsor can request reconsideration by submitting a written rebuttal with supporting data or request a meeting within 60 days to discuss the initial decision (meeting package required).

c) If the proprietary name is found to be unacceptable, the above review performance goals also would apply to the written request for reconsideration with supporting data or the submission of a new proprietary name.

d) A complete submission is required to begin the review clock.

2. Proprietary names submitted with NDA/BLA

a) Review 90% of NDA/BLA proprietary name submissions filed within 90 days of receipt. Notify sponsor of tentative acceptance/non-acceptance.

b) A supplemental review will be done meeting the above review performance goals if the proprietary name has been submitted previously (IND phase after end-of-phase 2) and has received tentative acceptance.

c) If the proprietary name is found to be unacceptable, the sponsor can request reconsideration by submitting a written rebuttal with supporting data or request a meeting within 60 days to discuss the initial decision (meeting package required).

d) If the proprietary name is found to be unacceptable, the above review performance goals apply to the written request for reconsideration with supporting data or the submission of a new proprietary name.

e) A complete submission is required to begin the review clock.

V. MAJOR DISPUTE RESOLUTION

A. Procedure: For procedural or scientific matters involving the review of human drug applications and supplements (as defined in PDUFA) that cannot be resolved at the signatory authority level (including a request for reconsideration by the signatory authority after reviewing any materials that are planned to be forwarded with an appeal to the next level), the response to appeals of decisions will occur within 30 calendar days of the Center's receipt of the written appeal.

B. Performance goal: 90% of such answers are provided within 30 calendar days of the Center's receipt of the written appeal.

C. Conditions:

1. Sponsors should first try to resolve the procedural or scientific issue at the signatory authority level. If it cannot be resolved at that level, it should be appealed to the next higher organizational level (with a copy to the signatory authority) and then, if necessary, to the next higher organizational level.

2. Responses should be either verbal (followed by a written confirmation within 14 calendar days of the verbal notification) or written and should ordinarily be to either grant or deny the appeal.

3. If the decision is to deny the appeal, the response should include reasons for the denial and any actions the sponsor might take to persuade the Agency to reverse its decision.

4. In some cases, further data or further input from others might be needed to reach a decision on the appeal. In these cases, the ''response'' should be the plan for obtaining that information (e.g., requesting further information from the sponsor, scheduling a meeting with the sponsor, scheduling the issue for discussion at the next scheduled available advisory committee).

5. In these cases, once the required information is received by the Agency (including any advice from an advisory committee), the person to whom the appeal was made, again has 30 calendar days from the receipt of the required information in which to either deny or grant the appeal.

6. Again, if the decision is to deny the appeal, the response should include the reasons for the denial and any actions the sponsor might take to persuade the Agency to reverse its decision.

7. N.B. If the Agency decides to present the issue to an advisory committee and there are not 30 days before the next scheduled advisory committee, the issue will be presented at the following scheduled committee meeting to allow conformance with advisory committee administrative procedures.

VI. CLINICAL HOLDS

A. Procedure: The Center should respond to a sponsor's complete response to a clinical hold within 30 days of the Agency's receipt of the submission of such sponsor response.

B. Performance goal: 90% of such responses are provided within 30 calendar days of the Agency's receipt of the sponsor's response.

VII. SPECIAL PROTOCOL QUESTION ASSESSMENT AND AGREEMENT

A. Procedure: Upon specific request by a sponsor (including specific questions that the sponsor desires to be answered), the Agency will evaluate certain protocols and issues to assess whether the design is adequate to meet scientific and regulatory requirements identified by the sponsor.

1. The sponsor should submit a limited number of specific questions about the protocol design and scientific and regulatory requirements for which the sponsor seeks agreement (e.g., is the dose range in the carcinogenicity study adequate, considering the intended clinical dosage; are the clinical endpoints adequate to support a specific efficacy claim).

2. Within 45 days of Agency receipt of the protocol and specific questions, the Agency will provide a written response to the sponsor that includes a succinct assessment of the protocol and answers to the questions posed by the sponsor. If the Agency does not agree that the protocol design, execution plans, and data analyses are adequate to achieve the goals of the sponsor, the reasons for the disagreement will be explained in the response.

3. Protocols that qualify for this program include: carcinogenicity protocols, stability protocols, and Phase 3 protocols for clinical trials that will form the primary basis of an efficacy claim. For such Phase 3 protocols to qualify for this comprehensive protocol assessment, the sponsor must have had an end of Phase 2/pre-Phase 3 meeting with the review division so that the division is aware of the developmental context in which the protocol is being reviewed and the questions being answered.

4. N.B. For products that will be using Subpart E or Subpart H development schemes, the Phase 3 protocols mentioned in this paragraph should be construed to mean those protocols for trials that will form the primary basis of an efficacy claim no matter what phase of drug development in which they happen to be conducted.

5. If a protocol is reviewed under the process outlined above and agreement with the Agency is reached on design, execution, and analyses and if the results of the trial conducted under the protocol substantiate the hypothesis of the protocol, the Agency agrees that the data from the protocol can be used as part of the primary basis for approval of the product. The fundamental agreement here is that having agreed to the design, execution, and analyses proposed in protocols reviewed under this process, the Agency will not later alter its perspective on the issues of design, execution, or analyses unless public health concerns unrecognized at the time of protocol assessment under this process are evident.

B. Performance goal: 90% of special protocols assessments and agreement requests completed and returned to sponsor within timeframes.

C. Reporting: The Agency will track and report the number of original special protocol assessments and resubmissions per original special protocol assessment.

VIII. MEETING MANAGEMENT GOALS

A. Responses to Meeting Requests

1. Procedure: Within 14 calendar days of the Agency's receipt of a request from industry for a formal Type A meeting, or within 21 calendar days of the Agency's receipt of a request from industry for a formal Type B or Type C meeting (i.e., a scheduled face-to-face, teleconference, videoconference, or written response), CBER and CDER should notify the requester in writing (letter or fax) of the date, time, and place for the meeting, as well as expected Center participants. In the case of pre-IND and Type C meeting requests, the sponsor may request a written response to its questions rather than a face-to-face meeting, videoconference or teleconference. In some cases, while the sponsor may request a face-to-face pre-IND or Type C meeting, the Agency may determine that a written response to the sponsor's questions would be the most appropriate means for responding to the meeting request. When it is determined that the meeting request can be appropriately addressed through a written response to questions, FDA shall notify the requester of the date it intends to send the response.

2. Performance Goal: FDA will provide this notification within 14 days for 90% of Type A meeting requests and within 21 days for 90% of Type B and Type C meeting requests.

B. Scheduling Meetings

1. Procedure: The meeting date should reflect the next available date on which all applicable Center personnel are available to attend, consistent with the component's other business; however, the meeting should be scheduled consistent with the type of meeting requested. If the requested date for any of these types of meetings is greater than 30, 60, or 75 calendar days (as appropriate) from the date the request is received by the Agency, the meeting date should be within 14 calendar days of the requested date.

a) Type A Meetings should occur within 30 calendar days of the Agency receipt of the meeting request.

b) Type B Meetings should occur within 60 calendar days of the Agency receipt of the meeting request. In the case of a written response for a pre-IND meeting, the response should be transmitted by FDA within 60 calendar days of the Agency receipt of the meeting request.

c) Type C Meetings should occur within 75 calendar days of the Agency receipt of the meeting request. In the case of a written response, the response should be transmitted by FDA within 75 calendar days of the Agency receipt of the meeting request.

2. Performance goal: 90% of meetings are held within the timeframe, and 90% of written responses are sent within the timeframe.

C. Meeting Minutes

1. Procedure: The Agency will prepare minutes which will be available to the sponsor 30

calendar days after the meeting. The minutes will clearly outline the important agreements, disagreements, issues for further discussion, and action items from the meeting in bulleted form and need not be in great detail. Meeting minutes are not required if the Agency transmits a written response for pre-IND or Type C meetings.

2. Performance goal: 90% of minutes are issued within 30 calendar days of date of meeting.

D. Conditions

For a meeting to qualify for these performance goals:

1. A written request (letter or fax) should be submitted to the review division; and

2. The letter should provide:

a) A brief statement of the purpose of the meeting, and in the case of pre-IND and Type C meetings, the sponsor's proposal for either a face-to-face meeting or a written response from the Agency;

b) A listing of the specific objectives/outcomes the requester expects from the meeting;

c) A proposed agenda, including estimated times needed for each agenda item;

d) A listing of planned external attendees;

e) A listing of requested participants/disciplines representative(s) from the Center; and

f) The approximate time that supporting documentation (i.e., the ''backgrounder'') for the meeting will be sent to the Center (i.e., ''x'' weeks prior to the meeting), but should be received by the Center at the time of the meeting request for Type A meetings and at least 1 month in advance of the scheduled meeting for Type B and Type C meetings (including those for which a written response will be provided)

3. The Agency concurs that the meeting will serve a useful purpose (i.e., it is not premature or clearly unnecessary). However, requests for a ''Type B'' meeting will be honored except in the most unusual circumstances.

4. In general, meetings regarding REMS or postmarketing requirements that occur outside the context of the review of a marketing application shall be classified as Type B meetings.

5. In general, a post-action meeting requested by the sponsor within three months after an FDA regulatory action other than an approval (i.e., issuance of a complete response letter) shall be classified as a Type A meeting.

6. FDA shall publish revised draft guidance on formal meetings between FDA and sponsors no later than the end of FY 2013.

Sponsors are encouraged to consult available FDA guidance to obtain further information on recommended meeting procedures.

IX. ENHANCING REGULATORY SCIENCE AND EXPEDITING DRUG DEVELOPMENT

To enhance communications between FDA and sponsors during drug development and to meet the challenges of emerging science in the areas of clinical trial endpoint assessment tools, biomarkers and pharmacogenomics, meta-analysis, and development of drugs for rare diseases, FDA will conduct the following activities:

A. Promoting Innovation Through Enhanced Communication Between FDA and Sponsors During Drug Development

1. FDA's philosophy is that timely interactive communication with sponsors during drug development is a core Agency activity to help achieve the Agency's mission to facilitate the conduct of efficient and effective drug development programs, which can enhance public health by making new safe and effective drugs available to the American public in a timely manner.

2. By the end of FY 2013, FDA will develop a dedicated drug development communication and training staff within the Office of New Drugs in CDER and augment the manufacturers assistance staff in CBER, focused on enhancing communication between FDA and sponsors during drug development.

3. Within CDER, the drug development communication and training staff will include (1) a dedicated liaison staff to facilitate general and, in some cases, specific interactions with sponsors and (2) a training staff for CDER staff training and for communication of best practices to the sponsor community.

4. The liaison staff will be composed of individuals who are experienced and knowledgeable about the drug review process (and in some cases may be on detail from the review divisions), interact regularly with the staff in review divisions, and are skilled in facilitating communications between applicants and FDA staff.

5. The liaison staff will conduct a range of tasks associated with enhancing communication between the review team and sponsors including identification and dissemination of best practices for enhanced communication, and development of training programs for review staff. In addition, they will work in collaboration with sponsor stakeholders to develop training for sponsors and receive feedback on FDA's programs regarding best practices for communication during drug development (e.g., participation in workshops and other meetings to communicate CDER's policy and practice to the sponsor community and to receive feedback on recommended improvements).

6. The liaison staff will serve as a point of contact for sponsors who have general questions about drug development or who need clarification on which review division to contact with their questions. The staff will also serve as a secondary point of communication within CDER for sponsors who are encountering problems in communication with the review team for their IND (e.g., in instances when they have not received a response from the review team to a simple or clarifying question or referral to the formal meeting process within 30 days of the sponsor's initial request). In such cases the liaison staff will assist in evaluating the issues and working with the review team and the sponsor to facilitate resolution of the problem.

7. By the end of FY 2014, the OND drug development and communication staff will provide training to all CDER staff involved in review of INDs. The training will include:

a) CDER's philosophy that timely interactive communication with sponsors during drug development is a core activity to help achieve our mission to facilitate the conduct of efficient and effective drug development programs, which can enhance public health by making new safe and effective drugs available to the American public in a timely manner.

b) Best practices for triage of sponsor requests for advice from the review team and timely communication of responses to simple and clarifying questions or referral of more complex questions to the formal meeting process.

c) Best practices for communication between the review team and the sponsor including establishing clear expectations and agreement on appropriate mechanisms (e.g., when teleconferencing or secure email may be the most appropriate means of communication) and frequency of such communications.

d) The role of the OND liaison staff in facilitating overall enhanced drug development communication between CDER and the drug development sponsor community and the staff's role in facilitating resolution of individual communication requests that have not been handled successfully in a timely manner by the review team, which is the primary interface with the sponsor regarding the drug under development.

8. By the end of the second quarter of FY 2015, FDA will publish draft guidance for review staff and industry describing best practices for communication between FDA and IND sponsors during drug development. The guidance will describe FDA's philosophy regarding timely interactive communication with sponsors as a core activity, the scope of appropriate interactions between the review team and the sponsor, outline the types of advice that are appropriate for sponsors to seek from FDA in pursuing their drug development program, describe the general expectations for the timing of FDA response to sponsor inquiries of simple and clarifying questions or referral of more complex questions to the formal meeting process, and describe best practices and communication methods (including the value of person-to-person scientific dialogue) to facilitate interactions between the FDA review team and the sponsor during drug development. FDA will publish final guidance within 18 months of the close of the comment period for the draft guidance.

B. Advancing the Science of Meta-Analysis Methodologies

1. Develop a dedicated review team with appropriate expertise to evaluate different scientific methods and to explore the practical application of scientific approaches and best practices, including methodological limitations, for the conduct of meta-analyses in the context of FDA's regulatory review process.

2. By the end of FY 2013, hold a public meeting engaging stakeholders in discussing current and emerging scientific approaches and methods for the conduct of meta-analyses, and to facilitate stakeholder feedback and input regarding the use of meta-analyses in the FDA's regulatory review process.

3. Considering feedback and input received through the public meeting, publish a draft guidance document for comment describing FDA's intended approach to the use of meta-analyses in the FDA's regulatory review process by the end of FY 2015. This guidance will promote a better understanding and more consistency among Agency, industry, and other stakeholders regarding meta-analyses and their role in regulatory decision-making.

4. Complete the final guidance describing FDA's intended approach to the use of meta-analyses in the FDA's regulatory review process (or revised draft guidance, if appropriate) within 1.5 years of the close of the public comment period.

C. Advancing the Use of Biomarkers and Pharmacogenomics

1. Develop staff capacity to review submissions that contain complex issues involving pharmacogenomics and biomarkers. This additional staff capacity will be integrated into the clinical review divisions and the clinical pharmacology and statistical review disciplines to ensure greater understanding of biomarker use in application review and efficient incorporation of qualified biomarkers in the review process.

2. Provide training for FDA staff on approaches to conducting a pharmacogenomics review of a new product application. This training will focus on the following: facilitation of a greater understanding of the challenges that arise when using pharmacogenomic markers and other biomarkers in a development program (including programs involving companion diagnostics), development of approaches to

address these challenges, and promotion of consistency in regulatory review through an understanding of best practices in assessment of applications that use biomarkers in the drug development program.

3. By the end of FY 2013, hold a public meeting to discuss the current status of biomarkers and pharmacogenomics and potential strategies to facilitate scientific exchanges in regulatory and non-regulatory contexts.

D. Advancing Development of Patient-Reported Outcomes (PROs) and Other Endpoint Assessment Tools

1. Develop clinical and statistical staff capacity to more efficiently and effectively respond to submissions that involve PROs and other outcomes assessment tools. These staff will advance the development of these tools by providing IND and qualification consultations and through promoting best practices for review and qualification of outcomes assessment tools. The additional capacity includes staff who will focus on review and qualification of endpoint assessment tools, including IND consultations with sponsors, as well as staff who will be integrated into the review divisions to facilitate evaluation of these tools and improve familiarity and understanding of assessment tools among review staff. These activities will allow for greater understanding of challenges that arise during development of outcomes assessment tools, potential strategies to overcome these challenges, and greater consistency in FDA's approach to review, qualification, and usage of these tools as part of the drug development process.

2. By the end of FY 2014, hold a public meeting to discuss FDA's qualification standards for drug development tools, new measurement theory, and implications for multi-national trials.

E. Advancing Development of Drugs for Rare Diseases

1. By the end of FY 2013, FDA will complete a staffing and implementation plan for the CDER Rare Disease Program within the Office of New Drugs and a CBER Rare Disease liaison within the Office of Center Director.

2. FDA will increase by five the staff of the CDER Rare Disease Program and establish and fill the CBER Rare Disease liaison position.

3. On an ongoing basis, the staff in the Rare Disease Programs of the two Centers will develop and disseminate guidance and policy related to advancing and facilitating the development of drugs and biologics for rare diseases, including improving understanding among FDA reviewers of approaches to studying such drugs; considering non-traditional clinical development programs, study design, endpoints, and statistical analysis; recognizing particular challenges with post-market studies; and encouraging flexibility and scientific judgment, as appropriate, on the part of reviewers when evaluating investigational studies and marketing applications for drugs for rare diseases. Rare Disease Program staff will also engage in increased outreach to industry regarding development of such drugs and to patient representatives and organizations.

4. By mid-FY 2014, FDA, through the Rare Disease Program, will conduct a public meeting to discuss complex issues in clinical trials for studying drugs for rare diseases, including such questions as endpoint selection, use of surrogate endpoints/Accelerated Approval, and clinical significance of primary endpoints; reasonable safety exposures; assessment of dose selection; and development of patient-reported outcome instruments. Participants in the discussion will include FDA staff, academic and clinical experts, and industry experts. A summary from the meeting will be made available publicly through the FDA website.

5. By the end of FY 2015, FDA will develop and implement staff training related to development, review, and approval of drugs for rare diseases. The training will be provided to all CDER and CBER review staff, and will be part of the reviewer training core curriculum. Among the key purposes of this training are to familiarize review staff with the challenges associated with rare disease applications and strategies to address these challenges; to promote best practices for review and regulation of rare disease applications; and to encourage flexibility and scientific judgment among reviewers in the review and regulation of rare disease applications. The training will also emphasize the role of the Rare Disease Program staff as members of the review team to help ensure consistency of scientific and regulatory approaches across applications and review teams.

6. By the end of FY 2016, FDA, through the Rare Disease Program, will develop an evaluation tool to evaluate the success of the activities of the Rare Disease Program, including the reviewer training. Among potential measures of success are the development of a system to track rare disease applications from IND submission through the post-marketing period, increased number of reviewers receiving rare disease-specific training, increased number of activities contributing to regulatory and biomedical science for rare disease drug development, and meeting of PDUFA goals for rare disease applications.

X. ENHANCING BENEFIT-RISK ASSESSMENT IN REGULATORY DECISIONMAKING

A. FDA will develop a five-year plan to further develop and implement a structured benefit/risk assessment in the new drug approval process. FDA will publish its draft plan for public comment by the end of the first quarter of FY 2013. FDA will begin execution of the plan to implement the benefit-risk framework across review divisions in the pre-and post-market human drug review process by the end of the fourth quarter of FY 2013, and the Agency will update the plan as needed and post all updates on the FDA website.

The plan will include:

1. A description of FDA's intended approach to build on the Agency's current efforts to integrate a structured benefit/risk framework throughout the lifecycle of human drug development.

2. A plan to conduct two public workshops on benefit-risk considerations from the regulator's perspective that will begin by the first quarter of FY 2014. The first workshop will be primarily informational by focusing discussion on the various frameworks and methods available and their application to regulatory decision-making. The second workshop will focus on the results and lessons learned in implementing frameworks at regulatory agencies in the pre- and post-market drug review process.

3. An evaluation plan to ascertain the impact of the benefit-risk framework in the human drug review process. The evaluation will consider the utility of the framework in facilitating decision-making and review team discussions across disciplines, risk management plan decision-making, training of new review staff, and communicating regulatory decisions. In particular, the evaluation will consider the degree to which the framework supports or facilitates balanced consideration of benefits and risks, a more consistent and systematic approach to discussion and decision-making, and communication of benefits and risks.

B. As appropriate, FDA will revise the CDER Clinical Review Template, Office and Division Director Summary Memo Templates, and corresponding Manuals of Policies and Procedures (MaPP) [and equivalent documents in CBER] to incorporate a structured benefit/risk assessment into the human drug review process on a timeframe outlined in the five-year plan described in (A).

C. Over the period of PDUFA V, FDA will initiate a public process to nominate a set of disease areas that could benefit from a more systematic and expansive approach to obtaining the patient perspective on disease severity or unmet medical need. FDA will convene 4 meetings per year (CDER will host 17 meetings and CBER will host 3 meetings throughout PDUFA V) with each meeting focused on a different disease area. These meetings will include participation of FDA review divisions, the relevant patient advocacy community, and other interested stakeholders. After each meeting, FDA will publish the meeting proceedings and a summary analysis of the input received by FDA that is relevant to FDA's consideration of disease severity and unmet medical need. This knowledge will be used to more fully develop an understanding of the disease severity and an assessment of the current state of the treatment armamentarium which are both critical components of FDA's current benefit-risk framework in regulatory decision-making and communication. After the first two meetings, FDA will develop a proposal for how FDA will incorporate these perspectives into the Agency's decision-making.

In addition, FDA will increase its utilization of FDA's Patient Representatives as Special Government Employee consultants to CDER and CBER to provide patients' views early in the medical product development process and ensure those perspectives are considered in regulatory discussions.

D. FDA will train review and management staff on the revised templates and MaPPs described in (B) and fully integrate structured benefit/risk assessment into the regulatory review process by a date specified in the five-year plan.

XI. ENHANCEMENT AND MODERNIZATION OF THE FDA DRUG SAFETY SYSTEM

FDA will continue to use user fees to enhance and modernize the current U.S. drug safety system, including adoption of new scientific approaches, improving the utility of existing tools for the detection, evaluation, prevention, and mitigation of adverse events, and enhancing communication and coordination between post-market and pre-market review staff. Enhancements to the drug safety system will improve public health by increasing patient protection while continuing to enable access to needed medical products. User fees will provide support for 1) enhancing risk evaluation and mitigation strategies (REMS) by measuring their effectiveness and evaluating with stakeholder input appropriate ways to better integrate them into the existing and evolving healthcare system, and 2) continued development and implementation of the Sentinel System.

A. Measure the Effectiveness of REMS and Standardize and Better Integrate REMS into the Healthcare System

FDA will use user fee funds to continue to develop techniques to standardize REMS and with stakeholder input seek to integrate them into the existing and evolving (e.g., increasingly electronic) healthcare system.

1. By the end of FY 2013, FDA will develop and issue guidance on how to apply the statutory criteria to determine whether a REMS is necessary to ensure that the benefits of a drug outweigh the risks.

2. By the end of FY 2013, FDA will hold one or more public meetings to include the pharmaceutical industry, other government

healthcare providers, patient groups, and partners from other sectors of the healthcare delivery system to explore strategies to standardize REMS, where appropriate, with the goal of reducing the burden of implementing REMS on practitioners, patients, and others in various healthcare settings. To move towards increased integration of REMS into the healthcare delivery system, FDA will issue a report of its findings by the first quarter of FY 2014 that will identify at least one priority project in each of the following areas including a workplan for project completion: pharmacy systems, prescriber education, providing benefit/risk information to patients, and practice settings.

3. By the end of FY 2013, FDA will initiate one or more public workshops on methodologies for assessing whether REMS are mitigating the risks they purport to mitigate and for assessing the effectiveness and impact of REMS, including methods for assessing the effect on patient access, individual practitioners, and the overall burden on the healthcare delivery system. FDA will issue guidance by the end of FY 2014 on methodologies for assessing REMS. This guidance should specifically address methodologies for determining whether a specific REMS with elements to assure safe use (ETASU) is: (i) commensurate with the specific serious risk listed in the labeling of the drug and (ii) considering the observed risk, not unduly burdensome on patient access to the drug.

B. Sentinel as a Tool for Evaluating Drug Safety Issues That May Require Regulatory Action

FDA will use user fee funds to conduct a series of activities to determine the feasibility of using Sentinel to evaluate drug safety issues that may require regulatory action, e.g., labeling changes, PMRs, or PMCs. The activities will be selected and designed to focus on issues that affect classes of drugs or multiple products.

1. By the end of FY 2013, FDA will hold or support public meetings engaging stakeholders to discuss current and emerging Sentinel projects and facilitate stakeholder feedback and input regarding Sentinel projects that would be appropriate to meet the goals stated above.

2. Informed by the feedback and input received through the public meeting, in FY 2013 through FY 2017, FDA will fund 4–6 activities, which will include multiple product or class-specific studies or methodology development. These activities will be specifically designed to further evaluate safety signals that, in previous cases, have served as the basis for regulatory action(s) or designed more broadly to help determine the utility and validity of the Sentinel System to evaluate other types of signals in population-based databases. The following are examples of potential activities:

a) Expanding the active surveillance mechanisms begun for the H1N1 pandemic to substitute for the information gathered in large ad hoc, manufacturer-conducted studies

b) Evaluating risk for class-wide adverse events (e.g., cardiovascular events, suicidality)

3. By the end of FY 2015, FDA will conduct (or fund by contract) an interim assessment to evaluate the strengths, limitations and the appropriate use of Sentinel for informing regulatory actions (e.g., labeling changes, PMRs and PMCs) to manage safety issues.

4. By the end of FY 2017, FDA will conduct (or fund by contract) an assessment to evaluate the strengths, limitations, and the appropriate use of Sentinel for informing regulatory actions (e.g., labeling changes, PMRs and PMCs) to manage safety issues.

C. Conduct and support activities designed to modernize the process of pharmacovigilance

1. Continued use of expanded database resources: A critical part of the transformation of the drug safety program is maximizing the usefulness of tools used for adverse event signal detection and risk assessment. Use of data other than passive spontaneous reports, including population-based epidemiological data and other types of observational data resources will continue to enhance FDA's capability to conduct targeted post-marketing surveillance, evaluate class effects of drugs, and potentially conduct signal detection using data resources other than reports from the Adverse Event Reporting System (AERS). FDA will continue training and development of existing staff on the use of these resources, and develop the information technology infrastructure needed to support access and analysis of data from these resources.

D. Information Systems and Infrastructure

FDA will continue the Agency's efforts on the following standards-based information systems to support how FDA obtains and analyzes post-market drug safety data and manages emerging drug safety information:

1. Enhanced adverse event reporting system and surveillance tools;

2. IT infrastructure to support access and analyses of externally-linked databases; and

3. Workflow tracking system.

XII. IMPROVING THE EFFICIENCY OF HUMAN DRUG REVIEW THROUGH REQUIRED ELECTRONIC SUBMISSIONS AND STANDARDIZATION OF ELECTRONIC DRUG APPLICATION DATA

A. To enhance the quality and efficiency of FDA's review of NDAs, BLAs, and INDs, FDA shall consult with stakeholders, including pharmaceutical manufacturers and other research sponsors, to issue draft guidance on the standards and format of electronic submission of applications by December 31, 2012.

B. FDA will issue final guidance no later than 12 months from the close of the public comment period on the draft guidance. Such final guidance and any subsequent revisions to the final guidance shall be binding on sponsors, applicants, and manufacturers no earlier than twenty-four months after issuance of the final guidance.

C. Requirements for electronic submission shall be phased in according to the following schedule:

1. Twenty-four (24) months after publication of the final guidance: All new original NDA and BLA submissions, all new NDA and BLA efficacy supplements and amendments, all new NDA and BLA labeling supplements and amendments, all new manufacturing supplements and amendments, and all other new NDA submissions.

2. Thirty-six (36) months after publication of the final guidance: All original commercial INDs and amendments, except for submissions described in section 561 of the Federal Food, Drug, and Cosmetic Act.

D. Because of the significant investments required to change regulatory submission and review software, initial FDA guidance shall specify the format of electronic submission of applications using eCTD version 3.2.2 unless, after notice and an opportunity for stakeholder comment, FDA determines that another version will provide for more efficient and effective applicant submission or FDA review. In general, when FDA revises final guidance requiring submission using a new version of electronic standards or formats, FDA shall also accept submissions using the previous version for no less than twenty-four (24) months.

E. Clinical Terminology Standards: Using a public process that allows for stakeholder input, FDA shall develop standardized clinical data terminology through open standards development organizations (i.e., the Clinical Data Interchange Standards Consortium (CDISC)) with the goal of completing clinical data terminology and detailed implementation guides by FY 2017.

1. FDA shall develop a project plan for distinct therapeutic indications, prioritizing clinical terminology standards development within and across review divisions. FDA shall publish a proposed project plan for stakeholder review and comment by June 30, 2013. FDA shall update and publish its project plan annually.

F. Development of terminology standards for data other than clinical data: To address FDA-identified nonclinical data standards needs, FDA will request public input on the use of relevant already-existing data standards and the involvement of existing standards development organizations to develop new standards or refine existing standards. FDA will obtain this input via publication of a Federal Register notice that specifies a 60-day comment period.

G. FDA shall periodically publish final guidance specifying the completed data standards, formats, and terminologies that sponsors must use to submit data in applications. In the case of standards for study data, new data standards and terminology shall be applicable prospectively and only required for studies that begin 12 months after issuance of FDA's final guidance on the applicable data standards and terminology.

XIII. PROGRESS REPORTING FOR PDUFA V AND CONTINUING PDUFA IV INITIATIVES

On an annual basis, FDA will report on its website the progress in each of the PDUFA V initiatives described in Sections IX, X, XI, and XII. The annual reports will include: (a) descriptions of the hiring and placement of new staff and use of PDUFA resources to support the new initiatives in Sections IX, X, XI.A, XI.B, and XII, and (b) progress reports on achieving metrics described in each of the sections. Each report will be posted on the FDA website no later than 120 days after the end of the fiscal year. The staff resources will support the new initiatives described in Sections IX, X, XIA, XIB and XII and the related work associated with these initiatives to ensure their success.

XIV. INFORMATION TECHNOLOGY GOALS

A. Objective

FDA is committed to achieve the long-term goal of improving the exchange, review, and management of human drug and biologic applications throughout the product life cycle through strategic investments in automated, standards-based information technology (IT).

B. Communications and Technical Interactions

1. FDA will periodically update and publish to the FDA website a five-year plan for business process improvement enabled by IT investments.

a) The plan will frame the strategy for prioritizing IT-enabled business process change, enumerate the business process improvements expected from each IT investment, and convey a consistent series of milestones for each initiative to track pace and progress.

b) FDA will conduct an annual assessment of progress against the plan and publish on the FDA website a summary of the assessment within 3 months after the close of each fiscal year.

c) FDA will publish updates to the plan as FDA deems appropriate. FDA will publish on the FDA web site draft revisions to the plan; solicit comments from the public on those draft revisions; and consider the public comments before completing and publishing updates to the plan.

2. The FDA and industry stakeholders will meet on a quarterly basis to discuss prospective implementation of the plan, progress toward the long term goal, potential impacts that future activities may have on FDA or stakeholders, and potential revisions to the plan.

C. Metrics and Measures

On an annual basis, FDA will measure and report progress toward achievement of the objectives defined in Section XIV.A. Measures will include but are not limited to:

1. The number and percentage of IND, NDA, and BLA submissions received in valid electronic format in compliance with FDA standards, categorized by types of submissions. Increasing the number and percentage of IND, NDA, and BLA submissions received in valid electronic format is a goal that is supported by the FDA and industry stakeholders. Achievement of this goal requires the cooperation of regulated industry. To support the assessment of this goal, the following information will be tracked and reported:

a) Total number of submissions categorized by type of submission

b) Total number of submissions in valid electronic format in compliance with FDA standards

c) Total number of submissions received through the secure electronic single point of entry versus other methods

d) Total number of submissions received substantially on paper or non-standardized electronic format

e) Total number of standards-based electronic submissions that fail to comply with FDA electronic submission standards, along with a distribution of these submission failures across categories of failure or problem type

2. Number and significance of IT technical specifications or e-submission guidance implemented requiring industry to change submission content that are not forecasted accurately in the five year plan or those whose content has not been available to industry at least twelve months prior to required implementation.

3. Spending on Center IT systems and IT systems that are common across the organizational divisions participating in the process for the review of human drug applications. This includes systems development versus maintenance spending; infrastructure support; a report of total PDUFA fee-funded spending versus appropriations-funded spending; FDA enterprise versus PDUFA-program specific support.

XV. IMPROVING FDA PERFORMANCE MANAGEMENT

A. The studies conducted under this initiative are intended to foster:

1. Development of programs to improve access to internal and external expertise

2. Reviewer development programs, particularly as they relate to drug review processes

3. Advancing science and use of information management tools

4. Improving both inter- and intra-Center consistency, efficiency, and effectiveness

5. Improved reporting of management objectives

6. Increased accountability for use of user fee revenues

7. Focused investments on improvements in the process of drug review

8. Improved communication between the FDA and industry

B. Studies will include:

1. Assessment by an independent contractor of the Program for NME NDAs and original BLAs as described in Section IIB.

2. Assessment of the impact of the benefit-risk framework in the human drug review process as described in Section X.A.3.

3. Development of a tool to evaluate the success of the activities of the Rare Disease Program as described in Section IX.D.6.

4. Assessment of the impact of electronic submissions and data standards on the efficiency and other performance attributes of the human drug review process beginning in FY 2015.

5. Assessments by an independent accounting firm of the review activity adjustment methodology, as described in section 736(c)(2), by the end of the second quarter of FY 2013 and by the end of the fourth quarter of FY 2015 with recommendations for changes, if warranted.

XVI. DEFINITIONS AND EXPLANATION OF TERMS

A. The term ''review and act on'' means the issuance of a complete action letter after the complete review of a filed complete application. The action letter, if it is not an approval, will set forth in detail the specific deficiencies and, where appropriate, the actions necessary to place the application in condition for approval.

B. Goal Date Extensions for Major Amendments

1. A major amendment to an original application, efficacy supplement, or resubmission of any of these applications, submitted at any time during the review cycle, may extend the goal date by three months.

2. A major amendment may include, for example, a major new clinical safety/efficacy study report; major re-analysis of previously submitted study(ies); submission of a REMS with ETASU not included in the original application; or significant amendment to a previously submitted REMS with ETASU. Generally, changes to REMS that do not include ETASU and minor changes to REMS with ETASU will not be considered major amendments.

3. A major amendment to a manufacturing supplement submitted at any time during the review cycle may extend the goal date by two months.

4. Only one extension can be given per review cycle.

5. Consistent with the underlying principles articulated in the GRMP guidance, FDA's decision to extend the review clock should, except in rare circumstances, be limited to occasions where review of the new information could address outstanding deficiencies in the application and lead to approval in the current review cycle.

C. A resubmitted original application is a complete response to an action letter addressing all identified deficiencies.

D. Class 1 resubmitted applications are applications resubmitted after a complete response letter (or a not approvable or approvable letter) that include the following items only (or combinations of these items):

1. Final printed labeling

2. Draft labeling

3. Safety updates submitted in the same format, including tabulations, as the original safety submission with new data and changes highlighted (except when large amounts of new information including important new adverse experiences not previously reported with the product are presented in the resubmission)

4. Stability updates to support provisional or final dating periods

5. Commitments to perform Phase 4 studies, including proposals for such studies

6. Assay validation data

7. Final release testing on the last 1–2 lots used to support approval

8. A minor reanalysis of data previously submitted to the application

9. Other minor clarifying information (determined by the Agency as fitting the Class 1 category)

10. Other specific items may be added later as the Agency gains experience with the scheme and will be communicated via guidance documents to industry

E. Class 2 resubmissions are resubmissions that include any other items, including any items that would require presentation to an advisory committee.

F. A Type A meeting is a meeting which is necessary for an otherwise stalled drug development program to proceed (a ''critical path'' meeting) or to address an important safety issue.

G. A Type B Meeting is a 1) pre-IND, 2) end of Phase 1 (for Subpart E or Subpart H or similar products) or end of Phase 2/pre-Phase 3, or 3) a pre-NDA/BLA meeting. Each requestor should usually only request 1 each of these Type B meetings for each potential application (NDA/BLA) (or combination of closely related products, i.e., same active ingredient but different dosage forms being developed concurrently).

H. A Type C meeting is any other type of meeting.

I. The performance goals and procedures also apply to original applications and supplements for human drugs initially marketed on an over-the-counter (OTC) basis through an NDA or switched from prescription to OTC status through an NDA or supplement.

J. IT-specific definitions (refer also to Section XIV)

1. ''Program'' refers to the organizational resources, procedures, and activities assigned to conduct ''the process for the review of human drug applications,'' as defined in the Prescription Drug User Fee Act.

2. ''Standards-based'' means compliant with published specifications that address terminology or information exchange between the FDA and regulated parties or external stakeholders, as adopted by the FDA or other agencies of the federal government, and often based on the publications of national or international Standards Development Organizations.

3. ''FDA Standards'' means technical specifications that have been adopted and published by the FDA through the appropriate governance process. FDA standards may apply to terminology, information exchange, engineering or technology specifications, or other technical matters related to information systems. FDA standards often are based on the publications of other federal agencies, or the publications of national or international Standards Development Organizations.

4. ''Product life cycle'' means the sequential stages of human drug development, regulatory review and approval, post-market surveillance and risk management, and where applicable, withdrawal of an approved drug from the market. In the context of the process for the review of human drug applications, the product life cycle begins with the earliest regulatory submissions in the Investigational New Drug (IND) phase, continues through the New Drug Application (NDA) or Biological Licensing Application (BLA) review phase, and includes post-market surveillance and risk management activities as covered under the process for the review of human drug applications.

GENERIC DRUG USER FEE ACT PROGRAM PERFORMANCE GOALS AND PROCEDURES

The performance efficiencies, metric goals and procedures to which FDA will agree upon commencement of a generic drug user fee act (GDUFA) program (''the program''), as jointly proposed by FDA and industry, are summarized below.

OVERALL PURPOSE OF THE GENERIC DRUG USER FEE PROGRAM

To help FDA ensure that participants in the U.S. generic drug system comply with U.S. quality standards, and to increase the likelihood that American consumers get timely access to low cost, high quality generic drugs, FDA and industry have jointly agreed to a comprehensive user fee program,

to be supplemental to traditional appropriated funding, that is focused on three key aims:

Safety—Ensure that industry participants, foreign or domestic, who participate in the U.S. generic drug system are held to consistent high quality standards and are inspected biennially, using a risk-based approach, with foreign and domestic parity.

Access—Expedite the availability of low cost, high quality generic drugs by bringing greater predictability to the review times for abbreviated new drug applications, amendments and supplements, increasing predictability and timeliness in the review process.

Transparency—Enhance FDA's ability to protect Americans in the complex global supply environment by requiring the identification of facilities involved in the manufacture of generic drugs and associated active pharmaceutical ingredients, and improving FDA's communications and feedback with industry in order to expedite product access.

Recognizing the critical role generic drugs play in providing more affordable, therapeutically equivalent medicine, the Generic Drug User Fee program is designed to keep individual fee amounts as low as possible to supplement appropriated funding to ensure that consumers continue to receive the significant benefits offered by generic drugs which provided more than $824 billion in savings to the nation's health care system in the last decade alone. The additional resources called for under the agreement, an inflation adjusted $299 million annually for each of the five years of the program, will provide FDA with the ability to perform critical program functions that could not otherwise occur. This program is not expected to add significantly to the cost of generic drugs: given that a reported 3.99 billion retail prescriptions per year were dispensed in the United States in 2010, and assuming that 78% of these prescriptions were filled by generic drugs, it equates to less than a dime per prescription for the average cost of a prescription filled by a generic drug in the United States. Moreover, with the adoption of user fees and the associated savings in development time, the overall expense of bringing a product to market may decline and result in reduced costs.

In addition to the public health benefits outlined above, the program described in this letter is expected to provide significant value to small companies and first time entrants in the generic market who will benefit significantly from the certainty associated with performance review metrics that offer the potential to dramatically reduce the time needed to commercialize a generic drug when compared to pre-GDUFA review times.

In addition, the variety of funding sources for the program will assure that participants in the generic drug industry, whether finished dosage form (FDF) manufacturers or Active Pharmaceutical Ingredient (API) manufacturers appropriately share the financial expense and benefits of the program. Given that the total amount of annual user fee funding is expected to be derived from a broad funding source, including an estimated 2000 FDF and API facilities supporting Abbreviated New Drug Applications (ANDAs), as well as approximately 750 ANDAs, 750 prior approval supplements (PASs) and 350 Type II Active Pharmaceutical Drug Master Files (DMFs) annually, user fees are expected to provide a measurable return on investment related to predictability of inspection, and review timelines. The program's goals of ensuring FDA has necessary resources to conduct needed inspections as part of the complete review framework and achieve parity of Good Manufacturing Practice (GMP) inspections for foreign and domestic facilities by the 5th year of the user fee program will also provide significant value to industry participants given that outstanding inspections can result in delays of ANDA approvals.

Taken collectively, the user fee program and associated performance metrics and fees are expected to provide measurable public health benefits and are not expected to competitively disadvantage any company or business sector regardless of size or location.

END NOTES

1. Source: IMS Health Report—GPHA. Savings achieved through the use of generic pharmaceuticals: 2000–2009, July 2010.

2. Source: ''The Use of Medicines in the United States: Review of 2010'', Report by the IMS Institute for Healthcare Informatics, slide 8, available at *http://www.imshealth.com/deployedfiles/imshealth/Global/Content/IMS%20Institute/Static%20File/IHII_UseOfMe_d_report.pdf.*

3. Ibid., slide 22.

1. OVERVIEW

OVERALL PROGRAM SCOPE, ASSUMPTIONS, AND ASPIRATIONS

The goals to which FDA is committing for generic drugs are premised on the following assumptions:

I. Funding for the program from user fees will be at agreed-upon levels of approximately $299 million annually adjusted for inflation and will supplement appropriated funding from Congress as described further below.

II. It is estimated that FDA will receive the funding through approximately 750 abbreviated new drug applications (ANDAs) per year submitted electronically, approximately 750 prior approval supplements (PASs) approximately 350 newly referenced drug master files (DMFs) per year and through approximately 2000 facilities associated with ANDAs. While the total revenue collected can be defined in advance and is constant as the resourcing level must be constant, the individual fee will be determined each year based on the variability of the fee source.

III. Over the five year course of the program, there will be no significant changes in the generic drug facility inventory, either in terms of general number of facilities, or the foreign and domestic facility split.

IV. FDA will have streamlined hiring authority for all GDUFA-related positions prior to or concurrent with the implementation date of the program.

V. FDA expects the program will be implemented starting on the first day of Fiscal Year 2013, October 1, 2012 and continue for five years, with the joint expectation that the program will be continued at the end of five years under terms to be negotiated before the end of FY 2017.

VI. Industry and FDA will populate and maintain databases as necessary for facilities, fee assessments, efficiency and other enhancements as described further below and as needed to support the Generic Drug User Fee Act. Because certain databases to implement this program will need to be built, and existing systems need to be expanded or modified, industry will submit necessary information in electronic format to FDA using appropriate standards to be specified by the agency or as specified in statute.

VII. FDA will aspire to the extent possible to maintain levels of productivity at least similar to pre-GDUFA levels, while hiring and training incremental staff necessary to achieve the program performance goals, building necessary systems and implementing outlined program changes in years 1 and 2 of the program (see goals for years 3–5 metrics).

VIII. FDA will utilize a complete review standard (as defined below), will aspire to hold first cycle deficiency teleconferences with industry to discuss complete response questions at a level at least similar to pre-GDUFA levels in years 1 and 2 of the program (see goals for years 3–5 metrics) and will utilize an approach similar to the NDA review process whereby FDA uses telephone information requests to address easily correctable deficiencies during the review process before and after issuance of complete response letters.

IX. FDA will aspire to complete reviews for applications with only minor administrative amendments pending prior to the expiration date of the controlling patent or applicable exclusivity date regardless of the amendment(s) goal date.

X. FDA will work towards achieving performance goals to reach parity of GMP inspections of foreign and domestic establishments, will prioritize inspections using a risk-based approach, and will prioritize inspections of establishments associated with ANDAs that are otherwise approvable or eligible for tentative approval except for an outstanding inspection, as well as establishments associated with ANDAs that have not been inspected previously. In appropriate circumstances FDA can rely on a routine surveillance inspection in lieu of an application-specific inspection. Generally, among other considerations, FDA relies on a previous inspection of a finished product site occurring within 2 years of the current good manufacturing practice (CGMP) evaluation for a pending application, 3 years for an active pharmaceutical ingredient (API) site or a control testing laboratory, and 4 years for a packaging-only site. There are exceptions to this general practice, which are usually related to the nature of the drug being processed or the complexity of the associated processing operations. FDA intends to continue the practice of using a risk-based assessment in determining the length of time since the last inspection, guided by a 2-year cycle for finished dosage product sites and a 3-year cycle for API sites and consideration of the type of finished product or API in the application. Practically, this means that in making decisions about pending applications for which FDA does not have current inspection information within the time period indicated, FDA may use previous FDA inspection information and/or use inspection information from another regulatory authority as appropriate.

XI. FDA will strive to review and act on all ANDAs that are submitted on the first day that any valid Paragraph IV application for the drug in question is submitted within 30 months of submission to avoid causing first applicants to inadvertently forfeit 180-day exclusivity eligibility under 21 U.S.C. §355(j)(5)(D)(i)(IV).

XII. Because the agreed generic drug user fee program is intended to be additive to budget appropriations, agreed upon legislative language will require that annual program appropriations from Congress must be equal to or exceed the FDA appropriation for FY 2009.

XIII. In order to generate the agreed upon levels of user fee funding to achieve the enclosed performance goals, metrics and efficicienies, legislative language will require that approximately 70% of GDUFA fees shall be derived from facility fees (for facilities producing or pending review to produce active pharmaceutical ingredients or finished dosage forms for a generic drug application), approximately 30% of GDUFA fees shall be derived from application fees (DMF Fees and ANDA and PAS (Prior Approval Supplement) Fees). As discussed and agreed by the various industry business segments, overall fees will be divided 80 percent to 20 percent between the finished dosage form (FDF) and API and manufacturers, respectively in industry. In the first year of the

program, $50 million of the total GDUFA user fee funding shall be generated by a one time backlog fee for ANDAs pending (except for ANDAs that are pending but have received tentative approval) on October 1, 2012.

XIV. For appeals of decisions concerning procedural or scientific matter involving review of pending ANDAs, ANDA amendments and ANDA supplements FDA will aspire that the response to appeals of decisions will occur within 30 calendar days of OGD receipt of the written appeal when possible, though no reportable performance goals are required.

Note: If these assumptions differ significantly from actuality, FDA may not be able to achieve the goals and efficiency enhancements outlined in this goals letter, despite the supplemental funding provided by the program.

SUMMARY OF MAJOR PROGRAM GOALS INCLUDING FIVE YEAR GOALS

Major Program (including 5 year) goals can be summarized as follows:

Note that FDA agrees to additional 5 year goals, as set forth later in this goals letter, such as goals on amendments, controlled correspondence, and prior approval supplements, as well as goals for years prior to year 5 of the program. The goals summarized in this section are a subset of the complete year 5 goals, and are intended simply to illustrate the scope of the program.

Application metrics—For Abbreviated New Drug Applications (ANDAs) in the year 5 cohort, FDA will review and act on 90 percent of complete electronic ANDAs within 10 months after the date of submission. Certain amended applications may have differing metrics as discussed below.

Backlog metrics—FDA will review and act on 90 percent of all ANDAs, ANDA amendments and ANDA prior approval supplements regardless of current review status (whether electronic, paper, or hybrid) pending on October 1, 2012 by the end of FY 2017.

CGMP Inspection metrics—FDA will conduct risk-adjusted biennial CGMP surveillance inspections of generic API and generic finished dosage form (FDF) manufacturers, with the goal of achieving parity of inspection frequency between foreign and domestic firms in FY 2017.

Efficiency Enhancements—FDA will implement various efficiency enhancements discussed below on October 1, 2012 or upon enactment of the program, whichever is later.

Regulatory Science—FDA will continue, and for some topics begin undertaking various regulatory science initiatives discussed below on October 1, 2012 or upon enactment of the program, whichever is later, focusing first on the initiatives discussed below and with additional initiatives to be identified with input from an industry working group.

Details follow.

2. EFFICIENCY ENHANCEMENTS TO BE UNDERTAKEN ON OCTOBER 1, 2012, OR UPON ENACTMENT OF THE PROGRAM, WHICHEVER IS LATER

A. ANDA REVIEW EFFICIENCY ENHANCEMENTS

Starting on October 1, 2012 or upon enactment of the program, whichever is later, FDA will issue complete response letters, rather than discipline specific letters, for all ANDAs, including those pending on October 1, 2012.

Complete response letters will reflect full division-level review of deficiencies from all relevant review disciplines, including inspections, and address other matters relating to the ANDA and associated DMFs as well as consults with other agency components (these will be subsumed into the application metrics).

FDA reviewers will make every reasonable effort to communicate promptly to applicants easily correctable deficiencies found in the ANDA and will utilize an approach similar to the NDA review process whereby FDA uses telephone information requests to address easily correctable deficiencies during the review process before and after issuance of complete response letters.

When requested by the ANDA sponsor within 10 business days of FDA issuing a first cycle complete response letter, as provided by the sponsor in a written request that outlines specific written questions the applicant would like to discuss (limited to the content of the letter), FDA will schedule a 30 minute teleconference to clarify issues and answer questions. Priority for such teleconferences will be given to expedited and first major amendment applications. Although FDA will begin to develop procedures and tracking systems for such teleconferences coincident with the start of the program, there will be no teleconference goals for the first two years of the program although FDA will aspire to conduct such teleconferences as requested when reportable performance goals are not otherwise required. In the first two years, FY 2013 and FY 2014, FDA would aspire to hold teleconferences with industry to address complete response questions at a level similar to pre-GDUFA levels. Subsequently, the goals for number of reportable teleconferences (although FDA may conduct more such teleconferences) will be:

Closing out the teleconference request for 200 meetings in FY 2015;

Closing out the teleconference request for 250 meetings in FY 2016;

Closing out the teleconference request for 300 meetings in FY 2017.

FDA will develop enhanced refusal to receive standards for ANDAs and other related submissions by the end of year 1 of the program and will publish such standards in advance of implementation.

For ANDAs in the year 1 and 2 cohorts, FDA will expedite review of Paragraph IV applications that are submitted on the first day that any valid Paragraph IV application for the drug in question is submitted. Expedited review will be implemented consistent with existing procedure for expediting applications as set forth in CDER's MAPP 5240.3, and will also include those applications that become eligible for approval during the review period as a result of no blocking exclusivities, patent(s) and/or applicable stays based on appropriate documentation submitted.

Review metric goals (described below) only apply to submissions made electronically, following the eCTD format in effect at the date of submission.

Backlog review metric goals (described below) apply to all ANDA applications, amendments, and supplements regardless of current review status in the queue as of October 1, 2012, regardless of whether they were submitted in paper, electronic, or hybrid format.

B. DRUG MASTER FILE (DMF) REVIEW EFFICIENCY ENHANCEMENTS

After the program's implementation date, upon payment of the DMF fee by DMF holders anticipating reference by a generic drug manufacturer, FDA will conduct a completeness assessment of Type II API DMFs. Following a satisfactory completeness assessment, FDA will deem the DMF available for reference, placing the DMF number in a publicly available list of Type II API DMFs available for reference.

Review metric goals (described below) will only apply to Type II API DMFs submitted after the program's implementation date, if they are submitted electronically. Electronic DMFs will follow the eCTD format in effect at date of submission.

FDA will issue a letter detailing all identified deficiencies, rather than discipline specific letters, for all DMFs including those under review at the time of enactment of the implementing legislation.

The DMF deficiency letters will reflect full division-level deficiency review of deficiencies from all relevant review disciplines, including inspections, and address other matters relating to the DMF review such as consults with other agency components (these will be subsumed into the DMF metrics).

FDA reviewers will make every reasonable effort to communicate promptly to applicants easily correctable deficiencies found in the DMF and will continue to utilize an approach similar to the NDA review process whereby FDA uses telephone information requests to address easily correctable deficiencies during the review process before and after issuance of complete response letters.

When requested by a DMF holder within 10 business days of FDA issuing a first cycle DMF deficiency letter, as provided by the DMF holder in a written request that outlines specific written questions the DMF holder would like to discuss (limited to the content of the letter), FDA will schedule a 30 minute teleconference with a limit of one teleconference per DMF holder per month, with the total number of teleconferences not to exceed the number of teleconferences for ANDAs, a teleconference to clarify issues and answer questions. Priority for such teleconferences will be given to DMFs referenced in expedited and first major deficiency applications. Although FDA will begin to develop procedures and tracking systems for such teleconferences coincident with the start of the program, there will be no teleconference goals for the first two years of the program although FDA will aspire to conduct such teleconferences as requested when reportable performance goals are not otherwise required. In the first two years, FY 2013 and FY 2014, FDA would aspire to hold teleconferences with industry to address DMF deficiency questions at a level similar to pre-GDUFA levels (although FDA may conduct more such teleconferences).

Once a DMF has undergone a complete review and the ANDA referencing same is either approved or tentatively approved—at such time there being no further outstanding deficiencies to the DMF—FDA will issue the DMF holder a letter to indicate that the DMF does not have any further open matters as part of the review associated with the referencing ANDA.

C. INSPECTION EFFICIENCY ENHANCEMENTS

To maximize the number of applications that can be reviewed within the metric goals and to assist in securing the pharmaceutical supply chain, FDA will employ a risk-adjusted biennial CGMP surveillance inspection model for inspection of generic API and FDF manufacturers, with the goal of achieving parity of inspection frequency between foreign and domestic establishments in FY 2017 and will prioritize inspections of establishments associated with ANDAs that are otherwise approvable or eligible for tentative approval except for an outstanding inspection, as well as establishments that have not been inspected previously.

FDA will make inspection classification results and date of the last facility inspection available to the public and industry on FDA's website on timely basis.

During the five years of the program, FDA will undertake a study of foreign government regulator inspections (CGMP and bioequivalence), report findings publicly, and develop a program to utilize foreign inspection classifications when and where appropriate.

D. OTHER EFFICIENCY ENHANCEMENTS

FDA will develop new and/or enhance existing facility databases (API and FDF manufacturing and clinical/ bioequivalence site) to be populated by industry. These databases will, at a minimum, contain information for generics-related firms, including addresses and Data Universal Numbering System (DUNS) numbers, and will link facilities to DMFs and ANDAs and will contain other information as necessary.

FDA will develop a current chemistry manufacturing and controls (CMC) records database to aid in the efficiency of review and inspection.

FDA will develop and issue electronic data submission standards.

Because certain databases to implement this program will need to be built, and existing systems need to be expanded or modified, industry will submit necessary information in electronic format to FDA using appropriate standards to be specified by the agency or as specified in statute.

3. REGULATORY SCIENCE INITIATIVES

A. WORKING GROUP

FDA will convene a working group and consider suggestions from industry and other stakeholders to develop an annual list of regulatory science initiatives for review by CDER Director.

B. FY 2013 PLAN

The FY 2013 plan is appended.

4. METRIC GOALS/MEASUREMENTS

A. HUMAN RESOURCES METRICS

FDA will hire and train at least 25 percent of incremental staff in FY 2013, 50 percent in FY 2014 and will strive to complete GDUFA-funded human resources hiring goals in FY 2015 as necessary to achieve the program's performance metrics and goals.

B. ANDA, ANDA AMENDMENT, AND ANDA PRIOR APPROVAL SUPPLEMENT REVIEW METRICS AND DMF REVIEWS AS SUBSUMED IN EACH

ANDAs will be categorized according to cohort year.

Once an ANDA is in a given year's cohort, dates of submission of a subsequent amendment will not change the cohort year. Regardless of the year in which an amendment is submitted, any additional time periods to be added to the base review period will be calculated using the time periods corresponding to the original cohort year.

Original (complete) ANDA Review (Certain amended applications may have differing metrics as discussed below.)

FDA will review and act on 60 percent of original ANDA submissions within 15 months from the date of submission for the year 3 cohort.

FDA will review and act on 75 percent of original ANDA submissions within 15 months from the date of submission for the year 4 cohort.

FDA will review and act on 90 percent of original ANDA submissions within 10 months from the date of submission for the year 5 cohort.

For ANDAs in the year 1 and 2 cohorts, FDA will expedite review of Paragraph IV applications that are submitted on the first day that any valid Paragraph IV application for the drug in question is submitted.

Amendment Review

All amendment metric goals are incremental, and the time periods specified are calculated from the date of submission. They will be added to the original review goal, but in no case shall they shorten the original goal date. (In other words, an amendment with a 6 month metric which was submitted 4 months prior to original goal date would add 2 months to the review clock).

An amendment pre Complete Response Letter adjusts the goal date for the original application.

Subsequent amendments pre Complete Response Letter also adjust the goal date for the application and are additive.

An amendment post Complete Response Letter sets a new goal date for the application.

Subsequent amendments post Complete Response Letter also adjust the goal date for the application and are additive.

Delaying amendments or amendments containing information that FDA would otherwise ask for as a result of post ANDA submission reference listed drug changes do not add to the count of amendments.

If any amendment contains multiple elements, the longest goal date shall apply.

Amendments shall be grouped as Tier 1, Tier 2 or Tier 3. FDA agrees that unsolicited amendments that are submitted to a pending ANDA that are neither Tier 1, Tier 2 or Tier 3 amendments, but rather are routine or administrative in nature and do not require scientific review (e.g., requests for final ANDA approval, patent amendments, general correspondence, and USP monograph updates), will not lengthen or impact the original review goal date.

Tier 1 amendments include:

All solicited first major and the first five minor amendments

All unsolicited amendments indicated by sponsor and agreed by FDA to be a result of either delaying actions as determined by FDA's Office of Generic Drugs taking into account the facts and information supplied by the ANDA applicant or that otherwise would eventually be solicited.

Tier 2 amendments include:

All unsolicited amendments not arising from delaying actions as determined by FDA's Office of Generic Drugs taking into account the facts and information supplied by the ANDA applicant excepting those amendments which only remove information for review.

Tier 3 amendments include:

Any solicited major amendment subsequent to the first major amendment

Any solicited minor amendment subsequent to the fifth minor amendment

Tier 1 amendment goals:

First major amendment

FDA will review and act on 60 percent of first major amendment submissions within 10 months from the date of submission for the year 3 cohort.

FDA will review and act on 75 percent of first major amendment submissions within 10 months from the date of submission for the year 4 cohort.

FDA will review and act on 90 percent of first major amendment submissions within 10 months from the date of submission for the year 5 cohort.

Minor amendments (first—third)

FDA will review and act on 60 percent of first through third minor amendment submissions within 3 months from the date of submission for the year 3 cohort.

FDA will review and act on 75 percent of first through third minor amendment submissions within 3 months from the date of submission for year 4 cohort.

FDA will review and act on 90 percent of first through third minor amendment submissions within 3 months from the date of submission for the year 5 cohort.

Minor amendments (fourth—fifth)

FDA will review and act on 60 percent of fourth through fifth minor amendment submissions within 6 months from the date of submission for the year 3 cohort.

FDA will review and act on 75 percent of fourth through fifth minor amendment submissions within 6 months from the date of submission for year 4 cohort.

FDA will review and act on 90 percent of fourth through fifth minor amendment submissions within 6 months from the date of submission for the year 5 cohort.

Except that if any Tier 1 amendment requires an inspection, the goal shall be 10 months.

Tier 2 amendment goals:

FDA will review and act on 60 percent of amendment submissions within 12 months from the date of submission for the year 3 cohort.

FDA will review and act on 75 percent of amendment submissions within 12 months from the date of submission for year 4 cohort.

FDA will review and act on 90 percent of amendment submissions within 12 months from the date of submission for the year 5 cohort.

Tier 3 amendment goals:

There will be no GDUFA metrics for tier 3 amendments.

Review of Complete Prior Approval Supplements (PASs) (Certain amended PASs may have differing metrics as discussed above in the Amendment Review section).

FDA will review and act on 60 percent of PASs not requiring inspection within 6 months from the date of submission for receipts in FY 2015; FDA will review and act on 60 percent of PASs requiring inspection within 10 months from the date of submission for receipts in FY 2015.

FDA will review and act on 75 percent of PASs not requiring inspection within 6 months from the date of submission for receipts in FY 2016; FDA will review and act on 75 percent of PASs requiring inspection within 10 months from the date of submission for receipts in FY 2016.

FDA will review and act on 90 percent of PASs not requiring inspection within 6 months from the date of submission for receipts in FY 2017; FDA will review and act on 90 percent of PASs requiring inspection within 10 months from the date of submission for receipts in FY 2017.

C. CONTROLLED CORRESPONDENCE METRICS

Controlled Correspondence

FDA will respond to 70 percent of controlled correspondence in 4 months from date of submission in FY 2015.

FDA will respond to 70 percent of controlled correspondence in 2 months from date of submission in FY 2016.

FDA will respond 90 percent of controlled correspondence in 2 months from date of submission in FY 2017.

If the controlled correspondence requires input from the clinical division, one additional month will be added to the goals outlined above.

In the case of controlled correspondence which raises an issue or question that is the same as or related to the issue or question that is the subject of one or more pending citizen petitions, or petitions for stay or reconsideration, the above goals will apply from the date FDA issues responses to the pending petitions.

D. CGMP INSPECTION METRICS

FDA will conduct risk-adjusted biennial CGMP surveillance inspections of generic API and generic finished dosage form (FDF) manufacturers, with the goal of achieving parity of inspection frequency between foreign and domestic firms in FY 2017.

E. BACKLOG METRICS

FDA will review and act on 90 percent of all ANDAs, ANDA amendments, and ANDA prior approval supplements regardless of current review status (whether electronic, paper, or hybrid) pending on October 1, 2012 by the end of FY 2017.

DEFINITIONS

For the purposes of this goals letter:

Act on an application—means FDA will either issue a complete response letter, an approval letter, a tentative approval letter for an ANDA, or a refuse to receive action.

Active pharmaceutical ingredient—means (A) a substance, or a mixture when the substance is unstable or cannot be transported on its own, intended to be used as a component of a drug and intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the human body; or (B) a substance intended for final crystallization, purification, or salt formation, or any combination of those activities, to become the final active pharmaceutical ingredient as defined in paragraph (A).

Backlog—refers to the queue of pending ANDAs, ANDA amendments and ANDA supplements pending as of October 1, 2012.

Delaying amendments—refers to amendments to an ANDA from the ANDA sponsor to address actions by a third party that would cause delay or impede application review or approval timing and that were not or may not have been initially recognized by FDA as necessary when the application was first submitted. FDA's Office of Generic Drugs shall have broad discretion to determine what constitutes a delaying event caused by actions generally outside of the applicants control taking into account facts and information supplied by the ANDA sponsor.

Closing out a request for a first cycle review teleconference—means: 1) holding the teleconference; or 2) responding to questions in the sponsor's teleconference request in writing in lieu of holding the teleconference.

Cohort—The program is structured based on 5 cohorts of submission dates (original ANDAs, PASs and DMFs), corresponding to the five fiscal years to be covered by the program. The year 1 cohort refers to the dates of submissions made electronically in FY 2013 (October 1, 2012 to September 30, 2013). The year 2 cohort refers to the dates of submissions made electronically in FY 2014 (October 1, 2013 to September 30, 2014). The year 3 cohort refers to the dates of submissions made electronically in FY 2015 (October 1, 2014 to September 30, 2015). The year 4 cohort refers to submissions made electronically in FY 2016 (October 1, 2015 to September 30, 2016). The year 5 cohort refers to submissions made electronically in FY 2017 (October 1, 2016 to September 30, 2017).

Complete response letter—refers to a written communication to an applicant or DMF holder from FDA usually describing all of the deficiencies that the agency has identified in an abbreviated application (including pending amendments) or a DMF that must be satisfactorily addressed before the ANDA can be approved. Complete response letters will reflect a complete review and will require a complete response from industry to restart the clock. Refer to 21 CFR 314.110 and *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/LawsActsandRules/ucm084138.htm* for additional details. When a citizen petition may impact the approvability of the ANDA, FDA will strive to address, where possible, valid issues raised in a relevant citizen petition in the complete response letter. If a citizen petition raises an issue that would delay only part of a complete response, a response that addresses all other issues will be considered a complete response.

Complete review—refers to a full division-level review from all relevant review disciplines, including inspections, and includes other matters relating to the ANDA and associated DMFs as well as consults with other agency components.

Controlled correspondence—FDA'S Office of Generic Drugs provides assistance to pharmaceutical firms and related industry regarding a variety of questions posed as ''controlled documents.'' See *http://www.fda.gov/AboutFDA/CentersOffices/CDER/ucm120610.htm*. Controlled correspondence does not include citizen petitions, petitions for reconsideration or requests for stay.

DMF or *Type II Active Pharmaceutical Ingredient Drug Master File*—means a submission of information to the Secretary by a person that intends to authorize the Food and Drug Administration to reference the information to support approval of a generic drug submission without the submitter having to disclose the information to the generic drug submission applicant.

Electronic—refers to submissions in an all electronic eCTD format in effect at the date of submission.

Expedited review of application—While generally, review of original ANDAs, ANDA amendments and ANDA supplements are reviewed in the order received, (first-in, first-reviewed), certain applications may be identified at the date of submission for expedited review, as described in CDER's MAPP 5240.3. (See *http://www.fda.gov/downloads/AboutFDA/CentersOffices/CDER/ManualofPoliciesProcedures/ucm079787.pdf*) which includes expedited review of the original submission and amendment(s) associated with the expedited review qualifying application. Products to respond to current and anticipated public health emergencies, products under special review programs, such as the President's Emergency Plan for AIDS Relief (PEPFAR), products for which a nationwide shortage has been identified, and first generic products for which there are no blocking patents or exclusivities on the reference listed drug currently may qualify for expedited review. For ANDAs in the year 1 and 2 cohorts, FDA will expedite review of Paragraph IV applications that are submitted on the first day that any valid Paragraph IV application for the drug in question is submitted.

Facility—means business or other entity under one management either direct or indirect and at one geographic location or address engaged in manufacturing or processing an active pharmaceutical ingredient or a finished dosage form, but does not include a business or other entity whose only manufacturing or processing activities are one or more of the following: repackaging, relabeling, or testing. For purposes of this definition, separate buildings within close proximity are considered to be at one geographic location or address if the activities in them are closely related to the same business enterprise, under the supervision of the same local management, and are capable of being inspected by the Food and Drug Administration during a single inspection.

Finished Dosage Form—means (A) a drug product in the form in which it will be administered to a patient, such as a tablet, capsule, solution, or topical application; (B) a drug product in a form in which reconstitution is necessary prior to administration to a patient, such as oral suspensions or lyophilized powders; or (C) any combination of an active pharmaceutical ingredient, as defined in paragraph (m)(2), with another component of a drug product for purposes of production of such a drug product.

First major deficiency application—means an ANDA which has been issued its first complete response letter classified as having major deficiency(ies).

Generic Drug Program—refers to all agency activities related to the determination of approvability of an ANDA.

Major and minor amendments—All references to ''major'' and ''minor'' amendments in this goals letter are intended to refer to the distinctions that FDA described in its Guidance for Industry: Major, Minor, Telephone Amendments to Abbreviated New Drug Applications. See *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm072888.pdf*

Parity—in reference to inspections, as between foreign and domestic facilities, means inspection at an equal frequency plus or minus 20 percent with comparable depth and rigor of inspection.

Refuse to receive—means refusal to file an application. See 21 CFR 314.101 and *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM080561.pdf1993*

Solicited amendment—an amendment submitted in response to a Complete Response letter.

Submission date—is the date an ANDA, ANDA amendment, ANDA supplement, or Type II active pharmaceutical drug master file arrives in the appropriate electronic portal of the FDA.

Prior Approval Supplements—A prior approval supplement is a submission to allow a company to make a change in a product that already has an approved ANDA. CDER must approve all important ANDA changes (in packaging or ingredients, for instance) to ensure the conditions originally set for the product are still met. (Source: *http://www.fda.gov/Drugs/InformationOnDrugs/ucm079436.htm#S)*

Unsolicited amendment—an amendment with information not requested by the FDA except for those unsolicited amendments considered routine or administrative in nature and that do not require scientific review (e.g., requests for final ANDA approval, patent amendments, general correspondence, and USP monograph updates).

FY 2013 REGULATORY SCIENCE PLAN

Topic 1: Bioequivalence of local acting orally inhaled drug products

Impact: Continue to develop new and improved PD endpoints and study designs or establishment of alternative approaches to ensure equivalent local delivery of orally inhaled drug product to the lung would lead to more efficient development of generic products in a sector that lacks any generic competition

Topic 2: Bioequivalence of local acting topical dermatological drug products

Impact: Continue developing new bioequivalence methods in order to reduce the need for relatively insensitive clinical endpoint bioequivalence studies. Development of in vitro release tests or other product characterization to ensure consistent drug release or product performance

Topic 3: Bioequivalence of local acting gastro-intestinal drug products

Impact: Developing new bioequivalence methods for direct measurement of drug concentrations in the GI tract and establishing better correlations between pharmacokinetic measurements and GI concentration would allow more efficient demonstration of bioequivalence than by clinical endpoint studies.

Topic 4: Quality by design of generic drug products

Impact: Continue developing science-based recommendations for product development, raw material, APIs and process controls, and life-cycle management of complex dosage forms (e.g. orally inhaled drug products and modified-release dosage forms)

Topic 5: Modeling and simulation

Impact: Modeling and simulation (including in-vitro and in-vivo correlations) is essential to efficient implementation of quality by design and can help to identify and eliminate unneeded in-vitro and/or in-vivo studies. Models (PK/PD, exposure-response, clinical use simulation) support generic drug evaluation policies especially for NTI drugs and complex products.

Topic 6: Pharmacokinetic studies and evaluation of anti-epileptic drugs

Impact: Improving public confidence in bioequivalent generic epilepsy drugs.

Topic 7: Excipient effects on permeability and absorption of BCS Class 3 Drugs

Impact: Extension of biowaivers to BCS Class 3 Drugs and eliminating the need for unnecessary in vivo bioequivalence studies

Topic 8: Product- and patient-related factors affecting switchability of drug-device combination products (e.g., orally inhaled and nasal drug products and injection drug products)

Impact: Establishing a systematic, science- and risk-based approach to ensure device switchability, and improving the patient's compliance and acceptability of generic devices

Topic 9: Postmarketing surveillance of generic drug usage patterns and adverse events.

Impact: Improved data collection about usage patterns (which strengths are used in which populations, extent of switchability, back switches to RLD products, medication errors) will be fed back into regulatory policy development including those for excipients and impurities. Baseline data collection on adverse event reports on switching to an authorized generic would improve the ability to investigate reports.

Topic 10: Evaluation of drug product physical attributes on patient acceptability

Impact: Laboratory and human studies on physical attributes such as tablet size, shape, coating, odor perception (residual solvents), score configuration, taste masking or color on the ability of patient to use (for example swallow) or perceive quality (for example smell) will allow OGD to provide better guidance to applicants on how these physical attributes should be controlled and compared to the RLD.

Topic 11: Postmarking assessment of generic drugs and their brand-name counterparts

Impact: Stronger public confidence in generic drugs because of pro-active responses to product concerns. An integrated response to product concerns involving laboratory investigations and post-marketing data collection.

Topic 12: Physicochemical characterization of complex drug substances

Impact: Developing analytical methods for demonstrating pharmaceutical equivalence for complex drug substances (non-small molecules) characterized by natural source origin, polydisperse mixture, and/or supramolecular structure, and therefore expanding the boundary of the generic drug program for these complex drug products

Topic 13: Develop a risk-based understanding of potential adverse impacts to drug product quality resulting from changes in API manufacturing and controls.

Impact: The ability to predict the potential impacts of manufacturing changes on product quality will allow manufacturers to target assessments and controls on high-risk areas for regulators to focus their reviews on these areas too.

FY 2014 REGULATORY SCIENCE PRELIMINARY TOPICS FOR CONSIDERATION

In addition to those topics to be identified by the Working Group described in section 3.A of this letter, topics will include recommendations for draft guidances to clarify FDA recommendations with regard to complex product development and to help limit deficiencies in applications.

BIOSIMILAR BIOLOGICAL PRODUCT AUTHORIZATION PERFORMANCE GOALS AND PROCEDURES FOR FISCAL YEARS 2013 THROUGH 2017

FDA proposes the following goals contingent on the allocation of resources for each of the fiscal years 2013–2017 of at least the inflation-adjusted value of $20 million in non-user fee funds, plus collections of biosimilar user fees, to support the process for the review of biosimilar biological applications.

I. REVIEW PERFORMANCE GOALS

A. Biosimilar Biological Product Application Submissions and Resubmissions

FY 2013

1. Review and act on 70 percent of original biosimilar biological product application submissions within 10 months of receipt.

2. Review and act on 70 percent of resubmitted original biosimilar biological product applications within 6 months of receipt.

FY 2014

1. Review and act on 70 percent of original biosimilar biological product application submissions within 10 months of receipt.

2. Review and act on 70 percent of resubmitted original biosimilar biological product applications within 6 months of receipt.

FY 2015

1. Review and act on 80 percent of original biosimilar biological product application submissions within 10 months of receipt.

2. Review and act on 80 percent of resubmitted original biosimilar biological product applications within 6 months of receipt.

FY 2016

1. Review and act on 85 percent of original biosimilar biological product application submissions within 10 months of receipt.

2. Review and act on 85 percent of resubmitted original biosimilar biological product applications within 6 months of receipt.

FY 2017

1. Review and act on 90 percent of original biosimilar biological product application submissions within 10 months of receipt.

2. Review and act on 90 percent of resubmitted original biosimilar biological product applications within 6 months of receipt.

B. Supplements with Clinical Data

1. Review and act on 90 percent of original supplements with clinical data within 10 months of receipt.

2. Review and act on 90 percent of resubmitted supplements with clinical data within 6 months of receipt.

C. Original Manufacturing Supplements

1. Review and act on 90 percent of manufacturing supplements within 6 months of receipt.

D. Goals Summary Tables

ORIGINAL AND RESUBMITTED APPLICATIONS AND SUPPLEMENTS

Submission cohort	Performance goal				
	2013	2014	2015	2016	2017
Original Biosimilar Biological Product Application Submissions	70% in 10 months of the receipt date.	70% in 10 months of the receipt date.	80% in 10 months of the receipt date.	85% in 10 months of the receipt date.	90% in 10 months of the receipt date
Resubmitted Original Biosimilar Biological Product Applications	70% in 6 months of the receipt date.	70% in 6 months of the receipt date.	80% in 6 months of the receipt date.	85% in 6 months of the receipt date.	90% in 6 months of the receipt date
Original Supplements with Clinical Data	90% in 10 months of the receipt date				
Resubmitted Supplements with Clinical Data	90% in 6 months of the receipt date				
Manufacturing Supplements	90% in 6 months of the receipt date				

II. FIRST CYCLE REVIEW PERFORMANCE

A. Notification of Issues Identified during the Filing Review

1. Performance Goal: For original biosimilar biological product applications and supplements with clinical data, FDA will report substantive review issues identified during the initial filing review to the applicant by letter, teleconference, facsimile, secure e-mail, or other expedient means.

2. The timeline for such communication will be within 74 calendar days from the date of FDA receipt of the original submission.

3. If no substantive review issues were identified during the filing review, FDA will so notify the applicant.

4. FDA's filing review represents a preliminary review of the application and is not indicative of deficiencies that may be identified later in the review cycle.

5. FDA will notify the applicant of substantive review issues prior to the goal date for 90% of applications.

B. Notification of Planned Review Timelines

1. Performance Goal: For original biosimilar biological product applications and supplements with clinical data, FDA will inform the applicant of the planned timeline for review of the application. The information conveyed will include a target date for communication of feedback from the review division to the applicant regarding proposed labeling, postmarketing requirements, and postmarketing commitments the Agency will be requesting.

2. The planned review timeline will be included with the notification of issues identified during the filing review, within 74 calendar days from the date of FDA receipt of the original submission.

3. The planned review timelines will be consistent with the Guidance for Review Staff and Industry: Good Review Management Principles and Practices for PDUFA Products (GRMPs), taking into consideration the specific circumstances surrounding the individual biosimilar biological product application.

4. The planned review timeline will be based on the application as submitted.

5. FDA will inform the applicant of the planned review timeline for 90% of all applications and supplements with clinical data.

6. In the event FDA determines that significant deficiencies in the application preclude discussion of labeling, postmarketing requirements, or postmarketing commitments by the target date identified in the planned review timeline (e.g., failure to demonstrate a biosimilar biological product is highly similar to the reference product, significant safety concern(s), need for a new study(ies) or extensive re-analyses of existing data before approval), FDA will communicate this determination to the applicant in accordance with GRMPs and no later than the target date. In such cases the planned review timeline will be considered to have been met. Communication of FDA's determination may occur by letter, teleconference, facsimile, secure e-mail, or other expedient means.

7. To help expedite the development of biosimilar biological products, communication

of the deficiencies identified in the application will generally occur through issuance of a discipline review (DR) letter(s) in advance of the planned target date for initiation of discussions regarding labeling, postmarketing requirements, and postmarketing commitments the Agency may request.

8. If the applicant submits a major amendment(s) (refer to Section VIII.B for additional information on major amendments) and the review division chooses to review such amendment(s) during that review cycle, the planned review timeline initially communicated (under Section II.B.1 and 2) will generally no longer be applicable. Consistent with the underlying principles articulated in the GRMP guidance, FDA's decision to extend the review clock should, except in rare circumstances, be limited to occasions where review of the new information could address outstanding deficiencies in the application and lead to approval in the current review cycle.

If the review division determines that the major amendment will result in an extension of the biosimilar biological product review clock, the review division will communicate to the applicant at the time of the clock extension a new planned review timeline, including a new review timeline for communication of feedback on proposed labeling, postmarketing requirements, and any postmarketing commitments the Agency may request.

In the rare case where the review division determines that the major amendment will not result in an extension of the biosimilar biological product review clock, the review division may choose to retain the previously communicated planned review timeline or may communicate a new planned review timeline to the applicant.

The division will notify the applicant promptly of its decision regarding review of the major amendment(s) and whether the planned review timeline is still applicable.

III. REVIEW OF PROPRIETARY NAMES TO REDUCE MEDICATION ERRORS

To enhance patient safety, FDA will utilize user fees to implement various measures to reduce medication errors related to look-alike and sound-alike proprietary names and such factors as unclear label abbreviations, acronyms, dose designations, and error prone label and packaging design.

A. Review Performance Goals—Biosimilar Biological Product Proprietary Names

1. Proprietary names submitted during the biosimilar biological product development (BPD) phase

a) Review 90% of proprietary name submissions filed within 180 days of receipt. Notify sponsor of tentative acceptance or non-acceptance.

b) If the proprietary name is found to be unacceptable, the sponsor can request reconsideration by submitting a written rebuttal with supporting data or request a meeting within 60 days to discuss the initial decision (meeting package required).

c) If the proprietary name is found to be unacceptable, the above review performance goals also would apply to the written request for reconsideration with supporting data or the submission of a new proprietary name.

d) A complete submission is required to begin the review clock.

2. Proprietary names submitted with biosimilar biological product application

a) Review 90% of biosimilar biological product application proprietary name submissions filed within 90 days of receipt. Notify sponsor of tentative acceptance/non-acceptance.

b) A supplemental review will be done meeting the above review performance goals if the proprietary name has been submitted previously (during the BPD phase) and has received tentative acceptance.

c) If the proprietary name is found to be unacceptable, the sponsor can request reconsideration by submitting a written rebuttal with supporting data or request a meeting within 60 days to discuss the initial decision (meeting package required).

d) If the proprietary name is found to be unacceptable, the above review performance goals apply to the written request for reconsideration with supporting data or the submission of a new proprietary name.

e) A complete submission is required to begin the review clock.

IV. MAJOR DISPUTE RESOLUTION

A. Procedure: For procedural or scientific matters involving the review of biosimilar biological product applications and supplements (as defined in BsUFA) that cannot be resolved at the signatory authority level (including a request for reconsideration by the signatory authority after reviewing any materials that are planned to be forwarded with an appeal to the next level), the response to appeals of decisions will occur within 30 calendar days of the Center's receipt of the written appeal.

B. Performance goal: 90% of such answers are provided within 30 calendar days of the Center's receipt of the written appeal.

C. Conditions:

1. Sponsors should first try to resolve the procedural or scientific issue at the signatory authority level. If it cannot be resolved at that level, it should be appealed to the next higher organizational level (with a copy to the signatory authority) and then, if necessary, to the next higher organizational level.

2. Responses should be either verbal (followed by a written confirmation within 14 calendar days of the verbal notification) or written and should ordinarily be to either grant or deny the appeal.

3. If the decision is to deny the appeal, the response should include reasons for the denial and any actions the sponsor might take to persuade the Agency to reverse its decision.

4. In some cases, further data or further input from others might be needed to reach a decision on the appeal. In these cases, the ''response'' should be the plan for obtaining that information (e.g., requesting further information from the sponsor, scheduling a meeting with the sponsor, scheduling the issue for discussion at the next scheduled available advisory committee).

5. In these cases, once the required information is received by the Agency (including any advice from an advisory committee), the person to whom the appeal was made, again has 30 calendar days from the receipt of the required information in which to either deny or grant the appeal.

6. Again, if the decision is to deny the appeal, the response should include the reasons for the denial and any actions the sponsor might take to persuade the Agency to reverse its decision.

7. Note: If the Agency decides to present the issue to an advisory committee and there are not 30 days before the next scheduled advisory committee, the issue will be presented at the following scheduled committee meeting to allow conformance with advisory committee administrative procedures.

V. CLINICAL HOLDS

A. Procedure: The Center should respond to a sponsor's complete response to a clinical hold within 30 days of the Agency's receipt of the submission of such sponsor response.

B. Performance goal: 90% of such responses are provided within 30 calendar days of the Agency's receipt of the sponsor's response.

VI. SPECIAL PROTOCOL QUESTION ASSESSMENT AND AGREEMENT

A. Procedure: Upon specific request by a sponsor (including specific questions that the sponsor desires to be answered), the Agency will evaluate certain protocols and related issues to assess whether the design is adequate to meet scientific and regulatory requirements identified by the sponsor.

1. The sponsor should submit a limited number of specific questions about the protocol design and scientific and regulatory requirements for which the sponsor seeks agreement (e.g., are the clinical endpoints adequate to assess whether there are clinically meaningful differences between the proposed biosimilar biological product and the reference product).

2. Within 45 days of Agency receipt of the protocol and specific questions, the Agency will provide a written response to the sponsor that includes a succinct assessment of the protocol and answers to the questions posed by the sponsor. If the Agency does not agree that the protocol design, execution plans, and data analyses are adequate to achieve the goals of the sponsor, the reasons for the disagreement will be explained in the response.

3. Protocols that qualify for this program include any necessary clinical study or studies to prove biosimilarity and/or interchangeability (e.g., protocols for comparative clinical trials that will form the primary basis for demonstrating that there are no clinically meaningful differences between the proposed biosimilar biological product and the reference product, and protocols for clinical trials intended to support a demonstration of interchangeability). For such protocols to qualify for this comprehensive protocol assessment, the sponsor must have had a BPD Type 2 or 3 Meeting, as defined in section VIII (F and G), below, with the review division so that the division is aware of the developmental context in which the protocol is being reviewed and the questions being answered.

4. If a protocol is reviewed under the process outlined above, and agreement with the Agency is reached on design, execution, and analyses, and if the results of the trial conducted under the protocol substantiate the hypothesis of the protocol, the Agency agrees that the data from the protocol can be used as part of the primary basis for approval of the product. The fundamental agreement here is that having agreed to the design, execution, and analyses proposed in protocols reviewed under this process, the Agency will not later alter its perspective on the issues of design, execution, or analyses unless public health concerns unrecognized at the time of protocol assessment under this process are evident.

B. Performance goal:

For FY 2013, 70% of special protocols assessments and agreement requests completed and returned to sponsor within timeframes.

For FY 2014, 70% of special protocols assessments and agreement requests completed and returned to sponsor within timeframes.

For FY 2015, 80% of special protocols assessments and agreement requests completed and returned to sponsor within timeframes.

For FY 2016, 85% of special protocols assessments and agreement requests completed and returned to sponsor within timeframes.

For FY 2017, 90% of special protocols assessments and agreement requests completed and returned to sponsor within timeframes.

C. Reporting: The Agency will track and report the number of original special protocol assessments and resubmissions per original special protocol assessment.

VII. MEETING MANAGEMENT GOALS

A. Responses to Meeting Requests

1. Procedure: Within 14 calendar days of the Agency's receipt of a request and meeting package from industry for a BPD Type 1 Meeting, or within 21 calendar days of the Agency's receipt of a request and meeting package from industry for a Biosimilar Initial Advisory Meeting or a BPD Type 2, 3, or 4 Meeting, as defined in section VIII(D–H), below, CBER and CDER should notify the requester in writing of the date, time, place, and format (i.e., a scheduled face-to-face, teleconference, or videoconference) for the meeting, as well as expected Center participants.

2. Performance Goal: FDA will provide this notification within 14 days for 90 percent of BPD Type 1 Meeting requests and within 21 days for 90 percent of Biosimilar Initial Advisory Meeting and BPD Type 2, 3 and 4 Meeting requests.

B. Scheduling Meetings

1. Procedure: The meeting date should reflect the next available date on which all applicable Center personnel are available to attend, consistent with the component's other business; however, the meeting should be scheduled consistent with the type of meeting requested.

a) Biosimilar Initial Advisory Meeting should occur within 90 calendar days of the Agency receipt of the sponsor-submitted meeting request and meeting package.

b) BPD Type 1 Meetings should occur within 30 calendar days of the Agency receipt of the sponsor-submitted meeting request and meeting package.

c) BPD Type 2 Meetings should occur within 75 calendar days of the Agency receipt of the sponsor-submitted meeting request and meeting package.

d) BPD Type 3 Meetings should occur within 120 calendar days of the Agency receipt of the sponsor-submitted meeting request and meeting package.

e) BPD Type 4 Meetings should occur within 60 calendar days of the Agency receipt of the sponsor-submitted meeting request and meeting package.

2. Performance goal:

For FY 2013, 70% of Biosimilar Initial Advisory Meetings and BPD Type 1–4 Meetings are held within the timeframe.

For FY 2014, 70% of Biosimilar Initial Advisory Meetings and BPD Type 1–4 Meetings are held within the timeframe.

For FY 2015, 80% of Biosimilar Initial Advisory Meetings and BPD Type 1–4 Meetings are held within the timeframe.

For FY 2016, 85% of Biosimilar Initial Advisory Meetings and BPD Type 1–4 Meetings are held within the timeframe.

For FY 2017, 90% of Biosimilar Initial Advisory Meetings and BPD Type 1–4 Meetings are held within the timeframe.

C. Meeting Minutes

1. Procedure: The Agency will prepare minutes which will be available to the sponsor 30 calendar days after the meeting. The minutes will clearly outline the important agreements, disagreements, issues for further discussion, and action items from the meeting in bulleted form and need not be in great detail.

2. Performance Goal: FDA will provide meeting minutes within 30 days of the date of the meeting for 90 percent of Biosimilar Initial Advisory Meetings and BPD Type 1–4 Meetings.

D. Conditions

For a meeting to qualify for these performance goals:

1. A written request (letter or fax) and supporting documentation (i.e., the meeting package) should be submitted to the appropriate review division or office. The request should provide:

a) A brief statement of the purpose of the meeting, the sponsor's proposal for the type of meeting, and the sponsor's proposal for a face-to-face meeting or a teleconference;

b) A listing of the specific objectives/outcomes the requester expects from the meeting;

c) A proposed agenda, including estimated times needed for each agenda item;

d) A list of questions, grouped by discipline. For each question there should be a brief explanation of the context and purpose of the question.

e) A listing of planned external attendees; and

f) A listing of requested participants/disciplines representative(s) from the Center.

g) Suggested dates and times (e.g., morning or afternoon) for the meeting that are within or beyond the appropriate time frame of the meeting type being requested.

2. The Agency concurs that the meeting will serve a useful purpose (i.e., it is not premature or clearly unnecessary). However, requests for BPD Type 2, 3 and 4 Meetings will be honored except in the most unusual circumstances.

The Center may determine that a different type of meeting is more appropriate and it may grant a meeting of a different type than requested, which may require the payment of a biosimilar biological product development fee as described in section 744B of the Federal Food, Drug, and Cosmetic Act before the meeting will be provided. If a biosimilar biological product development fee is required under section 744B, and the sponsor does not pay the fee within the time frame required under section 744B, the meeting will be cancelled. If the sponsor pays the biosimilar biological product development fee after the meeting has been cancelled due to non-payment, the time frame described in section VII.A.1 will be calculated from the date on which FDA received the payment, not the date on which the sponsor originally submitted the meeting request.

Sponsors are encouraged to consult FDA to obtain further information on recommended meeting procedures.

3. FDA will develop and publish for comment draft guidance on Biosimilar Initial Advisory Meetings and BPD Type 1–4 Meetings by end of second quarter of FY 2014.

VIII. DEFINITIONS AND EXPLANATION OF TERMS

A. The term ''review and act on'' means the issuance of a complete action letter after the complete review of a filed complete application. The action letter, if it is not an approval, will set forth in detail the specific deficiencies and, where appropriate, the actions necessary to place the application in condition for approval.

B. Goal Date Extensions for Major Amendments

1. A major amendment to an original application, supplement with clinical data, or resubmission of any of these applications, submitted at any time during the review cycle, may extend the goal date by three months.

2. A major amendment may include, for example, a major new clinical safety/efficacy study report; major re-analysis of previously submitted study(ies); submission of a risk evaluation and mitigation strategy (REMS) with elements to assure safe use (ETASU) not included in the original application; or significant amendment to a previously submitted REMS with ETASU. Generally, changes to REMS that do not include ETASU and minor changes to REMS with ETASU will not be considered major amendments.

3. A major amendment to a manufacturing supplement submitted at any time during the review cycle may extend the goal date by two months.

4. Only one extension can be given per review cycle.

5. Consistent with the underlying principles articulated in the GRMP guidance, FDA's decision to extend the review clock should, except in rare circumstances, be limited to occasions where review of the new information could address outstanding deficiencies in the application and lead to approval in the current review cycle.

C. A resubmitted original application is a complete response to an action letter addressing all identified deficiencies.

D. A Biosimilar Initial Advisory Meeting is an initial assessment limited to a general discussion regarding whether licensure under section 351(k) of the Public Health Service Act may be feasible for a particular product, and, if so, general advice on the expected content of the development program. Such term does not include any meeting that involves substantive review of summary data or full study reports.

E. A BPD Type 1 Meeting is a meeting which is necessary for an otherwise stalled drug development program to proceed (e.g. meeting to discuss clinical holds, dispute resolution meeting), a special protocol assessment meeting, or a meeting to address an important safety issue.

F. A BPD Type 2 Meeting is a meeting to discuss a specific issue (e.g., proposed study design or endpoints) or questions where FDA will provide targeted advice regarding an ongoing biosimilar biological product development program. Such term includes substantive review of summary data, but does not include review of full study reports.

G. A BPD Type 3 Meeting is an in depth data review and advice meeting regarding an ongoing biosimilar biological product development program. Such term includes substantive review of full study reports, FDA advice regarding the similarity between the proposed biosimilar biological product and the reference product, and FDA advice regarding additional studies, including design and analysis.

H. A BPD Type 4 Meeting is a meeting to discuss the format and content of a biosimilar biological product application or supplement submitted under 351(k) of the PHS Act.

VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT

Mr. LEAHY. Mr. President, I have been saying for weeks and months that we are overdue to pass into law the Leahy-Crapo Violence Against Women Reauthorization Act, which the Senate approved in April with 68 bipartisan votes. I am disappointed that the House still has not picked up this bipartisan effort and that we are not getting the job done this year. I want everyone to know that I will be back next year, and we will get it done.

Just yesterday we were reminded again why this legislation is so important. In Colorado, a man just released from jail on domestic violence charges shot his way into a house, murdering his ex-girlfriend, and her sister, and her sister's husband, before killing himself. We have seen enough horrific violence. It is past time to act.

The Leahy-Crapo bill would support the use of techniques proven to help identify high-risk cases and prevent domestic violence homicides. It will help

us go further to prevent domestic and sexual violence and to provide services and support to all victims.

For several weeks, I have been advocating a compromise on a key provision aimed at addressing the epidemic of domestic violence against native women. I want to compliment my partner on this bill, Senator CRAPO, who has been working hard to try to bridge the divide and address concerns with the provision in our bill that gives limited jurisdiction to tribal courts to make sure that no perpetrators of domestic violence are immune from prosecution. Senator CRAPO has pushed hard and has indicated a willingness to compromise significantly, as have I. Sadly, others have continued to draw lines which would ultimately deny assistance to some of the most vulnerable victims. That is unacceptable.

I appreciate that there have at last been some renewed discussions about this bill in the House of Representatives but that is not enough. The only way to reauthorize VAWA this year is for the House to take up and pass the Senate-passed bill. If the House Republican leadership refuses to do that in the final days of this Congress, it is a shame.

I remain steadfast in my resolve to get this done and pass a good VAWA bill that protects all victims. I know Senator CRAPO shares my resolve. I know every woman in the Senate and many other Senators and House members share our resolve. I know President Obama and Vice President BIDEN share our resolve.

We will be back next year. We will introduce a good bill, and we will pass it through the Senate. We will continue our discussions, and we will work tirelessly to have a good bill enacted into law. This is not the end of our efforts to renew and improve VAWA to more effectively help all victims of domestic and sexual violence.

We know that the epidemic of violence against native women is appalling, with a recent study finding that almost three in five native women have been assaulted by their spouses or intimate partners. We know that immigrant women are particularly vulnerable, with their immigration status another weapon that abusers can use to keep power and prevent reporting. We know that some victims cannot access needed services because of their sexual orientation or gender identity. We know that women and girls on college campuses are too much at risk, and more must be done to protect them. The list goes on.

We have shown a willingness to compromise but we must make progress on all of these issues. We must make things better, and never make things worse, for the most vulnerable of victims.

The community of advocates and service providers who work every day with victims of these terrible crimes is inspiring. It was their advice on the real needs of real victims that shaped this legislation, and they have fought with us every day to get this bill enacted. I want them to know how much I value the work they do and that I will not abandon their cause. We will continue working together, and we will reauthorize VAWA.

We have seen enough violence. If we cannot get the Leahy-Crapo bill over the finish line this year, we will come back next year, and we will get it done. I look forward to other Senators joining us as we continue this vital effort.

INVEST TAXPAYER DOLLARS IN WHAT WORKS

Ms. LANDRIEU. Mr. President, as Congress continues its work addressing our Nation's looming fiscal crisis, we must also remember that we have a responsibility to our taxpayers to improve outcomes for young people and their families by driving Federal funds more efficiently toward evidence-based, results-oriented solutions.

In August, I shared promising news from my home State, where evidence-based Federal programs, including the Social Innovation Fund, the Investing in Innovation Fund, and the High Quality Charter Schools Replication and Expansion Program, are improving education and other important outcomes for thousands of young people throughout Louisiana.

Bipartisan support for investing in what works has been growing for decades.

Under the George W. Bush administration, the Office of Management and Budget put a priority on improving the performance of Federal programs and encouraged more rigorous evaluations to assess their effectiveness.

In 2010, the Simpson-Bowles Commission Report, the ''National Commission on Fiscal Responsibility and Reform,'' specifically recommended urging all Federal agency heads to ''identify ways to shift from inefficient, unproductive spending to productive, results-based investment.''

And in May of this year, the Office of Management and Budget, OMB, instructed all Federal departments and agencies to demonstrate the use of evidence throughout their fiscal year 2014 budget submissions.

At a time when America is facing enormous social and economic shifts, budget constraints at all levels of government, significant demographic changes, and an increasingly globally competitive, changing workforce, our Federal Government must continue to drive public resources toward evidence-based, results-driven solutions that work.

I believe the following principles can serve as the foundation of an ''invest in what works'' agenda: develop and use a common evidence framework to inform program design and management; use evidence, data and information about performance to inform policy and drive continuous improvement in Federal programs and grantee interventions; promote innovation and flexibility and focus on outcomes rather than simply on compliance; increasingly target investments in interventions with the strongest evidence of effectiveness, as well as support the development and rigorous evaluation of promising, innovative interventions; and, seek opportunities to promote and invest in systems and communities that are collaborating to achieve significant community-wide impact or change at scale.

I would encourage the administration to incorporate these principles in its fiscal year 2014 budget request, and to consider reserving 1 percent of Federal program funds for independent, third-party evaluations. These recommendations, which are consistent with the 2010 Simpson-Bowles report and the 2012 OMB memo on evidence and evaluation, would provide Members of Congress with reliable information to gauge program effectiveness and drive continuous improvement.

In pursuing this approach, we should remain steadfastly focused on equity and serving children and families in greatest need. Done right, an ''invest in what works'' framework can advance an equity agenda. Competitive grants can augment and help maximize the impact of important formula funding. When designing such policies, we must prioritize grantees serving children and families most in need and leverage lessons learned to improve the impact of larger scale programs. Moreover, the Federal Government should make technical assistance a priority to potentially high-impact grantees—including rural grantees—that have less expertise in preparing Federal grant applications.

I am fully committed to working with my colleagues on both sides of the aisle to help improve outcomes for young people and their families through the development and implementation of an agenda that invests in what works.

NEWTOWN, CONNECTICUT TRAGEDY

Ms. KLOBUCHAR. Mr. President, I rise today with a heavy heart to express my deepest sympathy to the families of the 28 people who were murdered last week at Sandy Hook Elementary. These last few days have been immensely painful as our nation has mourned the loss of life and desperately searched for answers that might somehow explain such a senseless act of violence.

Like all Americans, my thoughts and prayers have been and continue to be with the students, teachers, and families. But my heart especially goes out to those mothers and fathers who lost their children. As a mother, I cannot even begin to fathom the depth of their anguish.

The murder of a child is the most heinous of crimes. But the mass murder of 20 children trapped in an elementary school is an act of unspeakable

evil. There are simply no words to describe the shock, horror, and grief. There is nothing we can say to undo the horrific events of that day or to numb the wounds of the families who are grieving. The best we can hope for is that our words and prayers might somehow bring them comfort and to show them they are not alone in their sorrow.

At moments like these, the weight of despair falls heavy upon us. But we cannot forget that, even amidst the horror and sadness, there have been remarkable acts of decency. And for that, we have hope.

I think of the brave law enforcement officers and first responders who answered the call to serve and protect that day, just as they do every day. I think of the incredible outpouring of support we have seen from people across the country, most of whom have never met the victims or their families but have come forward anyway with checks, with flowers, with stuffed animals, and messages of sympathy. And of course, I think of those heroic teachers who risked, and in some cases gave their lives to save their students.

We will always remember the names and faces of people like Dawn Hochsprung and Mary Sherlach, the principal and school psychologist who died trying to disarm and dissuade gunman. They didn't think twice. They did what they knew was right.

And we will always remember 27-year-old Victoria Soto, the teacher who hid her students in closets and cabinets before bravely approaching the gunman and pointing him in the other direction. She had her whole life ahead of her, but she laid it down to save those kids.

These are the stories that keep us going. They remind us that, even in the wake of senseless violence, no individual act of evil can match the overwhelming goodness of our people. We are a resilient and fundamentally decent country, and my hope is that in the coming weeks and months we will find a way to come together to ease the pain of the families and to make some sense out of this tragedy.

TRIBUTE TO MICHAEL ALEXANDER

Mr. LIEBERMAN. Mr. President, I rise today to honor the nearly quarter of a century of public service of my friend and the staff director of the Homeland Security and Governmental Affairs Committee, Michael L. Alexander.

Mike will be leaving his position when this Congress adjourns. And he will leave quite a legacy.

Thomas Jefferson once asked the question: ''What duty does a citizen owe to the government that secures the society in which he lives?'' Answering his own question, Jefferson said: ''A nation that rests on the will of the people must also depend on individuals to support its institutions if it is to flourish. Persons qualified for public service should feel an obligation to make that contribution.''

Mike answered that call in a way that would have made Jefferson proud.

Mike joined what was then the Governmental Affairs Committee as a staff member for the minority side in April 2001 and was a leader in negotiating and drafting the legislation that created the Department of Homeland Security and later the Intelligence Reform and Terrorism Prevention Act.

In recognition of his hard work and proven leadership abilities, I promoted Mike to the position of staff director in May 2006. Under his direction, the committee, through legislation and investigation, took on some of the great challenges of our time.

After Hurricane Katrina ravaged the Gulf Coast in August 2005, claiming more than 1,800 lives, the committee launched a major investigation into how American government at all levels failed so dramatically to safeguard its citizens from a predicted storm. Over the course of the investigation, the committee held 22 hearings, interviewed, 345 witnesses, and reviewed over 800,000 documents. The, ''Hurricane Katrina: A Nation Still Unprepared,'' was the most comprehensive evaluation of the Katrina catastrophe.

In 2007, the committee began a series of 14 hearings examining the root causes of violent domestic radicalization, the tactics and measures used by U.S. law enforcement at every level to prevent and deter homegrown terrorism, the role of the Internet in self radicalization, and the threat of homegrown terrorism to military personnel.

In May 2008, the committee issued a bipartisan staff report detailing the results of its investigation entitled, ''Violent Islamist Extremism, The Internet, and the Homegrown Terrorist Threat.'' The report concluded that: ''No longer is the threat just from abroad, as was the case with the attacks of September 11, 2001; the threat is now increasingly from within, from homegrown terrorists who are inspired by violent Islamist ideology to plan and execute attacks where they live. One of the primary drivers of this new threat is the use of the Internet to enlist individuals or groups of individuals to join the cause without ever affiliating with a terrorist organization.''

Following the murders at Fort Hood on Nov. 5, 2009, when Maj. Nidal Hasan—a psychiatrist trained by the U.S. Army at taxpayer expense entered the Soldier Readiness Processing Center with two loaded pistols and opened fire, killing 13 and wounding 32, the committee launched a 14-month investigation into what happened and why.

The report that followed the investigation—''A Ticking Time Bomb: Counterterrorism Lessons from the U.S. Government's Failure to Prevent the Fort Hood Attack''—detailed flawed practices and communications, both within and between the FBI and Department of Defense, that allowed Hasan to remain in the military—and even be promoted—despite many warning signs that he was becoming dangerous.

Besides the investigations, here are just a few of the successful pieces of legislation that were passed out of the committee and enacted into law on Mike's watch: The ''Post-Katrina Emergency Management Reform Act of 2006,'' which remade and strengthened the Federal Emergency Management Agency after the failures in responding to Hurricane Katrina; the ''Honest Leadership and Open Government Act of 2007,'' which made sweeping ethics and lobbying reforms; the ''Implementing the Recommendations of the 9/11 Commission Act of 2007,'' which strengthened the Nation's security against terrorism by providing first responders with the resources they need to protect their communities from disaster, promoting interoperable emergency communications, requiring screening of cargo placed on passenger aircraft, securing mass transit, rail and buses; and improving the security of maritime cargo; ''The Inspector General Reform Act,'' passed in 2008, which sought to improve government accountability by guaranteeing that qualified individuals are appointed as IGs and that IGs remain independent; ''The Presidential Appointment Efficiency and Streamlining Act of 2011'' that addresses the increasingly slow and burdensome appointments process by, among other things, removing about 170 non-policymaking positions from the list of Presidential appointments requiring Senate confirmation, thereby allowing the Senate to focus on the most important positions; and the Stop Trading on Congressional Knowledge, STOCK Act, that ensures that Members of Congress are subject to the same insider information prohibitions as other Americans.

It is quite a record of accomplishment. And he did it all with a wonderful sense of humor, patience and civility.

Mr. President, I want to return to Thomas Jefferson for a moment, because he had another thought on public service that sums up one of Mike's greatest assets—spotting talent in young people and convincing them to use those talents in public service.

Jefferson once wrote to a friend: ''It will remain . . . to those now coming on the stage of public affairs to perfect what has been so well begun by those going off it.''

Mike may be leaving the Senate, but he leaves behind a cadre of talented and diverse individuals he recruited to join the committee and then gave increased responsibilities as their talents began to flower.

Many of these people who started out as interns or junior support staffers, have moved up the committee ranks, working on important legislation and investigations, while others have gone

on to other Congressional or executive branch offices thanks to the skills Mike helped them develop.

Prior to joining the committee, Mike served as an Executive Assistant to former Agriculture Secretary Mike Espy and had also been Espy's Legislative Director when Espy was a Congressman.

One of the joys of my Senate career was the chance to work with talented and dedicated public servants like Michael Alexander and I want to thank him for all his hard work and wish him the best of luck in whatever his next endeavor may be.

ADDITIONAL STATEMENTS

MARYLAND LEGAL SERVICES CORPORATION

• Mr. CARDIN. Mr. President, I want to congratulate Maryland Legal Services Corporation on their 30th anniversary. Established in 1982 by the Maryland General Assembly, Maryland Legal Services Corporation raises and distributes funds to nonprofit organizations that provide civil legal assistance to low-income persons.

As chairman of Maryland Legal Services Corporation from 1988–1995, I know firsthand the extraordinary service they provide to Marylanders. Maryland Legal Services Corporation's grants have enabled 35 Maryland-area nonprofits to assist individuals in matters such as eviction, foreclosure, domestic violence, child custody, veteran's benefits, and health care. To date, Maryland Legal Services Corporation has awarded more than $164 million in grants, assisting Marylanders in 2 million different legal matters.

In recent years Maryland Legal Services Corporation's mission has become even more critical, as more and more people have turned to our nonprofit community for civil legal services. Studies have shown that poor households will on average face from 1 to 3 legal problems a year, and Maryland is fortunate that Maryland Legal Services Corporation has worked tirelessly to ensure that our nonprofit civil legal service providers can assist its clients.

In the Western part of our State, a couple who were 2 months behind on their mortgage and close to foreclosure was provided a volunteer attorney from Allegany Law Foundation who helped them save their home.

In Harford County, Legal Aid successfully advocated for a woman who was being sued by her credit card company after she had paid thousands of dollars to a debt settlement company believing that the company would pay off her credit card debt. Legal Aid helped her cancel her contract, get a refund and have the lawsuit dismissed.

A man on the Eastern Shore contacted his local Maryland Legal Aid Bureau with concerns about black mold that was growing in his rental unit. The landlord refused to remedy the mold situation, so Legal Aid staff investigated the situation and helped the man escrow his rent.

Had these Marylanders not had access to civil legal assistance, what would have happened? I submit that inevitably justice suffers. Judges are put in the position of trying to provide some assistance and advice—while remaining impartial—to one or two unrepresented parties before them. Social service agencies absorb additional costs from those that are unfairly denied health care or social services benefits. Neighborhoods and communities are damaged due to unjust evictions. Families are torn apart, and domestic violence and abuse continues unabated. Public health and law enforcement costs rise. The rule of law is undermined, and Americans come to believe that justice is only for the rich, not the poor.

According to one study, each Legal Aid attorney serves over 6,800 people, while there is one private attorney for every 525 people in the nation. This is not ''Equal Justice Under Law'', as promised by the etching at the entrance to the United States Supreme Court. I am committed to help close the justice gap by giving the Federal Legal Services Corporation the resources it needs from Congress. This must include increasing its authorized level of funding and removing harmful funding restrictions regarding class action lawsuits and attorneys fees.

Maryland Legal Services Corporation's successes over the last 30 years are impressive, and while we celebrate all they have been able to do, we also recommit ourselves to ensuring that all people have access to quality legal representation, regardless of income.•

UNIVERSITY OF TEXAS WOMEN'S VOLLEYBALL CHAMPIONS

• Mrs. HUTCHISON. Mr. President, it is with great pride that I pay tribute to my alma mater, the University of Texas at Austin, and, in particular, the Texas Longhorns Volleyball team, the 2012 National Collegiate Athletic Association Division I Women's Volleyball Champion.

On Saturday, December 15, 2012, the Texas Longhorns won their third national championship for women's volleyball, and first NCAA Volleyball title since 1988. After reaching their fourth NCAA Final Four in five seasons, the Longhorns outlasted the Michigan Wolverines in five sets in the semifinal to advance to Saturday's championship match. The Longhorns then proceeded to post a .438 hitting percentage in the final—breaking an NCAA record—and swept the Oregon Ducks in three sets to earn the 2012 title.

Longhorn outside hitter Bailey Webster led the way with 14 kills and a .500 hitting percentage in the championship match. After recording 96 kills and a .458 hitting percentage during the NCAA postseason, Webster was voted as the Most Outstanding Player of the 2012 NCAA Division I Women's Volleyball Tournament. She was joined on the All-Tournament team by three Longhorn teammates: Hannah Allison, Haley Eckerman, and Sha'dare McNeal.

This was the first national championship for Jerritt Elliott, the coach of the Longhorns since 2001. Coach Elliott also guided the Longhorns to their fifth Big 12 Conference championship in six seasons and was named the 2012 American Volleyball Coaches Association AVCA Division I National Coach of the Year.

The Longhorns finished the season with a 29–4 record, and were 15–1 in conference action to claim their second straight conference title. Four Longhorn student athletes earned All-America honors. Bailey Webster and Big 12 Player of the Year Haley Eckerman were selected to the first team, and Sha'Dare McNeal and Khat Bell received honorable mention recognition.

Winning the national championship is an achievement which will long be cherished by each of these Longhorns: senior Sha'Dare McNeal; juniors Hannah Allison, Megan Futch, Sarah Palmer, and Bailey Webster; sophomores Khat Bell, Haley Eckerman, and Madelyn Hutson; freshmen Kat Brooks, Nicole Dalton, Sara Hattis, Molly McCage, and Amy Neal; coaches Jerritt Elliott, Salima Rockwell, Erik Sullivan, and special assistant Nathan Mendoza; women's athletics director Christine Plonsky; and University of Texas at Austin president Bill Powers.

One of my favorite scenes in all of Texas is found on the original Forty Acres of my alma mater. There rising 307 feet at the center of campus is the University of Texas Tower. The tower is a beacon for all Longhorns day and night, when it is flooded with light and set aglow against the nighttime sky. It is a particularly spectacular sight when Longhorn student athletes win a national championship, and the tower is bathed in burnt orange with a number ''1'' displayed on all sides to mark the achievement.

With the 2012 Women's Volleyball National Championship, the U.T. Tower has now been illuminated to celebrate 50 athletic national championships. Congratulations to the National Champion Texas Longhorns Women's Volleyball team, and Hook 'em Horns!•

• Mr. CORNYN. Mr. President, I congratulate the University of Texas women's volleyball team for their national-championship victory over the University of Oregon. The Lady Longhorns swept the Ducks 3–0 to secure their first NCAA title since 1988.

It was a fitting capstone for a remarkable season, in which the Longhorns finished 29–4 and rallied from a 2–1 deficit against Michigan in the national semifinals. Their championship game against Oregon drew the second-largest crowd in tournament history.

I salute 12 veteran Head Coach Jerritt Elliot for coaching the Longhorn volleyball squad to its third national title. I also salute Associate Head Coach Salima Rockwell, Assistant Coach Erik Sullivan, and Special Assistant Nathan Mendoza, all of whom mentored these young women and helped them reach their full potential. And, of course, I salute the players themselves, such as junior outside hitter Bailey Webster, who was named Tournament MVP; All Tournament team members Haley Eckerman, Hannah Allison, and Sha'Dare McNeal; and all the rest of the Longhorns: Ashley Bannister, Khat Bell, Kat Brooks, Nicole Dalton, Megan Futch, Sara Hattis, Madelyn Hutson, Molly McCage, Amy Neal, and Sarah Palmer.

It is my honor to join with the entire University of Texas family, as well as Longhorn fans across our great State, to celebrate their achievement. In its long and proud athletic history, the University of Texas has now won 50 national titles overall.

The Longhorn volleyball team has learned what it takes to become national champions, and the experience that each of these athletes has gained will prove invaluable in their future endeavors.●

TRIBUTE TO VICTORIA ARLEN

● Mrs. SHAHEEN. Mr. President, today I wish to recognize and honor the success of Victoria Arlen of Exeter, NH. This summer, Victoria represented the United States in a number of swimming events at the 2012 Paralympic Games in London.

Victoria Arlen is an 18-year-old young woman who 7 years ago was diagnosed with transverse myelitis, a neurological disorder that causes inflammation of a section of the spinal cord. Victoria's resulting paralysis from the waist down has not damaged her determination or her competitive spirit, and her achievements this year have been truly remarkable.

Victoria was a very active child prior to her diagnosis, and was involved in dancing, swimming, playing field hockey, lacrosse, and soccer. For more than 2 years, Victoria lived in a coma and only began swimming competitively again at the age of 16, and it came as no surprise to Victoria's family when the honors student earned a place on the U.S. Paralympic Team. In London, she competed in the 100-meter, 50-meter, 400-meter and 4x100-meter relay freestyle events and the 100-meter breaststroke event. Victoria set a world record and won a gold medal in the 100-meter freestyle, in her final competition, and earned silver medals in three of her other races.

Victoria's determination in the face of adversity and ability to accomplish her goals demonstrate her strength of spirit and her quality of character. Citizens of New Hampshire are incredibly proud of her achievements; she is a role model and an inspiration. I am confident that her success at the 2012 Paralympic Games is one great accomplishment in what is certain to be a lifetime of impressive feats.

Since 1960, the Paralympic Games have provided athletes who have certain physical disabilities the chance to compete in a broad range of sports and athletic events on the international level, providing them with an opportunity similar to that of their able-bodied counterparts. Victoria's inspiring performance throughout the 2012 Paralympic Games should serve as a reminder of the hard work and dedication required to succeed.

I applaud and congratulate Victoria for her devotion and determination. I also commend her family, including her parents, Jacqueline and Larry, and her three brothers, Cameron, LJ, and William, for their role in her success. I know that her victories give her family, her friends, the Exeter community, and the State of New Hampshire great pride.

I wish to recognize Victoria Arlen for her accomplishments and her victory in the 2012 Paralympic Games in London, and I commend her dedication, maturity, and hard work. She is truly an inspiring young woman.●

TRIBUTE TO AMANDA RENTERIA

● Ms. STABENOW. Mr. President, today I wish to pay tribute to a truly remarkable member of my staff who is leaving the Senate.

Amanda Renteria came to my office as a Legislative Assistant in 2006, and has been an integral member of my staff for the last 7 years, including serving as my legislative director and then my chief of staff for the last 4½ years.

A proud graduate of Stanford University and Harvard Business School, Amanda brought a wide range of experience with her to the Senate.

After graduating from Harvard, she worked in the private sector for a while before going back to California and working as a high school teacher and coach. She then worked for the city of San Jose before coming to Washington.

And I am so glad she did. She has been my right hand through some very challenging times.

When I asked her to become my chief of staff in 2008, she agreed and promised to stay through the 2012 election. But neither of us knew what we would face between then and now.

Amanda was with me through the Wall Street collapse and our work to reform our financial system, and her business background was an invaluable resource to me during that difficult time.

In the fall of 2008, the American auto industry nearly collapsed, and as I fought to save our automakers and the more than 1 million workers who depend on it, Amanda was right there by my side, working to make sure we kept manufacturing things in this country.

She was there as we worked with partners in the State and here in Washington to make sure the people of Michigan had a fair shot at turning things around and getting back on their feet.

During the debate on health care reform, she was a critical part of my effort to make sure we kept health care affordable, that we protected coverage for mental health care, that we closed the donut hole for seniors, and she worked with her counterparts in other offices and with industry leaders to get the best possible policies to help every family get the health insurance they need.

And in the middle of all of that, she found time to have her first son, Diego, and prove how important it was that women have access to maternity care, something I was very proud to fight for in the health care law.

And when I became Chairwoman of the Senate Agriculture Committee, she led the effort to put together an amazing team of policy experts that accomplished a legislative achievement that is rare these days—a bipartisan deficit reduction bill that passed the Senate with strong support from both parties.

And as we worked so hard all year long to pass a Farm Bill, she and her husband Pat found time to have their second son, T.J., who we were so happy to welcome this fall.

I know the people of Michigan—and this country—join me in thanking her for everything she has done during her time in public service. She may not have been born in Michigan, but after all she's done for the people back home, she's earned herself a ''Pure Michigan'' reputation of hard work and dedication.

Amanda will be missed in the Senate, but I am honored to have had her serve as my chief of staff.●

NOTIFICATION OF THE PRESIDENT'S INTENT TO TERMINATE THE DESIGNATION OF THE FEDERATION OF SAINT KITTS AND NEVIS AS A BENEFICIARY DEVELOPING COUNTRY UNDER THE GENERALIZED SYSTEM OF PREFERENCES (GSP) PROGRAM—PM 64

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

To the Congress of the United States:

In accordance with section 502(f)(2) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2462(f)(2)), I am providing notification of my intent to terminate the designation of the Federation of Saint Kitts and Nevis (St. Kitts and Nevis) as a beneficiary developing country under the Generalized System of Preferences (GSP) program. Section 502(e) of the 1974 Act (19 U.S.C. 2462(e)) provides that if the President determines that a beneficiary developing country has become a ''high-income'' country, as defined by the official statistics of the International

Bank for Reconstruction and Development (i.e., the World Bank), then the President shall terminate the designation of such country as a beneficiary developing country for purposes of the GSP, effective on January 1 of the second year following the year in which such determination is made.

Pursuant to section 502(e) of the 1974 Act, I have determined that it is appropriate to terminate the designation of St. Kitts and Nevis as a beneficiary developing country under the GSP program because it has become a high-income country as defined by the World Bank. Accordingly, St. Kitts and Nevis' eligibility for trade benefits under the GSP program will end on January 1, 2014.

BARACK OBAMA.

THE WHITE HOUSE, *December 20, 2012*.

MESSAGES FROM THE HOUSE

At 11:03 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 2170. An act to amend the provisions of title 5, United States Code, which are commonly referred to as the ''Hatch Act'', to scale back the provision forbidding certain State and local employees from seeking elective office, clarify the application of certain provisions to the District of Columbia, and modify the penalties which may be imposed for certain violations under subchapter III of chapter 73 of that title.

S. 3311. An act to designate the United States courthouse located at 2601 2nd Avenue North, Billings, Montana, as the ''James F. Battin United States Courthouse''.

S. 3564. An act to extend the Public Interest Declassification Act of 2000 until 2014 and for other purposes.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

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

H.R. 4062. An act to designate the facility of the United States Postal Service located at 1444 Main Street in Ramona, California, as the ''Nelson 'Mac' MacWilliams Post Office Building''.

H.R. 6016. An act to amend title 5, United States Code, to provide for investigative leave requirements with respect to Senior Executive Service employees, and for other purposes.

H.R. 6166. An act to designate the United States courthouse located at 333 West Broadway Street in San Diego, California, as the ''James M. Carter and Judith N. Keep United States Courthouse''.

H.R. 6633. An act to designate the United States courthouse located at 101 East Pecan Street in Sherman, Texas, as the ''Paul Brown United States Courthouse''.

ENROLLED BILLS SIGNED

At 3:39 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 2170. An act to amend the provisions of title 5, United States Code, which are commonly referred to as the ''Hatch Act'', to scale back the provision forbidding certain State and local employees from seeking elective office, clarify the application of certain provisions to the District of Columbia, and modify the penalties which may be imposed for certain violations under subchapter III of chapter 73 of that title.

S. 2367. An act to strike the word ''lunatic'' from Federal law, and for other purposes.

S. 3311. An act to designate the United States courthouse located at 2601 2nd Avenue North, Billings Montana, as the ''James F. Battin United States Courthouse''.

S. 3564. An act to extend the Public Interest Declassification Act of 2000 until 2014 and for other purposes.

S. 3642. An act to clarify the scope of the Economic Espionage Act of 1996.

S. 3687. An act to amend the Federal Water Pollution Control Act to reauthorize the Lake Pontchartrain Basin Restoration Program, to designate certain Federal buildings, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. LEAHY).

At 5:34 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House agreed to the following resolution:

H. Res. 839. Resolution relative to the death of the Honorable Daniel K. Inouye, Senator from the State of Hawaii.

The message further announced that 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, the Speaker appoints the following member on the part of the House of Representatives to the United States-China Economic and Security Review Commission for a term to expire December 31, 2014: Mr. Larry Wortzel of Williamsburg, Virginia.

At 7:05 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4310) to authorize appropriations for fiscal year 2013 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for the purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 6016. An act to amend title 5, United States Code, to provide for investigative leave requirements with respect to Senior Executive Service employees, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, December 20, 2012, she had presented to the President of the United States the following enrolled bills:

S. 285. An act for the relief of Sopuruchi Chukwueke.

S. 2170. An act to amend the provisions of title 5, United States Code, which are commonly referred to as the ''Hatch Act'', to scale back the provision forbidding certain State and local employees from seeking elective office, clarify the application of certain provisions to the District of Columbia, and modify the penalties which may be imposed for certain provisions to the District of Columbia, and modify the penalties which may be imposed for certain violations under subchapter III of chapter 73 of that title.

S. 2367. An act to strike the word ''lunatic'' from Federal law, and for other purposes.

S. 3311. An act to designate the United States courthouse located at 2601 2nd Avenue North, Billings, Montana, as the ''James F. Battin United States Courthouse''.

S. 3564. An act to extend the Public Interest Declassification Act of 2000 until 2014 and for other purposes.

S. 3642. An act clarify the scope of the Economic Espionage Act of 1996.

S. 3687. An act to amend the Federal Water Pollution Control Act to reauthorize the Lake Pontchartrain Basin Restoration Program, to designate certain Federal buildings, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–8623. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Spirotetramat; Pesticide Tolerance for Emergency Exemption'' (FRL No. 9373–2) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8624. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Difenzoquat; Data Call-in Order for Pesticide Tolerances'' (FRL No. 9372–9) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8625. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Quinclorac; Pesticide Tolerances'' (FRL No. 9372–4) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8626. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Chlorantraniliprole; Pesticide Tolerances, Technical Correction'' (FRL No. 9367–6) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8627. A communication from the Director of the Regulatory Management Division,

Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Propiconazole; Pesticide Tolerances'' (FRL No. 9369–5) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8628. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, a report relative to a violation of the Antideficiency Act that occurred in the Department of Veterans Affairs (VA) Construction, Minor Projects appropriation (Department of Treasury account symbol 36X0111); to the Committee on Appropriations.

EC–8629. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report on the continuation of the national emergency that was originally declared in Executive Order 13405 of June 16, 2006, with respect to Belarus; to the Committee on Banking, Housing, and Urban Affairs.

EC–8630. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to a transaction involving U.S. exports to the United Arab Emirates; to the Committee on Banking, Housing, and Urban Affairs.

EC–8631. A communication from the Associate General Counsel for Legislation and Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''HUD Acquisition Regulations (HUDAR)'' (RIN2501–AD56) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Banking, Housing, and Urban Affairs.

EC–8632. A communication from the Associate General Counsel for Legislation and Regulations, Office of the Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Federal Housing Administration (FHA) Section 232 Healthcare Mortgage Insurance Program: Partial Payment of Claims'' (RIN2502–AJ04) received in the Office of the President of the Senate on December 13, 2012; to the Committee on Banking, Housing, and Urban Affairs.

EC–8633. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Revisions to Authorization Validated End-User Provisions: Requirement for Notice of Export, Reexport or Transfer (In-Country) and Clarification Regarding Termination of Conditions on VEU Authorizations'' (RIN0694–AF19) received during adjournment of the Senate in the Office of the President of the Senate on December 14, 2012; to the Committee on Banking, Housing, and Urban Affairs.

EC–8634. A communication from the Deputy Secretary, Division of Trading and Markets, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Extension of Dates for Certain Requirements of Rule 19b-4(n) (1) and Rule 19b-4(o) (2) and Amendment of Form 19b-4'' (RIN3235-AK87) received during adjournment of the Senate in the Office of the President of the Senate on December 7, 2012; to the Committee on Banking, Housing, and Urban Affairs.

EC–8635. A communication from the Chairman of the Office of Proceedings, Surface Transportation Board, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Solid Waste Rail Transfer Facilities'' (RIN2140–AA92) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Commerce, Science, and Transportation.

EC–8636. A communication from the Deputy Bureau Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Parts 32, 51 , and 69 of the Commission's Rules'' (DA 12–1552) received during adjournment of the Senate in the Office of the President of the Senate on December 14, 2012; to the Committee on Commerce, Science, and Transportation.

EC–8637. A communication from the General Attorney, Consumer Product Safety Commission, transmitting, pursuant to law, the report of a rule entitled ''Requirements for Child-Resistant Packaging: Products Containing Imidazolines Equivalent to 0.08 Milligrams or More'' (CPSC Docket No. CPSC–2012–0005) received in the Office of the President of the Senate on December 17, 2012; to the Committee on Commerce, Science, and Transportation.

EC–8638. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Acquisition Regulation: Department of Energy Acquisition Regulation, Government Property'' (RIN1991–AB86) received in the Office of the President of the Senate on December 17, 2012; to the Committee on Energy and Natural Resources.

EC–8639. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District'' (FRL No. 9730–4) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Environment and Public Works.

EC–8640. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Indiana; Delaware County (Muncie), Indiana Ozone Maintenance Plan Revision to Approved Motor Vehicle Emissions Budgets'' (FRL No. 9762–9) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Environment and Public Works.

EC–8641. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; South Carolina 110(a) (1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards; Correction'' (FRL No. 9762–6) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Environment and Public Works.

EC–8642. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Motor Vehicle Inspection and Maintenance Program - Deletion of Final Enhanced Inspection and Maintenance Emission Cutpoint Standards'' (FRL No. 9676–3) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Environment and Public Works.

EC–8643. A communication from the Director of the Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources'' (FRL No. 9725–9) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Environment and Public Works.

EC–8644. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Assessing the Feasibility of Extending the Hospital Acquired Conditions (HAC) IPPS Payment Policy to Non-IPPS Settings'' ; to the Committee on Finance.

EC–8645. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Certain Exceptions to Disclosure Requirements under Treas. Reg. 1.6011–4(b) (5)'' (Rev. Proc. 2013–11) received in the Office of the President of the Senate on December 11, 2012; to the Committee on Finance.

EC–8646. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Deduction for Qualified Film and Television Production Costs'' ((RIN1545–BJ23) (TD 9603)) received in the Office of the President of the Senate on December 11, 2012; to the Committee on Finance.

EC–8647. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Update of Weighted Average Interest Rates, Yield Curves, and Segment Rates'' (Rev. Proc. 2012–78) received in the Office of the President of the Senate on December 11, 2012; to the Committee on Finance.

EC–8648. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''2012 Cumulative List of Changes in Plan Qualification Requirements'' (Notice 2012–76) received in the Office of the President of the Senate on December 13, 2012; to the Committee on Finance.

EC–8649. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Voluntary Classification Settlement Program'' (Announcement 2012–45) received in the Office of the President of the Senate on December 13, 2012; to the Committee on Finance.

EC–8650. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Voluntary Classification Settlement Program - Temporary Eligibility Expansion'' (Rev . Proc. 2012–46) received in the Office of the President of the Senate on December 13, 2012; to the Committee on Finance.

EC–8651. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Taxable Medical Devices'' (TD 9604) received in the Office of the President of the Senate on December 13, 2012; to the Committee on Finance.

EC–8652. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Update to Announcement 2012–25 - Extension of Time'' (Announcement 2012–50) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Finance.

EC–8653. A communication from the Chief of the Publications and Regulations Branch,

Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''FICA Taxes on Wages Paid to Residents of the Philippines for Services Performed in the Commonwealth of the Northern Mariana Islands'' (Rev. Proc. 2012–43) received in the Office of the President of the Senate on December 18, 2012; to the Committee on Finance.

EC–8654. A communication from the Acting Secretary of Commerce, transmitting, pursuant to law, a report relative to the export to the People's Republic of China of an item not detrimental to the U.S. space launch industry; to the Committee on Foreign Relations.

EC–8655. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to extending and amending the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Objects and Material from the Pre-Columbian Cultures of Guatemala; to the Committee on Foreign Relations.

EC–8656. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to the establishment of a Danger Pay Allowance for Tunisia; to the Committee on Foreign Relations.

EC–8657. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report prepared by the Department of State on progress toward a negotiated solution of the Cyprus question covering the period August 1, 2012 through September 30, 2012; to the Committee on Foreign Relations.

EC–8658. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, a report relative to section 38(f) (1) of the Arms Export Control Act (Transmittal No. DDTC F10–001); to the Committee on Foreign Relations.

EC–8659. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, certification of proposed issuance of an export license pursuant to section 36(c) of the Arms Export Control Act (Transmittal No. DDTC 12–151); to the Committee on Foreign Relations.

EC–8660. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, certification of proposed issuance of an export license pursuant to section 36(c) of the Arms Export Control Act (Transmittal No. DDTC 12–160); to the Committee on Foreign Relations.

EC–8661. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, certification of proposed issuance of an export license pursuant to section 36(c) of the Arms Export Control Act (Transmittal No. DDTC 12–147); to the Committee on Foreign Relations.

EC–8662. A joint communication from the Presiding Governor and the Director (International Broadcasting Bureau), Broadcasting Board of Governors, transmitting, pursuant to law, the Board's Performance and Accountability Report for fiscal year 2012; to the Committee on Foreign Relations.

EC–8663. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers who were employed at the Mound Plant in Miamisburg, OH, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–8664. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers who were employed at the United Nuclear Corporation in Hematite, Missouri, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–8665. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers who were employed at Nuclear Metals, Inc. (or subsequent owner) in West Concord, Massachusetts, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–8666. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers who were employed at Oak Ridge National Laboratory (X–10) in Oak Ridge, Tennessee, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–8667. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers who were employed at the Los Alamos National Laboratory in Los Alamos, New Mexico, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–8668. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers who were employed at the Weldon Spring Plant in Weldon Spring, Missouri, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–8669. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report of a petition to add workers who were employed at the Mound Plant in Miamisburg, Ohio, to the Special Exposure Cohort; to the Committee on Health, Education, Labor, and Pensions.

EC–8670. A communication from the Deputy Director for Policy, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' (29 CFR Part 4022) received during adjournment of the Senate in the Office of the President of the Senate on December 12, 2012; to the Committee on Health, Education, Labor , and Pensions.

EC–8671. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Administration on Aging Report to Congress for Fiscal Year 2011; to the Committee on Health, Education, Labor, and Pensions.

EC–8672. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Targeted Grants to Increase the Well-Being of, and to Improve the Permanency Outcomes for, Children Affected by Methamphetamine or Other Substance Abuse: Second Annual Report to Congress'' ; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary:

Report to accompany H.R. 2471, a bill to amend section 2710 of title 18, United States Code, to clarify that a video tape service provider may obtain a consumer's informed, written consent on an ongoing basis and that consent may be obtained through the Internet (Rept. No. 112–258).

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 3523. A bill to amend title 17, United States Code, to extend protection to fashion design, and for other purposes (Rept. No. 112–259).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CARPER:

S. 3699. A bill to amend title XVIII of the Social Security Act to include information on the coverage of intensive behavioral therapy for obesity in the Medicare and You Handbook, to provide written notification to beneficiaries and providers regarding new Medicare coverage of intensive behavioral therapy for obesity, and to provide for the coordination of programs to prevent and treat obesity, and for other purposes; to the Committee on Finance.

By Mrs. MCCASKILL:

S. 3700. A bill to amend the Internal Revenue Code of 1986 to protect employees in the building and construction industry who are participants in multiemployer plans, and for other purposes; to the Committee on Finance.

By Mr. HELLER (for himself and Mr. REID):

S. 3701. A bill to designate the Wovoka Wilderness and provide for certain land conveyances in Lyon County, Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. KERRY (for himself, Mr. JOHNSON of South Dakota, Mr. WHITEHOUSE, and Mr. FRANKEN):

S. 3702. A bill to provide grants to establish veteran's treatment courts; to the Committee on the Judiciary.

By Mr. WYDEN:

S. 3703. A bill to improve the ability of consumers to control their digital data usage, promote Internet use, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KYL (for himself and Mrs. FEINSTEIN):

S. 3704. A bill to clarify the authorized uses of funds in the Crime Victims Fund; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LUGAR:

S. Res. 626. A resolution designating April 24, 2014, as ''Jan Karski Day'' ; to the Committee on the Judiciary.

By Mr. REID:

S. Res. 627. A resolution designating the Chairman of the Senate Committee on Appropriations; considered and agreed to.

ADDITIONAL COSPONSORS

S. 32

At the request of Mr. LAUTENBERG, the names of the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 32, a bill to prohibit the transfer or possession of large capacity ammunition feeding devices, and for other purposes.

S. 998

At the request of Mr. AKAKA, the name of the Senator from Maryland

(Mr. CARDIN) was added as a cosponsor of S. 998, a bill to amend title IV of the Employee Retirement Income Security Act of 1974 to require the Pension Benefit Guaranty Corporation, in the case of airline pilots who are required by regulation to retire at age 60, to compute the actuarial value of monthly benefits in the form of a life annuity commencing at age 60.

S. 1244

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of S. 1244, a bill to provide for preferential duty treatment to certain apparel articles of the Philippines.

S. 1301

At the request of Mr. LEAHY, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 1301, a bill to authorize appropriations for fiscal years 2012 through 2015 for the Trafficking Victims Protection Act of 2000, to enhance measures to combat trafficking in persons, and for other purposes.

S. RES. 618

At the request of Mr. WICKER, his name was added as a cosponsor of S. Res. 618, a resolution observing the 100th birthday of civil rights icon Rosa Parks and commemorating her legacy.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WYDEN:

S. 3703. A bill to improve the ability of consumers to control their digital data usage, promote Internet use, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. WYDEN. Mr. President, I rise today to introduce legislation which promotes innovation and the expansion of the digital economy.

Every day, each and every American grows increasingly reliant on the Internet. We use it at work, at home at school, and on the go. The Internet has changed the way we communicate, the way we share and speak, and it is transforming our economy.

As the Internet becomes increasingly important to American consumers, businesses and innovators, Internet Service Providers, or ISPs, are increasingly imposing caps on the amount of data that consumers may move over the Net. Unfortunately, because of a lack of competition in Internet broadband services, the imposition of data caps raises a public policy concern. Data caps are appropriate if they are carefully constructed to manage network congestion but as the New York Times has editorialized, they ''should not just be a way for Internet providers to extract monopoly rents.'' The imposition of data caps also risks undermining online competition and innovation as the market for digital goods and services expands.

In order to empower consumers to better manage their data usage and promote online innovation, I am sponsoring the Data Cap Integrity Act. This bill will give consumers the tools they need to manage their own data usage, institute industry-wide data measurement accuracy standards for ISPs, and impose disciplines to ensure that ISPs' data caps are truly designed to manage network congestion.

The Data Measurement Integrity Act requires the Federal Communications Commission, or FCC, to establish standards for how ISPs measure data and make certain that data caps are designed to manage network congestion rather than monetize data in ways that undermine online innovation. Furthermore, this bill ensures that consumers are provided tools to manage their data consumption and that ISPs cannot for purposes of measuring data, discriminate against any content.

Internet use is central to our lives and to our economy. Future innovation will undoubtedly require consumers to use more and more data, data caps should not impede this innovation and the jobs it creates.

I look forward to working with my colleagues and stakeholders to discuss this legislation, consider improvements to it, and work toward its adoption into law.

By Mr. KYL (for himself and Mrs. FEINSTEIN):

S. 3704. A bill to clarify the authorized uses of funds in the Crime Victims Fund; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise to introduce a bill to clarify the use of funds in the Crime Victims Fund. I am pleased to be joined by Senator FEINSTEIN.

Federal law makes money from the Crime Victims Fund available to the Department of Justice ''for the United States Attorneys Offices and the Federal Bureau of Investigation to improve services for the benefit of crime victims in the Federal criminal justice system, and for a Victim Notification System.'' 42 U.S.C. 10601(d)(3).

This money is used, among other purposes, to fund positions for Victim Advocates in the United States Attorneys' Offices throughout the Federal jurisdiction. These Advocates are crucial to the system.

We must make sure that DOJ uses Victim Advocates for services ''for the benefit of crime victims.''

Advocates should not be providing travel services. Advocates should not be forced to wear two hats: fact witness management and victim services. Often these hats conflict with one another at the expense of victims.

According to a letter from John W. Gillis, the former Director of the Office for Victims of Crime, U.S. Department of Justice, ''Travel services required of Advocates have included approving fact witness travel, making or authorizing travel arrangements or cancellations, changes to travel and lodging arrangements for witnesses, reconciling errors, handling with hotels, and seeking approval for government employee witnesses. This runs counter to the law and is a matter of serious concern.''

Here is a sample of U.S. Attorney websites, which shows that Advocates make witness travel arrangements.

FLORIDA

Services provided to crime victims and witnesses by the U.S. Attorney's Office include: notice of case events; information concerning their rights; information about case proceedings and the criminal justice system in general; referrals to medical and/or social service providers; assistance with travel arrangements; and logistical information concerning transportation, parking, child care, etc.

http://www.justice.gov/usao/fln/programs/VW/vwa.html

VERMONT

The The U.S. Attorney's Office Victim and Witness Assistance Program can assist eligible Federal crime victims and witnesses with the following:

Provide logistical information and assistance to witnesses with respect to directions, transportation, parking, witness fees and travel reimbursement; assistance with airline and lodging arrangements is provided for out-of-state witnesses;

http://www.justice.gov/usao/vt/victim_witness/vw_uaservices.html

NORTHERN DISTRICT OF ALABAMA

If you have been subpoenaed to testify on behalf of the federal government and you are not a federal government employee, you are entitled to certain fees for coming to court. These are the types of fees that federal fact witnesses are entitled to:

$40.00 for each day that you have to be available to testify, plus travel days.

Reimbursement for round-trip mileage to and from the courthouse at the current government mileage reimbursement rate if you drove your privately-owned vehicle.

Reimbursement for parking, taxis, and excess baggage fees. All of these claims must be supported by receipts. If you choose to mail your receipts to the USAO at a later time, please advise the USAO staff member assisting you that you will do so in order for us to include these amounts in your reimbursement.

A daily meal allowance based on the current government meal allowance rate if you are away from home overnight. You are not required to provide receipts for your meals.

To receive these entitlements, you are required to complete a form referred to as an OBD–3, Fact Witness Voucher. Our Victim-Witness staff will assist you in completing the form. If you have not completed your form prior to being dismissed from court, please contact them at the numbers set out earlier.

If you are away from home overnight, we will make travel, air, train, or bus fare, and lodging arrangements for you. If you need to make changes in these arrangements, we must make the changes for you.

http://www.justice.gov/usao/aln/federalwitness.html

WESTERN DISTRICT OF TENNESSEE

As a victim or witness, you may have questions about transportation, the location of the courthouse, food service, or where to go and what time to appear. You should feel free to ask either the case agent, the Assistant United States Attorney, or the Victim-Witness Coordinator about them. If you are an out-of-town witness, you must contact the Victim-Witness Coordinator to make all your travel arrangements, the federal government is very specific on when it can and cannot reimburse witnesses.

http://www.justice.gov/usao/tnw/brochures/vwhandbook.html

NEW HAMPSHIRE

Fact Witness: ''a person whose testimony consists of the recitation of facts or events.'' The Victim Witness Specialist provides information and education about the judicial process and assists witnesses who are subpoenaed to testify in a federal court proceeding with travel arrangements and other needs and may come up relating to their appearance in court. The Victim Witness Specialist often accompanies the witness to the courtroom to ensure the witness's safety and to address any concerns the witness may have while waiting to testify.

http://www.justice.gov/usao/nh/aboutus/divisions/vicwitdiv.html

The interests of victims of serious federal crimes, including crimes of violence, such as rape, child molestation, and horrific homicides, whose needs are immediate and complex, should not be subordinated to the demands of administrative duties unrelated to Congress' purposes for the Crime Victims Fund.

Fact Witness travel responsibilities directly hinder victim services by prolonging crisis response or intervention techniques to help traumatized and grieving victims, delaying coordination with other social service agencies to help victims of violence, decreasing time for Advocates to meet with victims to assess their immediate safety needs and address them, and delaying or denying time to develop rapport and help victims understand their rights and the criminal justice process.

Victims often find the system overwhelming and it is critical for the Advocates to be able to meet with them to explain their rights and speak personally to them to develop trust. Advocates must have time to address specific victim centered issues.

Many problems arise if Advocates do not have such time: delaying or denying time to implement effective strategies for reducing on-going trauma and stress; delaying or denying time to improve support systems and help victims overcome the community pressures they may experience due to aiding the prosecution; delaying or denying time to seek resources to meet the needs of victims; delaying or denying time to assist victims with impact statements; delaying or denying time to help victims collect restitution information and associated receipts; delaying or denying time to effect safety assessment and planning which can change with time; interrupting court accompaniment, leaving victims to deal with a process that is intimidating and confusing, often forcing victims, including child victims, to face the defendant alone without the emotional support, guidance, and advocacy to which they are entitled; preventing the Advocate's ability to assess the victim's on-going safety needs, which can change with time; preventing timely follow up and forcing delay finding additional resources or referrals to meet the needs of the victims; and preventing proper trial preparation and court room orientation. Trial preparation is a vulnerable time for victims who often feel exposed, scared, and vulnerable. It can trigger a variety of emotions and reactions as they prepare to testify about the specific events related to the crime.

There are other harmful effects of the travel work. Advocates are unable to regularly participate in victim-centered meetings with state, local, and federal agencies. This limits the Advocates' ability to learn about new resources, work together in adapting new strategies to help victims, share in information that is necessary to assist victims in the process, develop best practices, planning to reduce stress and trauma, learning about specific victim issues and current research to address some of the issues, provide community outreach, and develop training tools to educate the community to increase awareness on victim rights issues.

It is the intent of Congress by this amendment to make it clear that the funds authorized for victims services under section 42 U.S.C. 10601(d)(3) be clearly limited to those purposes including the work of victim advocates, victim advocate supervisors, and their direct support staff so that none of the money available is used for purposes that do not benefit crime victims.

Mr. President, I ask unanimous consent that a letter of support and the text of the bill be printed in the RECORD.

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

DECEMBER 14, 2012.

Senator DIANNE FEINSTEIN,
Hart Senate Office Building, Washington, DC.
Senator JON KYL,
Hart Senate Office Building, Washington, DC.

DEAR SENATORS FEINSTEIN AND KYL, I served as the Director, Office for Victims of Crime, U. S. Department of Justice from September, 2001 to January, 2009. During that period it was our ongoing struggle with EOUSA to restrict spending VOCA funds to victims of crime and not to use funds for witnesses who were not victims of crime.

Travel services required of Advocates have included approving fact witness travel, making or authorizing travel arrangements or cancellations, making changes to travel and lodging arrangements for witnesses, reconciling errors, handling issues with hotels, and seeking approval for government employee witnesses. This runs counter to the law and is a matter of serious concern.

Respectfully,

JOHN W. GILLIS,
Former Director, Office for Victims of Crime,
U.S. Department of Justice.

S. 3704

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

SECTION 1. CRIME VICTIMS FUND.

Section 1402(d)(3) of the Victims of Crime Act of 1984 (42 U.S.C.10601(d)(3)) is amended by—

(1) inserting ''(A)'' before ''Of the sums''; and

(2) by adding at the end the following:

''(B) Amounts made available under subparagraph (A) may not be used for any purpose that is not specified in subparagraph (A).''.

Mrs. FEINSTEIN. Mr. President, I rise today to join my friend and colleague, Senator KYL, in introducing legislation that will ensure that monies in the Crime Victims Fund are used for their intended purpose, to help victims of crime.

Senator KYL and I have long worked together to improve the treatment of victims in our criminal justice system. In 2004, we passed the Crime Victims' Rights Act. Because of that legislation, for the first time, victims were given the right to be heard in what is really their own case, and to participate in the proceedings against the accused.

The legislation we are introducing today will strengthen another area of federal law that has a profound impact on the ability of victims to navigate the criminal justice system. In 1984, Congress established the Crime Victims Fund to provide support for victim compensation and assistance programs. This past year, $37 million from the Crime Victims Fund was used to support over 300 victim-witness coordinators and specialists within the Department of Justice's 93 U.S. Attorney's Offices and the FBI's 56 field offices. These personnel advise victims of their rights, update victims on the status of criminal proceedings against the accused, and otherwise assist victims with understanding the operation of the judicial system.

However, it was recently brought to the attention of Senator KYL and myself that these victim-witness coordinators and specialists are being asked to perform duties unrelated to the provision of services for victims. The diversion of funds from victim services prompted the National Organization for Victim Assistance to send a letter this past June, which I am submitting for the record, calling on Congress to clarify the purposes for which monies in the Crime Victims Fund may be used. Senator KYL's and my legislation would do just that. It will make clear that resources available under the Crime Victims Fund may be used only to support services for victims.

A person who is a victim of a crime may have never stepped foot inside a courtroom or had any other interaction with our legal system prior to the commission of the crime. Yet, so much is at stake for that victim when the accused is prosecuted. Congress established the Crime Victims Fund to ensure that victims are able to fully participate in their case. We must make certain that 100 percent of these funds are used to support victims during their time of great need.

The legislation Senator KYL and I are introducing today has already passed out of the Judiciary Committee as part of the Justice For All Reauthorization Act of 2011. While that broader legislation has unfortunately stalled, it is my hope that the Senate and House can quickly pass this one specific, uncontroversial piece, to ensure that victims of crime have all the support that they need and deserve.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 626—DESIGNATING APRIL 24, 2014, AS ''JAN KARSKI DAY''

Mr. LUGAR submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 626

Whereas Jan Karski was born on April 24, 1914, in Lodz, Poland;

Whereas Jan Karski escaped the Soviet massacre in the Katyn forest in 1940;

Whereas Jan Karski became a key emissary in the Polish underground resistance against Nazi occupation;

Whereas Jan Karski chose to risk his own life by staying in Poland after escaping a prisoner of war camp and enduring Gestapo torture in order to provide critical intelligence to the Allied war effort and alert Allied governments about the Holocaust;

Whereas Jan Karski provided eyewitness testimony during the war about the horrors in occupied Poland to British Foreign Minister Anthony Eden and United States President Franklin Roosevelt;

Whereas Jan Karski enrolled in Georgetown University after World War II and earned a doctor of philosophy in 1952;

Whereas Jan Karski became a United States citizen and taught at Georgetown University for 40 years, dedicating the rest of his life to ensuring that the full extent of the Nazi atrocities are never forgotten; and

Whereas Jan Karski was awarded the Presidential Medal of Freedom posthumously on May 29, 2012, 1 of the highest civilian honors in the United States: Now, therefore, be it

Resolved, That the Senate—

(1) designates April 24, 2014, as ''Jan Karski Day'';

(2) recognizes the life and legacy of Dr. Jan Karski and expresses its gratitude for his efforts in informing the free world of the atrocities committed by Nazi and totalitarian forces in Poland during World War II;

(3) applauds the awarding of the Presidential Medal of Freedom to Jan Karski for his efforts during World War II and in reaffirming the importance of the United States-Polish bilateral relationship; and

(4) requests that the Secretary transmit an enrolled copy of this resolution to the family of Jan Karski and to the Ambassador of Poland to the United States.

SENATE RESOLUTION 627—DESIGNATING THE CHAIRMAN OF THE SENATE COMMITTEE ON APPROPRIATIONS

Mr. REID submitted the following resolution; which was considered and agreed to:

S. RES. 627

Resolved, That the following Senator is designated as chairman of the following committee:

COMMITTEE ON APPROPRIATIONS: Ms. Mikulski, of Maryland.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3408. Mr. PAUL submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table.

SA 3409. Mr. PAUL submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3410. Mr. PAUL submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3411. Mr. COONS (for himself and Mr. CARPER) submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3412. Mr. BINGAMAN (for himself, Mr. AKAKA, Mr. WYDEN, and Mr. WEBB) submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3413. Mr. CARPER (for himself and Mr. COONS) submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3414. Mr. CARPER (for himself and Mr. COONS) submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3415. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3416. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3417. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3418. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3419. Mr. NELSON, of Florida submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3420. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3421. Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted an amendment intended to be proposed by her to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3422. Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted an amendment intended to be proposed to amendment SA 3421 submitted by Mrs. FEINSTEIN (for herself and Mrs. BOXER) and intended to be proposed to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 3423. Mr. DURBIN (for Ms. MURKOWSKI) proposed an amendment to the bill H.R. 443, to provide for the conveyance of certain property from the United States to the Maniilaq Association located in Kotzebue, Alaska.

SA 3424. Mr. DURBIN (for Mr. BEGICH) proposed an amendment to the bill S. 2388, to reauthorize and amend the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002, and for other purposes.

TEXT OF AMENDMENTS

SA 3408. Mr. PAUL submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

On page 5, strike lines 12 through 14.

SA 3409. Mr. PAUL submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. BUDGET OFFSET AND ELIMINATING THE EMERGENCY DESIGNATION.

(a) OFFSETTING AMOUNTS.—

(1) IN GENERAL.—There is rescinded for fiscal year 2013 any unobligated balances in an amount equal to $60,407,000,000 of the budget authority provided for fiscal year 2013 of any discretionary account in title II – United States Agency for International Development, title III – Bilateral economic assistance, and title IV – International security assistance as provided by the continuing appropriations resolution of 2013 for the Department of State, Foreign Operations and Related Appropriations Act, 2012 (Public Law 112-175).

(2) LIMITATION.—Of the accounts and programs included in paragraph (1), the rescissions amounts shall not reduce the combined aggregate budget authority of those accounts and programs below $5,000,000,000 for all of fiscal year 2013.

(3) EXCESS RECOVERED.—The amount of rescission of budget authority in paragraphs (1) and (2) that exceeds the level of unobligated balances in that section shall be rescinded, on a pro rata basis, from the budget authority provided for fiscal year 2013 from any remaining discretionary accounts in any fiscal year 2013 appropriations Act (except the accounts and programs included as provided by the continuing appropriations resolution of 2013 for the Military Construction and Veterans Affairs and Related Appropriations Act, 2012).

(b) APPLICATION OF RESCISSIONS.—Of the total amount rescinded subject to including subsection (a)(2), the allocation of rescissions from the accounts or programs as specified in subsection (a)(1), shall be determined by the Director of the Office of Management and Budget.

(c) REGULAR NOT EMERGENCY SPENDING.—Notwithstanding any other provision of this Act, none of the funding provided by this Act shall be considered to be emergency spending for purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and the Balanced Budget and Emergency Deficit Control Act of 1985.

SA 3410. Mr. PAUL submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. BUDGET OFFSET.

(a) IN GENERAL.—

(1) FINDING.—Congress finds that the Congressional Budget Office estimates that—

(A) this Act, the Disaster Relief Appropriations Act, 2013, will spend only 15 percent of the budget authority provided in this Act in fiscal year 2013; and

(B) total outlays flowing from this Act will equal $8,974,000,000 for fiscal year 2013.

(2) BUDGET AUTHORITY LIMIT.—The total amount provided to chapters 1, 2, 3, 4, 5, 6, 7,

8, 9, and 10 of this Act shall be provided based on the Congressional Budget Office's cost estimate findings, such that—

(A) total budget authority for the Act shall not exceed $8,974,000,000;

(B) total budget authority provided for Chapter 1 shall not exceed $81,000,000;

(C) total budget authority provided for Chapter 2 shall not exceed $192,000,000;

(D) total budget authority provided for Chapter 3 shall not exceed $42,000,000;

(E) total budget authority provided for Chapter 4 shall not exceed $673,000,000;

(F) total budget authority provided for Chapter 5 shall not exceed $437,000,000;

(G) total budget authority provided for Chapter 6 shall not exceed $6,681,000,000;

(H) total budget authority provided for Chapter 7 shall not exceed $147,000,000;

(I) total budget authority provided for Chapter 8 shall not exceed $85,000,000;

(J) total budget authority provided for Chapter 9 shall not exceed $23,000,000; and

(K) total budget authority provided for Chapter 10 shall not exceed $613,000,000.

(3) APPLICATION OF BUDGET AUTHORITY REDUCTION.—Of the total amount reduced in this Act as subject to paragraph (2), the allocation of such reductions among the accounts and programs shall be determined by the Director of Office of Management and Budget.

(b) OFFSETTING AMOUNTS.—

(1) IN GENERAL.—There is rescinded for fiscal year 2013 any unobligated balances in an amount equal to $8,974,000,000 of the budget authority provided for fiscal year 2013 of any discretionary account in title II – United States Agency for International Development, title III – Bilateral economic assistance, and title IV – International security assistance accounts and programs as provided by the continuing appropriations resolution of 2013 for the Department of State, Foreign Operations and Related Appropriations Act, 2012 (Public Law 112-175).

(2) LIMIT.—Of the accounts and programs included in paragraph (1), the rescission amounts shall not reduce the combined aggregate budget authority of those accounts and programs below $5,000,000,000 for all of fiscal year 2013.

(3) EXCESS RECOVERED.—The amount of rescission of budget authority in paragraphs (1) and (2) that exceeds the level of unobligated balances in those paragraphs shall be rescinded, on a pro rata basis, from the budget authority provided for fiscal year 2013 from any remaining discretionary accounts in any fiscal year 2013 appropriations Act (except the accounts and programs as provided by the continuing appropriations resolution of 2013 for the Military Construction and Veterans Affairs and Related Appropriations Act, 2012).

(c) APPLICATION OF RESCISSIONS.—Of the total amount rescinded subject to subsection (b), including paragraph (2) the allocation of such rescissions among the accounts or programs as specified in subsection (b)(1), shall be determined by the Director of the Office of Management and Budget.

(d) REGULAR NOT EMERGENCY SPENDING.—Notwithstanding any other provision of this Act, none of the funding provided by this Act shall be considered to be emergency spending for purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and the Balanced Budget and Emergency Deficit Control Act of 1985.

SA 3411. Mr. COONS (for himself and Mr. CARPER) submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

On page 66, line 13, after ''1985'' insert '': *Provided further*, That the Secretary may carry out projects that will restore or enhance National Wildlife Refuges using amounts made available under this heading in areas for which a major disaster declaration for Hurricane Sandy has been made pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), which projects may be carried out in cooperation with the Secretary of the Army, acting through the Chief of Engineers''.

SA 3412. Mr. BINGAMAN (for himself, Mr. AKAKA, Mr. WYDEN, and Mr. WEBB) submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ____. APPROVAL OF THE 2010 U.S.-PALAU AGREEMENT IN RESPONSE TO SUPER TYPHOON BOPHA.

(a) IN GENERAL.—The agreement entitled ''The Agreement Between the Government of the United States of America and the Government of the Republic of Palau Following the Compact of Free Association Section 432 Review'' signed on September 3, 2010 (including the appendices to the agreement) (referred to in this section as the ''Agreement'') is approved (other than Article 7 to the extent it extends Article X of the Federal Programs and Services Agreement) and may only enter into force after the Secretary of State, in coordination with the Secretary of the Interior, enters into an implementing arrangement with the Republic of Palau that makes the adjustments to dates and amounts as set forth in Senate Amendment 3331.

(b) AMENDMENT.—Section 105(f)(1)(B)(ix) of the Compact of Free Association Amendments Act of 2003 (48 U.S. C. 1921d(f)(1)(B)(ix)) is amended by striking ''2009'' and inserting ''2024''.

(c) FUNDING.—

(1) IN GENERAL.—There are appropriated to the Secretary of the Interior such sums as are specified to carry out sections 1, 2(a), 4(a), and 5 of the Agreement for each of fiscal years 2014 through 2024.

(2) AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available until expended.

(3) EMERGENCY DESIGNATION.—Amounts appropriated under paragraph (1) are designated by Congress as being for an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111-139; 2 U.S.C. 933(g)).

SA 3413. Mr. CARPER (for himself and Mr. COONS) submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, line 9, after ''funds:'' insert ''*Provided further*, That for these projects, the Secretary shall work with the Administrator of the National Oceanic and Atmospheric Administration, the Director of the National Park Service, and the Director of the United States Fish and Wildlife Service to encourage the beneficial use of sediment to enhance ecosystem restoration and storm protection, including through modifications of existing regional sediment management plans: *Provided further*, That for these projects, the Secretary shall incorporate all values accruing to the established business lines of the Corps of Engineers (navigation, flood protection, environmental enhancement) in the benefits calculation:''.

SA 3414. Mr. CARPER (for himself and Mr. COONS) submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

On page 19, line 22, after ''projects'' insert '', with such modifications as the Secretary determines to be necessary to meet the goal of providing sustainable reduction to flooding and storm damage risks''.

SA 3415. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

On page 51, strike lines 8 through 23 and insert the following:

''(1) IN GENERAL.—If the President declares a major disaster or emergency for an area within the jurisdiction of a State, tribal, or local government, the President may reimburse the State, tribal, or local government for costs relating to—

''(A) basic pay and benefits for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section, if—

''(i) the work is not typically performed by the employees; and

''(ii) the type of work may otherwise be carried out by contract or agreement with private organizations, firms, or individuals; or

''(B) overtime and hazardous duty compensation for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section.

''(2) OVERTIME.—The guidelines for reimbursement for costs under paragraph (1) shall ensure that no State, tribal, or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

''(3) NO EFFECT ON MUTUAL AID PACTS.—Nothing in this subsection shall effect the ability of the President to reimburse labor force expenses provided pursuant to an authorized mutual aid pact.''.

SA 3416. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and

for other purposes; which was ordered to lie on the table; as follows:

On page 53, line 10, strike ''and'' and all that follows through line 12 and insert the following:

(iii) for which the applicant has a non-Federal share; and

(iv) for which the applicant has received a decision on a first appeal.

SA 3417. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, strike line 1 and insert the following:

(m) HOUSES OF WORSHIP.—For purposes of providing assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) relating to a major disaster declared by the President under section 401 of such Act (42 U.S.C. 5170) relating to Hurricane Sandy, the term ''private nonprofit facility'' shall include a house of worship.

(n) APPLICABILITY.—Unless otherwise specified,

SA 3418. Mr. LIEBERMAN submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, strike line 1 and insert the following:

(m) HOUSES OF WORSHIP.—Section 102(10)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(10)(B)) is amended by inserting ''houses of worship and'' before ''any private nonprofit facility''.

(n) APPLICABILITY.—Unless otherwise specified,

SA 3419. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

On page 5, line 14, strike ''2012:'' and insert ''2012 and related to a fishery disaster that was requested during calendar year 2012 and declared by the Secretary after the date of the enactment of this Act:''.

SA 3420. Mr. COCHRAN submitted an amendment intended to be proposed by him to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

After section 1105, insert the following:

SEC. 1106. MEDICARE DIRECT PAYMENT TO PHARMACIES FOR CERTAIN COMPOUNDED DRUGS THAT ARE PREPARED BY THE PHARMACIES FOR A SPECIFIC BENEFICIARY FOR USE THROUGH AN IMPLANTED INFUSION PUMP.

(a) IN GENERAL.—The first sentence of section 1842(b)(6) of the Social Security Act (42 U.S.C. 1395u(b)(6)) is amended—

(1) by striking ''and'' before ''(H)''; and

(2) by inserting before the period at the end the following: '', and (I) in the case of covered compounded drugs that are prepared by a pharmacy for a specific individual, are dispensed, directly or indirectly, to the individual, are necessary for the effective use of, or therapeutic benefit from, an implanted infusion pump (regardless who refills the pump), and are billed directly by the pharmacy, payment shall be made to the pharmacy''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to drugs dispensed on or after the date of the enactment of this Act.

SA 3421. Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted an amendment intended to be proposed by her to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

Viz: On Page 16, strike lines 17 through 20, and insert in lieu thereof:

''*Provided further*, That these funds may be used to construct any project that is currently under study by the Corps for reducing flooding and storm damage risks along the Atlantic coast within the North Atlantic or the Mississippi Valley Divisions of the U.S. Army Corps of Engineers that suffered direct impacts and significant monetary damages from Hurricanes Isaac or Sandy if the study demonstrates that the project will cost-effectively reduce those risks and is environmentally acceptable and technically feasible: *Provided*''.

SA 3422. Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted an amendment intended to be proposed to amendment SA 3421 submitted by Mrs. FEINSTEIN (for herself and Mrs. BOXER) and intended to be proposed to the bill H.R. 1, making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes; which was ordered to lie on the table; as follows:

On Page 1 line 2, strike ''risks'' and all that follows through ''impacts'' on line 4, and insert in lieu thereof:

risks in areas along the Atlantic coast within the North Atlantic or the Gulf Coast within the Mississippi Valley Divisions of the U.S. Army Corps of Engineers that suffered direct surge inundation impacts

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SA 3423. Mr. DURBIN (for Ms. MURKOWSKI) proposed an amendment to the bill H.R. 443, to provide for the conveyance of certain property from the United States to the Maniilaq Association located in Kotzebue, Alaska; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. CONVEYANCE OF PROPERTY.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, but not later than 180 days after such date, the Secretary of Health and Human Services (in this Act referred to as the ''Secretary'') shall convey to the Maniilaq Association located in Kotzebue, Alaska, all right, title, and interest of the United States in and to the property described in section 2 for use in connection with health and social services programs. The Secretary's conveyance of title by warranty deed under this section shall, on its effective date, supersede and render of no future effect on any Quitclaim Deed to the properties described in section 2 executed by the Secretary and the Maniilaq Association.

(b) CONDITIONS.—The conveyance required by this section shall be made by warranty deed without consideration and without imposing any obligation, term, or condition on the Maniilaq Association, or reversionary interest of the United States, other than that required by this Act or section 512(c)(2)(B) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aaa–11(c)(2)(B)).

SEC. 2. PROPERTY DESCRIBED.

The property, including all land and appurtenances, to be conveyed pursuant to section 1 is as follows:

(1) KOTZEBUE HOSPITAL AND LAND.—Re-Plat of Friends Mission Reserve, Subdivision No. 2, U.S. Survey 2082, Lot 1, Block 12, Kotzebue, Alaska, containing 8.10 acres recorded in the Kotzebue Recording District, Kotzebue, Alaska, on August 18, 2009.

(2) KOTZEBUE QUARTERS AKA KIC SITE.—Replat of Friends Mission Reserve, U.S. Survey 2082, Lot 1A, Block 13, Kotzebue, Alaska, containing 5.229 acres recorded in the Kotzebue Recording District, Kotzebue, Alaska, on December 23, 1991.

(3) KOTZEBUE QUARTERS AKA NANA SITE.—Lot 1B, Block 26, Tract A, Townsite of Kotzebue, U.S. Survey No. 2863 A, Kotzebue, Alaska, containing 1.29 acres recorded in the Kotzebue Recording District, Kotzebue, Alaska, on December 23, 1991.

SEC. 3. ENVIRONMENTAL LIABILITY.

(a) IN GENERAL.—Notwithstanding any other provision of Federal law, the Maniilaq Association shall not be liable for any soil, surface water, groundwater, or other contamination resulting from the disposal, release, or presence of any environmental contamination, including any oil or petroleum products, or any hazardous substances, hazardous materials, hazardous waste, pollutants, toxic substances, solid waste, or any other environmental contamination or hazard as defined in any Federal or State of Alaska law, on any property described in section 2 on or before the date on which all of the properties described in section 2 were conveyed by quitclaim deed.

(b) EASEMENT.—The Secretary shall be accorded any easement or access to the property conveyed as may be reasonably necessary to satisfy any retained obligations and liability of the Secretary.

(c) NOTICE OF HAZARDOUS SUBSTANCE ACTIVITY AND WARRANTY.—The Secretary shall comply with section 120(h)(3)(A) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(3)(A)).

SA 3424. Mr. DURBIN (for Mr. BEGICH) proposed an amendment to the bill S. 2388, to reauthorize and amend the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002, and for other purposes; as follows:

On page 50, line 20, strike ''by section 5'' and insert ''by section 4(a)''.

On page 55, lines 1 and 2, strike '', by and with the advice and consent of the Senate''.

On page 56, strike lines 9 through 19.

On page 58, line 15, strike ''alone''.

On page 58, line 19, strike ''alone''.

On page 59, line 4, strike ''alone''.

On page 61, line 22, strike ''such Act'' and insert ''the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002''.

On page 85, strike lines 1 through 12.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on December 20, 2012.

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

COMMITTEE ON FINANCE

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on December 20, 2012, at 2:30 p.m., in room SD–215 of the Dirksen Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on December 20, 2012, at 9 a.m., to hold a hearing entitled, ''Benghazi: The Attacks and the Lessons Learned.''

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

COMMITTEE ON THE JUDICIARY

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on December 20, 2012, in SD–226 of the Dirksen Senate Office Building.

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

SUBCOMMITTEE ON HOUSING, TRANSPORTATION, AND COMMUNITY DEVELOPMENT

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs' Subcommittee on Housing, Transportation, and Community Development be authorized to meet during the session of the Senate on December 20, 2012, at 11 a.m., to conduct a hearing entitled ''Recovering From Superstorm Sandy: Rebuilding Our Infrastructure.''

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

PRIVILEGES OF THE FLOOR

Mr. CARDIN. Mr. President, I ask unanimous consent that Janet Jacqueline Emanuel, a fellow in Senator MARK UDALL's office, be granted the privilege of the floor for the remainder of the Senate's session of the 112th Congress.

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

MANIILAQ ASSOCIATION CONVEYANCE ACT

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 566, H.R. 443.

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

The legislative clerk read as follows:

A bill (H.R. 443) to provide for the conveyance of certain property from the United States to the Maniilaq Association located in Kotzebue, Alaska.

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

Mr. DURBIN. I further ask that the Murkowski substitute amendment at the desk be agreed to; the bill, as amended, be read a third time and passed; the motions to reconsider be considered made and laid on the table, with no intervening action or debate; and that any statements be printed in the RECORD.

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

The amendment (No. 3423) was agreed to, as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. CONVEYANCE OF PROPERTY.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, but not later than 180 days after such date, the Secretary of Health and Human Services (in this Act referred to as the ''Secretary'') shall convey to the Maniilaq Association located in Kotzebue, Alaska, all right, title, and interest of the United States in and to the property described in section 2 for use in connection with health and social services programs. The Secretary's conveyance of title by warranty deed under this section shall, on its effective date, supersede and render of no future effect on any Quitclaim Deed to the properties described in section 2 executed by the Secretary and the Maniilaq Association.

(b) CONDITIONS.—The conveyance required by this section shall be made by warranty deed without consideration and without imposing any obligation, term, or condition on the Maniilaq Association, or reversionary interest of the United States, other than that required by this Act or section 512(c)(2)(B) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aaa–11(c)(2)(B)).

SEC. 2. PROPERTY DESCRIBED.

The property, including all land and appurtenances, to be conveyed pursuant to section 1 is as follows:

(1) KOTZEBUE HOSPITAL AND LAND.—Re-Plat of Friends Mission Reserve, Subdivision No. 2, U.S. Survey 2082, Lot 1, Block 12, Kotzebue, Alaska, containing 8.10 acres recorded in the Kotzebue Recording District, Kotzebue, Alaska, on August 18, 2009.

(2) KOTZEBUE QUARTERS AKA KIC SITE.—Replat of Friends Mission Reserve, U.S. Survey 2082, Lot 1A, Block 13, Kotzebue, Alaska, containing 5.229 acres recorded in the Kotzebue Recording District, Kotzebue, Alaska, on December 23, 1991.

(3) KOTZEBUE QUARTERS AKA NANA SITE.—Lot 1B, Block 26, Tract A, Townsite of Kotzebue, U.S. Survey No. 2863 A, Kotzebue, Alaska, containing 1.29 acres recorded in the Kotzebue Recording District, Kotzebue, Alaska, on December 23, 1991.

SEC. 3. ENVIRONMENTAL LIABILITY.

(a) IN GENERAL.—Notwithstanding any other provision of Federal law, the Maniilaq Association shall not be liable for any soil, surface water, groundwater, or other contamination resulting from the disposal, release, or presence of any environmental contamination, including any oil or petroleum products, or any hazardous substances, hazardous materials, hazardous waste, pollutants, toxic substances, solid waste, or any other environmental contamination or hazard as defined in any Federal or State of Alaska law, on any property described in section 2 on or before the date on which all of the properties described in section 2 were conveyed by quitclaim deed.

(b) EASEMENT.—The Secretary shall be accorded any easement or access to the property conveyed as may be reasonably necessary to satisfy any retained obligations and liability of the Secretary.

(c) NOTICE OF HAZARDOUS SUBSTANCE ACTIVITY AND WARRANTY.—The Secretary shall comply with section 120(h)(3)(A) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(3)(A)).

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 443), as amended, was read the third time and passed.

IMPROPER PAYMENTS ELIMINATION AND RECOVERY IMPROVEMENT ACT OF 2012

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4053, which was just received from the House and is at the desk.

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

The legislative clerk read as follows:

A bill (H.R. 4053) to intensify efforts to identify, prevent, and recover payment error, waste, fraud and abuse within Federal spending.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that the bill be read three times and passed, with no intervening action or debate and that any related statements be printed in the RECORD.

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

The bill (H.R. 4053) was ordered to a third reading, was read the third time, and passed.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS AMENDMENTS ACT OF 2012

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 551, S. 2388.

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

The legislative clerk read as follows:

A bill (S. 2388) to reauthorize and amend the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the committee

on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2012''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Strength and distribution in grade.
Sec. 3. Exclusion of officers recalled from retired status and positions of importance and responsibility from number of authorized commissioned officers.
Sec. 4. Obligated service requirement.
Sec. 5. Training and physical fitness.
Sec. 6. Appointments.
Sec. 7. Personnel boards.
Sec. 8. Temporary appointments.
Sec. 9. Officer candidates.
Sec. 10. Involuntary retirement or separation.
Sec. 11. Separation pay.
Sec. 12. Applicability of certain provisions of title 10, United States Code.
Sec. 13. Education loan repayment program.
Sec. 14. Interest payment program.
Sec. 15. Student pre-commissioning education assistance program.
Sec. 16. Limitation on educational assistance.
Sec. 17. Applicability of certain provisions of title 37, United States Code.
Sec. 18. Application of certain provisions of competitive service law.
Sec. 19. Eligibility of all members of uniformed services for Legion of Merit award.
Sec. 20. Application of Employment and Reemployment Rights of Members of the Uniformed Services to members of commissioned officer corps.
Sec. 21. Protected communications for commissioned officer corps and prohibition of retaliatory personnel actions.
Sec. 22. Criminal penalties for wearing uniform without authority.
Sec. 23. Report on status of officers in commissioned officer corps of National Oceanic and Atmospheric Administration and Public Health Service during Government shutdowns.
Sec. 24. Technical correction.
Sec. 25. Report.
Sec. 26. Effective date.

SEC. 2. STRENGTH AND DISTRIBUTION IN GRADE.

Section 214 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3004) is amended to read as follows:

''SEC. 214. STRENGTH AND DISTRIBUTION IN GRADE.

''(a) GRADES.—The commissioned grades in the commissioned officer corps of the Administration are the following, in relative rank with officers of the Navy:

''(1) Vice admiral.
''(2) Rear admiral.
''(3) Rear admiral (lower half).
''(4) Captain.
''(5) Commander.
''(6) Lieutenant commander.
''(7) Lieutenant.
''(8) Lieutenant (junior grade).
''(9) Ensign.

''(b) PROPORTION.—

''(1) IN GENERAL.—The officers on the lineal list shall be distributed in grade in the following percentages:

''(A) 8 in the grade of captain.
''(B) 14 in the grade of commander.
''(C) 19 in the grade of lieutenant commander.

''(2) GRADES BELOW LIEUTENANT COMMANDER.—The Secretary shall prescribe, with respect to the distribution on the lineal list in grade, the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign.

''(c) ANNUAL COMPUTATION OF NUMBER IN GRADE.—

''(1) IN GENERAL.—Not less frequently than once each year, the Secretary shall make a computation to determine the number of officers on the lineal list authorized to be serving in each grade.

''(2) METHOD OF COMPUTATION.—The number in each grade shall be computed by applying the applicable percentage to the total number of such officers serving on active duty on the date the computation is made.

''(3) FRACTIONS.—If a final fraction occurs in computing the authorized number of officers in a grade, the nearest whole number shall be taken. If the fraction is ½, the next higher whole number shall be taken.

''(d) TEMPORARY INCREASE IN NUMBERS.—The total number of officers authorized by law to be on the lineal list during a fiscal year may be temporarily exceeded if the average number on that list during that fiscal year does not exceed the authorized number.

''(e) POSITIONS OF IMPORTANCE AND RESPONSIBILITY.—Officers serving in positions designated under section 228(a) and officers recalled from retired status shall not be counted when computing authorized strengths under subsection (c) and shall not count against those strengths.

''(f) PRESERVATION OF GRADE AND PAY.—No officer may be reduced in grade or pay or separated from the commissioned officer corps of the Administration as the result of a computation made to determine the authorized number of officers in the various grades.''.

SEC. 3. EXCLUSION OF OFFICERS RECALLED FROM RETIRED STATUS AND POSITIONS OF IMPORTANCE AND RESPONSIBILITY FROM NUMBER OF AUTHORIZED COMMISSIONED OFFICERS.

Section 215 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3005) is amended—

(1) in the matter before paragraph (1), by striking ''Effective'' and inserting the following:

''(a) IN GENERAL.—Effective''; and

(2) by adding at the end the following new subsection:

''(b) POSITIONS OF IMPORTANCE AND RESPONSIBILITY.—Officers serving in positions designated under section 228 and officers recalled from retired status—

''(1) may not be counted in determining the total number of authorized officers on the lineal list under this section; and

''(2) may not count against such number.''.

SEC. 4. OBLIGATED SERVICE REQUIREMENT.

(a) IN GENERAL.—Subtitle A of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3001 et seq.) is amended by adding at the end the following:

''SEC. 216. OBLIGATED SERVICE REQUIREMENT.

''(a) IN GENERAL.—

''(1) RULEMAKING.—The Secretary shall prescribe the obligated service requirements for appointments, training, promotions, separations, continuations, and retirement of officers not otherwise covered by law.

''(2) WRITTEN AGREEMENTS.—The Secretary and officers shall enter into written agreements that describe the officers' obligated service requirements prescribed under paragraph (1) in return for such appointments, training, promotions, separations, and retirements as the Secretary considers appropriate.

''(b) REPAYMENT FOR FAILURE TO SATISFY REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary may require an officer who fails to meet the service requirements prescribed under subsection (a)(1) to reimburse the Secretary in an amount that bears the same ratio to the total costs of the training provided to that officer by the Secretary as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve.

''(2) OBLIGATION AS DEBT TO UNITED STATES.—An obligation to reimburse the Secretary under paragraph (1) shall be considered for all purposes as a debt owed to the United States.

''(3) DISCHARGE IN BANKRUPTCY.—A discharge in bankruptcy under title 11 that is entered less than 5 years after the termination of a written agreement entered into under subsection (a)(2) does not discharge the individual signing the agreement from a debt arising under such agreement.

''(c) WAIVER OR SUSPENSION OF COMPLIANCE.—The Secretary may waive the service obligation of an officer who—

''(1) becomes unqualified to serve on active duty in the commissioned officer corps of the Administration because of a circumstance not within the control of that officer; or

''(2) is—

''(A) not physically qualified for appointment; and

''(B) determined to be unqualified for service in the commissioned officer corps of the Administration because of a physical or medical condition that was not the result of the officer's own misconduct or grossly negligent conduct.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372) is amended by inserting after the item relating to section 215 the following:

''Sec. 216. Obligated service requirement.''.

SEC. 5. TRAINING AND PHYSICAL FITNESS.

(a) IN GENERAL.—Subtitle A of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3001 et seq.), as amended by section 5, is further amended by adding at the end the following:

''SEC. 217. TRAINING AND PHYSICAL FITNESS.

''(a) TRAINING.—The Secretary may take such measures as may be necessary to ensure that officers are prepared to carry out their duties in the commissioned officer corps of the Administration and proficient in the skills necessary to carry out such duties. Such measures may include the following:

''(1) Carrying out training programs and correspondence courses, including establishing and operating a basic officer training program to provide initial indoctrination and maritime vocational training for officer candidates as well as refresher training, mid-career training, aviation training, and such other training as the Secretary considers necessary for officer development and proficiency.

''(2) Providing officers and officer candidates with books and school supplies.

''(3) Acquiring such equipment as may be necessary for training and instructional purposes.

''(b) PHYSICAL FITNESS.—The Secretary shall ensure that officers maintain a high physical state of readiness in preparation for functioning as a service in the Navy during times of war, including by establishing standards of physical fitness for officers that are substantially equivalent to those prescribed for officers in the Navy.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372), as amended by section 4(b), is further amended by inserting after the item relating to section 216, as added by such section 4(b), the following:

''Sec. 217. Training and physical fitness.''.

SEC. 6. APPOINTMENTS.

(a) ORIGINAL APPOINTMENTS.—

(1) IN GENERAL.—Section 221 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3021) is amended to read as follows:

"SEC. 221. ORIGINAL APPOINTMENTS AND REAPPOINTMENTS.

''(a) ORIGINAL APPOINTMENTS.—

''(1) GRADES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an original appointment of an officer may be made in such grades as may be appropriate for—

''(i) the qualification, experience, and length of service of the appointee; and

''(ii) the commissioned officer corps of the Administration.

''(B) APPOINTMENT OF OFFICER CANDIDATES.—

''(i) LIMITATION ON GRADE.—An original appointment of an officer candidate, upon graduation from the basic officer training program of the commissioned officer corps of the Administration, may not be made in any other grade than ensign.

''(ii) RANK.—Officer candidates receiving appointments as ensigns upon graduation from basic officer training program shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

''(2) SOURCE OF APPOINTMENTS.—An original appointment may be made from among the following:

''(A) Graduates of the basic officer training program of the commissioned officer corps of the Administration.

''(B) Graduates of the military service academies of the United States who otherwise meet the academic standards for enrollment in the training program described in subparagraph (A).

''(C) Licensed officers of the United States merchant marine who have served 2 or more years aboard a vessel of the United States in the capacity of a licensed officer, who otherwise meet the academic standards for enrollment in the training program described in subparagraph (A).

''(3) MILITARY SERVICE ACADEMIES OF THE UNITED STATES DEFINED.—In this subsection, the term 'military service academies of the United States' means the following:

''(A) The United States Military Academy, West Point, New York.

''(B) The United States Naval Academy, Annapolis, Maryland.

''(C) The United States Air Force Academy, Colorado Springs, Colorado.

''(D) The United States Coast Guard Academy, New London, Connecticut.

''(E) The United States Merchant Marine Academy, Kings Point, New York.

''(b) REAPPOINTMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an individual who previously served in the commissioned officer corps of the Administration may be appointed by the Secretary to the grade the individual held prior to separation.

''(2) REAPPOINTMENTS TO HIGHER GRADES.—An appointment under paragraph (1) to a position of importance and responsibility designated under section 228 may only be made by the President, by and with the advice and consent of the Senate.

''(c) QUALIFICATIONS.—An appointment under subsection (a) or (b) may not be given to an individual until the individual's mental, moral, physical, and professional fitness to perform the duties of an officer has been established under such regulations as the Secretary shall prescribe.

''(d) PRECEDENCE OF APPOINTEES.—Appointees under this section shall take precedence in the grade to which appointed in accordance with the dates of their commissions as commissioned officers in such grade. Appointees whose dates of commission are the same shall take precedence with each other as the Secretary shall determine.

''(e) INTER-SERVICE TRANSFERS.—For inter-service transfers (as described in the Department of Defense Directive 1300.4 (dated December 27, 2006)) the Secretary shall—

''(1) coordinate with the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating to promote and streamline inter-service transfers;

''(2) give preference to such inter-service transfers for recruitment purposes as determined appropriate by the Secretary; and

''(3) reappoint such inter-service transfers to the equivalent grade in the commissioned officer corps.''.

(2) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372) is amended by striking the item relating to section 221 and inserting the following:

''Sec. 221. Original appointments and reappointments.''.

(b) APPOINTMENTS TO PERMANENT GRADES.—Section 226 of such Act (33 U.S.C. 3026) is amended by striking ''Appointments'' and all that follows and inserting the following:

''(a) HIGHER GRADES.—Original appointments under section 221 in and promotions to the grades of lieutenant commander and above shall be made by the President, by and with the advice and consent of the Senate.

''(b) LOWER GRADES.—Original appointments under section 221 in and promotions to the grades of ensign through lieutenant shall be made by the President alone.''.

SEC. 7. PERSONNEL BOARDS.

Section 222 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3022) is amended to read as follows:

"SEC. 222. PERSONNEL BOARDS.

''(a) CONVENING.—Not less frequently than once each year and at such other times as the Secretary determines necessary, the Secretary shall convene a personnel board.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—A board convened under subsection (a) shall consist of 5 or more officers who are serving in or above the permanent grade of the officers under consideration by the board.

''(2) RETIRED OFFICERS.—Officers on the retired list may be recalled to serve on such personnel boards as the Secretary considers necessary.

''(3) NO MEMBERSHIP ON 2 SUCCESSIVE BOARDS.—No officer may be a member of 2 successive personnel boards convened to consider officers of the same grade for promotion or separation.

''(c) DUTIES.—Each personnel board shall—

''(1) recommend to the Secretary such changes as may be necessary to correct any erroneous position on the lineal list that was caused by administrative error; and

''(2) make selections and recommendations to the Secretary and the President for the appointment, promotion, involuntary separation, continuation, and involuntary retirement of officers in the commissioned officer corps of the Administration as prescribed in this title.

''(d) ACTION ON RECOMMENDATIONS NOT ACCEPTABLE.—If any recommendation by a board convened under subsection (a) is not accepted by the Secretary or the President, the board shall make such further recommendations as the Secretary or the President consider appropriate.''.

SEC. 8. TEMPORARY APPOINTMENTS.

Section 229 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3029) is amended to read as follows:

"SEC. 229. TEMPORARY APPOINTMENTS.

''(a) APPOINTMENTS BY PRESIDENT.—Temporary appointments in the grade of ensign, lieutenant junior grade, or lieutenant may be made by the President alone.

''(b) TERMINATION.—A temporary appointment to a position under subsection (a) shall terminate upon approval of a permanent appointment for such position made by the President alone.

''(c) ORDER OF PRECEDENCE.—Appointees under subsection (a) shall take precedence in the grade to which appointed in accordance with the dates of their appointments as officers in such grade. The order of precedence of appointees who are appointed on the same date shall be determined by the Secretary.

''(d) ANY ONE GRADE.—When determined by the Secretary to be in the best interest of the commissioned officer corps, officers in any permanent grade may be temporarily promoted one grade by the President alone. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.''.

SEC. 9. OFFICER CANDIDATES.

(a) IN GENERAL.—Subtitle B of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3021 et seq.) is amended by adding at the end the following:

"SEC. 234. OFFICER CANDIDATES.

''(a) DETERMINATION OF NUMBER.—The Secretary shall determine the number of appointments of officer candidates.

''(b) APPOINTMENT.—Appointment of officer candidates shall be made under regulations which the Secretary shall prescribe, including regulations with respect to determining age limits, methods of selection of officer candidates, term of service as an officer candidate before graduation from the program, and all other matters affecting such appointment.

''(c) DISMISSAL.—The Secretary may dismiss from the basic officer training program of the Administration any officer candidate who, during the officer candidate's term as an officer candidate, the Secretary considers unsatisfactory in either academics or conduct, or not adapted for a career in the commissioned officer corps of the Administration. Officer candidates shall be subject to rules governing discipline prescribed by the Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

''(d) AGREEMENT.—

''(1) IN GENERAL.—Each officer candidate shall sign an agreement with the Secretary in accordance with section 216(a)(2) regarding the officer candidate's term of service in the commissioned officer corps of the Administration.

''(2) ELEMENTS.—An agreement signed by an officer candidate under paragraph (1) shall provide that the officer candidate agrees to the following:

''(A) That the officer candidate will complete the course of instruction at the basic officer training program of the Administration.

''(B) That upon graduation from the such program, the officer candidate—

''(i) will accept an appointment, if tendered, as an officer; and

''(ii) will serve on active duty for at least 4 years immediately after such appointment.

''(e) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. Such regulations shall include—

''(1) standards for determining what constitutes a breach of an agreement signed under such subsection (d)(1); and

''(2) procedures for determining whether such a breach has occurred.

''(f) REPAYMENT.—An officer candidate or former officer candidate who does not fulfill the terms of the obligation to serve as specified under section (d) shall be subject to the repayment provisions of section 216(b).''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to

authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372) is amended by inserting after the item relating to section 233 the following:

''Sec. 234. Officer candidates.''.

(c) OFFICER CANDIDATE DEFINED.—Section 212 of such Act (33 U.S.C. 3002) is amended—

(1) by redesignating paragraphs (4) through (6) as paragraphs (5) through (7), respectively; and

(2) by inserting after paragraph (3) the following:

''(4) OFFICER CANDIDATE.—The term 'officer candidate' means an individual who is enrolled in the basic officer training program of the Administration and is under consideration for appointment as an officer under section 221(a)(2)(A).''.

(d) PAY FOR OFFICER CANDIDATES.—Section 203 of title 37, United States Code, is amended by adding at the end the following:

''(f)(1) An officer candidate enrolled in the basic officer training program of the commissioned officer corps of the National Oceanic and Atmospheric Administration is entitled, while participating in such program, to monthly officer candidate pay at monthly rate equal to the basic pay of an enlisted member in the pay grade E–5 with less than 2 years service.

''(2) An individual who graduates from such program shall receive credit for the time spent participating in such program as if such time were time served while on active duty as a commissioned officer. If the individual does not graduate from such program, such time shall not be considered creditable for active duty or pay.''.

SEC. 10. INVOLUNTARY RETIREMENT OR SEPARATION.

Section 241 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3041) is amended by adding at the end the following:

''(d) DEFERMENT OF RETIREMENT OR SEPARATION FOR MEDICAL REASONS.—

''(1) IN GENERAL.—If the Secretary determines that the evaluation of the medical condition of an officer requires hospitalization or medical observation that cannot be completed with confidence in a manner consistent with the officer's well being before the date on which the officer would otherwise be required to retire or be separated under this section, the Secretary may defer the retirement or separation of the officer.

''(2) CONSENT REQUIRED.—A deferment may only be made with the written consent of the officer involved. If the officer does not provide written consent to the deferment, the officer shall be retired or separated as scheduled.

''(3) LIMITATION.—A deferral of retirement or separation under this subsection may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation.''.

SEC. 11. SEPARATION PAY.

Section 242 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3042) is amended by adding at the end the following:

''(d) EXCEPTION.—An officer discharged for twice failing selection for promotion to the next higher grade is not entitled to separation pay under this section if the officer—

''(1) expresses a desire not to be selected for promotion; or

''(2) requests removal from the list of selectees.''.

SEC. 12. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 10, UNITED STATES CODE.

Section 261(a) of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071(a)) is amended—

(1) by redesignating paragraphs (13) through (16) as paragraphs (20) through (23), respectively;

(2) by redesignating paragraphs (7) through (12) as paragraphs (12) through (17), respectively;

(3) by redesignating paragraphs (4) through (6) as paragraphs (8) through (10), respectively;

(4) by inserting after paragraph (3) the following:

''(4) Section 771, relating to unauthorized wearing of uniforms.

''(5) Section 774, relating to wearing religious apparel while in uniform.

''(6) Section 982, relating to service on State and local juries.

''(7) Section 1031, relating to administration of oaths.'';

(5) by inserting after paragraph (10), as redesignated, the following:

''(11) Chapter 58, relating to the Benefits and Services for members being separated or recently separated.''; and

(6) by inserting after paragraph (17), as redesignated, the following:

''(18) Subchapter I of chapter 88, relating to Military Family Programs.

''(19) Section 2005, relating to advanced education assistance, active duty agreements, and reimbursement requirements.''.

SEC. 13. EDUCATION LOAN REPAYMENT PROGRAM.

(a) IN GENERAL.—Subtitle E of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071 et seq.) is amended by adding at the end the following:

''SEC. 267. EDUCATION LOAN REPAYMENT PROGRAM.

''(a) AUTHORITY TO REPAY EDUCATION LOANS.—For the purpose of maintaining adequate numbers of officers of the commissioned officer corps of the Administration on active duty who have skills required by the commissioned officer corps, the Secretary may repay, in the case of a person described in subsection (b), a loan that—

''(1) was used by the person to finance education; and

''(2) was obtained from a governmental entity, private financial institution, educational institution, or other authorized entity.

''(b) ELIGIBLE PERSONS.—To be eligible to obtain a loan repayment under this section, a person must—

''(1) satisfy 1 of the requirements specified in subsection (c);

''(2) be fully qualified for, or hold, an appointment as a commissioned officer in the commissioned officer corps of the Administration; and

''(3) sign a written agreement to serve on active duty, or, if on active duty, to remain on active duty for a period in addition to any other incurred active duty obligation.

''(c) ACADEMIC AND PROFESSIONAL REQUIREMENTS.—One of the following academic requirements must be satisfied for purposes of determining the eligibility of an individual for a loan repayment under this section:

''(1) The person is fully qualified in a profession that the Secretary has determined to be necessary to meet identified skill shortages in the commissioned officer corps.

''(2) The person is enrolled as a full-time student in the final year of a course of study at an accredited educational institution (as determined by the Secretary of Education) leading to a degree in a profession that will meet identified skill shortages in the commissioned officer corps.

''(d) LOAN REPAYMENTS.—

''(1) IN GENERAL.—Subject to the limits established under paragraph (2), a loan repayment under this section may consist of the payment of the principal, interest, and related expenses of a loan obtained by a person described in subsection (b).

''(2) LIMITATION ON AMOUNT.—For each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(3), the Secretary may pay not more than the amount specified in section 2173(e)(2) of title 10, United States Code.

''(e) ACTIVE DUTY SERVICE OBLIGATION.—

''(1) IN GENERAL.—A person entering into an agreement described in subsection (b)(3) incurs an active duty service obligation.

''(2) LENGTH OF OBLIGATION DETERMINED UNDER REGULATIONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the length of the obligation under paragraph (1) shall be determined under regulations prescribed by the Secretary.

''(B) MINIMUM OBLIGATION.—The regulations prescribed under subparagraph (A) may not provide for a period of obligation of less than 1 year for each maximum annual amount, or portion thereof, paid on behalf of the person for qualified loans.

''(3) PERSONS ON ACTIVE DUTY BEFORE ENTERING INTO AGREEMENT.—The active duty service obligation of persons on active duty before entering into the agreement shall be served after the conclusion of any other obligation incurred under the agreement.

''(f) EFFECT OF FAILURE TO COMPLETE OBLIGATION.—

''(1) ALTERNATIVE OBLIGATIONS.—An officer who is relieved of the officer's active duty obligation under this section before the completion of that obligation may be given any alternative obligation, at the discretion of the Secretary.

''(2) REPAYMENT.—An officer who does not complete the period of active duty specified in the agreement entered into under subsection (b)(3), or the alternative obligation imposed under paragraph (1), shall be subject to the repayment provisions under section 216.

''(g) RULEMAKING.—The Secretary shall prescribe regulations to carry out this section, including—

''(1) standards for qualified loans and authorized payees; and

''(2) other terms and conditions for the making of loan repayments.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372) is amended by inserting after the item relating to section 266 the following:

''Sec. 267. Education loan repayment program.''.

SEC. 14. INTEREST PAYMENT PROGRAM.

(a) IN GENERAL.—Subtitle E of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071 et seq.), as amended by section 13, is further amended by adding at the end the following:

''SEC. 268. INTEREST PAYMENT PROGRAM.

''(a) AUTHORITY.—The Secretary may pay the interest and any special allowances that accrue on 1 or more student loans of an eligible officer, in accordance with this section.

''(b) ELIGIBLE OFFICERS.—An officer is eligible for the benefit described in subsection (a) while the officer—

''(1) is serving on active duty;

''(2) has not completed more than 3 years of service on active duty;

''(3) is the debtor on 1 or more unpaid loans described in subsection (c); and

''(4) is not in default on any such loan.

''(c) STUDENT LOANS.—The authority to make payments under subsection (a) may be exercised with respect to the following loans:

''(1) A loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.).

''(2) A loan made under part D of such title (20 U.S.C. 1087a et seq.).

''(3) A loan made under part E of such title (20 U.S.C. 1087aa et seq.).

''(d) MAXIMUM BENEFIT.—Interest and any special allowance may be paid on behalf of an officer under this section for any of the 36 consecutive months during which the officer is eligible under subsection (b).

''(e) FUNDS FOR PAYMENTS.—The Secretary may use amounts appropriated for the pay and

allowances of personnel of the commissioned officer corps of the Administration for payments under this section.

''(f) COORDINATION WITH SECRETARY OF EDUCATION.—

''(1) IN GENERAL.—The Secretary shall consult with the Secretary of Education regarding the administration of this section.

''(2) TRANSFER OF FUNDS.—The Secretary shall transfer to the Secretary of Education the funds necessary—

''(A) to pay interest and special allowances on student loans under this section (in accordance with sections 428(o), 455(l), and 464(j) of the Higher Education Act of 1965 (20 U.S.C. 1078(o), 1087e(l), and 1087dd(j)); and

''(B) to reimburse the Secretary of Education for any reasonable administrative costs incurred by the Secretary in coordinating the program under this section with the administration of the student loan programs under parts B, D, and E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.).

''(g) SPECIAL ALLOWANCE DEFINED.—In this section, the term 'special allowance' means a special allowance that is payable under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 428(o) of the Higher Education Act of 1965 (20 U.S.C. 1078(o)) is amended—

(A) by striking the subsection heading and inserting ''ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS''; and

(B) in paragraph (1)—

(i) by inserting ''or section 264 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002'' after ''Code,''; and

(ii) by inserting ''or an officer in the commissioned officer corps of the National Oceanic and Atmospheric Administration, respectively,'' after ''Armed Forces''.

(2) Sections 455(l) and 464(j) of the Higher Education Act of 1965 (20 U.S.C. 1087e(l) and 1087dd(j)) are each amended—

(A) by striking the subsection heading and inserting ''ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS''; and

(B) in paragraph (1)—

(i) by inserting ''or section 264 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002'' after ''Code,''; and

(ii) by inserting ''or an officer in the commissioned officer corps of the National Oceanic and Atmospheric Administration, respectively'' after ''Armed Forces''.

(c) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372), as amended by section 13(b), is further amended by inserting after the item relating to section 267, as added by such section 13(b), the following:

''Sec. 268. Interest payment program.''.

SEC. 15. STUDENT PRE-COMMISSIONING EDUCATION ASSISTANCE PROGRAM.

(a) IN GENERAL.—Subtitle E of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071 et seq.), as amended by sections 13 and 14, is further amended by adding at the end the following:

''SEC. 269. STUDENT PRE-COMMISSIONING EDUCATION ASSISTANCE PROGRAM.

''(a) AUTHORITY TO PROVIDE FINANCIAL ASSISTANCE.—For the purpose of maintaining adequate numbers of officers of the commissioned officer corps of the Administration on active duty, the Secretary may provide financial assistance to a person described in subsection (b) for expenses of the person while the person is pursuing on a full-time basis at an accredited educational institution (as determined by the Secretary of Education) a program of education approved by the Secretary that leads to—

''(1) a baccalaureate degree in not more than 5 academic years; or

''(2) a postbaccalaureate degree.

''(b) ELIGIBLE PERSONS.—

''(1) IN GENERAL.—A person is eligible to obtain financial assistance under subsection (a) if the person—

''(A) is enrolled on a full-time basis in a program of education referred to in subsection (a) at any educational institution described in such subsection;

''(B) meets all of the requirements for acceptance into the commissioned officer corps of the Administration except for the completion of a baccalaureate degree; and

''(C) enters into a written agreement with the Secretary described in paragraph (2).

''(2) AGREEMENT.—A written agreement referred to in paragraph (1)(C) is an agreement between the person and the Secretary in which the person agrees—

''(A) to accept an appointment as an officer, if tendered; and

''(B) upon completion of the person's educational program, agrees to serve on active duty, immediately after appointment, for—

''(i) up to 3 years if the person received less than 3 years of assistance; and

''(ii) up to 5 years if the person received at least 3 years of assistance.

''(c) QUALIFYING EXPENSES.—Expenses for which financial assistance may be provided under subsection (a) are the following:

''(1) Tuition and fees charged by the educational institution involved.

''(2) The cost of books.

''(3) In the case of a program of education leading to a baccalaureate degree, laboratory expenses.

''(4) Such other expenses as the Secretary considers appropriate.

''(d) LIMITATION ON AMOUNT.—The Secretary shall prescribe the amount of financial assistance provided to a person under subsection (a), which may not exceed the amount specified in section 2173(e)(2) of title 10, United States Code, for each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(2).

''(e) DURATION OF ASSISTANCE.—Financial assistance may be provided to a person under subsection (a) for not more than 5 consecutive academic years.

''(f) SUBSISTENCE ALLOWANCE.—

''(1) IN GENERAL.—A person who receives financial assistance under subsection (a) shall be entitled to a monthly subsistence allowance at a rate prescribed under paragraph (2) for the duration of the period for which the person receives such financial assistance.

''(2) DETERMINATION OF AMOUNT.—The Secretary shall prescribe monthly rates for subsistence allowance provided under paragraph (1), which shall be equal to the amount specified in section 2144(a) of title 10, United States Code.

''(g) INITIAL CLOTHING ALLOWANCE.—

''(1) TRAINING.—The Secretary may prescribe a sum which shall be credited to each person who receives financial assistance under subsection (a) to cover the cost of the person's initial clothing and equipment issue.

''(2) APPOINTMENT.—Upon completion of the program of education for which a person receives financial assistance under subsection (a) and acceptance of appointment in the commissioned officer corps of the Administration, the person may be issued a subsequent clothing allowance equivalent to that normally provided to a newly appointed officer.

''(h) TERMINATION OF FINANCIAL ASSISTANCE.—

''(1) IN GENERAL.—The Secretary shall terminate the assistance provided to a person under this section if—

''(A) the Secretary accepts a request by the person to be released from an agreement described in subsection (b)(2);

''(B) the misconduct of the person results in a failure to complete the period of active duty required under the agreement; or

''(C) the person fails to fulfill any term or condition of the agreement.

''(2) REIMBURSEMENT.—The Secretary may require a person who receives assistance described in subsection (c), (f), or (g) under an agreement entered into under subsection (b)(1)(C) to reimburse the Secretary in an amount that bears the same ratio to the total costs of the assistance provided to that person as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve under the agreement.

''(3) WAIVER.—The Secretary may waive the service obligation of a person through an agreement entered into under subsection (b)(1)(C) if the person—

''(A) becomes unqualified to serve on active duty in the commissioned officer corps of the Administration because of a circumstance not within the control of that person; or

''(B) is—

''(i) not physically qualified for appointment; and

''(ii) determined to be unqualified for service in the commissioned officer corps of the Administration because of a physical or medical condition that was not the result of the person's own misconduct or grossly negligent conduct.

''(4) OBLIGATION AS DEBT TO UNITED STATES.—An obligation to reimburse the Secretary imposed under paragraph (2) is, for all purposes, a debt owed to the United States.

''(5) DISCHARGE IN BANKRUPTCY.—A discharge in bankruptcy under title 11, United States Code, that is entered less than 5 years after the termination of a written agreement entered into under subsection (b)(1)(C) does not discharge the person signing the agreement from a debt arising under such agreement or under paragraph (2).

''(i) REGULATIONS.—The Secretary may promulgate such regulations and orders as the Secretary considers appropriate to carry out this section.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372), as amended by section 14(c), is further amended by inserting after the item relating to section 268, as added by such section 14(c), the following:

''Sec. 269. Student pre-commissioning education assistance program.''.

SEC. 16. LIMITATION ON EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Each fiscal year, beginning with fiscal year 2013, the Secretary of Commerce shall ensure that the total amount expended by the Secretary under section 267 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (as added by section 13(a)), section 268 of such Act (as added by section 14(a)), and section 269 of such Act (as added by section 15(a)) does not exceed the amount by which—

(1) the total amount the Secretary would pay in that fiscal year to officer candidates under section 203(f)(1) of title 37, United States Code (as added by section 9(d)), if such section entitled officers candidates to pay at monthly rates equal to the basic pay of a commissioned officer in the pay grade O-1 with less than 2 years of service; exceeds

(2) the total amount the Secretary actually pays in that fiscal year to officer candidates under section 203(f)(1) of such title (as so added).

(b) OFFICER CANDIDATE DEFINED.—In this section, the term ''officer candidate'' has the meaning given the term in section 212 of such Act (as added by section 9(c)).

SEC. 17. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 37, UNITED STATES CODE.

(a) IN GENERAL.—Subtitle E of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071 et seq.), as amended by sections 13 through 15, is further amended by adding at the end the following:

''SEC. 270. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 37, UNITED STATES CODE.

''(a) PROVISIONS MADE APPLICABLE TO COMMISSIONED OFFICER CORPS.—The provisions of law applicable to the Armed Forces under the following provisions of title 37, United States Code, shall apply to the commissioned officer corps of the Administration:

''(1) Section 324, relating to accession bonuses for new officers in critical skills.

''(2) Section 403(f)(3), relating to prescribing regulations defining the terms 'field duty' and 'sea duty'.

''(3) Section 403(l), relating to temporary continuation of housing allowance for dependents of members dying on active duty.

''(4) Section 414(a)(2), relating to personal money allowance while serving as Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

''(5) Section 428, relating to allowances for recruiting expenses.

''(6) Section 435, relating to allowances for funeral honors duty.

''(b) REFERENCES.—The authority vested by title 37, United States Code, in the 'military departments', 'the Secretary concerned', or 'the Secretary of Defense' with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the commissioned officer corps of the Administration when the commissioned officer corps is not operating as a service in the Navy, by the Secretary of Commerce or the Secretary's designee.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372), as amended by section 15(b), is further amended by inserting after the item relating to section 269, as added by such section 15(b), the following:

''Sec. 270. Applicability of certain provisions of title 37, United States Code.''.

SEC. 18. APPLICATION OF CERTAIN PROVISIONS OF COMPETITIVE SERVICE LAW.

Section 3304(f) of title 5, United States Code, is amended—

(1) in paragraph (1), by inserting ''and members of the commissioned officer corps of the National Oceanic and Atmospheric Administration (or its predecessor organization the Coast and Geodetic Survey) separated from such uniformed service'' after ''separated from the armed forces'';

(2) in paragraph (2), by striking ''or veteran'' and inserting '', veteran, or member''; and

(3) in paragraph (4), by inserting ''and members of the commissioned officer corps of the National Oceanic and Atmospheric Administration (or its predecessor organization the Coast and Geodetic Survey) separated from such uniformed service'' after ''separated from the armed forces''.

SEC. 19. ELIGIBILITY OF ALL MEMBERS OF UNIFORMED SERVICES FOR LEGION OF MERIT AWARD.

Section 1121 of title 10, United States Code, is amended by striking ''armed forces'' and inserting ''uniformed services''.

SEC. 20. APPLICATION OF EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES TO MEMBERS OF COMMISSIONED OFFICER CORPS.

Section 4303(16) of title 38, United States Code, is amended by inserting ''the commissioned officer corps of the National Oceanic and Atmospheric Administration,'' after ''Public Health Service,''.

SEC. 21. PROTECTED COMMUNICATIONS FOR COMMISSIONED OFFICER CORPS AND PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.

(a) IN GENERAL.—Subsection (a) of section 261 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071(a)), as amended by section 12, is further amended—

(1) by redesignating paragraphs (8) through (23) as paragraphs (9) through (24), respectively; and

(2) by inserting after paragraph (7) the following:

''(8) Section 1034, relating to protected communications and prohibition of retaliatory personnel actions.''.

(b) CONFORMING AMENDMENT.—Subsection (b) of such section is amended by adding at the end the following: ''For purposes of paragraph (8) of subsection (a), the term 'Inspector General' in section 1034 of such title 10 shall mean the Inspector General of the Department of Commerce.''.

SEC. 22. CRIMINAL PENALTIES FOR WEARING UNIFORM WITHOUT AUTHORITY.

Section 702 of title 18, United States Code, is amended by striking ''Service or any'' and inserting ''Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, or any''.

SEC. 23. REPORT ON STATUS OF OFFICERS IN COMMISSIONED OFFICER CORPS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE DURING GOVERNMENT SHUTDOWNS.

Not later than 60 days after the date of the enactment of this Act, the Attorney General shall submit to Congress a report that details whether officers of the commissioned officer corps of the National Oceanic and Atmospheric Administration and the Public Health Service are treated as performing an essential level of activity to protect life and property during any period of a lapse in appropriations.

SEC. 24. TECHNICAL CORRECTION.

Section 101(21)(C) of title 38, United States Code, is amended by inserting ''in the commissioned officer corps'' before ''of the National''.

SEC. 25. REPORT.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Commerce shall submit to Congress a report evaluating the current status and projected needs of the commissioned officer corps of the National Oceanic and Atmospheric Administration to operate sufficiently through fiscal year 2017.

(b) CONTENTS.—The report required by subsection (a) shall include the following:

(1) The average annual attrition rate of officers in the commissioned officer corps of the National Oceanic and Atmospheric Administration.

(2) An estimate of the number of annual recruits that would reasonably be required to operate the commissioned officer corps sufficiently through fiscal year 2017.

(3) The projected impact of this Act on annual recruitment numbers through fiscal year 2017.

(4) Identification of areas of duplication or unnecessary redundancy in current activities of the commissioned officer corps that could otherwise be streamlined or eliminated to save costs.

(5) Such other matters as the Secretary considers appropriate regarding the provisions of this Act and the amendments made by this Act.

SEC. 26. EFFECTIVE DATE.

Notwithstanding any other provision of this Act, sections 2 through 22 shall take effect on the date that is 90 days after the date on which the Secretary of Commerce submits to Congress the report required by section 25(a).

Mr. DURBIN. Mr. President, I further ask unanimous consent that the committee-reported substitute amendment be considered; the Begich amendment, which is at the desk, be agreed to; the committee-reported substitute, as amended, be agreed to; the bill, as amended, be read a third time and passed; the motions to reconsider be laid on the table with no intervening action or debate; and that any statements be printed in the RECORD.

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

The amendment (No. 3424) was agreed to, as follows:

On page 50, line 20, strike ''by section 5'' and insert ''by section 4(a)''.

On page 55, lines 1 and 2, strike '', by and with the advice and consent of the Senate''.

On page 56, strike lines 9 through 19.

On page 58, line 15, strike ''alone''.

On page 58, line 19, strike ''alone''.

On page 59, line 4, strike ''alone''.

On page 61, line 22, strike ''such Act'' and insert ''the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002''.

On page 85, strike lines 1 through 12.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2388) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2388

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2012''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Strength and distribution in grade.
Sec. 3. Exclusion of officers recalled from retired status and positions of importance and responsibility from number of authorized commissioned officers.
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Sec. 20. Application of Employment and Reemployment Rights of Members of the Uniformed Services to members of commissioned officer corps.
Sec. 21. Protected communications for commissioned officer corps and prohibition of retaliatory personnel actions.
Sec. 22. Criminal penalties for wearing uniform without authority.

Sec. 23. Technical correction.
Sec. 24. Report.
Sec. 25. Effective date.

SEC. 2. STRENGTH AND DISTRIBUTION IN GRADE.

Section 214 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3004) is amended to read as follows:

"SEC. 214. STRENGTH AND DISTRIBUTION IN GRADE.

''(a) GRADES.—The commissioned grades in the commissioned officer corps of the Administration are the following, in relative rank with officers of the Navy:

''(1) Vice admiral.
''(2) Rear admiral.
''(3) Rear admiral (lower half).
''(4) Captain.
''(5) Commander.
''(6) Lieutenant commander.
''(7) Lieutenant.
''(8) Lieutenant (junior grade).
''(9) Ensign.

''(b) PROPORTION.—

''(1) IN GENERAL.—The officers on the lineal list shall be distributed in grade in the following percentages:

''(A) 8 in the grade of captain.
''(B) 14 in the grade of commander.
''(C) 19 in the grade of lieutenant commander.

''(2) GRADES BELOW LIEUTENANT COMMANDER.—The Secretary shall prescribe, with respect to the distribution on the lineal list in grade, the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign.

''(c) ANNUAL COMPUTATION OF NUMBER IN GRADE.—

''(1) IN GENERAL.—Not less frequently than once each year, the Secretary shall make a computation to determine the number of officers on the lineal list authorized to be serving in each grade.

''(2) METHOD OF COMPUTATION.—The number in each grade shall be computed by applying the applicable percentage to the total number of such officers serving on active duty on the date the computation is made.

''(3) FRACTIONS.—If a final fraction occurs in computing the authorized number of officers in a grade, the nearest whole number shall be taken. If the fraction is ½, the next higher whole number shall be taken.

''(d) TEMPORARY INCREASE IN NUMBERS.—The total number of officers authorized by law to be on the lineal list during a fiscal year may be temporarily exceeded if the average number on that list during that fiscal year does not exceed the authorized number.

''(e) POSITIONS OF IMPORTANCE AND RESPONSIBILITY.—Officers serving in positions designated under section 228(a) and officers recalled from retired status shall not be counted when computing authorized strengths under subsection (c) and shall not count against those strengths.

''(f) PRESERVATION OF GRADE AND PAY.—No officer may be reduced in grade or pay or separated from the commissioned officer corps of the Administration as the result of a computation made to determine the authorized number of officers in the various grades.''.

SEC. 3. EXCLUSION OF OFFICERS RECALLED FROM RETIRED STATUS AND POSITIONS OF IMPORTANCE AND RESPONSIBILITY FROM NUMBER OF AUTHORIZED COMMISSIONED OFFICERS.

Section 215 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3005) is amended—

(1) in the matter before paragraph (1), by striking ''Effective'' and inserting the following:

''(a) IN GENERAL.—Effective''; and

(2) by adding at the end the following new subsection:

''(b) POSITIONS OF IMPORTANCE AND RESPONSIBILITY.—Officers serving in positions designated under section 228 and officers recalled from retired status—

''(1) may not be counted in determining the total number of authorized officers on the lineal list under this section; and

''(2) may not count against such number.''.

SEC. 4. OBLIGATED SERVICE REQUIREMENT.

(a) IN GENERAL.—Subtitle A of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3001 et seq.) is amended by adding at the end the following:

"SEC. 216. OBLIGATED SERVICE REQUIREMENT.

''(a) IN GENERAL.—

''(1) RULEMAKING.—The Secretary shall prescribe the obligated service requirements for appointments, training, promotions, separations, continuations, and retirement of officers not otherwise covered by law.

''(2) WRITTEN AGREEMENTS.—The Secretary and officers shall enter into written agreements that describe the officers' obligated service requirements prescribed under paragraph (1) in return for such appointments, training, promotions, separations, and retirements as the Secretary considers appropriate.

''(b) REPAYMENT FOR FAILURE TO SATISFY REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary may require an officer who fails to meet the service requirements prescribed under subsection (a)(1) to reimburse the Secretary in an amount that bears the same ratio to the total costs of the training provided to that officer by the Secretary as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve.

''(2) OBLIGATION AS DEBT TO UNITED STATES.—An obligation to reimburse the Secretary under paragraph (1) shall be considered for all purposes as a debt owed to the United States.

''(3) DISCHARGE IN BANKRUPTCY.—A discharge in bankruptcy under title 11 that is entered less than 5 years after the termination of a written agreement entered into under subsection (a)(2) does not discharge the individual signing the agreement from a debt arising under such agreement.

''(c) WAIVER OR SUSPENSION OF COMPLIANCE.—The Secretary may waive the service obligation of an officer who—

''(1) becomes unqualified to serve on active duty in the commissioned officer corps of the Administration because of a circumstance not within the control of that officer; or

''(2) is—

''(A) not physically qualified for appointment; and

''(B) determined to be unqualified for service in the commissioned officer corps of the Administration because of a physical or medical condition that was not the result of the officer's own misconduct or grossly negligent conduct.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372) is amended by inserting after the item relating to section 215 the following:

''Sec. 216. Obligated service requirement.''.

SEC. 5. TRAINING AND PHYSICAL FITNESS.

(a) IN GENERAL.—Subtitle A of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3001 et seq.), as amended by section 4(a), is further amended by adding at the end the following:

"SEC. 217. TRAINING AND PHYSICAL FITNESS.

''(a) TRAINING.—The Secretary may take such measures as may be necessary to ensure that officers are prepared to carry out their duties in the commissioned officer corps of the Administration and proficient in the skills necessary to carry out such duties. Such measures may include the following:

''(1) Carrying out training programs and correspondence courses, including establishing and operating a basic officer training program to provide initial indoctrination and maritime vocational training for officer candidates as well as refresher training, mid-career training, aviation training, and such other training as the Secretary considers necessary for officer development and proficiency.

''(2) Providing officers and officer candidates with books and school supplies.

''(3) Acquiring such equipment as may be necessary for training and instructional purposes.

''(b) PHYSICAL FITNESS.—The Secretary shall ensure that officers maintain a high physical state of readiness in preparation for functioning as a service in the Navy during times of war, including by establishing standards of physical fitness for officers that are substantially equivalent to those prescribed for officers in the Navy.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372), as amended by section 4(b), is further amended by inserting after the item relating to section 216, as added by such section 4(b), the following:

''Sec. 217. Training and physical fitness.''.

SEC. 6. APPOINTMENTS.

(a) ORIGINAL APPOINTMENTS.—

(1) IN GENERAL.—Section 221 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3021) is amended to read as follows:

"SEC. 221. ORIGINAL APPOINTMENTS AND REAPPOINTMENTS.

''(a) ORIGINAL APPOINTMENTS.—

''(1) GRADES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an original appointment of an officer may be made in such grades as may be appropriate for—

''(i) the qualification, experience, and length of service of the appointee; and

''(ii) the commissioned officer corps of the Administration.

''(B) APPOINTMENT OF OFFICER CANDIDATES.—

''(i) LIMITATION ON GRADE.—An original appointment of an officer candidate, upon graduation from the basic officer training program of the commissioned officer corps of the Administration, may not be made in any other grade than ensign.

''(ii) RANK.—Officer candidates receiving appointments as ensigns upon graduation from basic officer training program shall take rank according to their proficiency as shown by the order of their merit at date of graduation.

''(2) SOURCE OF APPOINTMENTS.—An original appointment may be made from among the following:

''(A) Graduates of the basic officer training program of the commissioned officer corps of the Administration.

''(B) Graduates of the military service academies of the United States who otherwise meet the academic standards for enrollment in the training program described in subparagraph (A).

''(C) Licensed officers of the United States merchant marine who have served 2 or more years aboard a vessel of the United States in the capacity of a licensed officer, who otherwise meet the academic standards for enrollment in the training program described in subparagraph (A).

''(3) MILITARY SERVICE ACADEMIES OF THE UNITED STATES DEFINED.—In this subsection, the term 'military service academies of the United States' means the following:

''(A) The United States Military Academy, West Point, New York.

''(B) The United States Naval Academy, Annapolis, Maryland.

''(C) The United States Air Force Academy, Colorado Springs, Colorado.

''(D) The United States Coast Guard Academy, New London, Connecticut.

''(E) The United States Merchant Marine Academy, Kings Point, New York.

''(b) REAPPOINTMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an individual who previously served in the commissioned officer corps of the Administration may be appointed by the Secretary to the grade the individual held prior to separation.

''(2) REAPPOINTMENTS TO HIGHER GRADES.—An appointment under paragraph (1) to a position of importance and responsibility designated under section 228 may only be made by the President.

''(c) QUALIFICATIONS.—An appointment under subsection (a) or (b) may not be given to an individual until the individual's mental, moral, physical, and professional fitness to perform the duties of an officer has been established under such regulations as the Secretary shall prescribe.

''(d) PRECEDENCE OF APPOINTEES.—Appointees under this section shall take precedence in the grade to which appointed in accordance with the dates of their commissions as commissioned officers in such grade. Appointees whose dates of commission are the same shall take precedence with each other as the Secretary shall determine.

''(e) INTER-SERVICE TRANSFERS.—For inter-service transfers (as described in the Department of Defense Directive 1300.4 (dated December 27, 2006)) the Secretary shall—

''(1) coordinate with the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating to promote and streamline inter-service transfers;

''(2) give preference to such inter-service transfers for recruitment purposes as determined appropriate by the Secretary; and

''(3) reappoint such inter-service transfers to the equivalent grade in the commissioned officer corps.''.

(2) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372) is amended by striking the item relating to section 221 and inserting the following:

''Sec. 221. Original appointments and reappointments.''.

SEC. 7. PERSONNEL BOARDS.

Section 222 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3022) is amended to read as follows:

''SEC. 222. PERSONNEL BOARDS.

''(a) CONVENING.—Not less frequently than once each year and at such other times as the Secretary determines necessary, the Secretary shall convene a personnel board.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—A board convened under subsection (a) shall consist of 5 or more officers who are serving in or above the permanent grade of the officers under consideration by the board.

''(2) RETIRED OFFICERS.—Officers on the retired list may be recalled to serve on such personnel boards as the Secretary considers necessary.

''(3) NO MEMBERSHIP ON 2 SUCCESSIVE BOARDS.—No officer may be a member of 2 successive personnel boards convened to consider officers of the same grade for promotion or separation.

''(c) DUTIES.—Each personnel board shall—

''(1) recommend to the Secretary such changes as may be necessary to correct any erroneous position on the lineal list that was caused by administrative error; and

''(2) make selections and recommendations to the Secretary and the President for the appointment, promotion, involuntary separation, continuation, and involuntary retirement of officers in the commissioned officer corps of the Administration as prescribed in this title.

''(d) ACTION ON RECOMMENDATIONS NOT ACCEPTABLE.—If any recommendation by a board convened under subsection (a) is not accepted by the Secretary or the President, the board shall make such further recommendations as the Secretary or the President consider appropriate.''.

SEC. 8. TEMPORARY APPOINTMENTS.

Section 229 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3029) is amended to read as follows:

''SEC. 229. TEMPORARY APPOINTMENTS.

''(a) APPOINTMENTS BY PRESIDENT.—Temporary appointments in the grade of ensign, lieutenant junior grade, or lieutenant may be made by the President.

''(b) TERMINATION.—A temporary appointment to a position under subsection (a) shall terminate upon approval of a permanent appointment for such position made by the President.

''(c) ORDER OF PRECEDENCE.—Appointees under subsection (a) shall take precedence in the grade to which appointed in accordance with the dates of their appointments as officers in such grade. The order of precedence of appointees who are appointed on the same date shall be determined by the Secretary.

''(d) ANY ONE GRADE.—When determined by the Secretary to be in the best interest of the commissioned officer corps, officers in any permanent grade may be temporarily promoted one grade by the President. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.''.

SEC. 9. OFFICER CANDIDATES.

(a) IN GENERAL.—Subtitle B of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3021 et seq.) is amended by adding at the end the following:

''SEC. 234. OFFICER CANDIDATES.

''(a) DETERMINATION OF NUMBER.—The Secretary shall determine the number of appointments of officer candidates.

''(b) APPOINTMENT.—Appointment of officer candidates shall be made under regulations which the Secretary shall prescribe, including regulations with respect to determining age limits, methods of selection of officer candidates, term of service as an officer candidate before graduation from the program, and all other matters affecting such appointment.

''(c) DISMISSAL.—The Secretary may dismiss from the basic officer training program of the Administration any officer candidate who, during the officer candidate's term as an officer candidate, the Secretary considers unsatisfactory in either academics or conduct, or not adapted for a career in the commissioned officer corps of the Administration. Officer candidates shall be subject to rules governing discipline prescribed by the Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

''(d) AGREEMENT.—

''(1) IN GENERAL.—Each officer candidate shall sign an agreement with the Secretary in accordance with section 216(a)(2) regarding the officer candidate's term of service in the commissioned officer corps of the Administration.

''(2) ELEMENTS.—An agreement signed by an officer candidate under paragraph (1) shall provide that the officer candidate agrees to the following:

''(A) That the officer candidate will complete the course of instruction at the basic officer training program of the Administration.

''(B) That upon graduation from the such program, the officer candidate—

''(i) will accept an appointment, if tendered, as an officer; and

''(ii) will serve on active duty for at least 4 years immediately after such appointment.

''(e) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. Such regulations shall include—

''(1) standards for determining what constitutes a breach of an agreement signed under such subsection (d)(1); and

''(2) procedures for determining whether such a breach has occurred.

''(f) REPAYMENT.—An officer candidate or former officer candidate who does not fulfill the terms of the obligation to serve as specified under section (d) shall be subject to the repayment provisions of section 216(b).''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372) is amended by inserting after the item relating to section 233 the following:

''Sec. 234. Officer candidates.''.

(c) OFFICER CANDIDATE DEFINED.—Section 212 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3002) is amended—

(1) by redesignating paragraphs (4) through (6) as paragraphs (5) through (7), respectively; and

(2) by inserting after paragraph (3) the following:

''(4) OFFICER CANDIDATE.—The term 'officer candidate' means an individual who is enrolled in the basic officer training program of the Administration and is under consideration for appointment as an officer under section 221(a)(2)(A).''.

(d) PAY FOR OFFICER CANDIDATES.—Section 203 of title 37, United States Code, is amended by adding at the end the following:

''(f)(1) An officer candidate enrolled in the basic officer training program of the commissioned officer corps of the National Oceanic and Atmospheric Administration is entitled, while participating in such program, to monthly officer candidate pay at monthly rate equal to the basic pay of an enlisted member in the pay grade E–5 with less than 2 years service.

''(2) An individual who graduates from such program shall receive credit for the time spent participating in such program as if such time were time served while on active duty as a commissioned officer. If the individual does not graduate from such program, such time shall not be considered creditable for active duty or pay.''.

SEC. 10. INVOLUNTARY RETIREMENT OR SEPARATION.

Section 241 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3041) is amended by adding at the end the following:

''(d) DEFERMENT OF RETIREMENT OR SEPARATION FOR MEDICAL REASONS.—

''(1) IN GENERAL.—If the Secretary determines that the evaluation of the medical condition of an officer requires hospitalization or medical observation that cannot be completed with confidence in a manner consistent with the officer's well being before

the date on which the officer would otherwise be required to retire or be separated under this section, the Secretary may defer the retirement or separation of the officer.

''(2) CONSENT REQUIRED.—A deferment may only be made with the written consent of the officer involved. If the officer does not provide written consent to the deferment, the officer shall be retired or separated as scheduled.

''(3) LIMITATION.—A deferral of retirement or separation under this subsection may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation.''.

SEC. 11. SEPARATION PAY.

Section 242 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3042) is amended by adding at the end the following:

''(d) EXCEPTION.—An officer discharged for twice failing selection for promotion to the next higher grade is not entitled to separation pay under this section if the officer—

''(1) expresses a desire not to be selected for promotion; or

''(2) requests removal from the list of selectees.''.

SEC. 12. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 10, UNITED STATES CODE.

Section 261(a) of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071(a)) is amended—

(1) by redesignating paragraphs (13) through (16) as paragraphs (20) through (23), respectively;

(2) by redesignating paragraphs (7) through (12) as paragraphs (12) through (17), respectively;

(3) by redesignating paragraphs (4) through (6) as paragraphs (8) through (10), respectively;

(4) by inserting after paragraph (3) the following:

''(4) Section 771, relating to unauthorized wearing of uniforms.

''(5) Section 774, relating to wearing religious apparel while in uniform.

''(6) Section 982, relating to service on State and local juries.

''(7) Section 1031, relating to administration of oaths.'';

(5) by inserting after paragraph (10), as redesignated, the following:

''(11) Chapter 58, relating to the Benefits and Services for members being separated or recently separated.''; and

(6) by inserting after paragraph (17), as redesignated, the following:

''(18) Subchapter I of chapter 88, relating to Military Family Programs.

''(19) Section 2005, relating to advanced education assistance, active duty agreements, and reimbursement requirements.''.

SEC. 13. EDUCATION LOAN REPAYMENT PROGRAM.

(a) IN GENERAL.—Subtitle E of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071 et seq.) is amended by adding at the end the following:

''SEC. 267. EDUCATION LOAN REPAYMENT PROGRAM.

''(a) AUTHORITY TO REPAY EDUCATION LOANS.—For the purpose of maintaining adequate numbers of officers of the commissioned officer corps of the Administration on active duty who have skills required by the commissioned officer corps, the Secretary may repay, in the case of a person described in subsection (b), a loan that—

''(1) was used by the person to finance education; and

''(2) was obtained from a governmental entity, private financial institution, educational institution, or other authorized entity.

''(b) ELIGIBLE PERSONS.—To be eligible to obtain a loan repayment under this section, a person must—

''(1) satisfy 1 of the requirements specified in subsection (c);

''(2) be fully qualified for, or hold, an appointment as a commissioned officer in the commissioned officer corps of the Administration; and

''(3) sign a written agreement to serve on active duty, or, if on active duty, to remain on active duty for a period in addition to any other incurred active duty obligation.

''(c) ACADEMIC AND PROFESSIONAL REQUIREMENTS.—One of the following academic requirements must be satisfied for purposes of determining the eligibility of an individual for a loan repayment under this section:

''(1) The person is fully qualified in a profession that the Secretary has determined to be necessary to meet identified skill shortages in the commissioned officer corps.

''(2) The person is enrolled as a full-time student in the final year of a course of study at an accredited educational institution (as determined by the Secretary of Education) leading to a degree in a profession that will meet identified skill shortages in the commissioned officer corps.

''(d) LOAN REPAYMENTS.—

''(1) IN GENERAL.—Subject to the limits established under paragraph (2), a loan repayment under this section may consist of the payment of the principal, interest, and related expenses of a loan obtained by a person described in subsection (b).

''(2) LIMITATION ON AMOUNT.—For each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(3), the Secretary may pay not more than the amount specified in section 2173(e)(2) of title 10, United States Code.

''(e) ACTIVE DUTY SERVICE OBLIGATION.—

''(1) IN GENERAL.—A person entering into an agreement described in subsection (b)(3) incurs an active duty service obligation.

''(2) LENGTH OF OBLIGATION DETERMINED UNDER REGULATIONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the length of the obligation under paragraph (1) shall be determined under regulations prescribed by the Secretary.

''(B) MINIMUM OBLIGATION.—The regulations prescribed under subparagraph (A) may not provide for a period of obligation of less than 1 year for each maximum annual amount, or portion thereof, paid on behalf of the person for qualified loans.

''(3) PERSONS ON ACTIVE DUTY BEFORE ENTERING INTO AGREEMENT.—The active duty service obligation of persons on active duty before entering into the agreement shall be served after the conclusion of any other obligation incurred under the agreement.

''(f) EFFECT OF FAILURE TO COMPLETE OBLIGATION.—

''(1) ALTERNATIVE OBLIGATIONS.—An officer who is relieved of the officer's active duty obligation under this section before the completion of that obligation may be given any alternative obligation, at the discretion of the Secretary.

''(2) REPAYMENT.—An officer who does not complete the period of active duty specified in the agreement entered into under subsection (b)(3), or the alternative obligation imposed under paragraph (1), shall be subject to the repayment provisions under section 216.

''(g) RULEMAKING.—The Secretary shall prescribe regulations to carry out this section, including—

''(1) standards for qualified loans and authorized payees; and

''(2) other terms and conditions for the making of loan repayments.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372) is amended by inserting after the item relating to section 266 the following:

''Sec. 267. Education loan repayment program.''.

SEC. 14. INTEREST PAYMENT PROGRAM.

(a) IN GENERAL.—Subtitle E of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071 et seq.), as amended by section 13, is further amended by adding at the end the following:

''SEC. 268. INTEREST PAYMENT PROGRAM.

''(a) AUTHORITY.—The Secretary may pay the interest and any special allowances that accrue on 1 or more student loans of an eligible officer, in accordance with this section.

''(b) ELIGIBLE OFFICERS.—An officer is eligible for the benefit described in subsection (a) while the officer—

''(1) is serving on active duty;

''(2) has not completed more than 3 years of service on active duty;

''(3) is the debtor on 1 or more unpaid loans described in subsection (c); and

''(4) is not in default on any such loan.

''(c) STUDENT LOANS.—The authority to make payments under subsection (a) may be exercised with respect to the following loans:

''(1) A loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.).

''(2) A loan made under part D of such title (20 U.S.C. 1087a et seq.).

''(3) A loan made under part E of such title (20 U.S.C. 1087aa et seq.).

''(d) MAXIMUM BENEFIT.—Interest and any special allowance may be paid on behalf of an officer under this section for any of the 36 consecutive months during which the officer is eligible under subsection (b).

''(e) FUNDS FOR PAYMENTS.—The Secretary may use amounts appropriated for the pay and allowances of personnel of the commissioned officer corps of the Administration for payments under this section.

''(f) COORDINATION WITH SECRETARY OF EDUCATION.—

''(1) IN GENERAL.—The Secretary shall consult with the Secretary of Education regarding the administration of this section.

''(2) TRANSFER OF FUNDS.—The Secretary shall transfer to the Secretary of Education the funds necessary—

''(A) to pay interest and special allowances on student loans under this section (in accordance with sections 428(o), 455(l), and 464(j) of the Higher Education Act of 1965 (20 U.S.C. 1078(o), 1087e(l), and 1087dd(j)); and

''(B) to reimburse the Secretary of Education for any reasonable administrative costs incurred by the Secretary in coordinating the program under this section with the administration of the student loan programs under parts B, D, and E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.).

''(g) SPECIAL ALLOWANCE DEFINED.—In this section, the term 'special allowance' means a special allowance that is payable under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 428(o) of the Higher Education Act of 1965 (20 U.S.C. 1078(o)) is amended—

(A) by striking the subsection heading and inserting ''ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS''; and

(B) in paragraph (1)—

(i) by inserting ''or section 264 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002'' after ''Code,''; and

(ii) by inserting ''or an officer in the commissioned officer corps of the National Oceanic and Atmospheric Administration, respectively,'' after ''Armed Forces''.

(2) Sections 455(l) and 464(j) of the Higher Education Act of 1965 (20 U.S.C. 1087e(l) and 1087dd(j)) are each amended—

(A) by striking the subsection heading and inserting ''ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS''; and

(B) in paragraph (1)—

(i) by inserting ''or section 264 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002'' after ''Code,''; and

(ii) by inserting ''or an officer in the commissioned officer corps of the National Oceanic and Atmospheric Administration, respectively'' after ''Armed Forces''.

(c) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372), as amended by section 13(b), is further amended by inserting after the item relating to section 267, as added by such section 13(b), the following:

''Sec. 268. Interest payment program.''.

SEC. 15. STUDENT PRE-COMMISSIONING EDUCATION ASSISTANCE PROGRAM.

(a) IN GENERAL.—Subtitle E of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071 et seq.), as amended by sections 13 and 14, is further amended by adding at the end the following:

''SEC. 269. STUDENT PRE-COMMISSIONING EDUCATION ASSISTANCE PROGRAM.

''(a) AUTHORITY TO PROVIDE FINANCIAL ASSISTANCE.—For the purpose of maintaining adequate numbers of officers of the commissioned officer corps of the Administration on active duty, the Secretary may provide financial assistance to a person described in subsection (b) for expenses of the person while the person is pursuing on a full-time basis at an accredited educational institution (as determined by the Secretary of Education) a program of education approved by the Secretary that leads to—

''(1) a baccalaureate degree in not more than 5 academic years; or

''(2) a postbaccalaureate degree.

''(b) ELIGIBLE PERSONS.—

''(1) IN GENERAL.—A person is eligible to obtain financial assistance under subsection (a) if the person—

''(A) is enrolled on a full-time basis in a program of education referred to in subsection (a) at any educational institution described in such subsection;

''(B) meets all of the requirements for acceptance into the commissioned officer corps of the Administration except for the completion of a baccalaureate degree; and

''(C) enters into a written agreement with the Secretary described in paragraph (2).

''(2) AGREEMENT.—A written agreement referred to in paragraph (1)(C) is an agreement between the person and the Secretary in which the person agrees—

''(A) to accept an appointment as an officer, if tendered; and

''(B) upon completion of the person's educational program, agrees to serve on active duty, immediately after appointment, for—

''(i) up to 3 years if the person received less than 3 years of assistance; and

''(ii) up to 5 years if the person received at least 3 years of assistance.

''(c) QUALIFYING EXPENSES.—Expenses for which financial assistance may be provided under subsection (a) are the following:

''(1) Tuition and fees charged by the educational institution involved.

''(2) The cost of books.

''(3) In the case of a program of education leading to a baccalaureate degree, laboratory expenses.

''(4) Such other expenses as the Secretary considers appropriate.

''(d) LIMITATION ON AMOUNT.—The Secretary shall prescribe the amount of financial assistance provided to a person under subsection (a), which may not exceed the amount specified in section 2173(e)(2) of title 10, United States Code, for each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(2).

''(e) DURATION OF ASSISTANCE.—Financial assistance may be provided to a person under subsection (a) for not more than 5 consecutive academic years.

''(f) SUBSISTENCE ALLOWANCE.—

''(1) IN GENERAL.—A person who receives financial assistance under subsection (a) shall be entitled to a monthly subsistence allowance at a rate prescribed under paragraph (2) for the duration of the period for which the person receives such financial assistance.

''(2) DETERMINATION OF AMOUNT.—The Secretary shall prescribe monthly rates for subsistence allowance provided under paragraph (1), which shall be equal to the amount specified in section 2144(a) of title 10, United States Code.

''(g) INITIAL CLOTHING ALLOWANCE.—

''(1) TRAINING.—The Secretary may prescribe a sum which shall be credited to each person who receives financial assistance under subsection (a) to cover the cost of the person's initial clothing and equipment issue.

''(2) APPOINTMENT.—Upon completion of the program of education for which a person receives financial assistance under subsection (a) and acceptance of appointment in the commissioned officer corps of the Administration, the person may be issued a subsequent clothing allowance equivalent to that normally provided to a newly appointed officer.

''(h) TERMINATION OF FINANCIAL ASSISTANCE.—

''(1) IN GENERAL.—The Secretary shall terminate the assistance provided to a person under this section if—

''(A) the Secretary accepts a request by the person to be released from an agreement described in subsection (b)(2);

''(B) the misconduct of the person results in a failure to complete the period of active duty required under the agreement; or

''(C) the person fails to fulfill any term or condition of the agreement.

''(2) REIMBURSEMENT.—The Secretary may require a person who receives assistance described in subsection (c), (f), or (g) under an agreement entered into under subsection (b)(1)(C) to reimburse the Secretary in an amount that bears the same ratio to the total costs of the assistance provided to that person as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve under the agreement.

''(3) WAIVER.—The Secretary may waive the service obligation of a person through an agreement entered into under subsection (b)(1)(C) if the person—

''(A) becomes unqualified to serve on active duty in the commissioned officer corps of the Administration because of a circumstance not within the control of that person; or

''(B) is—

''(i) not physically qualified for appointment; and

''(ii) determined to be unqualified for service in the commissioned officer corps of the Administration because of a physical or medical condition that was not the result of the person's own misconduct or grossly negligent conduct.

''(4) OBLIGATION AS DEBT TO UNITED STATES.—An obligation to reimburse the Secretary imposed under paragraph (2) is, for all purposes, a debt owed to the United States.

''(5) DISCHARGE IN BANKRUPTCY.—A discharge in bankruptcy under title 11, United States Code, that is entered less than 5 years after the termination of a written agreement entered into under subsection (b)(1)(C) does not discharge the person signing the agreement from a debt arising under such agreement or under paragraph (2).

''(i) REGULATIONS.—The Secretary may promulgate such regulations and orders as the Secretary considers appropriate to carry out this section.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372), as amended by section 14(c), is further amended by inserting after the item relating to section 268, as added by such section 14(c), the following:

''Sec. 269. Student pre-commissioning education assistance program.''.

SEC. 16. LIMITATION ON EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Each fiscal year, beginning with fiscal year 2013, the Secretary of Commerce shall ensure that the total amount expended by the Secretary under section 267 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (as added by section 13(a)), section 268 of such Act (as added by section 14(a)), and section 269 of such Act (as added by section 15(a)) does not exceed the amount by which—

(1) the total amount the Secretary would pay in that fiscal year to officer candidates under section 203(f)(1) of title 37, United States Code (as added by section 9(d)), if such section entitled officers candidates to pay at monthly rates equal to the basic pay of a commissioned officer in the pay grade O–1 with less than 2 years of service; exceeds

(2) the total amount the Secretary actually pays in that fiscal year to officer candidates under section 203(f)(1) of such title (as so added).

(b) OFFICER CANDIDATE DEFINED.—In this section, the term ''officer candidate'' has the meaning given the term in section 212 of such Act (as added by section 9(c)).

SEC. 17. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 37, UNITED STATES CODE.

(a) IN GENERAL.—Subtitle E of title II of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071 et seq.), as amended by sections 13 through 15, is further amended by adding at the end the following:

''SEC. 270. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 37, UNITED STATES CODE.

''(a) PROVISIONS MADE APPLICABLE TO COMMISSIONED OFFICER CORPS.—The provisions of law applicable to the Armed Forces under the following provisions of title 37, United States Code, shall apply to the commissioned officer corps of the Administration:

''(1) Section 324, relating to accession bonuses for new officers in critical skills.

''(2) Section 403(f)(3), relating to prescribing regulations defining the terms 'field duty' and 'sea duty'.

''(3) Section 403(l), relating to temporary continuation of housing allowance for dependents of members dying on active duty.

''(4) Section 414(a)(2), relating to personal money allowance while serving as Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

''(5) Section 428, relating to allowances for recruiting expenses.

''(6) Section 435, relating to allowances for funeral honors duty.

''(b) REFERENCES.—The authority vested by title 37, United States Code, in the 'military departments', 'the Secretary concerned', or 'the Secretary of Defense' with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the commissioned officer corps of the Administration when the commissioned officer corps is not operating as a service in the Navy, by the Secretary of Commerce or the Secretary's designee.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of the Act entitled ''An Act to authorize the Hydrographic Service Improvement Act of 1998, and for other purposes'' (Public Law 107–372), as amended by section 15(b), is further amended by inserting after the item relating to section 269, as added by such section 15(b), the following:

''Sec. 270. Applicability of certain provisions of title 37, United States Code.''.

SEC. 18. APPLICATION OF CERTAIN PROVISIONS OF COMPETITIVE SERVICE LAW.

Section 3304(f) of title 5, United States Code, is amended—

(1) in paragraph (1), by inserting ''and members of the commissioned officer corps of the National Oceanic and Atmospheric Administration (or its predecessor organization the Coast and Geodetic Survey) separated from such uniformed service'' after ''separated from the armed forces'';

(2) in paragraph (2), by striking ''or veteran'' and inserting '', veteran, or member''; and

(3) in paragraph (4), by inserting ''and members of the commissioned officer corps of the National Oceanic and Atmospheric Administration (or its predecessor organization the Coast and Geodetic Survey) separated from such uniformed service'' after ''separated from the armed forces''.

SEC. 19. ELIGIBILITY OF ALL MEMBERS OF UNIFORMED SERVICES FOR LEGION OF MERIT AWARD.

Section 1121 of title 10, United States Code, is amended by striking ''armed forces'' and inserting ''uniformed services''.

SEC. 20. APPLICATION OF EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES TO MEMBERS OF COMMISSIONED OFFICER CORPS.

Section 4303(16) of title 38, United States Code, is amended by inserting ''the commissioned officer corps of the National Oceanic and Atmospheric Administration,'' after ''Public Health Service,''.

SEC. 21. PROTECTED COMMUNICATIONS FOR COMMISSIONED OFFICER CORPS AND PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.

(a) IN GENERAL.—Subsection (a) of section 261 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071(a)), as amended by section 12, is further amended—

(1) by redesignating paragraphs (8) through (23) as paragraphs (9) through (24), respectively; and

(2) by inserting after paragraph (7) the following:

''(8) Section 1034, relating to protected communications and prohibition of retaliatory personnel actions.''.

(b) CONFORMING AMENDMENT.—Subsection (b) of such section is amended by adding at the end the following: ''For purposes of paragraph (8) of subsection (a), the term 'Inspector General' in section 1034 of such title 10 shall mean the Inspector General of the Department of Commerce.''.

SEC. 22. CRIMINAL PENALTIES FOR WEARING UNIFORM WITHOUT AUTHORITY.

Section 702 of title 18, United States Code, is amended by striking ''Service or any'' and inserting ''Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, or any''.

SEC. 23. TECHNICAL CORRECTION.

Section 101(21)(C) of title 38, United States Code, is amended by inserting ''in the commissioned officer corps'' before ''of the National''.

SEC. 24. REPORT.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Commerce shall submit to Congress a report evaluating the current status and projected needs of the commissioned officer corps of the National Oceanic and Atmospheric Administration to operate sufficiently through fiscal year 2017.

(b) CONTENTS.—The report required by subsection (a) shall include the following:

(1) The average annual attrition rate of officers in the commissioned officer corps of the National Oceanic and Atmospheric Administration.

(2) An estimate of the number of annual recruits that would reasonably be required to operate the commissioned officer corps sufficiently through fiscal year 2017.

(3) The projected impact of this Act on annual recruitment numbers through fiscal year 2017.

(4) Identification of areas of duplication or unnecessary redundancy in current activities of the commissioned officer corps that could otherwise be streamlined or eliminated to save costs.

(5) Such other matters as the Secretary considers appropriate regarding the provisions of this Act and the amendments made by this Act.

SEC. 25. EFFECTIVE DATE.

Notwithstanding any other provision of this Act, sections 2 through 22 shall take effect on the date that is 90 days after the date on which the Secretary of Commerce submits to Congress the report required by section 25(a).

ELIMINATING THE ''ADULT ENTERTAINMENT'' SECTION OF THE CLASSIFIED ADVERTISING WEB SITE BACKPAGE.COM

Mr. DURBIN. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 439 and the Senate proceed to its consideration.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 439) expressing the sense of the Senate that Village Voice Media Holdings, LLC should eliminate the ''adult entertainment'' section of the classified advertising website Backpage.com.

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

• Mr. KIRK. Mr. President, we often hear and read about stories of young boys and girls in foreign countries forced into sexual slavery. Helpless children as young as 11 and 12 years old are threatened, abused, raped, and sold for sex. But we rarely hear about the child sex trafficking that happens here at home in Chicago, New York, Atlanta, Miami, and most major metropolitan cities in the United States. Experts estimate that each year as many as 300,000 children are at risk of commercial sexual exploitation in the U.S. An alarming 40 percent of incidents investigated by federally funded task forces on human trafficking between 2008 and 2010 involved the sexual exploitation of a child, according to a Bureau of Justice Statistics report.

The numbers are rising, in part because it has become frighteningly simple to order a child prostitute on the Internet. One merely needs to look at the classified ads on Backpage.com, the leading Web site for prostitution advertising in the United States according to the Advanced Interactive Media, AIM, Group. The website's ''adult entertainment'' section generates more than 80 percent of total prostitution advertising revenue on the web. This section includes services such as ''escorts'' and ''body rubs,'' a thinly veiled code for prostitution. Just a few clicks on this site easily enables ''johns'' to purchase children for sex. Law enforcement believes that the existence of Backpage encourages the recruitment of victims for sexual exploitation because it allows traffickers to operate out of sight from police patrols.

Backpage.com is owned and operated by Village Voice Media Holdings, the former parent company of the alternative weekly Village Voice publications. The company, which makes an estimated $26 million per year from these ads, claims it polices the ads on its site, but the statistics and devastating reports say otherwise. According to the National Association of Attorneys General, 23 States have cumulatively filed more than 50 charges against suspects trafficking minors on Backpage.com.

In August 2011, nine members of the Vice Lords and other south and west side of Chicago gangs were charged with operating a major sex trafficking ring. Some of the girls forced into sexual slavery were as young as 12 years old. Victims suffered immense abuse, including beatings, branding, tattooing, death threats, being locked in car trunk, and forced to sleep outside even in cold Chicago winters. The gang members used Backpage.com to facilitate their operation.

In August 2012, Marques Williams was arrested and charged with a Federal sex trafficking complaint for trafficking a 15-year-old girl in Rochester, NY. Advertising the young girls services on Backpage.com, Williams forced her to take up to 15 customers a day.

In December 2012, Fernando Gonzales was sentenced to 20 years in prison for child sex trafficking. Fernando raped and impregnated a 16-year-old girl, then forced her into prostitution and advertised her services on Backpage.com. When the victim tried to escape, Fernando threatened to kill her and her child and then carved his initial into her arm.

Unfortunately, there are too many stories like these. As news reports of

pimps and traffickers using Backpage.com to advertise sexual services by minors continue to increase, we cannot leave our children defenseless. The profit-first mentality at Village Voice Media, which prioritizes the rights of pimps, not children, must end.

Fifty-one attorneys general, 36 clergymen, dozens of anti-trafficking organizations, columnists and editorial boards across the country, and 240,000 individuals through change.org have called on Village Voice Media to shutdown the ''adult entertainment'' section on Backpage.com. Even John Buffalo Mailer, son of Village Voice's cofounder, publicly urged Backpage.com to eliminate the section.

Over the past year, I joined with several of my colleagues in a bipartisan fashion to work to prevent children from being exploited and trafficked on Backpage.com. In March 2012, 18 Senators joined me in a letter to the Chairman and CEO of Village Voice Media Holdings, demanding the elimination of the adult entertainment section on the classified advertising Web site. I then led an effort to bring to the attention of those advertising on Village Voice publications the kinds of activities supported by the company. As a result, eight companies and organizations responded to our letter announcing the end of their advertising relationship with the publications. This had a clear effect, as a number of then-executives at Village Voice Media Holdings spun off the weekly publications as a new company in an apparent effort to circumvent the public relations disaster Backpage.com rightly caused Village Voice Media. But children continue to be bought and sold on Backpage.com.

Senator BLUMENTHAL and I introduced S. Res. 439 as part of this effort to curb online child sexual exploitation. The legislation calls on Village Voice Media Holdings to eliminate the ''adult entertainment'' section of Backpage.com. By passing S. Res. 439, the U.S. Senate will present a united front in the fight against online child sex trafficking. We will be making it clear that the American public strongly condemns the facilitation and perpetuation of human trafficking by website operators. I want to especially thank Senators BLUMENTHAL, RUBIO, and CORNYN for their great partnership and leadership on this effort, hope the rest of our colleagues will join us and pass S. Res. 439.●

Mr. DURBIN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the measure be printed in the RECORD.

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

The resolution (S. Res. 439) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 439

Whereas, according to the Department of Justice, there was a 59 percent increase in identified victims of human trafficking worldwide between 2009 and 2010;

Whereas, according to the Department of Health and Human Services, human trafficking is the fastest-growing criminal enterprise in the world;

Whereas experts estimate that up to 300,000 children are at risk of sexual exploitation each year in the United States;

Whereas experts estimate that the average female victim of sex trafficking is forced into prostitution for the first time between the ages of 12 and 14, and the average male victim of sex trafficking is forced into prostitution for the first time between the ages of 11 and 13;

Whereas the Bureau of Justice Statistics found that 40 percent of incidents investigated by federally funded task forces on human trafficking between 2008 and 2010 involved prostitution of a child or the sexual exploitation of a child;

Whereas, according to the classified advertising consultant Advanced Interactive Media Group (referred to in this preamble as ''AIM Group''), Backpage.com is the leading United States website for prostitution advertising;

Whereas Backpage.com is owned by Village Voice Media Holdings, LLC (referred to in this preamble as ''Village Voice Media'');

Whereas the National Association of Attorneys General tracked more than 50 cases in which charges were filed against persons who were trafficking or attempting to traffic minors on Backpage.com;

Whereas Myrelle and Tyrelle Locket—

(1) in February 2011 were each sentenced to 4 years in prison on charges of trafficking of persons for forced labor or services for operating an Illinois sex trafficking ring that included minors; and

(2) used Backpage.com to facilitate the prostitution;

Whereas Arthur James Chappell—

(1) in March 2011 was sentenced to 28 years in prison on charges of sex trafficking of a minor for running a prostitution ring with at least 1 juvenile victim in Minnesota; and

(2) used Backpage.com to facilitate the prostitution;

Whereas Brandon Quincy Thompson—

(1) in April 2011 was sentenced to life imprisonment on charges of sex trafficking a child by force for running a South Dakota prostitution ring that involved multiple underage girls; and

(2) used Backpage.com to facilitate the prostitution;

Whereas Clint Eugene Wilson—

(1) in May 2011 was sentenced to 20 years in prison on charges of sex trafficking of a minor by force, fraud, or coercion for forcing a 16-year-old Dallas girl into prostitution, threatening to assault her, and forcing her to get a tattoo that branded her as his property; and

(2) used Backpage.com to facilitate the prostitution;

Whereas Demetrius Darnell Homer—

(1) in August 2011 was sentenced to 20 years in prison on charges of sex trafficking of a minor for violently forcing a 14-year-old Atlanta girl into prostitution, controlling her through beatings, threatening her with a knife, shocking her with a taser in front of another underage girl whom he had placed in prostitution, and forcing her to engage in prostitution while she was pregnant with his child; and

(2) used Backpage.com to facilitate the prostitution;

Whereas Leighton Martin Curtis—

(1) in February 2012 was sentenced to 30 years in prison on charges of sex trafficking of a minor and production of child pornography for pimping a 15-year-old girl throughout Florida, Georgia, and North Carolina to approximately 20 to 35 customers each week for more than a year; and

(2) used Backpage.com to facilitate the prostitution;

Whereas Ronnie Leon Tramble—

(1) in March 2012 was sentenced to 15 years in prison on charges of sex trafficking through force, fraud, and coercion for forcing more than 5 young women and minors into prostitution over a period of at least 5 years throughout the State of Washington, during which time period he constantly subjected the victims to brutal physical and emotional abuse; and

(2) used Backpage.com to facilitate the prostitution;

Whereas, according to AIM Group, 80 percent of online prostitution advertising revenue for the month of February 2012 was attributed to Backpage.com;

Whereas, according to AIM Group, the number of Backpage.com advertisements for ''escorts'' and ''body rubs'', a thinly veiled code for prostitution, increased by nearly 5 percent between February 2011 and February 2012;

Whereas, according to AIM Group, Backpage.com earned an estimated $26,000,000 from prostitution advertisements between February 2011 and February 2012;

Whereas Backpage.com vice president Carl Ferrer acknowledged to the National Association of Attorneys General that the company identifies more than 400 ''adult entertainment'' posts that may involve minors each month;

Whereas the actual number of ''adult entertainment'' posts on Backpage.com each month that involve minors may be far greater than 400;

Whereas, according to the National Association of Attorneys General, Missouri investigators found that the review procedures of Backpage.com are ineffective in policing illegal activity;

Whereas, in September 2010, Craigslist.com removed the ''adult services'' section of its website following calls for removal from law enforcement and advocacy organizations;

Whereas, by September 16, 2011, 51 attorneys general of States and territories of the United States had called on Backpage.com to shut down the ''adult entertainment'' section of its website;

Whereas, on September 16, 2011, the Tri-City Herald of the State of Washington published an editorial entitled ''Attorneys general target sexual exploitation of kids'', writing, '' . . . we'd also encourage the owners of Backpage.com to give the attorneys general what they are asking for'';

Whereas, on October 25, 2011, 36 clergy members from across the United States published an open letter to Village Voice Media in the New York Times, calling on the company to shut down the ''adult entertainment'' section of Backpage.com;

Whereas, on December 2, 2011, 55 anti-trafficking organizations called on Village Voice Media to shut down the ''adult entertainment'' section of Backpage.com;

Whereas, on December 29, 2011, the Seattle Times published an editorial entitled ''Murders strengthen case against Backpage.com'', writing, ''Backpage.com cannot continue to dismiss the women and children exploited through the website, nor the 3 women in Detroit who are dead possibly because they were trafficked on the site. Revenue from the exploitation and physical harm of women and minors is despicable. Village Voice Media, which owns Backpage.com, must shut this site down. Until then, all the pressure that can be brought to bear must continue.'';

Whereas, on March 18, 2012, Nicholas Kristof of the New York Times wrote in an opinion piece entitled ''Where Pimps Peddle Their Goods'' that ''[t]here are no simple solutions to end sex trafficking, but it would help to have public pressure on Village Voice Media to stop carrying prostitution advertising.'';

Whereas, on March 29, 2012, Change.org delivered a petition signed by more than 240,000 individuals to Village Voice Media, calling on the company to shut down the ''adult entertainment'' section of Backpage.com;

Whereas, on January 12, 2012, John Buffalo Mailer, son of Village Voice co-founder Norman Mailer, joined the Change.org petition to shut down the ''adult entertainment'' section of Backpage.com, stating, ''For the sake of the Village Voice brand and for the sake of the legacy of a great publication, take down the adult section of Backpage.com, before the Village Voice must answer for yet another child who is abused and exploited because you did not do enough to prevent it.'';

Whereas, on March 30, 2012, a private equity firm owned by Goldman Sachs Group, Inc. completed a deal to sell its 16 percent ownership stake in Village Voice Media back to management;

Whereas, in M.A. ex rel. P.K. v. Village Voice Media Holdings, LLC (809 F. Supp. 2d 1041 (E.D. Mo. 2011)), the United States District Court for the Eastern District of Missouri held that section 230 of the Communications Act of 1934 (47 U.S.C. 230) (as added by section 509 of the Communications Decency Act of 1996 (Public Law 104–104; 110 Stat. 137)) protects Backpage.com from civil liability for the ''horrific victimization'' the teenage plaintiff suffered at the hands of the criminal who posted on the website to perpetrate her vicious crimes; and

Whereas the Communications Decency Act of 1996 (Public Law 104–104; 110 Stat. 56) and the amendments made by that Act do not preclude a service provider from voluntarily removing a portion of a website known to facilitate the sexual exploitation of minors in order to protect children in the United States: Now, therefore, be it

Resolved, That the Senate—

(1) supports the efforts of law enforcement agencies to provide training to law enforcement agents on how to identify victims of sex trafficking, investigate cases of sex trafficking, prosecute sex trafficking offenses, and rescue victims of sex trafficking;

(2) supports services for trafficking victims provided by the Federal Government, State and local governments, and non-profit and faith-based organizations, including medical, legal, mental health, housing, and other social services; and

(3) calls on Village Voice Media Holdings, LLC to act as a responsible global citizen and immediately eliminate the ''adult entertainment'' section of the classified advertising website Backpage.com to terminate the website's rampant facilitation of online sex trafficking.

2012 HEISMAN MEMORIAL TROPHY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 617 and the Senate proceed to its consideration.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 617) congratulating the recipient of the 2012 Heisman Memorial Trophy.

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

Mr. DURBIN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

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

The resolution (S. Res. 617) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 617

Whereas, for the 78th time, the Heisman Memorial Trophy has been awarded to the most outstanding collegiate football player in the United States;

Whereas Johnny Manziel overcame intense competition and defied expectations during Texas A&M University's first year in the Southeastern Conference;

Whereas Manziel led the 2012 Texas A&M Aggie football team to a regular season record of 10 wins and 2 losses;

Whereas Manziel was awarded the Davey O'Brien National Quarterback Award as the top quarterback in the National Collegiate Athletic Association;

Whereas Manziel became the first freshman, and only the fifth player ever, in National Collegiate Athletic Association Football Bowl Subdivision history to achieve 3,000 passing yards and 1,000 rushing yards in a season;

Whereas Manziel became the first player in the Football Bowl Subdivision to pass for 300 yards and rush for 100 yards in the same game 3 times in his career;

Whereas Manziel holds the freshman record for quarterback rushing yards (1,114) and total yards in a season (4,600);

Whereas Manziel was assisted by the leadership of Southeastern Conference Co-Coach of the Year Kevin Sumlin, the exceptional protection of the offensive line anchored by Outland Trophy winner Luke Joeckel, and Texas A&M's 12th Man;

Whereas Manziel became the second Heisman Trophy winner at Texas A&M, preceded by John David Crow in 1957;

Whereas Manziel started the development of his athletic capabilities before attending Texas A&M in the cities of Tyler, Texas, and Kerrville, Texas;

Whereas 2012 marks the eighth time a player at a university in Texas has won the Heisman Trophy and back-to-back years of keeping the award in Texas;

Whereas the hullabaloo of Manziel becoming the first freshman to win the Heisman Trophy is another testament to the strength and skill of Texas football; and

Whereas Manziel has combined incredible talent with hard work and a good heart: Now, therefore, be it

Resolved, That the Senate congratulates the recipient of the 2012 Heisman Memorial Trophy.

DESIGNATING THE CHAIRMAN OF THE SENATE COMMITTEE ON APPROPRIATIONS

Mr. DURBIN. I ask unanimous consent that the Senate proceed to the consideration of S. Res. 627 submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 627) designating the Chairman of the Senate Committee on Appropriations.

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

Mr. DURBIN. I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The resolution (S. Res. 627) was agreed to, as follows:

S. RES. 627

Resolved, That the following Senator is designated as chairman of the following committee:

COMMITTEE ON APPROPRIATIONS: Ms. Mikulski, of Maryland.

Mr. DURBIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

OBTAINING A CONSUMER'S INFORMED, WRITTEN CONSENT ON AN ONGOING BASIS THROUGH THE INTERNET

Mr. DURBIN. I ask unanimous consent that the Senate proceed to the consideration of H.R. 6671 which was received from the House and is at the desk.

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

The legislative clerk read as follows:

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

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

Mr. LEAHY. Mr. President, we are enacting legislation to update the Video Privacy Protection Act, VPPA, in order to permit the ongoing sharing of video viewing information via the Internet. This bill contains important digital privacy provisions that I authored in the Senate to ensure consumer control over video viewing information.

During my more than three decades in the Senate, I have worked to protect the privacy rights of American consumers. In doing so, I have joined with Democrats and Republicans alike to help guarantee the right to privacy for every citizen. Last month, the Judiciary Committee favorably reported legislation that included these video privacy updates with strong bipartisan support. I commend Senator FRANKEN for his exceptional work on this measure as the chairman of the Judiciary Committee's Subcommittee on Technology, Privacy and the Law. He held

the hearings and helped the committee to develop the proposal contained in this bill.

I congratulate Representative GOODLATTE for his work on this bill. He began the effort in the House to update the VPPA and has worked with me to reach this final product. I look forward to working with him to update another critical digital privacy law, the Electronic Communications Privacy Act, ECPA, in the new year. The Senate Judiciary Committee reported a good proposal to ensure a warrant requirement for e-mails and we should move forward quickly to enact it.

The bill we enact today takes several important steps to accommodate new technologies, like video streaming and social networking, while also helping to protect digital privacy rights in cyberspace. First, the bill updates the Video Privacy Protection Act to keep pace with how most Americans view and share videos today—on the Internet. This bill will allow American consumers, if they wish, to share their movie and television watching experiences through social media, while also ensuring that the important privacy protections in this law are not diminished.

Second, to protect the privacy of American consumers, the bill retains key privacy protections already in the VPPA which require that consumers ''opt-in'' to the sharing of their video viewing information. The bill similarly retains the requirement in current law that consumers provide informed written consent to share video viewing information. Moreover, to ensure that consumers have control over their own video viewing data, the bill provides that consumers may ''opt-in'' to the information sharing on an ongoing basis for a period of up to 2 years at a time. Consumers may ''opt-out'' of the information sharing at any time.

Lastly, the bill requires that the opportunity for a consumer to withdraw consent to the disclosure of video viewing information must be presented in a clear and conspicuous manner. This provision requires a video tape service provider to provide one of two opportunities for the consumer to withdraw consent: on a case-by-case—i.e., per title—basis, or to withdraw consent for ongoing disclosures. The bill does not, however, specify where on a Web site, or in what form, the opportunity to withdraw consent should be provided.

Like many Americans, I am concerned about the growing and unwelcome government intrusions into our private lives in cyber space. Last month, the Judiciary Committee overwhelmingly passed my legislative proposal to update the Electronic Communications Privacy Act, ECPA, to require a search warrant in order for the government to obtain our e-mail and other electronic communications stored with third-party service providers. When we worked to enact ECPA in 1986, no one could have imagined the way the Internet and mobile technologies would transform how we communicate and exchange information today. But, after three decades, this critical privacy law has been outpaced by the explosion of new technologies and the expansion of the government's surveillance powers.

My Electronic Communications Privacy Act updates would revive and enhance the privacy protections afforded to Americans' e-mails and other electronic communications by establishing a warrant requirement for all e-mail content when stored with a third-party service provider or ''in the cloud.'' There are limited exceptions to this requirement under current law. I have worked to make certain that these updates carefully balance privacy interests, the needs of law enforcement, and the interest of our thriving American tech sector.

When the Congress enacted the Electronic Communications Privacy Act in 1986, we did so with strong, bipartisan support. Today, we continue that long and proud tradition of coming together across Chamber and party affiliation by enacting this update to the VPPA. My legislative reforms to the Electronic Communications Privacy Act are likewise deserving of such broad and bipartisan support. I urge us to join together in the Congress to enact these important privacy updates without delay.

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

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

The bill (H.R. 6671) was ordered to a third reading, was read the third time, and passed.

ORDERS FOR FRIDAY, DECEMBER 21, 2012

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 1 p.m. on Friday, December 21, 2012; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate begin consideration of the conference report to accompany H.R. 4310, the National Defense Authorization Act under the previous order; and that following disposition of the conference report, the Senate then proceed to vote on the motion to invoke cloture on the substitute amendment to H.R. 1; further, that the mandatory quorum with respect to rule XXII be waived; further, the filing deadline for second-degree amendments to H.R. 1, the legislative vehicle for the emergency supplemental appropriations bill, be 1:30 p.m. on Friday.

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

PROGRAM

Mr. DURBIN. There will be a rollcall vote at approximately 2 p.m. tomorrow on the adoption of the Defense authorization conference report. Additional votes are expected and we hope to reach agreement on the supplemental and FISA tomorrow.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. DURBIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 9:24 p.m., adjourned until Friday, December 21, 2012, at 1 p.m.