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House of Representatives

The House met at noon and was called to order by the Speaker pro tempore (Mr. HARRIS).

DESIGNATION OF SPEAKER PRO TEMPORE

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

WASHINGTON, DC,
September 16, 2015.

I hereby appoint the Honorable ANDY HARRIS to act as Speaker pro tempore on this day.

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

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 6, 2015, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

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

CHRISTIAN PERSECUTION WORLDWIDE

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

Mr. POE of Texas. Mr. Speaker, soon Pope Francis will deliver a historical address to this Congress. During this year, he has addressed a form of genocide happening in the world.

Globally, Christians are being imprisoned, tortured, and killed because they are Christians. In 2013, Christians faced persecution in 102 out of 190-plus countries. In Iran, American Christian pastor Saeed Abedini has been languishing in jail for the last 2½ years because he is a Christian.

According to the 2015 Open Doors' World Watch List, North Korea is the worst persecutor of Christians in the whole world. There, Christians are often sent to prison camps for possession of Bibles, sometimes even executed because they are Christians. The State Department estimates that 80,000 to 120,000 North Koreans are imprisoned in labor camps because of their religious beliefs. In November of 2013, 80 North Korean Christians were reportedly executed for possession of Bibles and possessing South Korean religious films.

In Pakistan, in one city, Christian churches have been bombed. A 14-year-old Christian boy was beaten and set on fire because he was a Christian. Burns now cover more than 55 percent of his body.

In Egypt, over a 3-day period in 2013, Coptic Christians experienced the worst single attack against their churches in 700 years, with 40 Christian churches destroyed and over 100 others severely damaged. Thousands of Coptic Christians have fled Egypt to other countries.

In Libya, ISIS captured and beheaded 21 people because they were Christians. When the victims' families tried to build a church in their honor, they were attacked by a Muslim mob and beaten.

It is not just Assad's thugs in Syria killing Christians; religious cleansing takes place in other places. In Syria, militants expelled 90 percent of the Christians in the city of Homs. Patriarch Gregorios III of Antioch says, out of a population of 1.75 million, 450,000 Syrian Christians have fled in fear.

Mr. Speaker, no Christian anywhere on Earth should have to leave their homeland because of their faith.

In Iraq, where Christians have been calling home since the time of Christ, the story is just as dark. Its Christian population has almost entirely disappeared—dropping 90 percent since the first gulf war. The number of churches has declined from 300 in 2003 to 57.

In Africa, the terrorist group al Shabaab attacked a university in Kenya, going door-to-door to find and execute Christians. Al Shabaab attacked a shopping mall in Kenya in 2013 and took shoppers captive. One of them was Joshua Hakim. When Joshua got close to his attackers, he showed them his ID, and he covered up his Christian name with his thumb. ''They told me to go,'' Joshua recalled later. ''Then another man came forward, and they said, what is the name of Muhammad's mother?'' The individual couldn't answer; so they shot him.

Mr. Speaker, history tells us that the persecution of Christians has been going on since the day Stephen was stoned for his faith in Acts 7.

As a country, the United States needs to reexamine its relationship with countries and states that persecute or tolerate the persecution of Christians. Countries should get no U.S. foreign aid until they start protecting Christians instead of persecuting them. And let's call groups like ISIS what they truly are: a radical and dangerous Islamic extremist terrorist group.

Religious liberty is a basic civil right, a humanitarian right, and an inalienable right. Since Pilgrims came to America to escape religious persecution in their homeland, our Nation has stood as a bright beacon to the world for religious freedom for everyone—Jews, Muslims, Hindus, Christians, and others.

It is written in the Good Book that a man was traveling on the Jericho road and fell among robbers. The man was beaten, his property was stolen, and he was left for dead. Other people traveled down the same road, saw him in the ditch, but passed on by him on the

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other side of the road. They went their own way. They did nothing.

The United States cannot be silent and walk on the other side of the road while Christians worldwide are beaten, beheaded, and brutalized because they are Christians. We must be that beacon that shines in proud protection of religious freedom for all—including Christians.

And that is just the way it is.

HAPPY BIRTHDAY WISHES TO THE HONORABLE RON PAUL

The SPEAKER pro tempore. The Chair recognizes the gentleman from North Carolina (Mr. JONES) for 5 minutes.

Mr. JONES. Mr. Speaker, one of my dearest friends, and a man nationally known for his knowledge and wisdom on so many subjects, recently celebrated his 80th birthday on August 20. That special friend is Ron Paul.

Those who had the pleasure to serve with Ron know how he served with unwavering principles. Whether he was fighting the Federal Reserve, speaking out against unnecessary war, or defending life, Ron Paul lived out the principles he holds dear and upheld the Constitution. That is why I supported him when he ran for the President of the United States of America.

Mr. Speaker, it was Ron Paul who started the Liberty Caucus, of which I am still a member. I will always remember very fondly when we met in his office in the Cannon Building for lunch meetings. He would invite speakers who were expert in everything from monetary policy to foreign policy. We all got so much out of those Liberty Caucus meetings.

He helped me and many of my colleagues have a better understanding of monetary policy, what are good policies and what are bad policies. Too many times our leaders don't understand the impact and complexities of monetary policy. Mr. Speaker, it is obvious, with our growing debt of $18.3 trillion, that our leadership in both parties should call on Ron Paul and ask his advice.

In my 20 years in Congress, I have not had a better friend than Ron Paul. I have always been able to count on Ron as both a personal and professional confidant.

In his many years as a ''citizen patriot,'' as his son United States Senator RAND PAUL calls him, the cause of liberty has never had a better friend than Ron Paul. Ron is a great fighter for the Constitution; and even though he is out of public office, his fight is just as strong today as ever.

I'm sure many of my colleagues in the House would join me in wishing a belated happy birthday to Ron Paul, my dear friend, and a friend of the Constitution.

U.S. FORESTRY BUDGET

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

Mr. THOMPSON of Pennsylvania. Mr. Speaker, this has been, once again, a really catastrophic wildfire season. In fact, we saw the loss of lives of individuals who serve our country in the United States Forest Service, and so we certainly keep them and their family members in our thoughts and prayers.

It is time that we address this issue in terms of the expansive fires that we have seen. The administration has been very vocal for the need to provide more funding to combat more wildfires and also stop more fire-borrowing from the Forest Service budget. As a matter of fact, there was a press release yesterday regarding the administration's letter to Congress addressing the budget issue.

I agree there needs to be a solution, but fixing the budget is not the final solution. However, addressing the fire-borrowing will not solve the problem alone.

Mr. Speaker, in 1995, fighting wildfires consumed one-sixth of the Forest Service budget. In 2015, this August, it is consuming one-half, 50 percent, of the Forest Service budget. We have to address, though, the root cause of this problem, which is not just warmer temperatures, but it is largely the fuel load, the fire load, from the lack of active management, insufficient active management, in our national forests.

It is also very important that the Forest Service have the ability to expediently treat national forest acres for forest health and wildfire prevention. The Agriculture Committee passed through the House H.R. 2647. I was very proud to be a cosponsor of that bill and managed that bill on the floor. It passed with bipartisan support. This bill is called the Resilient Federal Forests Act of 2015. This legislation is an earnest attempt to give the Forest Service more authority and much-needed flexibility to deal with these challenges of process, funding, litigation, necessary timber harvesting, and much-needed active management in our national forests.

Now, the Obama administration strongly opposes this legislation despite, yesterday, in an Agriculture oversight hearing where we heard from the Under Secretary words like ''collaborative'' and the ''need for expedited NEPA,'' which is a national environmental assessment. It doesn't mean there is no assessment; it just does it in an efficient way. It provides what is necessary, not overregulation, providing more categorical exclusions to NEPA. Those were all things the Under Secretary said that this administration is supportive of.

Well, Mr. Speaker, those are all things in this bill, and yet the administration, for whatever reason I have a hard time understanding, is opposed to this bill.

One of the solutions here, obviously, is to do good, active timbering. I want to come back, Mr. Speaker, to those years, 1995, where one-sixth of the Forest Service budget was consumed for fighting wildfires—and that is a lot, one-sixth. That year, they generated 3.8 billion board-feet of timber. That was the harvesting that took place. Just 7 years prior to that, we were harvesting 12.7 billion board-feet. That was the high in recent decades, in 1987.

As you can imagine, when you are doing that much harvesting, you are reducing the fuel load. You are reducing the risk. Fire needs oxygen, it needs fuel, and it needs some type of energy to ignite it. If you take away the fuel, any of those three triangles, as a long-time firefighter, I can tell you that is how you prevent fires. Yet today, August 2015, where we are spending one-half of the Forest Service budget, we are taking money out of timbering programs and multiuse programs, they are only producing 2.4 billion board-feet from our forests.

Now, you look at what is the value of that? So you take the difference between where we were at a high of 12.7 billion board-feet—and that wasn't at a sustainable rate; we were growing much more timber than what we were cutting even in 1987—so that is a difference of 10.3 billion board-feet.

How do we put an economic value on that? Well, if you just look at what the most recent average is for board-foot of timber harvested in national forests, Mr. Speaker, and you calculate that difference, if we would be harvesting and active timbering, active management the way we should, just looking at that 1987 standard—which is well below what we potentially could be cutting—that is $169 billion in revenue coming into the Treasury of the United States.

Our national forests are meant to be resources that provide for our Nation. With $169 billion, do you know what, I think we would have the resources to fight the fires. But if we were truly timbering where we should be, we wouldn't be having those fires.

The U.S. Forest Service did recently announce that it has already surpassed its more than $1 billion budget for fighting wildfires and that it will have to transfer an additional $450 million from programs which benefit national forests across the Nation. This is the eighth time since 2002 that the service has had to transfer such funds because of wildfire costs. Such transfers take money directly out of timber harvesting and salvage logging, recreational activities, grants to States, and even funding for fire suppression.

There is a better way to do things. I look forward to working with our Forest Service, and I encourage the Obama administration to support that.

Mr. Speaker, I agree with many of my colleagues that these wildfires should be treated as natural disasters and the Forest Service needs budget flexibility.

This is why I strongly support H.R. 167, the Wildfire Disaster Funding Act.

Avoiding these funding transfers, keeping funding where it belongs, and increasing our

harvest are critical first steps in getting our nation forests on track.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 12 o'clock and 14 minutes p.m.), the House stood in recess.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HARRIS) at 2 p.m.

PRAYER

The Chaplain, the Reverend Patrick J. Conroy, offered the following prayer:

Almighty God of the universe, we give You thanks for giving us another day. We thank You that You give us a share in Your creative work, having endowed each with unique and important talents.

On this day, we ask Your blessing on the men and women of the people's House, who have been entrusted with the care of this great Nation's people. Because of the great blessings You have bestowed on our Nation, may we embrace the opportunity to build a better world beyond our borders as well.

Bless all those who work in the Nation's Capitol. May their work be appreciated by the American people, for their faithfulness in service to our Nation is truly edifying.

May all that they do this day be for Your greater honor and glory.

Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Nebraska (Mr. ASHFORD) come forward and lead the House in the Pledge of Allegiance.

Mr. ASHFORD 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.

HELPING FAMILIES IN MENTAL HEALTH CRISIS ACT

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

Mr. MURPHY of Pennsylvania. Mr. Speaker, over the last few years, I have met with thousands of families of those with mental illness. Their number one concern is how the current system shuts them out.

Debbie and Chaz Mahoney lost their son Chuckie to suicide in 2002. Although Chuckie sought counseling from his college and showed signs of mental crisis, his parents knew nothing about his struggle. The Family Educational Rights and Privacy Act, also known as FERPA, kept Chuckie's parents in the dark.

The Mahoneys aren't alone. Each day, millions of families experience the same tragic frustration. Schools will be sure to remind you when the tuition check arrives, but because of FERPA, when it comes to your child's mental health, you only receive a call when it is too, too late.

This Suicide Prevention Month, Congress can fix this problem. The Helping Families in Mental Health Crisis Act allows doctors to provide limited, but crucial, information concerning individuals with a serious mental illness to known caregivers. To save their lives and protect their rights to treatment, I urge my colleagues to support H.R. 2646.

GOVERNMENT SHUTDOWN

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

Mr. HOYER. Mr. Speaker, we have only 7 legislative days left until another unnecessary, costly, and entirely preventable government shutdown.

We need to negotiate an agreement to replace the sequester with a responsible alternative. Because Republicans have refused to start these negotiations, I have talked to Mrs. LOWEY, the ranking member on the Appropriations Committee, and I have talked to Mr. VAN HOLLEN, the ranking member on the Budget Committee, and I have talked to Mr. MCCARTHY, but we have had no discussions on how to keep the government open just 8 legislative days from now.

If the government were to shut down, as it did in 2013, it would cost our economy billions of dollars and put our national security at risk. Hundreds of thousands of public service workers would be furloughed, and millions of people would be cut off from critical programs and services.

Many Republicans are urging their leadership not to risk a shutdown. Representative CHARLIE DENT of Pennsylvania said, "I don't think we need to do a replay of 2013. It would be an enormous tactical and strategic blunder." Indiana Senator DAN COATS, a conservative Republican, called a shutdown a failed tactic for political purposes that is not going to succeed.

I urge my Republican colleagues to stop threatening a shutdown—not all of them, but some of them—and to, instead, take action to keep the government open as we work to reach an agreement on a budget that replaces the sequester and funds our Nation's priorities responsibly.

NUCLEAR IRAN DEAL MERITS SENATE'S "NUCLEAR" OPTION

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

Mr. SMITH of Texas. Mr. Speaker, this week, I am circulating a letter to my House colleagues that asks the Senate to drop the 60-vote requirement for consideration of the Iran deal.

The American people sent us to Congress to represent their interests and to take actions that benefit our great country.

Yet, time and time again, we hear from our constituents that Congress is not listening or is incapable of performing its basic responsibilities as a legislature.

Our request to eliminate the filibuster for some votes simply underscores that, in a democracy, the majority should decide.

It is time to send a strong signal to this administration that it can no longer disregard the will of the American people and their representatives in Congress.

I urge my colleagues to sign this letter that asks for a majority vote on the Iran deal in the Senate.

AVOID A GOVERNMENT SHUTDOWN

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

Mr. ASHFORD. Mr. Speaker, today, we face another government shutdown, another government shutdown that threatens our economy.

And what is this potential shutdown about?

It is about Congress trying to dictate to women in my community which healthcare providers they can and cannot see to get care.

Let me set the record straight.

Planned Parenthood of the Heartland provides vital preventive care to women in my community. Last year, Planned Parenthood of the Heartland served nearly 10,000 patients.

They conducted over 4,000 cervical and breast cancer screenings and over 13,000 tests for sexually transmitted infections. They provided prenatal care, pregnancy testing, and other preventive health services.

They are an active supporter of the national campaign to prevent teen and unplanned pregnancy, and they even have licensed adoption professionals on site to help women navigate the steps of adoption.

I am a strong believer that education regarding women's health prevents abortions. We must come together and work in a spirit of bipartisanship to avoid this government shutdown.

SACRED RIGHT—RELIGIOUS FREEDOM

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

Mr. POE of Texas. Mr. Speaker, Coptic Christians—the largest religious minority in Egypt and the largest Christian community in the Middle East—are constantly persecuted.

In 2011, Ayman Nabil Labib went to school like he did every day. Ayman, like most Coptic Christians in Egypt, had a cross tattooed on his wrist as a sign of his Christian faith.

When he got to school, Ayman's Arabic language teacher asked him to cover the tattoo. Instead, Ayman pulled the cross from underneath his shirt and left it hanging around his neck.

The teacher became enraged. He choked Ayman and asked Ayman's Muslim classmates: What are you going to do with him? Then his classmates beat him to death to silence his faith.

Ayman was murdered because he was a Christian.

Religious freedom is a basic, sacred, universal human right. Alexander Hamilton said in 1775, ''The sacred rights of mankind . . . are written, as with a sun beam in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power.''

And that is just the way it is.

GOVERNMENT SHUTDOWN

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

Mr. KILDEE. Mr. Speaker, there are only 7 legislative days until the GOP shuts down this government again.

I have been back home. I don't know about you, but what I have heard is that the American people do not want to see another government shutdown. They don't want to see Planned Parenthood defunded, taking away essential health care for women across the country.

What they want to see is for us to work together. They want to see both parties work together to keep the government open for sure, but to go beyond that, to make sure that families can save to own a home, that they can send their kids to college, that they can have something set aside for retirement.

It is not just enough to keep the government open. That ought to be a given. We ought to take up the priorities of the American people.

Unfortunately, what we see is that, in an attempt to get something that a minority of this body wants, they are going to hold up the entirety of the government—shut down the government—over one issue. That is not responsible, and that is not what the American people sent us here to do.

House Democrats are ready to work together. We will compromise, but let's negotiate. Let's have a discussion.

Let's talk to one another and come up with a budget that we can work together on and that we can present to the American people, and let's get back to the business the people sent us here to do.

MANUFACTURING DAY

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

Mr. BURGESS. Mr. Speaker, I rise today to encourage support in promoting National Manufacturing Day, an annual event that is recognized on Friday, October 2.

During a time in which the manufacturing sector is under a number of challenges, Manufacturing Day aims to revitalize the image of manufacturing and to bring awareness of this sector's many contributions to the economy and to the United States' competitiveness.

As the chairman of the Subcommittee on Commerce, Manufacturing, and Trade, I intend to support this day of recognition on October 2 in my district, and I encourage my colleagues to do the same in their districts. Manufacturing Day also serves as an opportunity for manufacturers across the country to highlight their work.

Manufacturing is imperative for the future of the United States' economy, and it encourages the growth of American innovation, a skill that must continue to be fostered in this generation and those generations yet to come.

A BIPARTISAN BUDGET AGREEMENT

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

Mr. TAKAI. Mr. Speaker, I rise today to discuss the need to come together, put aside partisan politics, and pass a budget.

More than 7 in 10 Americans are saying they would prefer a budget agreement to prevent the government from shutting down.

I was elected to Congress and came here promising my constituents no more government shutdowns, no more Federal furloughs, and no more sequestration.

I ask for the leadership of both parties to put forward a bipartisan, long-term budget solution to help prevent a government shutdown.

We need to focus on what matters: growing our economy, upgrading our aging infrastructure, and helping to ensure that our citizens are able to obtain the American Dream.

We cannot waste any more time on political gridlock, and it is not fair to hijack our Nation's budget bill. Let's come together. Let's get to work. Let's answer the call of our constituents, and let's pass a budget.

CHILDREN'S CARDIOMYOPATHY AWARENESS MONTH

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

Mrs. CAPPS. Mr. Speaker, I rise today to recognize September as Children's Cardiomyopathy Awareness Month.

Cardiomyopathy is a chronic disease of the heart muscle that increases the risk of sudden cardiac arrest, which is a condition that claims approximately 295,000 lives in the United States every year. It is also the leading cause of death among schoolchildren.

That is one reason I introduced the SAFE PLAY Act, which would improve the health and safety of student athletes, including those who are diagnosed with cardiomyopathy.

We know that, when sudden cardiac arrest hits, quick intervention saves lives. That is why the SAFE PLAY Act includes provisions to teach students across the country the life-saving skills of CPR and how to use AEDs.

As we recognize Children's Cardiomyopathy Awareness Month, I want to invite my colleagues and their staffs to the second annual AED Hunt on the Hill, taking place tomorrow at 4 p.m. in the afternoon. There you can learn more about cardiomyopathy, how AEDs save lives, and how the SAFE PLAY Act can help. Together, we can make a difference.

□ 1415

GOP SHUTDOWN/PLANNED PARENTHOOD

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

Ms. ADAMS. Mr. Speaker, once again, Republicans are threatening to shut down our government.

Instead of passing a sensible funding bill or a long-term transportation bill that will create jobs, Republicans have chosen to put jobs at risk. They have chosen to weaken security at our airports. They have chosen to close our national parks. They pretty much have chosen not to serve their constituents back home.

And it is for what reason? It is because they are so determined to regulate women's bodies and block women's right to access preventive and life-saving health care that they would rather throw Americans under the bus.

Last year alone, in my State of North Carolina, Planned Parenthood served more than 31,000 patients, providing mammograms, pap smears, cancer screenings, contraceptive services, and STD testing.

Why would we want to deny women, many who are low income, of these

necessary health benefits? Women's access to health care has always been important to me, and that is why I am a consistent advocate for the work that Planned Parenthood does.

More importantly, I refuse to put jobs and our country's safety at risk over partisan grandstanding. Only 7 days left—it is time to do what we were sent here to do and end this senseless shutdown talk.

GOP DYSFUNCTION

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

Mr. VEASEY. Mr. Speaker, I rise today to urge my Republican colleagues to please don't shut down the government. Let's work together. Let's put politics aside and do what is best for the American people.

By the end of this month, we are expected to negotiate a responsible budget agreement, but threats from the rightwing extremists are taking us off course once again.

I recently wrote an op-ed challenging Republican threats to women's healthcare coverage, as I refuse to stand on the sidelines when our country's daughters, sisters, and mothers are under attack.

Instead of, once again, holding women's health care hostage in order to pass a biased agenda, we need to come together to pass a responsible, bipartisan budget to address our Nation's most pressing problems.

Now, residents in the Dallas/Fort Worth area are concerned about getting some congestion off of our freeways and doing things like making sure that the American public has good, well-paying jobs and protecting our businesses.

They want us to pass a balanced and responsible budget that averts another government shutdown. We cannot expect to repeat the same mistakes and think that it is going to yield different results.

The American people are counting on us to focus on what matters: jobs, education, and fixing our country's crumbling infrastructure.

STOP GOVERNMENT SHUTDOWN

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

Mrs. LAWRENCE. Mr. Speaker, I stand before you today outraged and disappointed. Once again, petty partisan politics is threatening to derail government funding and shut down critical services to hard-working, deserving Americans.

Later today, I will be hosting a forum with the media, talking about how women are treated and misrepresented in the media; and here, we have an issue that has a direct impact on women being used as a pawn to shut down our government. The only group that is portrayed more negatively—and we all hear it—is our own Congress.

We must act now to change how we are portrayed and how America views us. We must work together and stop another wasteful and harmful government shutdown. We are better than this.

Congress, my colleagues, let's work together and keep our government working.

COMMUNICATION FROM THE CLERK OF THE HOUSE

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

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 16, 2015.

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

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on September 16, 2015 at 9:23 a.m.:

That the Senate passed S. 2036.

With best wishes, I am

Sincerely,

KAREN L. HAAS.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 3 p.m. today.

Accordingly (at 2 o'clock and 20 minutes p.m.), the House stood in recess.

□ 1500

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. SIMPSON) at 3 p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

NATIONAL WINDSTORM IMPACT REDUCTION ACT REAUTHORIZATION OF 2015

Mr. SMITH of Texas. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 23) to reauthorize the National Windstorm Impact Reduction Program, and for other purposes.

The Clerk read the title of the bill.

The text of the Senate amendment is as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Windstorm Impact Reduction Act Reauthorization of 2015''.

SEC. 2. DEFINITIONS.

(a) DIRECTOR.—Section 203(1) of the National Windstorm Impact Reduction Act of 2004 (42 U.S.C. 15702(1)) is amended by striking ''Director of the Office of Science and Technology Policy'' and inserting ''Director of the National Institute of Standards and Technology''.

(b) LIFELINES.—Section 203 of the National Windstorm Impact Reduction Act of 2004 (42 U.S.C. 15702) is further amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

''(2) LIFELINES.—The term 'lifelines' means public works and utilities, including transportation facilities and infrastructure, oil and gas pipelines, electrical power and communication facilities and infrastructure, and water supply and sewage treatment facilities.''.

(c) WINDSTORM.—Paragraph (5) of such section, as redesignated by subsection (b), is amended by inserting ''northeaster,'' after ''tropical storm,''.

SEC. 3. NATIONAL WINDSTORM IMPACT REDUCTION PROGRAM.

Section 204 of the National Windstorm Impact Reduction Act of 2004 (42 U.S.C. 15703) is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

''(a) ESTABLISHMENT.—There is established the National Windstorm Impact Reduction Program, the purpose of which is to achieve major measurable reductions in the losses of life and property from windstorms through a coordinated Federal effort, in cooperation with other levels of government, academia, and the private sector, aimed at improving the understanding of windstorms and their impacts and developing and encouraging the implementation of cost-effective mitigation measures to reduce those impacts.

''(b) RESPONSIBILITIES OF PROGRAM AGENCIES.—

''(1) LEAD AGENCY.—The National Institute of Standards and Technology shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director shall—

''(A) ensure that the Program includes the necessary components to promote the implementation of windstorm risk reduction measures by Federal, State, and local governments, national standards and model building code organizations, architects and engineers, and others with a role in planning and constructing buildings and lifelines;

''(B) support the development of performance-based engineering tools, and work with appropriate groups to promote the commercial application of such tools, including through wind-related model building codes, voluntary standards, and construction best practices;

''(C) request the assistance of Federal agencies other than the Program agencies, as necessary to assist in carrying out this Act;

''(D) coordinate all Federal post-windstorm investigations to the extent practicable; and

''(E) when warranted by research or investigative findings, issue recommendations to assist in informing the development of model codes, and provide information to Congress on the use of such recommendations.

''(2) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—In addition to the lead agency responsibilities described under paragraph (1),

the National Institute of Standards and Technology shall be responsible for carrying out research and development to improve model building codes, voluntary standards, and best practices for the design, construction, and retrofit of buildings, structures, and lifelines.

''(3) NATIONAL SCIENCE FOUNDATION.—The National Science Foundation shall support research in—

''(A) engineering and the atmospheric sciences to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines; and

''(B) economic and social factors influencing windstorm risk reduction measures.

''(4) NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—The National Oceanic and Atmospheric Administration shall support atmospheric sciences research to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines.

''(5) FEDERAL EMERGENCY MANAGEMENT AGENCY.—The Federal Emergency Management Agency shall—

''(A) support—

''(i) the development of risk assessment tools and effective mitigation techniques;

''(ii) windstorm-related data collection and analysis;

''(iii) public outreach and information dissemination; and

''(iv) promotion of the adoption of windstorm preparedness and mitigation measures, including for households, businesses, and communities, consistent with the Agency's all-hazards approach; and

''(B) work closely with national standards and model building code organizations, in conjunction with the National Institute of Standards and Technology, to promote the implementation of research results and promote better building practices within the building design and construction industry, including architects, engineers, contractors, builders, and inspectors.'';

(2) by redesignating subsection (d) as subsection (c), and by striking subsections (e) and (f); and

(3) by inserting after subsection (c), as so redesignated, the following new subsections:

''(d) BUDGET ACTIVITIES.—The Director of the National Institute of Standards and Technology, the Director of the National Science Foundation, the Director of the National Oceanic and Atmospheric Administration, and the Director of the Federal Emergency Management Agency shall each include in their agency's annual budget request to Congress a description of their agency's projected activities under the Program for the fiscal year covered by the budget request, along with an assessment of what they plan to spend on those activities for that fiscal year.

''(e) INTERAGENCY COORDINATING COMMITTEE ON WINDSTORM IMPACT REDUCTION.—

''(1) ESTABLISHMENT.—There is established an Interagency Coordinating Committee on Windstorm Impact Reduction, chaired by the Director or the Director's designee.

''(2) MEMBERSHIP.—In addition to the chair, the Committee shall be composed of—

''(A) the heads or such designees of—

''(i) the Federal Emergency Management Agency;

''(ii) the National Oceanic and Atmospheric Administration;

''(iii) the National Science Foundation;

''(iv) the Office of Science and Technology Policy; and

''(v) the Office of Management and Budget; and

''(B) the head of any other Federal agency, or such designee, the chair considers appropriate.

''(3) MEETINGS.—The Committee shall meet not less than once a year at the call of the Director of the National Institute of Standards and Technology.

''(4) GENERAL PURPOSE AND DUTIES.—The Committee shall oversee the planning and coordination of the Program.

''(5) STRATEGIC PLAN.—The Committee shall develop and submit to Congress, not later than one year after the date of enactment of the National Windstorm Impact Reduction Act Reauthorization of 2015, a Strategic Plan for the Program that includes—

''(A) prioritized goals for the Program that will mitigate against the loss of life and property from future windstorms;

''(B) short-term, mid-term, and long-term research objectives to achieve those goals;

''(C) a description of the role of each Program agency in achieving the prioritized goals;

''(D) the methods by which progress towards the goals will be assessed; and

''(E) an explanation of how the Program will foster the transfer of research results into outcomes, such as improved model building codes.

''(6) PROGRESS REPORT.—Not later than 18 months after the date of enactment of the National Windstorm Impact Reduction Act Reauthorization of 2015, the Committee shall submit to the Congress a report on the progress of the Program that includes—

''(A) a description of the activities funded under the Program, a description of how these activities align with the prioritized goals and research objectives established in the Strategic Plan, and the budgets, per agency, for these activities;

''(B) the outcomes achieved by the Program for each of the goals identified in the Strategic Plan;

''(C) a description of any recommendations made to change existing building codes that were the result of Program activities; and

''(D) a description of the extent to which the Program has incorporated recommendations from the Advisory Committee on Windstorm Impact Reduction.

''(7) COORDINATED BUDGET.—The Committee shall develop a coordinated budget for the Program, which shall be submitted to the Congress not later than 60 days after the date of the President's budget submission for each fiscal year.''.

SEC. 4. NATIONAL ADVISORY COMMITTEE ON WINDSTORM IMPACT REDUCTION.

Section 205 of the National Windstorm Impact Reduction Act of 2004 (42 U.S.C. 15704) is amended to read as follows:

''SEC. 205. NATIONAL ADVISORY COMMITTEE ON WINDSTORM IMPACT REDUCTION.

''(a) IN GENERAL.—The Director of the National Institute of Standards and Technology shall establish an Advisory Committee on Windstorm Impact Reduction, which shall be composed of at least 7 and not more than 15 members who are qualified to provide advice on windstorm impact reduction and represent related scientific, architectural, and engineering disciplines, none of whom may be employees of the Federal Government, including—

''(1) representatives of research and academic institutions;

''(2) industry standards development organizations;

''(3) emergency management agencies;

''(4) State and local government; and

''(5) business communities, including the insurance industry.

''(b) ASSESSMENTS.—The Advisory Committee on Windstorm Impact Reduction shall offer assessments and recommendations on—

''(1) trends and developments in the natural, engineering, and social sciences and practices of windstorm impact mitigation;

''(2) the priorities of the Program's Strategic Plan;

''(3) the coordination of the Program;

''(4) the effectiveness of the Program in meeting its purposes; and

''(5) any revisions to the Program which may be necessary.

''(c) COMPENSATION.—The members of the Advisory Committee established under this section shall serve without compensation.

''(d) REPORTS.—At least every 2 years, the Advisory Committee shall report to the Director on the assessments carried out under subsection (b) and its recommendations for ways to improve the Program.

''(e) CHARTER.—Notwithstanding section 14(b)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), the Advisory Committee shall not be required to file a charter subsequent to its initial charter, filed under section 9(c) of such Act, before the termination date specified in subsection (f) of this section.

''(f) TERMINATION.—The Advisory Committee shall terminate on September 30, 2017.

''(g) CONFLICT OF INTEREST.—An Advisory Committee member shall recuse himself from any Advisory Committee activity in which he has an actual pecuniary interest.''.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Section 207 of the National Windstorm Impact Reduction Act of 2004 (42 U.S.C. 15706) is amended to read as follows:

''SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

''(a) FEDERAL EMERGENCY MANAGEMENT AGENCY.—There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this title—

''(1) $5,332,000 for fiscal year 2015;

''(2) $5,332,000 for fiscal year 2016; and

''(3) $5,332,000 for fiscal year 2017.

''(b) NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the National Science Foundation for carrying out this title—

''(1) $9,682,000 for fiscal year 2015;

''(2) $9,682,000 for fiscal year 2016; and

''(3) $9,682,000 for fiscal year 2017.

''(c) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this title—

''(1) $4,120,000 for fiscal year 2015;

''(2) $4,120,000 for fiscal year 2016; and

''(3) $4,120,000 for fiscal year 2017.

''(d) NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—There are authorized to be appropriated to the National Oceanic and Atmospheric Administration for carrying out this title—

''(1) $2,266,000 for fiscal year 2015;

''(2) $2,266,000 for fiscal year 2016; and

''(3) $2,266,000 for fiscal year 2017.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. SMITH) and the gentleman from New York (Mr. TONKO) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

GENERAL LEAVE

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the bill under consideration.

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

There was no objection.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 23, the National Windstorm Impact Reduction Act Reauthorization of 2015, reauthorizes the activities of the National Windstorm Impact Reduction Program through fiscal year 2017.

Representative RANDY NEUGEBAUER, my Texas colleague, has championed this program for over a decade. In the 113th Congress, he and Representative FREDERICA WILSON's bipartisan efforts helped move this legislation through the Science Committee and to successfully pass the House.

It is because of their past work that we were able to bring this bill to the House floor on January 7, the second day of business in the 114th Congress, this Congress. The bill overwhelmingly passed the House 381–39.

Today, we consider the Senate amendment to H.R. 23. Thanks to leadership of my colleague on the other side of the Capitol, Senator JOHN THUNE, an amended version of H.R. 23 passed the Senate Commerce, Science, and Transportation Committee in June. It then passed the Senate by unanimous consent in July.

The National Windstorm Impact Reduction Program supports Federal research and development efforts to help mitigate the loss of life and property due to wind-related hazards.

Millions of Americans live in areas vulnerable to hurricanes, tornados, and other windstorms. The National Weather Service reported just over 100 deaths and over 900 injuries last year due to tornados and other windstorms.

In Texas, we are all too familiar with the harm that strong wind can cause. According to the National Oceanic and Atmospheric Administration's storm prediction center, 128 tornados and 1,366 windstorms were reported just in Texas in the last 2 years. The effects of these disasters can be felt for a long time.

Initially established in 2004, the National Windstorm Impact Reduction Program supports activities to improve our understanding of windstorms and their impacts and helps to develop and encourage the implementation of cost-effective mitigation measures. H.R. 23 establishes the National Institute of Standards and Technology as the lead agency for the program.

The bill also improves coordination of interagency activities in a fiscally responsible manner. It expands transparency for how much money is being spent on windstorm research at the four participating agencies, the National Institute of Standards and Technology, the National Science Foundation, the National Oceanic and Atmospheric Administration, and FEMA. It authorizes $21.4 million for this interagency research.

The Senate amendment provides some flexibility to the advisory committee on windstorm impact reduction when it provides recommendations in its report. It also ensures that northeasters are included in the definition of windstorm and makes a few other minor conforming and technical changes.

Again, I want to thank Representative NEUGEBAUER for his continued efforts in support of this program. I encourage my colleagues to support the bill and to send it to the President's desk for his autograph.

Mr. Speaker, I reserve the balance of my time.

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

Mr. Speaker, I rise in support of H.R. 23, legislation that reauthorizes the National Windstorm Impact Reduction Program, or NWIRP.

America faces significant exposure to windstorms. We saw that, indeed, in 2012 when Superstorm Sandy devastated parts of the Northeast. Superstorm Sandy was responsible for over 200 deaths and caused over $70 billion in damage.

According to the National Weather Service, from 2005 to 2014, thousands of Americans lost their lives from the impacts of windstorms. Along with the loss of life, windstorms caused many billions of dollars in property and crop damage during that time.

When windstorms occur, we must work to save lives and reduce the amount of property and crop damage that the windstorm or other natural disaster causes. We already are investing significant resources after a windstorm, but we should be investing more in preparedness.

FEMA's predisaster mitigation program has demonstrated that every dollar invested in mitigation activities saves $3 to $4 in recovery costs.

The National Windstorm Impact Reduction Act Reauthorization of 2015 is largely a mitigation program. The bill reauthorizes the NWIRP program that directs NIST, NSF, NOAA, and FEMA to support coordinated activities to improve our understanding of windstorms and their impacts and to develop cost-effective mitigation measures.

This program has the potential to lessen the loss of life and economic damage of windstorms by supporting research and helping to translate that research into more effective building codes and mitigation programs, but this program needs robust investment to achieve that result.

Unfortunately, this bill includes a lower total authorization level than was authorized for this program in fiscal year 2008.

We have the responsibility, I believe, to assist our constituents after a natural disaster occurs, but we also have the responsibility to properly support mitigation programs that could reduce the loss of life and property damage caused by the next natural disaster.

Nevertheless, this is an important program that needs reauthorization, and I, today, support its passage.

I want to thank the members of the Science, Space and Technology Committee, including Chair SMITH, Ranking Member JOHNSON, and Representative NEUGEBAUER, for their hard work on this bill.

I want to thank the members of the Senate Commerce, Science, and Transportation Committee for their hard work as well. It is nice to see my colleagues here in the House of Representatives and over in the Senate working in a bipartisan, bicameral manner to bring this bill to the floor today.

I urge my colleagues on both sides of the aisle to support this bill, and I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, first of all, I would like to thank the gentleman from New York (Mr. TONKO), a member of the Science Committee, for his comments and for supporting this piece of legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Lubbock, Texas (Mr. NEUGEBAUER), a Texas colleague. I want to thank him for sponsoring this piece of legislation and look forward to its passage today and to its being enacted into law as well.

Mr. NEUGEBAUER. Mr. Speaker, I rise in support today for my bill, the National Windstorm Impact Reduction Act, or NWIRP.

As I said, I want to thank Chairman SMITH. I also want to thank Senator JOHN THUNE of the Senate Committee on Commerce, Science, and Transportation, who helped shepherd this bill through the Senate.

The United States averages almost 1,300 recorded tornados every year, causing over 70 deaths and 1,500 injuries. These storms cost about $400 million in damage each year, but particularly in a bad year, like 2011, wind damage from tornadoes and thunderstorms cost more than $28 billion. This is a natural and a national disaster.

When a family loses their home in a windstorm, they don't just have to rebuild their house; they have to rebuild their lives as well, and we can help these families, and we can help save their lives and, in many cases, help save their property through the important research that is going on at many universities around the country, including my alma mater, Texas Tech University.

With those families in mind, I introduced NWIRP. NWIRP promotes research that helps saves lives, reduce injuries, and lessens damage from windstorms.

As was mentioned by my colleague from New York, we have found that $1 in investments in the resilience against windstorms can result in $4 in savings in a disaster response. Not only are we investing dollars to make America safer, but we are also saving the taxpayers in the long run.

Upon passage, this bill will move to the President's desk to be signed into law, and I think it is important that we get this bill passed as quickly as we can because, again, windstorms can cause a lot of damage and can cause the loss of life.

The more we understand about the dynamics of these windstorms and understanding how they interface with different types of building materials, the safer and better structures that we are able to build and ultimately, in many cases, save lives.

A lot of important research has been going on. One of the things I like about

this particular piece of legislation is that it brings some accountability in making sure that we are investing the dollars in the places where we are getting the most bang for the buck for the American taxpayers.

Not only are we looking out for the taxpayers in this bill, but we are also looking out for the people, the men and women, that are affected by these windstorms. I encourage my colleagues to support this legislation.

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

Mr. Speaker, we must help our constituents prepare for and mitigate the impacts of windstorms that threaten lives and property. This bill reauthorizes a program that would do just that, and I urge its adoption.

Mr. Speaker, I yield back the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I have no other requests from Members to speak on this piece of legislation, so I yield back the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise in support of H.R. 23, legislation that would reauthorize the National Windstorm Impact Reduction Program—or NWIRP.

The last few years have been devastating years for natural disasters across the country. For example, in May, the Great Plains had a six-day outbreak of tornado activity that affected areas ranging from Colorado to Texas and resulted in over 60 injuries and 5 fatalities.

H.R. 23 directs NIST, NSF, NOAA, and FEMA to support activities to improve the understanding of windstorms and their impacts. We can use that knowledge to reduce the vulnerability of our communities to natural disasters. The NWIRP program helps our federal agencies and communities across the nation to develop and implement many measures that help minimize the loss of life and property during windstorms and to rebuild effectively and safely after such storms.

I was pleased that when this bill was considered by the House Science, Space, and Technology Committee, we worked in a bipartisan manner and made several improvements to the bill. We worked together to increase the authorization for FEMA, the agency tasked with implementing the research conducted by the other NWIRP agencies. Also, we added several social science-related provisions to the bill. We cannot design effective disaster preparation strategies without understanding how people make decisions and respond to disaster warnings.

The House of Representatives passed H.R. 23 at the end of January with a vote of 381–39 and sent it to the Senate. During their consideration, the Senate made minor changes to the bill, but I am happy to report that all of the bipartisan improvements we made to the bill remain in H.R. 23.

I want to thank my fellow Texans—Chairman SMITH and Mr. NEUGEBAUER—for working across the aisle on this bill. I also want to thank the Commerce, Science, and Transportation Committee in the Senate for their work on this bill.

This is an important program that needs to be reauthorized. It is good to see Members of the House and Senate coming together, working out their differences, compromising, and ending up with a bill with bipartisan, bicameral support.

I support the bill and urge my colleagues to support this important bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SMITH) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 23.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

GERARDO HERNANDEZ AIRPORT SECURITY ACT OF 2015

Mr. KATKO. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 720) to improve intergovernmental planning for and communication during security incidents at domestic airports, and for other purposes.

The Clerk read the title of the bill.

The text of the Senate amendment is as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Gerardo Hernandez Airport Security Act of 2015''.

SEC. 2. DEFINITIONS.

In this Act:

(1) ASSISTANT SECRETARY.—The term ''Assistant Secretary'' means the Assistant Secretary of Homeland Security (Transportation Security) of the Department of Homeland Security.

(2) ADMINISTRATION.—The term ''Administration'' means the Transportation Security Administration.

SEC. 3. SECURITY INCIDENT RESPONSE AT AIRPORTS.

(a) IN GENERAL.—The Assistant Secretary shall, in consultation with other Federal agencies as appropriate, conduct outreach to all airports in the United States at which the Administration performs, or oversees the implementation and performance of, security measures, and provide technical assistance as necessary, to verify such airports have in place individualized working plans for responding to security incidents inside the perimeter of the airport, including active shooters, acts of terrorism, and incidents that target passenger-screening checkpoints.

(b) TYPES OF PLANS.—Such plans may include, but may not be limited to, the following:

(1) A strategy for evacuating and providing care to persons inside the perimeter of the airport, with consideration given to the needs of persons with disabilities.

(2) A plan for establishing a unified command, including identification of staging areas for non-airport-specific law enforcement and fire response.

(3) A schedule for regular testing of communications equipment used to receive emergency calls.

(4) An evaluation of how emergency calls placed by persons inside the perimeter of the airport will reach airport police in an expeditious manner.

(5) A practiced method and plan to communicate with travelers and all other persons inside the perimeter of the airport.

(6) To the extent practicable, a projected maximum timeframe for law enforcement response to active shooters, acts of terrorism, and incidents that target passenger security-screening checkpoints.

(7) A schedule of joint exercises and training to be conducted by the airport, the Administration, other stakeholders such as airport and airline tenants, and any relevant law enforcement, airport police, fire, and medical personnel.

(8) A schedule for producing after-action joint exercise reports to identify and determine how to improve security incident response capabilities.

(9) A strategy, where feasible, for providing airport law enforcement with access to airport security video surveillance systems at category X airports where those systems were purchased and installed using Administration funds.

(c) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Assistant Secretary shall report to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the findings from its outreach to airports under subsection (a), including an analysis of the level of preparedness such airports have to respond to security incidents, including active shooters, acts of terrorism, and incidents that target passenger-screening checkpoints.

SEC. 4. DISSEMINATING INFORMATION ON BEST PRACTICES.

The Assistant Secretary shall—

(1) identify best practices that exist across airports for security incident planning, management, and training; and

(2) establish a mechanism through which to share such best practices with other airport operators nationwide.

SEC. 5. CERTIFICATION.

Not later than 90 days after the date of enactment of this Act, and annually thereafter, the Assistant Secretary shall certify in writing to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that all screening personnel have participated in practical training exercises for active shooter scenarios.

SEC. 6. REIMBURSABLE AGREEMENTS.

Not later than 90 days after the enactment of this Act, the Assistant Secretary shall provide to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an analysis of how the Administration can use cost savings achieved through efficiencies to increase over the next 5 fiscal years the funding available for checkpoint screening law enforcement support reimbursable agreements.

SEC. 7. SECURITY INCIDENT RESPONSE FOR SURFACE TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—The Assistant Secretary shall, in consultation with the Secretary of Transportation, and other relevant agencies, conduct outreach to all passenger transportation agencies and providers with high-risk facilities, as identified by the Assistant Secretary, to verify such agencies and providers have in place plans to respond to active shooters, acts of terrorism, or other security-related incidents that target passengers.

(b) TYPES OF PLANS.—As applicable, such plans may include, but may not be limited to, the following:

(1) A strategy for evacuating and providing care to individuals, with consideration given to the needs of persons with disabilities.

(2) A plan for establishing a unified command.

(3) A plan for frontline employees to receive active shooter training.

(4) A schedule for regular testing of communications equipment used to receive emergency calls.

(5) An evaluation of how emergency calls placed by individuals using the transportation system will reach police in an expeditious manner.

(6) A practiced method and plan to communicate with individuals using the transportation system.

(c) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary shall report to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the findings from its outreach to the agencies and providers under subsection (a), including an analysis of the level of preparedness such transportation systems have to respond to security incidents.

(d) DISSEMINATION OF BEST PRACTICES.—The Assistant Secretary shall identify best practices for security incident planning, management, and training and establish a mechanism through which to share such practices with passenger transportation agencies nationwide.

SEC. 8. NO ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

No additional funds are authorized to be appropriated to carry out this Act, and this Act shall be carried out using amounts otherwise available for such purpose.

SEC. 9. INTEROPERABILITY REVIEW.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Assistant Secretary shall, in consultation with the Assistant Secretary of the Office of Cybersecurity and Communications, conduct a review of the interoperable communications capabilities of the law enforcement, fire, and medical personnel responsible for responding to a security incident, including active shooter events, acts of terrorism, and incidents that target passenger-screening checkpoints, at all airports in the United States at which the Administration performs, or oversees the implementation and performance of, security measures.

(b) REPORT.—Not later than 30 days after the completion of the review, the Assistant Secretary shall report the findings of the review to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. KATKO) and the gentleman from Mississippi (Mr. THOMPSON) each will control 20 minutes.

The Chair recognizes the gentleman from New York.

GENERAL LEAVE

Mr. KATKO. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and include any extraneous material on the bill under consideration.

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

There was no objection.

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

I rise today, Mr. Speaker, in strong support of H.R. 720, the Gerardo Hernandez Airport Security Act of 2015.

This critically important piece of legislation is the product of a strong bipartisan effort stemming from the fatal shooting at Los Angeles International Airport on November 1, 2013. On that tragic day, TSA Officer Gerardo Hernandez was shot and killed by an active shooter, becoming the first Transportation Security Administration employee to be killed in the line of duty. Two other Transportation Security Administration officers and a passenger were also injured during the attack.

In the wake of that attack, Congressman RICHARD HUDSON, who was then serving as the chairman of the Committee on Homeland Security's Subcommittee on Transportation Security, spearheaded a bipartisan effort to investigate the vulnerabilities highlighted by the attack and enhance the state of airport security across the United States.

One of my first acts as chairman of the subcommittee in the 114th Congress was to work with Mr. HUDSON and reintroduce this important legislation, and I am pleased to see it through to final passage today.

This bill builds on important steps taken by TSA and airports across the country and was developed with input from both public and private sector partners. The legislation makes important strides in enhancing the level of preparedness of our Nation's transportation systems in responding and mitigating security incidents, such as active shooters and terror attacks.

For example, it requires TSA to verify that airports and high-risk surface transportation hubs have plans in place to effectively train for and respond to security incidents when they occur.

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Further, it will ensure that emergency communications equipment is regularly tested and that emergency first responders are able to communicate with each other and the public during a major security incident. The legislation also directs TSA to seek ways in which funding for reimbursable agreements to airport law enforcement can be increased in order to provide better support to the critical layer of security they provide.

Developing this preparedness will go a long way in improving the response to threats to public safety and will work to overcome the challenges experienced by law enforcement, emergency first responders, TSA, and the public during the LAX shooting.

Just last week, the need for efficient and effective communications was highlighted during a stabbing and shooting incident at Union Station here in Washington, D.C., in which law enforcement from multiple agencies responded to mitigate the situation.

We must ensure that our frontline employees and first responders are equipped with the necessary tools and training to respond to these types of incidents in order to protect both themselves and the general public.

I wish to extend a sincere thanks to Congressman HUDSON for his work on this legislation as well as to the chairman of the full committee, Mr. MCCAUL of Texas, for his support. Additionally, I would like to thank Ranking Member THOMPSON, Ranking Member RICE, and the other bipartisan cosponsors for their work in getting this legislation to the finish line. I would also like to extend gratitude to our colleagues in the Senate, especially Chairman THUNE and Ranking Member NELSON, for further refining the legislation and moving it through the Senate.

I urge all my colleagues to support the bill.

I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of the Senate amendment to H.R. 720, the Gerardo Hernandez Airport Security Act of 2015, a bill that I am pleased to cosponsor.

The November 2013 shooting at the Los Angeles International Airport resulted in the death of Transportation Security Officer Gerardo Hernandez. This terrible incident brought into focus the heroism of those who serve on the front lines of aviation security—Transportation Security officers. Unarmed and exposed, Transportation Security officers perform the often thankless task of screening 1.8 million passengers per day, even though they have limited workplace protections and are charged with great responsibility.

In March of 2014, I traveled with my committee's Subcommittee on Transportation Security to conduct a site visit and oversight hearing at Los Angeles International Airport to explore what lessons could be learned from the tragic events of the shooting. Through this valuable oversight work, we learned that there was much to be done to address gaps and vulnerabilities within airports. We found that vital equipment, such as panic buttons at the checkpoints, were not in working order. We also found that there were other factors that could be bolstered to aid during active shooter situations, such as interoperable communications, so that every emergency responder would have access to realtime information.

The legislation under consideration today is the product of a bipartisan effort to remedy many of the deficiencies identified following the shooting.

Before yielding back, I would like to once again give my condolences to the family of Officer Hernandez and to remind Members that, under current law, TSO's families do not receive death benefits.

Currently, Transportation Security officers do not meet the definition for a public safety officer; and as a result, the families of TSOs who are killed in the line of duty, such as the Hernandez family, are not entitled to funds from the Public Safety Officers' Benefits Programs.

Last Congress, the gentlewoman from California (Ms. BROWNLEY) introduced legislation that would grant Transportation Security officers the benefits of other law enforcement officers that are killed in the line of duty; and she plans to reintroduce that legislation, the Honoring Our Fallen TSA Officers Act, today.

I hope my colleagues will join me in supporting this forthcoming legislation

so that the families of the men and women on the front lines of protecting our aviation sector are properly compensated if tragedy strikes. Mr. Speaker, I urge support for the Senate amendment to H.R. 720.

I reserve the balance of my time.

Mr. KATKO. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from North Carolina (Mr. HUDSON).

Mr. HUDSON. Mr. Speaker, I rise in strong support of H.R. 720, the Gerardo Hernandez Airport Security Act of 2015.

As the former chairman of the Committee on Homeland Security's Subcommittee on Transportation Security, I introduced this bipartisan bill in the 113th Congress to improve the state of preparedness at our Nation's airports in response to the shooting at Los Angeles International Airport in November of 2013.

I would like to thank Ranking Member THOMPSON for working with me in a bipartisan way. We traveled together for the field hearing and toured the site. And I think the work that he does in a bipartisan way on this committee is a true testament to what the American people expect us to do here, which is to work together and put the people's business first. It was a pleasure working with the ranking member.

I also want to thank Chairman MCCAUL for his strong leadership of this committee. He also worked very closely with me on this legislation and traveled with us that day to Los Angeles. So without his support, this would not have been possible.

That event, which tragically took the life of Transportation Security Officer Gerardo Hernandez and wounded three other people, served as an unfortunate wake-up call to the gaps in our security and the relative ease to which someone could wreak havoc on one of our Nation's airports.

After months and months of careful review and hard work, including the site visit I mentioned to LAX, the subcommittee found that while State, Federal, and local law enforcement's response to the LAX shooting could be described as nothing but heroic and was swiftly executed, there was room for improvement in the coordinated response and communications in the critical moments after the major security incident. That is where this important, bipartisan bill stems from.

And I know, as chairman of the subcommittee, the gentleman from New York (Mr. KATKO) has taken our work from the last Congress and has built upon it. He has done the hard work to make sure that it reached the finish line. I take my hat off to Chairman KATKO for showing great leadership and the kind of fortitude and determination necessary to advance this legislation, to finally get it to the Senate, and to have the President sign it into law.

Serving as chairman of the House committee that oversees transportation security is no easy task, but it is one that the gentleman from New York (Mr. KATKO) has excelled at. He is not afraid to ask tough questions. He holds folks accountable, and he has worked diligently to improve aviation security in this Nation.

The bottom line is, while TSA has taken positive measures to update the emergency response protocols since the LAX incident, this bill will help to solidify these changes and ensure our airports are fully prepared to respond to future security incidents and potential acts of terrorism. This bill will provide for more extensive collaboration and coordination between airports, law enforcement, first responders, and TSA, which will result in safer airports across the country. It is a necessary step towards countering the threats facing our Nation's airports without placing an undue burden on airport operators, law enforcement, and the taxpayers.

The shooting at LAX was a tragedy that will never be forgotten by those affected and those of us who are committed to protecting the traveling public.

My thoughts today and my prayers continue to be with the family of Officer Hernandez. I hope that they are watching today, and I hope they are proud of the work of this Congress.

I want to thank, again, Chairman KATKO for his work to keep the traveling public safe, and I applaud him for stepping up on such an important issue and ensuring this bill reaches the President's desk.

I urge my colleagues to honor the memory of Transportation Security Officer Hernandez and to support this legislation.

Mr. THOMPSON of Mississippi. Mr. Speaker, in closing, I would like to thank Subcommittee Chairman KATKO and Ranking Member RICE for their efforts on this legislation.

Through our votes today, we are honoring the life of Officer Hernandez and ensuring that Transportation Security officers, airport workers, and members of the flying public are more safe and secure.

With that, Mr. Speaker, I once again urge my colleagues to support the Senate amendment to this bill as well as the Honoring Our Fallen TSA Officers Act.

I yield back the balance of my time.

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

Mr. Speaker, I once again urge my colleagues to support H.R. 720. The tragic event that unfolded at LAX in November of 2013 was a stark reminder that much remains to be done in securing America's transit hubs, particularly the nonsterile or nonsecure areas of airports that are, in many ways, just like open shopping malls. Because of this reality, we must react to ensure that airport communities are prepared to respond swiftly to any major security incidents that threaten the safety of the traveling public.

In remembrance of TSA Officer Hernandez, I urge my colleagues to pass this important legislation.

Before I close, Mr. Speaker, I do want to recognize and echo the sentiments of my colleague, the gentleman from North Carolina (Mr. HUDSON) with respect to the gentleman from Mississippi (Mr. THOMPSON): He set a tone of bipartisanship in the committee; and because of that, in the Committee on Homeland Security, itself, as well as the subcommittee, much good work is being done and many bills are being passed. So I appreciate and acknowledge the bipartisanship because it is important. It is an art that all too often gets lost in this Congress, and we are doing well with it in our committee.

I yield back the balance of my time.

Mr. MCCAUL. Mr. Speaker, as Chairman of the Committee on Homeland Security, it is with great pride that I rise in support of H.R. 720, the Gerardo Hernandez Airport Security Act of 2015. The passage of this bipartisan legislation demonstrates the importance with which the Committee on Homeland Security considers the security of our nation's airports and transit hubs. Moreover, this legislation shows Congress' dedication to the men and women of the TSA, who work diligently each day to keep the American people safe.

In order to mitigate threats from those with malicious intent seeking to wreak havoc on our critical transportation systems, we must stand together. Our law enforcement and first responder community must communicate, collaborate and coordinate, so they are better prepared to execute emergency plans in response to all types of security incidents. I believe the passage of this bill creates a roadmap that will provide our first responders and TSA with the proper level of coordination to respond to incidents like the senseless shooting that took place at Los Angeles International Airport on November 1, 2013.

After the shooting, I travelled with other Members of the Committee, including Ranking Member THOMPSON, to Los Angeles to meet with first responders, TSA officials, airport personnel, as well as the injured Transportation Security Officers who bravely put themselves in harm's way to help an elderly passenger. I also had the somber opportunity to meet with the widow of Officer Hernandez, before holding a field hearing to examine what could be done to mitigate such tragedies in the future. Today, I am proud to see this Committee's efforts set to cross the finish line, and I hope that the wife of Officer Hernandez can find some solace in the passage of this legislation, which bears her husband's name.

The legislation will direct TSA to conduct necessary outreach to airports and transit hubs across the United States to ensure that there are adequate security incident response and communications plans in place. Moreover, H.R. 720 establishes TSA as a clearinghouse of best-practices for transportation sector preparedness and incident response, which will streamline the proliferation of information and communication across transportation systems in the United States. This bill also looks for ways to overcome interoperable communications challenges and increase funding for airport law enforcement, while also ensuring that airport personnel are equipped with training on how to response to active shooters and other security incidents, such as terrorism.

It is my pleasure to commend the Chairman of the Subcommittee on Transportation Security, Mr. KATKO and former Chairman of the Subcommittee, Mr. HUDSON, for their efforts in addressing this issue, as well as, working to foster bipartisan cooperation. I also wish to commend the bipartisan efforts of both the Ranking Member of the Full Committee, Mr. THOMPSON, and the Ranking Member of the Subcommittee, Ms. RICE, whose support of this legislation is greatly appreciated. Additionally, I would like to thank the other bipartisan cosponsors of this legislation, as well as Chairman THUNE and our Senate colleagues for moving this important bill through the Senate. I urge my colleagues to support the final passage of H.R. 720 and strengthen the security of U.S. transportation.

Ms. JACKSON LEE. Mr. Speaker, I rise in strong support of H.R. 720, The Gerardo Hernandez Airport Security Act of 2015, which improves intergovernmental planning and communication during security incidents at domestic airports.

As a former chair and ranking member of the Homeland Security Committee Transportation Security Subcommittee, I understand how important this bill will be in enhancing safety and protection in the air transit industry, not just for our citizens but for our Transportation Security Officers working in the line of duty.

This legislation, which requires the Transportation Security Administration (TSA) to devote more resources for planning and communication during and in case of threats or emergencies, is prompted by the tragic death of Gerardo I. Hernandez, a Transportation Security Officer who was killed in the line of duty at Los Angeles International Airport on November 1, 2013.

In a senseless act of violence, the love and care TSA Officer Gerardo Ismael Hernandez gave to his wife, Ana Machuca, his 14-year-old son and 12-year-old daughter, and the community he served, ended entirely too soon.

Mr. Speaker, Gerardo Hernandez was what we want in an American, he is in spirit and deed the type of person we want in our Transportation Security Officers (TSOs).

At just 39 years old, Gerardo Hernandez was the first TSA officer to lose his life in the line of duty in the 12-year history of the agency.

He died from several gunshot wounds inflicted by an assailant while on duty at the Los Angeles International Airport.

Gerardo Hernandez was among those thousands of TSA employees carrying out their mission to keep the airways safe for traveling citizens, and their work across the nation cannot be understated.

On average, TSA officers screen 1.7 million air passengers at more than 450 airports across the nation, which averaged over 637.5 million passengers in 2012.

In 2014, the TSA screened more than 653 million passengers, or nearly 1.8 million persons per day.

The Bush International and the William P. Hobby Airports that serve the Houston metropolitan area are essential hubs for domestic and international air travel for Houston and the region:

Nearly 40 million passengers traveled through Bush International Airport (IAH) and an additional 10 million traveled through William P. Hobby (HOU).

More than 650 daily departures occur at IAH.

IAH is the 11th busiest airport in the U.S. for total passenger traffic.

IAH has 12 all-cargo airlines handling more than 419,205 metric tons of cargo in 2012.

The Congressional Budget Office (CBO) estimates the implementation of H.R. 720 would cost about $2.5 million in 2015. Of the $2.5 million, an estimated $1.5 million would serve to provide additional technical assistance to airports, and the remaining $1 million would be used to evaluate the interoperability of communication systems used by emergency response teams.

Mr. Speaker, this month marked the 14th anniversary of the tragedy of the 9/11 terrorist attacks.

We will never forget how that day changed our lives, and the lives of every American generation to follow.

Security measures in airports across the country have been enhanced dramatically, and the resulting inconvenience is a small price to pay for the protective measures needed to keep the travelling public safe.

It is people like Gerardo Hernandez who do their best to make the necessary screening as least intrusive and burdensome as possible, consistent with the mission of ensuring the security of all members of the flying public.

TSA officers willingly risk their lives to make sure the job gets done, and for that we owe these men and women a debt of gratitude.

In honor of Gerardo Hernandez's contribution to his country, I strongly support this bill and urge all my colleagues to join me in voting for its passage.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. KATKO) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 720.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

MIAMI TRIBE OF OKLAHOMA LAND LEASE OR TRANSFER

Mr. MCCLINTOCK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 487) to allow the Miami Tribe of Oklahoma to lease or transfer certain lands.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 487

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

SECTION 1. APPROVAL NOT REQUIRED TO VALIDATE LAND TRANSACTIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, without further approval, ratification, or authorization by the United States, the Miami Tribe of Oklahoma may lease, sell, convey, warrant, or otherwise transfer all or any part of its interests in any real property that is not held in trust by the United States for the benefit of such tribe.

(b) TRUST LAND NOT AFFECTED.—Nothing in this section shall—

(1) authorize the Miami Tribe of Oklahoma to lease, sell, convey, warrant, or otherwise transfer all or any part of an interest in any real property that is held in trust by the United States for the benefit of such tribe; or

(2) affect the operation of any law governing leasing, selling, conveying, warranting, or otherwise transferring any interest in such trust land.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. MCCLINTOCK) and the gentlewoman from Michigan (Mrs. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. MCCLINTOCK. Mr. Speaker, I ask unanimous consent that all Members may have 5 days to revise and extend their remarks and include extraneous materials on the bill under consideration.

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

There was no objection.

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

Mr. Speaker, H.R. 487 is a noncontroversial, one-page bill that would exempt lands held in fee by the Miami Tribe of Oklahoma from the limitations imposed by the Indian Nonintercourse Act. According to the tribe, these limitations may hinder economic development.

Specifically, H.R. 487 would allow the tribe to lease, sell, convey, warrant, or transfer all or any portion of interest in any real property not held in trust for the tribe. The bill also states that the legislation does not authorize the tribe to lease, sell, convey, warrant, or otherwise transfer all or any portion of any interest in any real property that is held in trust.

In accordance with the expressed wishes of the tribe's leadership, Congressman MARKWAYNE MULLIN, who represents the tribe in the House, sponsored H.R. 487. The Department of the Interior supports this bill, which passed the Natural Resources Committee by unanimous consent earlier this year.

I commend my colleague from Oklahoma for his hard work, and I urge my colleagues to pass the bill.

I reserve the balance of my time.

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

H.R. 487 will allow the Miami Tribe of Oklahoma to effectively manage their nontrust lands by providing relief from the Indian Nonintercourse Act. The Indian Nonintercourse Act was intended to protect Indian tribes by preventing the loss of their lands, except by treaty. Historically, the act has generally not interfered with the tribe's ability to buy, sell, or lease land that it owns in fee simple.

□ 1530

But uncertainties raised by the act can be a hindrance when securing purchase agreements from outside parties.

Therefore, relief from the act is at times necessary for a tribe to successfully manage their lands and to sell fee

parcels that are determined to be in excess of the tribe's needs or were purchased for investment purposes.

Mr. Speaker, H.R. 487 would simply allow the Miami Tribe to convey all the land that the tribe holds in fee simple without further Federal approval to facilitate those future transactions. I agree with the goals of this legislation, and I ask my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from Oklahoma (Mr. MULLIN), the author of this measure.

Mr. MULLIN. Mr. Chairman, thank you for allowing us to bring this to the floor. This is one of those commonsense bills that, unfortunately, requires Congress to act. Several tribes before us have obtained legislation like this from Congress to authorize them to sell or mortgage specific lands. The lands we are talking about are lands that aren't needed anymore; it is outside of the trust. But in order for the tribes such as the Miami and other tribes that are out there to effectively manage their lands, Congress is required to act.

Mr. Speaker, I would like to thank Chairmen BISHOP and YOUNG for advancing this legislation, and I urge support for the passage of H.R. 487.

Mrs. DINGELL. Mr. Speaker, I want to thank Mr. MULLIN for his leadership.

Mr. Speaker, in closing, I urge all Members to support H.R. 487, and I yield back the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I, too, would urge adoption of the measure, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MCCLINTOCK) that the House suspend the rules and pass the bill, H.R. 487.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

MEDGAR EVERS HOUSE STUDY ACT

Mr. MCCLINTOCK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 959) to authorize the Secretary of the Interior to conduct a special resource study of the Medgar Evers House, located in Jackson, Mississippi, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 959

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medgar Evers House Study Act''.

SEC. 2. SPECIAL RESOURCE STUDY.

(a) STUDY.—The Secretary of the Interior shall conduct a special resource study of the home of the late civil rights activist Medgar Evers, located at 2332 Margaret Walker Alexander Drive in Jackson, Mississippi.

(b) CONTENTS.—In conducting the study under subsection (a), the Secretary shall—

(1) evaluate the national significance of the site;

(2) determine the suitability and feasibility of designating the site as a unit of the National Park System;

(3) consider other alternatives for preservation, protection, and interpretation of the site by Federal, State, or local governmental entities, or private and nonprofit organizations;

(4) consult with interested Federal, State, or local governmental entities, private and nonprofit organizations or any other interested individuals;

(5) determine the effect of the designation of the site as a unit of the National Park System on existing commercial and recreational uses, and the effect on State and local governments to manage those activities;

(6) identify any authorities, including condemnation, that will compel or permit the Secretary to influence or participate in local land use decisions (such as zoning) or place restrictions on non-Federal land if the site is designated a unit of the National Park System; and

(7) identify cost estimates for any Federal acquisition, development, interpretation, operation, and maintenance associated with the alternatives.

(c) APPLICABLE LAW.—The study required under subsection (a) shall be conducted in accordance with section 100507 of title 54, United States Code.

(d) STUDY RESULTS.—Not later than 3 years after the date on which funds are first made available for the study under subsection (a), the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate the results of the study and any conclusions and recommendations of the Secretary.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. MCCLINTOCK) and the gentlewoman from Michigan (Mrs. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. MCCLINTOCK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous materials on the bill under consideration.

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

There was no objection.

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

Mr. Speaker, H.R. 959 authorizes a special resource study to be conducted by the Department of the Interior on the home of the late civil rights activist Medgar Evers. This bill requires the Secretary to determine the national significance of the home and the feasibility of designating the site as a unit of the National Park Service.

The National Park Service does not have any objections to this bill, and it was reported out of the Natural Resources Committee by unanimous consent. Once results of the study are available, Congress would have to act to create any new unit of the National Park system.

Mr. Speaker, I reserve the balance of my time.

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

Mr. Speaker, 52 years ago, on June 12, 1963, Medgar Evers, a native Mississippian and the first field officer in that State for the National Association for the Advancement of Colored People, which we have come to know as the NAACP, was shot in the driveway of his home in Jackson, Mississippi. This horrific event occurred hours after President Kennedy made a televised speech in support of civil rights. This was a critical moment in the modern civil rights movement as it moved towards the seminal March on Washington for Jobs and Freedom.

Evers was a World War II veteran, fighting in the Battle of Normandy. He returned home to find his path to the voting booth literally blocked at gunpoint. He personally fought to integrate the University of Mississippi Law School and was integral in assisting James Meredith successfully enroll as an undergraduate.

Evers was an activist, an organizer, a loving father, a husband, and, finally, a martyr. He is a true American hero whose time came too soon, yet his name and what he stood for continues to inspire so many. It is time that his service and loss be properly recognized by our Nation.

H.R. 959, the Medgar Evers House Study Act, would authorize the Secretary of the Interior to conduct a special resource study of the Medgar Evers House in Jackson, Mississippi, for potential inclusion in the National Park system. We estimate that this study will cost approximately $200,000 to $300,000. Funding for this proposed study would need to be allocated from the set amount of funding that Congress appropriates for all special resource studies.

Mr. Speaker, I want to thank my friend and colleague, Congressman BENNIE THOMPSON of Mississippi, for his very hard work on this legislation and for his leadership on this critical issue. The Medgar Evers House is a piece of American history that must be preserved, which is why this legislation is so important.

Mr. Speaker, I urge my colleagues to support the adoption of H.R. 959.

I yield such time as he may consume to the gentleman from Mississippi (Mr. THOMPSON).

Mr. THOMPSON of Mississippi. Mr. Speaker, I thank the gentlewoman from Michigan for yielding me the necessary time.

Mr. Speaker, I rise today to urge our colleagues to support H.R. 959, the Medgar Evers House Study Act.

Medgar Wiley Evers was born in the small town of Decatur, Mississippi, in 1925. Medgar would go on to serve in our country's Army in France and in

Germany during World War II. After his military service, Medgar attended Alcorn State University, where he would meet his future wife, Myrlie.

After graduating from Alcorn, Medgar devoted his life to seeking justice and equality for all Americans. As field secretary for the NAACP in Mississippi, Mr. Evers led successful voter registration efforts throughout the State. He applied for admission to the University of Mississippi Law School in an unsuccessful effort to desegregate the university. Medgar also courageously led investigations into the death of Emmett Till and publicly supported Clyde Kennard after his imprisonment on erroneous charges stemming from his efforts to integrate the University of Southern Mississippi.

On June 12, 1963, as he returned home from a NAACP planning meeting, Medgar was shot in the back in the driveway of his home while his family was inside the house. He died at a local hospital less than an hour later. One week after his death, he was buried with full military honors at Arlington National Cemetery.

Today, the Medgar Evers House has been preserved as a museum by Tougaloo College. The home has been refurbished to appear as it did at the time of Evers' death. The home contains an exhibit regarding Evers' family, career, death, and his legacy. The home has hosted scores of visitors including many Members of Congress who participated in the Faith & Politics pilgrimages throughout the South.

My bill, H.R. 959, the Medgar Evers House Study Act, authorizes a special resource study by the Secretary of the Interior on the home in which his family lived and Medgar Evers was assassinated located at 2332 Margaret Walker Alexander Drive in Jackson, Mississippi. The study will determine the national significance of the Evers home and determine the feasibility of designating the site as a unit of the National Park system.

Mr. Speaker, Medgar Evers was a civil rights giant. He dedicated his life to bringing down the pillars that maintained Jim Crow in Mississippi. The heroic life he lived and the remarkable legacy that he left are unquestioned. Today's bill will further cement the role that he played in advancing civil and human rights in our Nation. With that, I urge my colleagues to join me in supporting H.R. 959.

Mrs. DINGELL. Mr. Speaker, in closing, I urge all Members to support H.R. 959.

I yield back the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, Medgar Evers was a patriot and a civil rights leader who gave his life to realize the full promise of the American Declaration of Independence. His memory is vivid and revered by every American of goodwill who lived through those momentous years. It is for us now to preserve his memory for the many generations of Americans to follow who will have to look to history to know him.

This bill is a step toward recognizing the enormous debt our Nation owes him and to ensure that future generations can draw inspiration from his leadership, his patriotism, his courage, and his sacrifice that he made in the cause of freedom.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MCCLINTOCK) that the House suspend the rules and pass the bill, H.R. 959, as amended.

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

A motion to reconsider was laid on the table.

NATIONAL FOREST SMALL TRACTS ACT AMENDMENTS ACT OF 2015

Mr. MCCLINTOCK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1214) to amend the Small Tracts Act to expand the authority of the Secretary of Agriculture to sell or exchange small parcels of National Forest System land to enhance the management of the National Forest System, to resolve minor encroachments, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1214

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Forest Small Tracts Act Amendments Act of 2015''.

SEC. 2. ADDITIONAL AUTHORITY FOR SALE OR EXCHANGE OF SMALL PARCELS OF NATIONAL FOREST SYSTEM LAND.

(a) INCREASE IN MAXIMUM VALUE OF SMALL PARCELS.—Section 3 of Public Law 97–465 (commonly known as the Small Tracts Act; 16 U.S.C. 521e) is amended in the matter preceding paragraph (1) by striking ''$150,000'' and inserting ''$500,000''.

(b) ADDITIONAL CONVEYANCE PURPOSES.—Section 3 of Public Law 97–465 (16 U.S.C. 521e) is further amended—

(1) in the matter preceding paragraph (1), by striking ''which are—'' and inserting ''which involve any one of the following:'';

(2) in paragraph (1)—

(A) by striking ''parcels'' and inserting ''Parcels''; and

(B) by striking the semicolon at the end and inserting a period;

(3) in paragraph (2)—

(A) by striking ''parcels'' the first place it appears and inserting ''Parcels''; and

(B) by striking ''; or'' at the end and inserting a period;

(4) in paragraph (3), by striking ''road'' and inserting ''Road''; and

(5) by adding at the end the following new paragraphs:

''(4) Parcels of 40 acres or less which are determined by the Secretary to be physically isolated, to be inaccessible, or to have lost their National Forest character.

''(5) Parcels of 10 acres or less which are not eligible for conveyance under paragraph (2), but which are encroached upon by permanent habitable improvements for which there is no evidence that the encroachment was intentional or negligent.

''(6) Parcels used as a cemetery, a landfill, or a sewage treatment plant under a special use authorization issued by the Secretary. In the case of a cemetery expected to reach capacity within 10 years, the sale, exchange, or interchange may include, in the sole discretion of the Secretary, up to one additional acre abutting the permit area to facilitate expansion of the cemetery.''.

(c) DISPOSITION OF PROCEEDS.—Section 2 of Public Law 97–465 (16 U.S.C. 521d) is amended—

(1) by striking ''The Secretary is authorized'' and inserting the following:

''(a) CONVEYANCE AUTHORITY; CONSIDERATION.—The Secretary is authorized'';

(2) by striking ''The Secretary shall insert'' and inserting the following:

''(b) INCLUSION OF TERMS, COVENANTS, CONDITIONS, AND RESERVATIONS.—The Secretary shall insert'';

(3) by striking ''convenants'' and inserting ''covenants''; and

(4) by adding at the end the following new subsection:

''(c) DISPOSITION OF PROCEEDS.—

''(1) DEPOSIT IN SISK FUND.—The net proceeds derived from any sale or exchange conducted under the authority of paragraph (4), (5), or (6) of section 3 shall be deposited in the fund established by Public Law 90–171 (commonly known as the Sisk Act; 16 U.S.C. 484a).

''(2) USE.—Amounts deposited under paragraph (1) shall be available to the Secretary until expended for—

''(A) the acquisition of land or interests in land for administrative sites for the National Forest System in the State from which the amounts were derived;

''(B) the acquisition of land or interests in land for inclusion in the National Forest System in that State, including land or interests in land which enhance opportunities for recreational access;

''(C) the performance of deferred maintenance on administrative sites for the National Forest System in that State or other deferred maintenance activities in that State which enhance opportunities for recreational access; or

''(D) the reimbursement of the Secretary for costs incurred in preparing a sale conducted under the authority of section 3 if the sale is a competitive sale.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. MCCLINTOCK) and the gentlewoman from Michigan (Mrs. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

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

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

There was no objection.

Mr. MCCLINTOCK. I yield myself such time as I may consume.

Mr. Speaker, H.R. 1214 would amend the Small Tracts Act to allow for the sale of small, isolated, federally owned parcels outside of the main body of a national forest as well as parcels encumbered with certain special uses such as cemeteries. The management

of these isolated and encumbered parcels takes considerable resources away from the core mission of the Forest Service. Proceeds from the sale of these parcels would be deposited into a Sisk Act fund and may be used for deferred maintenance, acquisition of lands for administrative sites or recreational access, or to reimburse the Forest Service for administrative costs in preparing the sales.

The U.S. Forest Service has a challenging mission. Enabling it to develop a more manageable land base is simply good government, which is why this bill has such broad-based support.

I also want to thank Chairman CONAWAY of the Agriculture Committee for his assistance in expediting this bill.

Mr. Speaker, I reserve the balance of my time.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC, June 5, 2015.

Hon. K. MICHAEL CONAWAY,
Chairman, Committee on Agriculture, Washington, DC.

DEAR MR. CHAIRMAN: On April 30, 2015, the Committee on Natural Resources ordered reported without amendment H.R. 1214, the National Forest Small Tracts Act Amendments Act of 2015, by unanimous consent. The bill was referred primarily to the Committee on Natural Resources, with an additional referral to the Committee on Agriculture.

I ask that you allow the Committee on Agriculture to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference oh the bill be necessary, I would support your request to have the Committee on Agriculture represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Natural Resources to memorialize our understanding.

Thank you for your consideration of my request, and for your continued strong cooperation between our committees.

Sincerely,

ROB BISHOP,
Chairman, Committee on Natural Resources.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, June 5, 2015.

Hon. ROB BISHOP,
Chairman, Committee on Natural Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing concerning H.R. 1214, the National Forest Small Tracts Act Amendments Act of 2015. It is my understanding that, on April 30, 2015, the Committee on Natural Resources ordered the bill reported without amendment and by unanimous consent.

This legislation contains provisions within the Committee on Agriculture's Rule X jurisdiction. As a result of your having consulted with the Committee and in order to expedite this bill for floor consideration, the Committee on Agriculture will forego action on the bill. This is being done on the basis of our mutual undemanding that doing so will in no way diminish or alter the jurisdiction of the Committee on Agriculture with respect to the appointment of conferees, or to any future jurisdictional claim over the subject matters contained in the bill or similar legislation.

I would appreciate your response to this letter confirming this understanding, and would request that you include a copy of this letter and your response in the Committee Report and in the Congressional Record during the floor consideration of this bill. Thank you in advance for your cooperation.

Sincerely,

K. MICHAEL CONAWAY,
Chairman.

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

Mr. Speaker, H.R. 1214 amends the Small Tracts Act to provide the Forest Service with more flexibility to sell or exchange small parcels of national forest land. This increased flexibility will allow the Forest Service to identify opportunities where the sale or exchange of small parcels of land will increase efficiency and improve the overall integrity and health of our national forests.

Mr. Speaker, I want to thank Mr. AMODEI, the sponsor of this legislation, for working with the Forest Service to update this bill so that it could be supported by both sides of the aisle.

Mr. Speaker, I support adoption of H.R. 1214.

I reserve the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I yield such time as he may consume to the gentleman from Nevada (Mr. AMODEI), my good friend and Nevada neighbor, the author of this bill.

Mr. AMODEI. Thank you, Mr. Chairman, and thank you Madam Ranking Member. I also want to thank the chairman of the full committee as well as my cosponsors in this measure: Mr. POLIS from Colorado, Mr. SHIMKUS from Illinois, and Mr. JONES from North Carolina.

So as not to risk snatching defeat from the jaws of victory, I will be brief. I would like to say that this was my idea and it is a wonderful thing, but this represents taking care of business that has been knocking around for probably a decade or more as far as the Forest Service is concerned. We are not moving the frontier into national forests; we are simply giving them the ability to administratively dispose of those lands that have become not attached to the national forest and have no management or land use characteristics with respect to the managing of a national forest.

□ 1545

The other thing I want to point out is that it will allow them the ability to dispose of well into six figures' worth of acres, potentially, over the next few years, much more than last year, which was almost nothing.

The most interesting thing is that the resources generated by this will stay with the Forest Service for use under their various charges as opposed to disappearing into that sometimes black hole in space, referred to as the ''United States Treasury.''

I urge nationwide bipartisan support.

Mrs. DINGELL. Mr. Speaker, in closing, I urge all Members to support this bill.

I yield back the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I, too, would urge the adoption of the bill.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MCCLINTOCK) that the House suspend the rules and pass the bill, H.R. 1214, as amended.

The question was taken.

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

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

JOHN MUIR NATIONAL HISTORIC SITE EXPANSION ACT

Mr. MCCLINTOCK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1289) to authorize the Secretary of the Interior to acquire approximately 44 acres of land in Martinez, California, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1289

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''John Muir National Historic Site Expansion Act''.

SEC. 2. JOHN MUIR NATIONAL HISTORIC SITE LAND ACQUISITION.

(a) ACQUISITION.—The Secretary of the Interior may acquire by donation the approximately 44 acres of land, and interests in such land, that are identified on the map entitled ''John Muir National Historic Site Proposed Boundary Expansion'', numbered 426/127150, and dated November, 2014.

(b) BOUNDARY.—Upon the acquisition of the land authorized by subsection (a), the Secretary of the Interior shall adjust the boundaries of the John Muir Historic Site in Martinez, California, to include the land identified on the map referred to in subsection (a).

(c) ADMINISTRATION.—The land and interests in land acquired under subsection (a) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (Public Law 88–547; 78 Stat. 753; 16 U.S.C. 461 note).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. MCCLINTOCK) and the gentlewoman from Michigan (Mrs. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. MCCLINTOCK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous materials on the bill under consideration.

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

There was no objection.

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

H.R. 1289 would expand the John Muir National Historic Site by approximately 44 acres. This expansion may only occur by donation of the land.

Located in the San Francisco Bay Area, in Martinez, California, this site preserves the 14-room Italianate Victorian mansion where John Muir lived, as well as a 325-acre tract of native oak woodlands and grasslands owned by the Muir family.

The additional proposed acreage in this bill is directly adjacent to the current site and will allow for better public access to trails in the area. This acreage has been donated to the National Park Service and will not be acquired with any Federal dollars.

This bill passed out of committee by unanimous consent, and a previous version passed the House during the 113th Congress. I urge my colleagues to vote in favor of the bill.

I reserve the balance of my time.

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

H.R. 1289 will authorize the National Park Service to expand the boundary of the John Muir National Historic Site and acquire, by donation, 44 acres of land from the Muir Heritage Land Trust. The donation will expand the site and help carry on Muir's important legacy of conservation and environmental stewardship.

John Muir is one of our Nation's most respected and revered ecologists. His writings have inspired millions, and his activism and advocacy led to the establishment of some of our first and most iconic national parks.

From the moment he set foot in Yosemite Valley, John Muir was consumed with its natural wonder and beauty. He became Yosemite's most vocal champion, but he didn't spend his whole life there.

From 1890 until his death in 1914, Muir lived on a farm not far from San Francisco. It was from this corner of the Bay Area that Muir cofounded the Sierra Club and helped lay the groundwork for a century of conservation.

Muir's tireless advocacy led to the creation of the Yosemite and Sequoia National Parks, and his spirit and enduring legacy led to the protection of much more.

Since he is known by some as the father of our national parks, I know he would be proud of all of our national parks today, especially as we are approaching the 100th anniversary of the National Park System.

My home State of Michigan has several beautiful national parks, including the Sleeping Bear Dunes National Lakeshore, Isle Royale, and the River Raisin National Battlefield.

The passage of H.R. 1289 will contribute to John Muir's legacy, and it will help to protect and conserve the place where he found solace and inspiration in his later years.

I want to thank the bill's sponsor, my good friend Representative MARK DESAULNIER from California, for his leadership.

I urge the swift passage of this legislation, and I reserve the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I reserve the balance of my time.

Mrs. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DESAULNIER).

Mr. DESAULNIER. Mr. Speaker, I want to thank the gentlewoman for yielding and for her kind comments.

What a pleasure it is to be here on the House floor to continue to honor and respect a great American and a great Californian, his adopted State.

Mr. Speaker, today I rise in support of H.R. 1289, the John Muir National Historic Site Expansion Act.

This bipartisan legislation will expand the Martinez, California, historic site in my district as it celebrates the life and legacy of John Muir.

Muir was a lifelong conservationist and leading advocate of the National Park Service and a cofounder of the Sierra Club. He worked to establish and protect national parks, including Yosemite, Sequoia, the Grand Canyon, and Mt. Rainier.

The John Muir National Historic Site, which includes the home where he lived, covers 330 acres in Contra Costa County, where Muir championed the revolutionary idea that wild spaces should be set aside for all Americans to enjoy.

This bill would add 44 acres of donated land from a nonprofit trust, improving access to the park and its scenic trails, including those on Mount Wanda, named after Muir's eldest daughter.

The trail systems are accessible for hikers and bikers, including critical connections to the 550-mile Bay Area Ridge Trail.

As Muir once said:

Every American needs beauty as well as bread, places to live in . . . where nature may heal and cheer and give enough strength to body and soul alike.

Mr. Speaker, I thank my predecessor, Congressman George Miller, who has been a champion of this bill and who introduced it in an earlier session.

I would also like to thank Natural Resources Committee Chairman BISHOP, Ranking Member GRIJALVA, as well as Subcommittee Chairman MCCLINTOCK and Ranking Member TSONGAS, for their leadership in bringing H.R. 1289 to the floor today.

I am also grateful for the support of 31 of my colleagues from both sides of the aisle who cosponsored the bill as well as Senators BOXER and FEINSTEIN for sponsoring this legislation in the Senate.

I would also like to thank the John Muir Land Trust for its hard work and dedication to preserving and protecting this valuable parkland and shoreline in the Bay Area for future generations.

As our Nation prepares to celebrate the centennial of the National Park Service, this legislation will help preserve the trails and lands that surround the long-time home of the man known as the father of the National Park Service.

I urge my colleagues to vote ''yes'' on this bipartisan legislation, the John Muir National Historic Site Expansion Act.

Mrs. DINGELL. Mr. Speaker, in closing, I urge all Members to support the bill.

I yield back the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, in conclusion, my district comprises the Sierra Nevada, and we are daily reminded of the foresight of pioneers like John Muir who worked to set aside these natural assets for, in the words of the original Yosemite Charter, ''the public's use, resort, and recreation for all time.''

Keeping their memory fresh is an important objective, and I urge the adoption of the legislation.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MCCLINTOCK) that the House suspend the rules and pass the bill, H.R. 1289, as amended.

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

A motion to reconsider was laid on the table.

ELKHORN RANCH AND WHITE RIVER NATIONAL FOREST CONVEYANCE ACT OF 2015

Mr. MCCLINTOCK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1554) to require a land conveyance involving the Elkhorn Ranch and the White River National Forest in the State of Colorado, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1554

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Elkhorn Ranch and White River National Forest Conveyance Act of 2015''.

SEC. 2. LAND CONVEYANCE, ELKHORN RANCH AND WHITE RIVER NATIONAL FOREST, COLORADO.

(a) LAND CONVEYANCE REQUIRED.—Consistent with the purpose of the Act of March 3, 1909 (43 U.S.C. 772), all right, title, and interest of the United States (subject to subsection (b)) in and to a parcel of land consisting of approximately 148 acres as generally depicted on the map entitled ''Elkhorn Ranch Land Parcel–White River National Forest'' and dated March 2015 shall be conveyed by patent to the Gordman-Leverich Partnership, a Colorado Limited Liability Partnership (in this section referred to as ''GLP'').

(b) EXISTING RIGHTS.—The conveyance under subsection (a)—

(1) is subject to the valid existing rights of the lessee of Federal oil and gas lease COC–75070 and any other valid existing rights; and

(2) shall reserve to the United States the right to collect rent and royalty payments on the lease referred to in paragraph (1) for the duration of the lease.

(c) EXISTING BOUNDARIES.—The conveyance under subsection (a) does not modify the exterior boundary of the White River National Forest or the boundaries of Sections 18 and 19 of Township 7 South, Range 93 West, Sixth Principal Meridian, Colorado, as such boundaries are in effect on the date of the enactment of this Act.

(d) TIME FOR CONVEYANCE; PAYMENT OF COSTS.—The conveyance directed under subsection (a) shall be completed not later than 180 days after the date of the enactment of this Act. The conveyance shall be without consideration, except that all costs incurred by the Secretary of the Interior relating to any survey, platting, legal description, or other activities carried out to prepare and issue the patent shall be paid by GLP to the Secretary prior to the land conveyance.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. MCCLINTOCK) and the gentlewoman from Michigan (Mrs. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. MCCLINTOCK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous materials on the bill under consideration.

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

There was no objection.

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

H.R. 1554, introduced by my friend Congressman SCOTT TIPTON of Colorado, would require the U.S. Forest Service to convey by patent a small area of land near Rifle, Colorado, to its rightful owner.

Conflicting surveys between Federal agencies resulted in the inclusion of this land in the White River National Forest even though it was originally patented in the early 20th century and was legally owned by private landowners for decades. These landowners have paid property taxes on the acreage and have used it for a variety of purposes, including agriculture and grazing.

Earlier this year, the Forest Service testified that the bill would ''resolve a longstanding title issue associated with the property'' and has recommended that the area be ''confirmed in the successors in interest to the original patentees.''

The bill is supported by Garfield County, Colorado, the city of Rifle, Colorado, and many others.

Congressman TIPTON has worked hard to correct this survey discrepancy and return this land to its rightful owner. I encourage my colleagues to vote ''yes'' on H.R. 1554.

I reserve the balance of my time.

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

H.R. 1554 will convey 148 acres of land to the Gordman-Leverich Partnership, a Colorado Limited Liability Partnership, and remedy a land dispute between a private landowner and the Forest Service.

In 1947, an administrative error occurred that shifted the boundary between the Elkhorn Ranch and the White River National Forest. This survey placed 148 acres of private land inside the forest boundary without providing consideration to the landholders.

Since then, the title to the ranch has changed hands several times, but the administrative error has not been corrected. This bill will correct the error and acknowledge the correct boundary of the Elkhorn Ranch, providing the current owner with a free and clear title.

I want to thank my colleagues, Congressman POLIS and Congressman TIPTON, for their good work on this legislation. The Forest Service testified in support of this bill, and I urge its adoption.

I reserve the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I yield such time as he may consume to the gentleman from Colorado (Mr. TIPTON), my friend who has worked tirelessly to correct this administrative error.

Mr. TIPTON. I thank the chairman and the ranking member for their support on this legislation.

Mr. Speaker, H.R. 1554 is a straightforward bill, which Congressman POLIS and I introduced, to reconfirm the private ownership of 140 acres of land in my congressional district.

The lands concerned were patented into two private ownerships via the United States land patents issued in 1914 and 1917 and 1957, but their ownership has come into question by virtue of the 1949 government survey, which showed them to be national forest land rather than private land.

Long-held U.S. law specifically states that a government resurvey cannot take away private property or private property rights.

Mr. Speaker, the Forest Service and the private landowners of the Elkhorn Ranch only became aware of the potential title issue in the early 2000s. Thereafter, the Forest Service conducted a lengthy and thorough review of the matter.

Upon the completion of the review, both the supervisor and surveyor of the White River National Forest concluded that the ownership of the 140 acres should be confirmed in the successors in interest to the original patentees, namely the Elkhorn Ranch.

In reaching this conclusion, the Forest Service noted that the land has never been managed by the national forestland and, indeed, has been fenced and occupied with stock ponds to develop springs, roads, and other private improvements, and it has been used as private land for ranching and agriculture for the better part of the past 100 years.

Mr. Speaker, this bill is a simple matter of fairness and equity to a private landowner to honor government land patents that were granted to the landowner's predecessors 60 to 100 years ago.

The bill is supported by both the surveyor and the supervisor of the White River National Forest, the Garfield County Surveyor, the Garfield County Commissioners, the city of Rifle, Colorado Club 20, which represents 20 of Colorado's counties, and Piceance Energy, which has the lease on part of the area.

In addition, at our hearing on H.R. 1554 in mid-June, the administration testified that this bill is a practical and workable way to address the longstanding title issue.

□ 1600

Mrs. DINGELL. Mr. Speaker, I urge all Members to support this bill.

I yield back the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I join the gentlewoman in requesting the adoption of this bill.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MCCLINTOCK) that the House suspend the rules and pass the bill, H.R. 1554.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

NATIONAL LIBERTY MEMORIAL CLARIFICATION ACT OF 2015

Mr. MCCLINTOCK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1949) to provide for the consideration and submission of site and design proposals for the National Liberty Memorial approved for establishment in the District of Columbia, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 1949

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Liberty Memorial Clarification Act of 2015''.

SEC. 2. COMPLIANCE WITH CERTAIN STANDARDS FOR COMMEMORATIVE WORKS IN ESTABLISHMENT OF NATIONAL LIBERTY MEMORIAL.

Section 2860(c) of the Military Construction Authorization Act for Fiscal Year 2013 (division B of Public Law 112–239; 40 U.S.C. 8903 note) is amended by striking the period at the end and inserting the following: '', except that, under subsections (a)(2) and (b) of section 8905, the Secretary of Agriculture, rather than the Secretary of the Interior or the Administrator of General Services, shall be responsible for the consideration of site and design proposals and the submission of such proposals on behalf of the sponsor to the Commission of Fine Arts and National Capital Planning Commission.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. MCCLINTOCK) and the

gentlewoman from Michigan (Mrs. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. MCCLINTOCK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous materials on the bill under consideration.

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

There was no objection.

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

Mr. Speaker, H.R. 1949 would transfer the responsibilities regarding the construction of the National Liberty Memorial that honors the slaves and freemen of African descent who fought during the American Revolution to the Secretary of Agriculture.

The proposed site for the memorial is on Department of Agriculture land, so this change makes sense. Under current law, either the Secretary of the Interior or the General Services Administrator would otherwise be responsible.

As a cosponsor of this bill, which passed out of committee by unanimous consent, I would urge my colleagues to vote favorably for its passage.

Mr. Speaker, I reserve the balance of my time.

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

Mr. Speaker, Public Law 112–239 authorized the establishment of a fund to create the National Liberty Memorial, dedicated to the honor and sacrifice of more than 5,000 enslaved and free Black people who served as sailors, soldiers, or provided civilian assistance during the Revolutionary War. This is a long overdue memorial, which recognizes the early military role Black people played in securing our Nation's freedom.

In June 2014, the General Services Administration identified a location for the memorial at 14th and Independence Avenue, Southwest, here in Washington, D.C. The approved site is on the grounds of the Department of Agriculture campus.

In the interest of eliminating unnecessary bureaucracy through overlapping jurisdiction, H.R. 1949 would make the Department of Agriculture responsible for the consideration of the site and design proposals, doing so on behalf of the Commission of Fine Arts and National Capital Planning Commission. This responsibility would be transferred from the GSA or the Department of the Interior, as it was originally written.

I want to thank my good friend and colleague, the chairman of the Congressional Black Caucus, Congressman BUTTERFIELD of North Carolina, for his years of hard work and leadership in establishing the National Liberty Memorial. We are all looking forward to seeing it open sometime in the future, and it will be a fitting tribute to those who sacrificed so much to create this great Nation of ours.

I ask all of my colleagues to support H.R. 1949, and I reserve the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I am ready to close when the gentlewoman concludes, so I reserve the balance of my time.

Mrs. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina (Mr. BUTTERFIELD).

Mr. BUTTERFIELD. Mr. Speaker, I thank Congresswoman DINGELL for yielding time. I thank her for those kind words a moment ago and thank her for her leadership here in the Congress.

Mr. Speaker, I rise today in support of my bill, H.R. 1949, the National Liberty Memorial Clarification Act of 2015. I was joined by my colleague, Congressman TOM MCCLINTOCK from California, who serves as chairman of the Committee on Natural Resources Subcommittee on Federal Lands.

I am grateful for Chairman MCCLINTOCK's early and sustained support for this bill and appreciate his moving it expeditiously to the floor for consideration.

The National Liberty Memorial, which I have long supported, seeks to honor the more than 5,000 slaves and free persons of color or, as historians sometimes refer to them, free Negroes who fought for independence during the American Revolution.

The memorial will ultimately be constructed near the National Mall in what is known as area one, pursuant to H.J. Res. 120, my resolution that was signed into law by President Obama last year. The preferred site location for the memorial is at the Department of Agriculture's Whitten Building, where both the memorial's private sponsor and the USDA want it to be ultimately constructed.

Under current law, governed by the Commemorative Works Act, the Government Services Administration is charged with, among other things, site and design proposals and their submission to the appropriate memorial planning commissions.

However, because the preferred site is physically located on property occupied by the Department of Agriculture, my bill will simply transfer site and design responsibilities to the Secretary of Agriculture. The memorial sponsor and the USDA both believe that the Secretary of Agriculture is in the best position to expeditiously move this important memorial project forward.

Doing so will allow the memorial sponsor and USDA to make progress on a design and construction plan. This simple change, Mr. Speaker, will eliminate duplication, better use scarce Federal resources, and avoid unnecessary delay.

Seeing this important and culturally significant memorial to fruition is of great importance to me. It is of great importance to the Congressional Black Caucus. It is important, certainly, to the constituents that I represent in North Carolina and descendants of the brave Revolutionary War soldiers who sacrificed so much on behalf of American independence.

Mr. Speaker, I urge my colleagues to signal their support for H.R. 1949 simply by voting ''yes'' on final passage.

Mr. MCCLINTOCK. Mr. Speaker, I reserve the balance of my time.

Mrs. DINGELL. Mr. Speaker, I urge all Members to support this bill.

I yield back the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, the National Liberty Memorial reminds us of a story of patriotism and sacrifice that won the independence of our country and that set in motion what Lincoln called ''the last best hope of mankind.'' It is a story from the American Revolution that, to this day, has not been adequately acknowledged.

I am pleased to commend Mr. BUTTERFIELD for his legislation, to have joined as a cosponsor of it, and to urge the House its speedy adoption.

Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I rise in support of H.R. 1949, the National Liberty Memorial Clarification Act of 2015, which will help lay the final foundation for a National Liberty Memorial in Washington, D.C.

Two-hundred and thirty-nine years ago our nation was inked into existence by Thomas Jefferson in defense of a simple idea: that all men were created equal, and are endowed with certain unalienable rights. Countless men and women stood up for that idea around the new nation—some volunteered to fight, but others served in their own way as civilians. We know so many of those patriots' names by heart—George Washington, Benjamin Franklin, John Paul Jones, John Adams—and those we do not are remembered in their hometowns all across America.

However, there are a number of patriots who are too often forgotten: the thousands of slaves and freed men and women who fought for our country and provided civilian assistance at our most vulnerable time. These men and women believed so fully in the ideas and principles of the American Revolution that they fought, died, and sacrificed even as their own rights were trampled.

Their actions demonstrated patriotism in its absolute highest form. But there is no monument to their sacrifice, no memorial for their descendants to honor, and no place for our nation to offer their collective thanks.

The National Liberty Memorial Clarification Act of 2015 will finally pay the debt we owe to these brave patriots who helped breathe life into our new nation. After some 230 years, it is the least we can do.

I would like to thank Mr. BUTTERFIELD and Mr. MCCLINTOCK for offering this important legislation. I would also like to thank my former Judiciary staffer, Maurice Barboza, who has been fighting to honor the sacrifices of slaves and freed persons for decades. Their work is a credit to us all.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr.

MCCLINTOCK) that the House suspend the rules and pass the bill, H.R. 1949, as amended.

The question was taken.

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

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

WESTERN OREGON TRIBAL FAIRNESS ACT

Mr. MCCLINTOCK. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2791) to require that certain Federal lands be held in trust by the United States for the benefit of certain Indian tribes in Oregon, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2791

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 ''Western Oregon Tribal Fairness Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—COW CREEK UMPQUA LAND CONVEYANCE

Sec. 101. Short title.
Sec. 102. Definitions.
Sec. 103. Conveyance.
Sec. 104. Map and legal description.
Sec. 105. Administration.
Sec. 106. Land reclassification.

TITLE II—COQUILLE FOREST FAIRNESS

Sec. 201. Short title.
Sec. 202. Amendments to Coquille Restoration Act.

TITLE III—OREGON COASTAL LANDS

Sec. 301. Short title.
Sec. 302. Definitions.
Sec. 303. Conveyance.
Sec. 304. Map and legal description.
Sec. 305. Administration.
Sec. 306. Land reclassification.

TITLE I—COW CREEK UMPQUA LAND CONVEYANCE

SEC. 101. SHORT TITLE.

This title may be cited as the ''Cow Creek Umpqua Land Conveyance Act''.

SEC. 102. DEFINITIONS.

In this title:

(1) COUNCIL CREEK LAND.—The term ''Council Creek land'' means the approximately 17,519 acres of land, as generally depicted on the map entitled ''Canyon Mountain Land Conveyance'' and dated June 27, 2013.

(2) TRIBE.—The term ''Tribe'' means the Cow Creek Band of Umpqua Tribe of Indians.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 103. CONVEYANCE.

(a) IN GENERAL.—Subject to valid existing rights, including rights-of-way, all right, title, and interest of the United States in and to the Council Creek land, including any improvements located on the land, appurtenances to the land, and minerals on or in the land, including oil and gas, shall be—

(1) held in trust by the United States for the benefit of the Tribe; and

(2) part of the reservation of the Tribe.

(b) SURVEY.—Not later than 1 year after the date of enactment of this Act, the Secretary shall complete a survey of the boundary lines to establish the boundaries of the land taken into trust under subsection (a).

SEC. 104. MAP AND LEGAL DESCRIPTION.

(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of the Council Creek land with—

(1) the Committee on Energy and Natural Resources of the Senate; and

(2) the Committee on Natural Resources of the House of Representatives.

(b) FORCE AND EFFECT.—The map and legal description filed under subsection (a) shall have the same force and effect as if included in this title, except that the Secretary may correct any clerical or typographical errors in the map or legal description.

(c) PUBLIC AVAILABILITY.—The map and legal description filed under subsection (a) shall be on file and available for public inspection in the Office of the Secretary.

SEC. 105. ADMINISTRATION.

(a) IN GENERAL.—Unless expressly provided in this title, nothing in this title affects any right or claim of the Tribe existing on the date of enactment of this Act to any land or interest in land.

(b) PROHIBITIONS.—

(1) EXPORTS OF UNPROCESSED LOGS.—Federal law (including regulations) relating to the export of unprocessed logs harvested from Federal land shall apply to any unprocessed logs that are harvested from the Council Creek land.

(2) NON-PERMISSIBLE USE OF LAND.—Any real property taken into trust under section 103 shall not be eligible, or used, for any gaming activity carried out under Public Law 100–497 (25 U.S.C. 2701 et seq.).

(c) FOREST MANAGEMENT.—Any forest management activity that is carried out on the Council Creek land shall be managed in accordance with all applicable Federal laws.

SEC. 106. LAND RECLASSIFICATION.

(a) IDENTIFICATION OF OREGON AND CALIFORNIA RAILROAD GRANT LAND.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture and the Secretary shall identify any Oregon and California Railroad grant land that is held in trust by the United States for the benefit of the Tribe under section 103.

(b) IDENTIFICATION OF PUBLIC DOMAIN LAND.—Not later than 18 months after the date of enactment of this Act, the Secretary shall identify public domain land in the State of Oregon that—

(1) is approximately equal in acreage and condition as the Oregon and California Railroad grant land identified under subsection (a); and

(2) is located in the vicinity of the Oregon and California Railroad grant land.

(c) MAPS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to Congress and publish in the Federal Register one or more maps depicting the land identified in subsections (a) and (b).

(d) RECLASSIFICATION.—

(1) IN GENERAL.—After providing an opportunity for public comment, the Secretary shall reclassify the land identified in subsection (b) as Oregon and California Railroad grant land.

(2) APPLICABILITY.—The Act of August 28, 1937 (43 U.S.C. 1181a et seq.), shall apply to land reclassified as Oregon and California Railroad grant land under paragraph (1).

TITLE II—COQUILLE FOREST FAIRNESS

SEC. 201. SHORT TITLE.

This title may be cited as the ''Coquille Forest Fairness Act''.

SEC. 202. AMENDMENTS TO COQUILLE RESTORATION ACT.

Section 5(d) of the Coquille Restoration Act (25 U.S.C. 715c(d)) is amended—

(1) by striking paragraph (5) and inserting the following:

''(5) MANAGEMENT.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary, acting through the Assistant Secretary for Indian Affairs, shall manage the Coquille Forest in accordance with the laws pertaining to the management of Indian trust land.

''(B) ADMINISTRATION.—

''(i) UNPROCESSED LOGS.—Unprocessed logs harvested from the Coquille Forest shall be subject to the same Federal statutory restrictions on export to foreign nations that apply to unprocessed logs harvested from Federal land.

''(ii) SALES OF TIMBER.—Notwithstanding any other provision of law, all sales of timber from land subject to this subsection shall be advertised, offered, and awarded according to competitive bidding practices, with sales being awarded to the highest responsible bidder.'';

(2) by striking paragraph (9); and

(3) by redesignating paragraphs (10) through (12) as paragraphs (9) through (11), respectively.

TITLE III—OREGON COASTAL LANDS

SEC. 301. SHORT TITLE.

This title may be cited as the ''Oregon Coastal Lands Act''.

SEC. 302. DEFINITIONS.

In this title:

(1) CONFEDERATED TRIBES.—The term ''Confederated Tribes'' means the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians.

(2) OREGON COASTAL LAND.—The term ''Oregon Coastal land'' means the approximately 14,408 acres of land, as generally depicted on the map entitled ''Oregon Coastal Land Conveyance'' and dated March 27, 2013.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 303. CONVEYANCE.

(a) IN GENERAL.—Subject to valid existing rights, including rights-of-way, all right, title, and interest of the United States in and to the Oregon Coastal land, including any improvements located on the land, appurtenances to the land, and minerals on or in the land, including oil and gas, shall be—

(1) held in trust by the United States for the benefit of the Confederated Tribes; and

(2) part of the reservation of the Confederated Tribes.

(b) SURVEY.—Not later than 1 year after the date of enactment of this Act, the Secretary shall complete a survey of the boundary lines to establish the boundaries of the land taken into trust under subsection (a).

SEC. 304. MAP AND LEGAL DESCRIPTION.

(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of the Oregon Coastal land with—

(1) the Committee on Energy and Natural Resources of the Senate; and

(2) the Committee on Natural Resources of the House of Representatives.

(b) FORCE AND EFFECT.—The map and legal description filed under subsection (a) shall have the same force and effect as if included in this title, except that the Secretary may correct any clerical or typographical errors in the map or legal description.

(c) PUBLIC AVAILABILITY.—The map and legal description filed under subsection (a) shall be on file and available for public inspection in the Office of the Secretary.

SEC. 305. ADMINISTRATION.

(a) IN GENERAL.—Unless expressly provided in this title, nothing in this title affects any

right or claim of the Confederated Tribes existing on the date of enactment of this Act to any land or interest in land.

(b) PROHIBITIONS.—

(1) EXPORTS OF UNPROCESSED LOGS.—Federal law (including regulations) relating to the export of unprocessed logs harvested from Federal land shall apply to any unprocessed logs that are harvested from the Oregon Coastal land taken into trust under section 303.

(2) NON-PERMISSIBLE USE OF LAND.—Any real property taken into trust under section 303 shall not be eligible, or used, for any gaming activity carried out under Public Law 100–497 (25 U.S.C. 2701 et seq.).

(c) LAWS APPLICABLE TO COMMERCIAL FORESTRY ACTIVITY.—Any commercial forestry activity that is carried out on the Oregon Coastal land taken into trust under section 303 shall be managed in accordance with all applicable Federal laws.

(d) AGREEMENTS.—The Confederated Tribes shall consult with the Secretary and other parties as necessary to develop agreements to provide for access to the Oregon Coastal land taken into trust under section 303 that provide for—

(1) honoring existing reciprocal right-of-way agreements;

(2) administrative access by the Bureau of Land Management; and

(3) management of the Oregon Coastal lands that are acquired or developed under chapter 2003 of title 54, United States Code (commonly known as the ''Land and Water Conservation Fund Act of 1965''), consistent with section 200305(f)(3) of that title.

(e) LAND USE PLANNING REQUIREMENTS.—Except as provided in subsection (c), once the Oregon Coastal land is taken into trust under section 303, the land shall not be subject to the land use planning requirements of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) or the Act of August 28, 1937 (43 U.S.C. 1181a et seq.).

SEC. 306. LAND RECLASSIFICATION.

(a) IDENTIFICATION OF OREGON AND CALIFORNIA RAILROAD GRANT LAND.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture and the Secretary shall identify any Oregon and California Railroad grant land that is held in trust by the United States for the benefit of the Confederated Tribes under section 303.

(b) IDENTIFICATION OF PUBLIC DOMAIN LAND.—Not later than 18 months after the date of enactment of this Act, the Secretary shall identify public domain land in the State of Oregon that—

(1) is approximately equal in acreage and condition as the Oregon and California Railroad grant land identified under subsection (a); and

(2) is located in the vicinity of the Oregon and California Railroad grant land.

(c) MAPS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to Congress and publish in the Federal Register one or more maps depicting the land identified in subsections (a) and (b).

(d) RECLASSIFICATION.—

(1) IN GENERAL.—After providing an opportunity for public comment, the Secretary shall reclassify the land identified in subsection (b) as Oregon and California Railroad grant land.

(2) APPLICABILITY.—The Act of August 28, 1937 (43 U.S.C. 1181a et seq.), shall apply to land reclassified as Oregon and California Railroad grant land under paragraph (1).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. MCCLINTOCK) and the gentlewoman from Michigan (Mrs. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. MCCLINTOCK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous materials on the bill under consideration.

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

There was no objection.

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

Mr. Speaker, I would like to acknowledge the gentlemen from Oregon, Mr. DEFAZIO and Mr. WALDEN, for their hard work on this important piece of legislation that will benefit several Indian tribes in the State of Oregon.

H.R. 2791 is a compilation of three stand-alone bills that were reported out of the Natural Resources Committee and passed by the full House as part of larger measures during the 113th Congress.

Since I have every confidence that Mr. DEFAZIO will describe the bill in detail, I will, at this point, reserve the balance of my time.

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

H.R. 2791 is the culmination of years of work to address the wrongs of the past. The ''termination era'' in Federal Indian policy is one of the darkest chapters in American history. In Oregon, all but one of the tribes lost their Federal recognition.

Fortunately, the Federal Government eventually saw the error of their ways and restored the recognition of the tribes, but they were now left with nonexistent or inadequate land bases.

H.R. 2791, the Western Oregon Tribal Fairness Act, will go a long way in helping reestablish long-promised land bases for the Oregon tribes, while also giving them the ability to effectively manage their land on their own terms.

Like my colleague, I want to thank our colleagues from Oregon, Mr. DEFAZIO and Mr. WALDEN, for listening to the needs of the Oregon tribal people and continuing to push for this bipartisan legislation.

All the sections included in this bill passed the House by voice vote last Congress, and I urge my colleagues to do the same now.

Mr. Speaker, I reserve the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I reserve the balance of my time.

Mrs. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Speaker, I thank the gentlewoman for both the kind words and for yielding the time here on the floor. I particularly want to thank the chairman of the Federal Lands Subcommittee and his words of support, also, and I thank the committee for sending this bill to the floor.

The Western Oregon Tribal Fairness Act is a bipartisan, no-cost, commonsense bill that will go a long way toward helping resolve some of the problems Federal Government and its haphazard policy shifts have created for three western Oregon tribes. The bill provides fairness for three tribes: the Coos, Lower Umpqua, and Siuslaw; the Cow Creek; and the Coquille.

The bill contains the text of provisions within H.R. 5701, which passed unanimously last December, but was not enacted into law.

For too long, Federal policies have unfairly disadvantaged Indian tribes in western Oregon. After signing many treaties with the tribes, the United States removed them from their original homelands and put them on only two reservations, established to house potentially more than 60 tribal governments.

In 1954, Congress made things worse. All tribes west of the Cascades lost Federal recognition when the Western Oregon Termination Act became law. Scholars called it the ''termination era.'' It was terrible Federal Indian policy. It was so bad that it was formally rebuked by Congress less than 30 years later.

In the 1970s, Congress began the process of restoring the western Oregon tribes to Federal recognition, cleaning up the mess and injustice the United States had made.

In fact, I began my congressional career as an original sponsor of the Coquille Restoration Act, legislation to restore one of Oregon's terminated tribes; yet, even today, it remains difficult for these tribes to function as the sovereign nations they are and to govern themselves effectively. Unlike many tribes, the Coos, Lower Umpqua, and Siuslaw, as well as the Cow Creek, are deprived of any land held in trust.

Unlike any other tribe in the United States, the Coquille Indian Tribe must function under a legal anomaly with regard to its own forest.

The Western Oregon Tribal Fairness Act makes good on a decades-old promise to restore land bases for the Coos and Cow Creek tribes, and it puts the Coquille Indian Tribe's forest on an equal footing with those of other Indian tribes nationwide.

H.R. 2791 deals only with Oregon issues, Oregon tribes, and Oregon constituents.

Mr. Speaker, I strongly encourage my colleagues to support the bill.

Mrs. DINGELL. Mr. Speaker, I urge all Members to join us in supporting this bill.

I yield back the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, my complete faith in Mr. DEFAZIO's powers of description was well placed. I endorse his remarks and ask for adoption of the measure.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MCCLINTOCK) that the House suspend the rules and pass the bill, H.R. 2791.

The question was taken; and (two-thirds being in the affirmative) the

rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

NEW MEXICO NAVAJO WATER SETTLEMENT TECHNICAL CORRECTIONS ACT

Mr. McCLINTOCK. Mr. Speaker, I move to suspend the rules and pass the bill (S. 501) to make technical corrections to the Navajo water rights settlement in the State of New Mexico, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 501

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''New Mexico Navajo Water Settlement Technical Corrections Act''.

SEC. 2. NAVAJO WATER SETTLEMENT.

(a) DEFINITIONS.—Section 10302 of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 407 note; Public Law 111–11) is amended—

(1) in paragraph (2), by striking ''Arrellano'' and inserting ''Arellano''; and

(2) in paragraph (27), by striking ''75–185'' and inserting ''75–184''.

(b) DELIVERY AND USE OF NAVAJO-GALLUP WATER SUPPLY PROJECT WATER.—Section 10603(c)(2)(A) of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1385) is amended—

(1) in clause (i), by striking ''Article III(c)'' and inserting ''Articles III(c)''; and

(2) in clause (ii)(II), by striking ''Article III(c)'' and inserting ''Articles III(c)''.

(c) PROJECT CONTRACTS.—Section 10604(f)(1) of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1391) is amended by inserting ''Project'' before ''water''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 10609 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1395) is amended—

(1) in paragraphs (1) and (2) of subsection (b), by striking ''construction or rehabilitation'' each place it appears and inserting ''planning, design, construction, rehabilitation,'';

(2) in subsection (e)(1), by striking ''2 percent'' and inserting ''4 percent''; and

(3) in subsection (f)(1), by striking ''4 percent'' and inserting ''2 percent''.

(e) AGREEMENT.—Section 10701(e) of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1400) is amended in paragraphs (2)(A), (2)(B), and (3)(A) by striking ''and Contract'' each place it appears.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. McCLINTOCK) and the gentlewoman from Michigan (Mrs. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. McCLINTOCK. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous materials on the bill under consideration.

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

There was no objection.

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

S. 501, the New Mexico Navajo Water Settlement Technical Corrections Act, makes a number of small changes to a Federal law impacting the Navajo Nation's water projects in New Mexico.

The bill specifically fixes misspellings, citations, and other errors to help expedite the completion of water infrastructure projects.

I urge my colleagues to support this noncontroversial bill, and I reserve the balance of my time.

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

S. 501 would make technical corrections, as my colleague has stated, to the Navajo-Gallup Water Supply Project, which was authorized by Congress in the Omnibus Public Land Management Act of 2009.

□ 1615

The legislation will help provide a reliable water supply to tribal communities on a faster timeline and promote economic growth in northwestern New Mexico. This legislation has the administration's support and has already passed the Senate by unanimous consent.

I want to thank my friend and colleague, Congressman BEN RAY LUJÁN of New Mexico, the sponsor of the companion legislation here in the House, for all of his hard work and leadership on this critical issue.

I fully support S. 501 and urge its adoption by all Members.

Mr. Speaker, I yield back the balance of my time.

Mr. McCLINTOCK. Mr. Speaker, I also urge all Members to support the bill.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. McCLINTOCK) that the House suspend the rules and pass the bill, S. 501.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

YUKON KUSKOKWIM HEALTH CORPORATION PROPERTY CONVEYANCE

Mr. McCLINTOCK. Mr. Speaker, I move to suspend the rules and pass the bill (S. 230) to provide for the conveyance of certain property to the Yukon Kuskokwim Health Corporation located in Bethel, Alaska.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 230

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

SECTION 1. CONVEYANCE OF PROPERTY.

(a) IN GENERAL.—As soon as practicable, but not later than 180 days, after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall convey to the Yukon Kuskokwim Health Corporation located in Bethel, Alaska (referred to in this Act as the ''Corporation''), 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.

(b) EFFECT ON ANY QUITCLAIM DEED.—The conveyance by the Secretary of title by warranty deed under this section shall, on the effective date of the conveyance, supersede and render of no future effect any quitclaim deed to the property described in section 2 executed by the Secretary and the Corporation.

(c) CONDITIONS.—The conveyance of the property under this Act—

(1) shall be made by warranty deed; and

(2) shall not—

(A) require any consideration from the Corporation for the property;

(B) impose any obligation, term, or condition on the Corporation; or

(C) allow for any reversionary interest of the United States in the property.

SEC. 2. PROPERTY DESCRIBED.

The property, including all land and appurtenances, described in this section is the property included in U.S. Survey No. 4000, Lot 2, T. 8 N., R. 71 W., Seward Meridian, containing 22.98 acres.

SEC. 3. ENVIRONMENTAL LIABILITY.

(a) LIABILITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Corporation shall not be liable for any soil, surface water, groundwater, or other contamination resulting from the disposal, release, or presence of any environmental contamination on any portion of the property described in section 2 on or before the date on which the property is conveyed to the Corporation.

(2) ENVIRONMENTAL CONTAMINATION.—An environmental contamination described in paragraph (1) includes any oil or petroleum products, 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.

(b) EASEMENT.—The Secretary shall be accorded any easement or access to the property conveyed under this Act as may be reasonably necessary to satisfy any retained obligation or liability of the Secretary.

(c) NOTICE OF HAZARDOUS SUBSTANCE ACTIVITY AND WARRANTY.—In carrying out this Act, the Secretary shall comply with subparagraphs (A) and (B) of section 120(h)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(3)).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. McCLINTOCK) and the gentlewoman from Michigan (Mrs. DINGELL) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. McCLINTOCK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous materials on the bill under consideration.

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

There was no objection.

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

I would first like to acknowledge the gentleman from Alaska (Mr. YOUNG), the chairman of the Subcommittee on Indian, Insular, and Alaska Native Affairs, for his hard work as the sponsor of the House companion to this bill, H.R. 521.

This bill was favorably reported from the Committee on Natural Resources by unanimous consent in July of this year. The Senate version, S. 230, sponsored by Senator MURKOWSKI, is before us today. This bill directs the Secretary of Health and Human Services to convey by warranty deed a 23-acre parcel of Federal land under the administration of the Indian Health Service and located in Bethel, Alaska, to the Yukon Kuskokwim Health Corporation for health and social service-related programs.

The YKHC is a nonprofit Alaska Native organization which operates a regional hospital on the 23 acres of the Federal land conveyed under this bill. In recent years, the hospital has had a need to expand and renovate the existing facilities in this location. To secure funding for the hospital expansion, the YKHC must demonstrate sufficient site control, but because the surrounding land is federally owned, this bill is necessary to provide the health corporation the site control necessary to improve its facilities.

Congress has enacted two similar bills in the last several Congresses and, like those, this bill is supported by the entire Alaska delegation and by the administration.

I again want to commend my colleague from Alaska for his hard work for Alaska Natives, and I urge my colleagues to pass this bill.

Mr. Speaker, I reserve the balance of my time.

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

Mr. Speaker, S. 230, as my colleague has so eloquently stated, will provide for the conveyance of approximately 23 acres to the YKHC, located in Bethel, Alaska, for the purposes of constructing a primary care clinic attached to the existing hospital.

This bill is identical to H.R. 521, introduced by our colleague and my very dear and good friend, Chairman DON YOUNG, which we passed by unanimous consent out of the Committee on Natural Resources. The land transfer is needed so that the YKHC might participate in the Indian Health Service Joint Venture Construction Program.

Access to quality health care is a fundamental part of our trust responsibility to tribal members, and passage of this bill will ensure that the YKHC can meet the current and future needs of its residents.

I urge my colleagues to support passage of S. 230.

Mr. Speaker, I reserve the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I yield such time as he may consume to the gentleman from Alaska (Mr. YOUNG), that legendary force of Alaskan nature.

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Speaker, I do thank the chairman and I do thank the ranking member for their kind comments.

Much has been said about this fine piece of legislation. As was mentioned, it has passed the House twice. The Senate finally passed out a bill, and now we are dealing with a Senate bill.

As was mentioned, this gives an opportunity for the YKHC, a Native hospital, to expand on Federal lands. By ownership of the land now, there will be no cloud on that title.

I do appreciate the comments. I do appreciate the work that has been put into this. This is a bill that should have been signed into law a lot sooner. It will be done now, and we will be able to expand this hospital for my Alaska Natives.

Mr. Speaker, I urge the passage of this legislation.

Mrs. DINGELL. Mr. Speaker, before I yield back for the day, I want to thank my colleague, Chairman MCCLINTOCK, for his collegiality today and his leadership in making this a pleasant afternoon and a bipartisan afternoon.

I urge all Members to join me in supporting S. 230.

Mr. Speaker, I yield back the balance of my time.

Mr. MCCLINTOCK. Mr. Speaker, I would reciprocate those kind words to the gentlewoman from Michigan; thank you.

Mr. Speaker, I ask for adoption of this measure.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MCCLINTOCK) that the House suspend the rules and pass the bill, S. 230.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 6:30 p.m. today.

Accordingly (at 4 o'clock and 21 minutes p.m.), the House stood in recess.

□ 1831

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. DUNCAN of Tennessee) at 6 o'clock and 31 minutes p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H.R. 1214, by the yeas and nays;

H.R. 1949, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. The second electronic vote will be conducted as a 5-minute vote.

NATIONAL FOREST SMALL TRACTS ACT AMENDMENTS ACT OF 2015

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill (H.R. 1214) to amend the Small Tracts Act to expand the authority of the Secretary of Agriculture to sell or exchange small parcels of National Forest System land to enhance the management of the National Forest System, to resolve minor encroachments, and for other purposes, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

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

The vote was taken by electronic device, and there were—yeas 403, nays 0, not voting 30, as follows:

[Roll No. 495]

YEAS—403

Abraham
Adams
Aderholt
Aguilar
Allen
Amash
Amodei
Ashford
Babin
Barletta
Barr
Barton
Bass
Beatty
Becerra
Benishek
Bera
Bishop (GA)
Bishop (MI)
Bishop (UT)
Black
Blackburn
Blum
Blumenauer
Bonamici
Bost
Boustany
Brady (PA)
Brady (TX)
Brat
Bridenstine
Brooks (AL)
Brooks (IN)
Brown (FL)
Brownley (CA)
Buchanan
Buck
Bucshon
Burgess
Bustos
Butterfield
Byrne
Calvert
Capps
Capuano
Cárdenas
Carney
Carson (IN)
Carter (GA)
Carter (TX)
Cartwright
Castor (FL)
Castro (TX)
Chabot
Chaffetz
Chu, Judy
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Coffman
Cohen
Collins (GA)
Collins (NY)
Comstock
Conaway
Connolly
Conyers
Cook
Cooper
Costa
Costello (PA)
Courtney
Cramer
Crawford
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Curbelo (FL)
Davis (CA)
Davis, Danny
Davis, Rodney
DeFazio
DeGette
Delaney
DeLauro
DelBene
Dent
DeSantis
DeSaulnier
DesJarlais
Deutch
Diaz-Balart
Dingell
Doggett
Dold
Donovan
Doyle, Michael F.
Duckworth
Duffy
Duncan (SC)
Duncan (TN)
Edwards
Ellison
Ellmers (NC)
Emmer (MN)
Engel
Eshoo
Esty
Farenthold
Farr
Fattah
Fitzpatrick
Fleischmann
Flores
Forbes
Fortenberry
Foster
Foxx
Frankel (FL)
Franks (AZ)
Frelinghuysen
Fudge
Gabbard
Gallego
Garamendi
Garrett
Gibbs
Gibson
Gohmert
Goodlatte
Gosar
Gowdy
Graham
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Green, Al

Green, Gene
Griffith
Grijalva
Grothman
Guinta
Guthrie
Hahn
Hanna
Hardy
Harper
Harris
Hartzler
Hastings
Heck (NV)
Heck (WA)
Hensarling
Herrera Beutler
Hice, Jody B.
Higgins
Hill
Himes
Hinojosa
Holding
Honda
Huelskamp
Huffman
Huizenga (MI)
Hultgren
Hurd (TX)
Hurt (VA)
Israel
Issa
Jackson Lee
Jeffries
Jenkins (KS)
Jenkins (WV)
Johnson (GA)
Johnson (OH)
Johnson, E. B.
Johnson, Sam
Jolly
Jones
Jordan
Joyce
Kaptur
Katko
Keating
Kelly (IL)
Kelly (MS)
Kelly (PA)
Kennedy
Kildee
Kilmer
Kind
King (IA)
King (NY)
Kinzinger (IL)
Kline
Kuster
Labrador
LaMalfa
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latta
Lawrence
Lee
Levin
Lewis
Lieu, Ted
Lipinski
LoBiondo
Loebsack
Lofgren
Long
Loudermilk
Love
Lowenthal
Lowey
Lucas
Luetkemeyer
Lujan Grisham (NM)
Luján, Ben Ray (NM)
Lynch
MacArthur
Maloney, Carolyn
Maloney, Sean
Marino
Massie
Matsui
McCarthy
McCaul
McClintock
McCollum
McDermott
McGovern
McHenry
McKinley
McMorris Rodgers
McNerney
McSally
Meadows
Meehan
Meeks
Meng
Mica
Miller (MI)
Moolenaar
Mooney (WV)
Moore
Moulton
Mullin
Mulvaney
Murphy (FL)
Murphy (PA)
Nadler
Napolitano
Neal
Neugebauer
Newhouse
Noem
Nolan
Norcross
Nugent
Nunes
O'Rourke
Olson
Palazzo
Pallone
Palmer
Pascrell
Paulsen
Payne
Pearce
Pelosi
Perlmutter
Perry
Peters
Peterson
Pittenger
Pitts
Pocan
Poe (TX)
Poliquin
Polis
Pompeo
Posey
Price (NC)
Price, Tom
Quigley
Rangel
Ratcliffe
Reed
Reichert
Renacci
Ribble
Rice (NY)
Rice (SC)
Richmond
Rigell
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rokita
Rooney (FL)
Ros-Lehtinen
Roskam
Ross
Rothfus
Rouzer
Roybal-Allard
Royce
Ruiz
Ruppersberger
Russell
Ryan (WI)
Salmon
Sánchez, Linda T.
Sanford
Sarbanes
Scalise
Schakowsky
Schiff
Schrader
Schweikert
Scott (VA)
Scott, Austin
Scott, David
Sensenbrenner
Serrano
Sessions
Sewell (AL)
Sherman
Shimkus
Shuster
Simpson
Sinema
Slaughter
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Speier
Stefanik
Stewart
Stivers
Stutzman
Swalwell (CA)
Takai
Takano
Thompson (MS)
Thompson (PA)
Thornberry
Tiberi
Tipton
Titus
Tonko
Torres
Trott
Tsongas
Turner
Upton
Valadao
Van Hollen
Vargas
Veasey
Vela
Velázquez
Visclosky
Walberg
Walden
Walker
Walorski
Walters, Mimi
Walz
Waters, Maxine
Watson Coleman
Weber (TX)
Webster (FL)
Welch
Wenstrup
Westerman
Whitfield
Williams
Wilson (FL)
Wilson (SC)
Wittman
Womack
Woodall
Yarmuth
Yoder
Yoho
Young (AK)
Young (IA)
Young (IN)
Zeldin
Zinke

NOT VOTING—30

Beyer
Bilirakis
Boyle, Brendan F.
Clawson (FL)
Cole
Denham
Fincher
Fleming
Grayson
Gutiérrez
Hoyer
Hudson
Hunter
Kirkpatrick
Knight
Lummis
Marchant
Messer
Miller (FL)
Pingree
Rohrabacher
Rush
Ryan (OH)
Sanchez, Loretta
Sires
Smith (WA)
Thompson (CA)
Wagner
Wasserman Schultz
Westmoreland

□ 1915

Ms. TSONGAS and Mr. GOSAR changed their vote from ''nay'' to ''yea.''

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

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

NATIONAL LIBERTY MEMORIAL CLARIFICATION ACT OF 2015

The SPEAKER pro tempore (Mr. POE of Texas). The unfinished business is the vote on the motion to suspend the rules and pass the bill (H.R. 1949) to provide for the consideration and submission of site and design proposals for the National Liberty Memorial approved for establishment in the District of Columbia, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

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

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 402, nays 0, not voting 31, as follows:

[Roll No. 496]

YEAS—402

Abraham
Adams
Aderholt
Aguilar
Allen
Amash
Amodei
Ashford
Babin
Barletta
Barr
Barton
Bass
Beatty
Becerra
Benishek
Bera
Bishop (GA)
Bishop (MI)
Black
Blackburn
Blum
Blumenauer
Bonamici
Bost
Boustany
Brady (PA)
Brady (TX)
Brat
Bridenstine
Brooks (AL)
Brooks (IN)
Brown (FL)
Brownley (CA)
Buck
Bucshon
Burgess
Bustos
Butterfield
Byrne
Calvert
Capps
Capuano
Cárdenas
Carney
Carson (IN)
Carter (GA)
Carter (TX)
Cartwright
Castor (FL)
Castro (TX)
Chabot
Chaffetz
Chu, Judy
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Coffman
Cohen
Cole
Collins (GA)
Collins (NY)
Comstock
Conaway
Connolly
Conyers
Cook
Cooper
Costa
Costello (PA)
Courtney
Cramer
Crawford
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Curbelo (FL)
Davis (CA)
Davis, Danny
Davis, Rodney
DeGette
Delaney
DeLauro
DelBene
Dent
DeSantis
DeSaulnier
Deutch
Diaz-Balart
Dingell
Doggett
Dold
Donovan
Doyle, Michael F.
Duckworth
Duffy
Duncan (SC)
Duncan (TN)
Edwards
Ellison
Ellmers (NC)
Emmer (MN)
Engel
Eshoo
Esty
Farenthold
Farr
Fattah
Fitzpatrick
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foster
Foxx
Frankel (FL)
Franks (AZ)
Frelinghuysen
Fudge
Gabbard
Gallego
Garamendi
Garrett
Gibbs
Gibson
Gohmert
Goodlatte
Gosar
Gowdy
Graham
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Green, Al
Green, Gene
Griffith
Grijalva
Grothman
Guinta
Guthrie
Hahn
Hanna
Hardy
Harper
Harris
Hartzler
Hastings
Heck (NV)
Heck (WA)
Hensarling
Herrera Beutler
Hice, Jody B.
Higgins
Hill
Himes
Hinojosa
Holding
Honda
Hudson
Huelskamp
Huffman
Huizenga (MI)
Hultgren
Hurd (TX)
Hurt (VA)
Israel
Issa
Jackson Lee
Jeffries
Jenkins (KS)
Jenkins (WV)
Johnson (GA)
Johnson (OH)
Johnson, E. B.
Johnson, Sam
Jolly
Jones
Jordan
Joyce
Kaptur
Katko
Keating
Kelly (IL)
Kelly (MS)
Kelly (PA)
Kennedy
Kildee
Kilmer
Kind
King (IA)
King (NY)
Kline
Kuster
Labrador
LaMalfa
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latta
Lawrence
Lee
Levin
Lewis
Lieu, Ted
Lipinski
LoBiondo
Loebsack
Lofgren
Long
Loudermilk
Love
Lowenthal
Lowey
Lucas
Luetkemeyer
Lujan Grisham (NM)
Luján, Ben Ray (NM)
Lummis
Lynch
MacArthur
Maloney, Carolyn
Maloney, Sean
Marchant
Marino
Massie
Matsui
McCarthy
McCaul
McClintock
McCollum
McDermott
McGovern
McHenry
McKinley
McMorris Rodgers
McNerney
McSally
Meadows
Meehan
Meeks
Meng
Messer
Mica
Miller (MI)
Moolenaar
Mooney (WV)
Moore
Moulton
Mullin
Mulvaney
Murphy (FL)
Murphy (PA)
Nadler
Napolitano
Neal
Neugebauer
Newhouse
Noem
Nolan
Norcross
Nugent
Nunes
O'Rourke
Olson
Palazzo
Pallone
Palmer
Pascrell
Paulsen
Payne
Pearce
Pelosi
Perlmutter
Perry
Peters
Peterson
Pittenger
Pitts
Pocan
Poe (TX)
Poliquin
Polis
Pompeo
Posey
Price, Tom
Quigley
Rangel
Ratcliffe
Reed
Reichert
Renacci
Ribble
Rice (NY)
Rice (SC)
Richmond
Rigell
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rokita
Rooney (FL)
Ros-Lehtinen
Roskam
Ross
Rothfus
Rouzer
Roybal-Allard
Royce
Ruiz
Ruppersberger
Rush
Russell
Ryan (WI)
Sánchez, Linda T.
Sanford
Sarbanes
Scalise
Schakowsky
Schiff
Schrader
Schweikert
Scott (VA)
Scott, Austin
Scott, David
Sensenbrenner
Serrano
Sessions
Sewell (AL)
Sherman
Shimkus
Shuster
Simpson
Sinema
Slaughter
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Speier
Stefanik
Stewart
Stivers
Stutzman
Swalwell (CA)
Takai
Takano
Thompson (MS)
Thompson (PA)
Thornberry
Tiberi
Tipton
Titus
Tonko
Torres
Trott
Tsongas
Turner
Upton
Valadao
Van Hollen
Vargas
Veasey
Vela
Velázquez
Visclosky
Walberg
Walden
Walker
Walorski
Walters, Mimi
Walz
Waters, Maxine
Watson Coleman
Weber (TX)
Webster (FL)
Welch
Wenstrup
Westerman
Whitfield
Williams
Wilson (FL)
Wilson (SC)
Wittman
Womack
Woodall
Yarmuth
Yoder
Young (AK)
Young (IA)
Young (IN)
Zeldin
Zinke

NOT VOTING—31

Beyer
Bilirakis
Bishop (UT)
Boyle, Brendan F.
Buchanan
Clawson (FL)
DeFazio
Denham
DesJarlais
Fincher
Grayson
Gutiérrez
Hoyer
Hunter
Kinzinger (IL)
Kirkpatrick
Knight
Miller (FL)
Pingree
Price (NC)
Rohrabacher
Ryan (OH)
Salmon

Sanchez, Loretta
Sires
Smith (WA)
Thompson (CA)
Wagner
Wasserman Schultz
Westmoreland
Yoho

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

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

□ 1922

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

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. MILLER of Florida. Mr. Speaker, today I attended the funeral of a fallen Air Force Special Operator from my district and missed the following rollcall votes: Nos. 495 and 496 on September 16, 2015.

Had I been present, I would have voted: rollcall vote No. 495—H.R. 1214—National Forest Small Tracts Amendments Act of 2015, as amended, "aye," and rollcall vote No. 496—H.R. 1949—National Liberty Memorial Clarification Act of 2015, as amended, "aye."

PERSONAL EXPLANATION

Mr. GUTIÉRREZ. Mr. Speaker, I was unavoidably absent in the House chamber for votes on Wednesday, September 16, 2015. Had I been present, I would have voted "yea" on rollcall votes 495 and 496.

AUTHORIZING THE SPEAKER TO DECLARE A RECESS ON THURSDAY, SEPTEMBER 24, 2015, FOR THE PURPOSE OF RECEIVING IN JOINT MEETING POPE FRANCIS OF THE HOLY SEE

Mr. AMODEI. Mr. Speaker, I ask unanimous consent that it may be in order at any time on Thursday, September 24, 2015, for the Speaker to declare a recess, subject to the call of the Chair, for the purpose of receiving in Joint Meeting Pope Francis of the Holy See.

The SPEAKER pro tempore (Mr. HURD of Texas). Is there objection to the request of the gentleman from Nevada?

There was no objection.

CRAGS, COLORADO LAND EXCHANGE ACT OF 2015

Mr. LAMBORN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2223) to authorize, direct, expedite, and facilitate a land exchange in El Paso and Teller Counties, Colorado, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2223

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Crags, Colorado Land Exchange Act of 2015".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to authorize, direct, expedite and facilitate the land exchange set forth herein; and

(2) to promote enhanced public outdoor recreational and natural resource conservation opportunities in the Pike National Forest near Pikes Peak, Colorado via acquisition of the non-Federal land and trail easement.

SEC. 3. DEFINITIONS.

In this Act:

(1) BHI.—The term "BHI" means Broadmoor Hotel, Inc., a Colorado corporation.

(2) FEDERAL LAND.—The term "Federal land" means all right, title, and interest of the United States in and to approximately 83 acres of land within the Pike National Forest, El Paso County, Colorado, together with a non-exclusive perpetual access easement to BHI to and from such land on Forest Service Road 371, as generally depicted on the map entitled "Proposed Crags Land Exchange–Federal Parcel–Emerald Valley Ranch", dated March 2015.

(3) NON-FEDERAL LAND.—The term "non-Federal land" means the land and trail easement to be conveyed to the Secretary by BHI in the exchange and is—

(A) approximately 320 acres of land within the Pike National Forest, Teller County, Colorado, as generally depicted on the map entitled "Proposed Crags Land Exchange–Non-Federal Parcel–Crags Property", dated March 2015; and

(B) a permanent trail easement for the Barr Trail in El Paso County, Colorado, as generally depicted on the map entitled "Proposed Crags Land Exchange–Barr Trail Easement to United States", dated March 2015, and which shall be considered as a voluntary donation to the United States by BHI for all purposes of law.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture, unless otherwise specified.

SEC. 4. LAND EXCHANGE.

(a) IN GENERAL.—If BHI offers to convey to the Secretary all right, title, and interest of BHI in and to the non-Federal land, the Secretary shall accept the offer and simultaneously convey to BHI the Federal land.

(b) LAND TITLE.—Title to the non-Federal land conveyed and donated to the Secretary under this Act shall be acceptable to the Secretary and shall conform to the title approval standards of the Attorney General of the United States applicable to land acquisitions by the Federal Government.

(c) PERPETUAL ACCESS EASEMENT TO BHI.—The nonexclusive perpetual access easement to be granted to BHI as shown on the map referred to in section 3(2) shall allow—

(1) BHI to fully maintain, at BHI's expense, and use Forest Service Road 371 from its junction with Forest Service Road 368 in accordance with historic use and maintenance patterns by BHI; and

(2) full and continued public and administrative access and use of FSR 371 in accordance with the existing Forest Service travel management plan, or as such plan may be revised by the Secretary.

(d) ROUTE AND CONDITION OF ROAD.—BHI and the Secretary may mutually agree to improve, relocate, reconstruct, or otherwise alter the route and condition of all or portions of such road as the Secretary, in close consultation with BHI, may determine advisable.

(e) EXCHANGE COSTS.—BHI shall pay for all land survey, appraisal, and other costs to the Secretary as may be necessary to process and consummate the exchange directed by this Act, including reimbursement to the Secretary, if the Secretary so requests, for staff time spent in such processing and consummation.

SEC. 5. EQUAL VALUE EXCHANGE AND APPRAISALS.

(a) APPRAISALS.—The values of the lands to be exchanged under this Act shall be determined by the Secretary through appraisals performed in accordance with—

(1) the Uniform Appraisal Standards for Federal Land Acquisitions;

(2) the Uniform Standards of Professional Appraisal Practice;

(3) appraisal instructions issued by the Secretary; and

(4) shall be performed by an appraiser mutually agreed to by the Secretary and BHI.

(b) EQUAL VALUE EXCHANGE.—The values of the Federal and non-Federal land parcels exchanged shall be equal, or if they are not equal, shall be equalized as follows:

(1) SURPLUS OF FEDERAL LAND VALUE.—If the final appraised value of the Federal land exceeds the final appraised value of the non-Federal land parcel identified in section 3(3)(A), BHI shall make a cash equalization payment to the United States as necessary to achieve equal value, including, if necessary, an amount in excess of that authorized pursuant to section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(2) USE OF FUNDS.—Any cash equalization moneys received by the Secretary under paragraph (1) shall be—

(A) deposited in the fund established under Public Law 90–171 (commonly known as the "Sisk Act"; 16 U.S.C. 484a); and

(B) made available to the Secretary for the acquisition of land or interests in land in Region 2 of the Forest Service.

(3) SURPLUS OF NON-FEDERAL LAND VALUE.—If the final appraised value of the non-Federal land parcel identified in section 3(3)(A) exceeds the final appraised value of the Federal land, the United States shall not make a cash equalization payment to BHI, and surplus value of the non-Federal land shall be considered a donation by BHI to the United States for all purposes of law.

(c) APPRAISAL EXCLUSIONS.—

(1) SPECIAL USE PERMIT.—The appraised value of the Federal land parcel shall not reflect any increase or diminution in value due to the special use permit existing on the date of the enactment of this Act to BHI on the parcel and improvements thereunder.

(2) BARR TRAIL EASEMENT.—The Barr Trail easement donation identified in section 3(3)(B) shall not be appraised for purposes of this Act.

SEC. 6. MISCELLANEOUS PROVISIONS.

(a) WITHDRAWAL PROVISIONS.—

(1) WITHDRAWAL.—Lands acquired by the Secretary under this Act shall, without further action by the Secretary, be permanently withdrawn from all forms of appropriation and disposal under the public land laws (including the mining and mineral leasing laws) and the Geothermal Steam Act of 1930 (30 U.S.C. 1001 et seq.).

(2) WITHDRAWAL REVOCATION.—Any public land order that withdraws the Federal land from appropriation or disposal under a public land law shall be revoked to the extent necessary to permit disposal of the Federal land parcel to BHI.

(3) WITHDRAWAL OF FEDERAL LAND.—All Federal land authorized to be exchanged under this Act, if not already withdrawn or segregated from appropriation or disposal under the public lands laws upon enactment of this Act, is hereby so withdrawn, subject to valid existing rights, until the date of conveyance of the Federal land to BHI.

(b) POSTEXCHANGE LAND MANAGEMENT.—Land acquired by the Secretary under this Act shall become part of the Pike-San Isabel National Forest and be managed in accordance with the laws, rules, and regulations applicable to the National Forest System.

(c) EXCHANGE TIMETABLE.—It is the intent of Congress that the land exchange directed by this Act be consummated no later than one year after the date of the enactment of this Act.

(d) MAPS, ESTIMATES, AND DESCRIPTIONS.—

(1) MINOR ERRORS.—The Secretary and BHI may by mutual agreement make minor boundary adjustments to the Federal and non-Federal lands involved in the exchange, and may correct any minor errors in any map, acreage estimate, or description of any land to be exchanged.

(2) CONFLICT.—If there is a conflict between a map, an acreage estimate, or a description of land under this Act, the map shall control unless the Secretary and BHI mutually agree otherwise.

(3) AVAILABILITY.—Upon enactment of this Act, the Secretary shall file and make available for public inspection in the headquarters of the Pike-San Isabel National Forest a copy of all maps referred to in this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Colorado (Mr. LAMBORN) and the gentleman from Arizona (Mr. GRIJALVA) each will control 20 minutes.

The Chair recognizes the gentleman from Colorado.

GENERAL LEAVE

Mr. LAMBORN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the bill under consideration.

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

There was no objection.

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

I rise in strong support of H.R. 2223, the Crags, Colorado Land Exchange Act of 2015, which I introduced, along with Mr. POLIS, to facilitate a land exchange in El Paso and Teller Counties in Colorado.

Specifically, this legislation would convey to the United States the 320-acre Crags property located on the west side of Pikes Peak that is currently owned by the Broadmoor Hotel and that is a perpetual public access easement for the lower portion of the popular Barr Trail.

In exchange, an 83-acre Federal parcel located at Emerald Valley Ranch on the southeast side of Pikes Peak and that is a perpetual access easement along two Forest Service roads would be transferred to the Broadmoor.

This exchange would eliminate the management and liability issues currently facing the United States because of the significant upgrades and improvements that Broadmoor has made to the Emerald Valley Ranch parcel.

Mr. Speaker, this land exchange will also provide increased outdoor recreational opportunities for the public. The 320-acre Crags property is completely surrounded by the Pike National Forest and has been the top acquisition priority for the Pikes Peak Ranger District for several years.

The property provides several opportunities to connect forest system trails emanating from The Crags Campground with trails in the Putney Gulch area. In addition, existing trails within the property could become key links in the proposed Ring the Peak Trail.

I would like to thank Chairman BISHOP and Chairman MCCLINTOCK and the entire staff of the Subcommittee on Federal Lands for all of their hard work in bringing this bill to the floor tonight to help increase the economic and recreational opportunities around Colorado Springs. I encourage my colleagues to support this legislation.

I reserve the balance of my time.

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

Rather than repeat what the chairman of the subcommittee just indicated on H.R. 2223, let me just say that the exchange eliminates a large private inholding in the National Forest and removes the need for the Federal land management of the Emerald Valley Ranch. The Forest Service testified in support of the legislation.

I want to thank my colleagues, Congressman POLIS and Congressman LAMBORN, for their hard and constructive work on this legislation. This is a good, bipartisan piece of legislation, and I congratulate its two sponsors. I urge its passage.

Mr. Speaker, I yield back the balance of my time.

Mr. LAMBORN. Mr. Speaker, in conclusion, I appreciate the ranking member, Representative GRIJALVA, for his work on the committee.

We have many spirited discussions. Sometimes we don't agree, but sometimes we do. This is one of those great occasions when, on a bipartisan basis, we do agree.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado (Mr. LAMBORN) that the House suspend the rules and pass the bill, H.R. 2223.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

□ 1930

CONGRATULATING SABADO GIGANTE AND DON FRANCISCO

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

Ms. ROS-LEHTINEN. Mr. Speaker, I rise tonight to congratulate Mario Kreutzberger, better known as Don Francisco, for his successful career as the host of Sabado Gigante whose last airing will be this Saturday, September 19.

From its humble beginnings in the country of Chile 53 years ago, Sabado Gigante has captivated and won the hearts of audiences throughout Latin America and especially in our south Florida community.

Nearly 30 years since its first transmission into the United States, Sabado Gigante has attracted loyal and enthusiastic viewers who enjoy the combination of entertainment and coverage of current events. In 2012, the Guinness Book of Records listed Sabado Gigante as the world's longest running TV variety show.

Don Francisco has also been dedicated to promoting charitable giving through his Teleton and has served as a spokesperson for the Muscular Dystrophy Association. Wherever Don Francisco decides to go, he will not only find success, but also the heartfelt support of our community.

Congratulations—felicidades, Don Francisco. Godspeed.

HONORING VERONICA POTTER

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

Ms. DUCKWORTH. Mr. Speaker, I am here today to recognize one of my outstanding constituents, Ms. Veronica Potter, of Barrington, Illinois.

She recently wrote a letter to a hometown paper saying:

> I know that the service of women in our current history is applauded because the service is indeed equal to that of men in our military, but in World War II, there were many women involved in serving their country in the military, but as a whole, nothing is ever mentioned.

Well, Mr. Speaker, she is right, so I would like to mention her today here on the House floor.

The Women's Reserve was created in 1942 when the strain of our two-front war caused shortages in military personnel. Recognizing her country needed her in a time of war, Veronica selflessly volunteered and served in the U.S. Marines Corps Reserves from 1944 to 1946 and supported our country's efforts during World War II.

Veronica joined the Marines right out of high school. After basic training, she was deployed to the Marine base in Parris Island, South Carolina, for 2 years, where she contributed to the wartime operations on the base that helped train more than 204,000 marines destined for the front line in defense of our great Nation.

Ms. Potter served our country in a dire time of need and has not been properly recognized for her efforts.

Mr. Speaker, please join me in honoring and recognizing Veronica Potter, a woman who contributed to the success of the U.S. Marines during World War II.

GOVERNMENT SHUTDOWN

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

Mr. HONDA. Mr. Speaker, we are now 7 legislative days from yet another Republican government shutdown, simply

because the Republicans want to deny women access to comprehensive health care—7 days away from a government shutdown—and we have no solution to keep our government funded and running.

We have radio silence on how to strengthen our middle class, build bigger paychecks for all Americans, and invest our infrastructure.

In light of this Republican Congress' dysfunction, just this week, General Electric announced that, because of the ''political debate over America's global competitiveness and the future of the Export-Import Bank,'' it is shifting 500 manufacturing jobs out of the U.S.

As a representative of Silicon Valley, I know that manufacturing jobs, such as those at GE, are the foundation to reversing income inequality and igniting innovation.

Mr. Speaker, we cannot hold our government and our American livelihood hostage. I call upon my Republican colleagues to stop pulling a Kim Davis and do your job.

NEW JERSEY'S CONFECTIONARY INDUSTRY

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

Mr. GARRETT. Mr. Speaker, today, I rise to recognize an industry that has a large and very delicious impact on my home district in the Fifth District of New Jersey. I, of course, am talking about New Jersey's confectionary manufacturers.

I am proud to see New Jersey products in stores, not only throughout the State and the country, but around the world. The Fifth District's own Promotion in Motion and M&M Mars have contributed to countless fond memories of enjoying candy at sports games, movie theaters, and birthday parties; but the confectionary industry provides even more than just tasty treats.

In New Jersey and throughout the country, this industry is an economic driver comprised of family-owned businesses employing tens of thousands of employees across the State and across the country.

No doubt, New Jersey is a sweeter place thanks to the candy manufacturers that call our State of New Jersey home.

CONCERNING THE CONTINUING RESOLUTION

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

Mr. GENE GREEN of Texas. Mr. Speaker, Members, here we are, 2 weeks away from another potential shutdown of the government.

Do my Republican friends know how silly it sounds to threaten shutting down the entire government over a manufactured crisis for funding that does not even go to abortions?

Current law already withholds Federal funding from covering a woman's abortion, except in cases of extreme limited circumstances. To gamble with valuable Federal programs should be embarrassing.

Here are just a few examples of programs that will be affected if the GOP pursues a strategy that I doubt they would want to see happen.

The GOP shutdown would mean that the Centers for Disease Control would be unable to support the annual seasonal influenza program.

The GOP shutdown means we rely more on foreign energy as the issuance of permits for energy production on Federal lands stop. I certainly know my Republican colleagues wouldn't want to see that happen.

Head Start centers around the country would close. During fiscal year 2014, an estimated 1,600 Head Start agencies served over 927,000 children, including 71,000 in Texas. Apparently, our children are okay to target in a political debate.

Under the GOP shutdown, the Bureau of Alcohol, Tobacco, Firearms and Explosives would be affected; and gun permits will not be processed.

We could be using this time to debate the extension of valuable programs like the Export-Import Bank or the highway trust fund, but instead, we are going through the same theatrics we went through 2 years ago, which accomplished nothing.

Mr. Speaker, I encourage my colleagues to be reasonable and pass a clean continuing resolution so Congress can get back to work doing what the American people sent us here to do.

QUESTIONS FOR TONIGHT'S DEBATE

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

Ms. JACKSON LEE. Mr. Speaker, the good news of this place is a congratulations offered by my colleague just a few minutes ago to a 90-year-old lady who served in World War II and had never received a thank you.

Wouldn't it be a positive step to reflect on America and to be able to hold in this body positive things that shows the Congress working together? Yet, as has been mentioned, our colleagues want to defund Planned Parenthood and shut down the government.

I wonder whether or not, in this debate coming up, that any of the moderators will ask whether any of those debating will stand in shutting down the government. I wonder whether they will ask them whether they support voting rights and will support the restoration of the Voting Rights Act, like the Americans who walked 1,000 miles for justice.

I wonder whether or not, in fact, they would ask them whether they care anything about criminal justice reform and decriminalizing, if you will, this system where it has mass incarceration, children in jail, where it doesn't believe in rehabilitation for those who have served.

I wonder whether these individuals that have been making a lot of noise in front of the public who will be in the public eye all over America, Mr. Speaker, whether they will answer the real questions about America and bring us together.

Voting rights, health care for women, and making sure that we fix the criminal justice system, those are the questions that should be asked tonight.

LAND AND WATER CONSERVATION FUND

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2015, the gentleman from Arizona (Mr. GRIJALVA) is recognized for 60 minutes as the designee of the minority leader.

Mr. GRIJALVA. Mr. Speaker, I rise this evening to talk about the Land and Water Conservation Fund, our Nation's most important conservation and outdoor recreation program.

For more than 50 years, the Land and Water Conservation Fund has conserved our Nation's most cherished natural spaces and historic landmarks. This groundbreaking program, created and reauthorized on a strong bipartisan basis, has protected and expanded iconic landscapes in every State and is responsible for more than 40,000 State and local outdoor recreation projects, from playgrounds and baseball fields to urban parks and nature refuges.

By reinvesting revenues from offshore oil and gas development in communities across America, the Land and Water Conservation Fund has become ''America's best parks program.''

In my home State of Arizona, the fund has provided approximately $223 million in funding to help preserve iconic places like the Grand Canyon, Buenos Aires National Wildlife Refuge, and the San Pedro Riparian National Conservation Area.

Recently, I had the pleasure of joining National Park staff and students from Cholla High School, Desert View High School, and Pueblo High School for a day of appreciation at Saguaro National Park West. For many of the students that joined us on this visit, this was their first visit to Saguaro, despite it being a 15-minute drive from Tucson.

Saguaro officials have leveraged the Land and Water Conservation Fund funding to benefit Arizonans, the desert tortoise, Gila monsters, and other desert wildlife that call Saguaro home. Without it, our students would have had a smaller national park to experience, less to learn, and less to enjoy.

The Land and Water Conservation Fund has preserved iconic sites like this all over the country. Our trip to Saguaro was hardly unique. These stories of discovery happen every day thanks to the Land and Water Conservation Fund.

Unfortunately, the fund's authorizing legislation expires on September 30, 2015. Six legislative days remain before the clock runs out. The stakes are high.

If the Land and Water Conservation Fund is not renewed, special wild areas will be at greater risk of overdevelopment, and our Nation's ability to conserve lands for future generations will be severely undercut.

Congress should build on the Land and Water Conservation Fund's legacy. We should stop playing political games and do what the public clearly wants us to do. We should permanently reauthorize and fully fund the program. It is that simple.

The House Republican leadership has not acted to extend the Land and Water Conservation Fund. They seem perfectly content to let it expire.

Rather than meeting with their fellow legislators and reaching a compromise, as Senate Republicans have done, the House Republican leadership, once again, has shown an inability to do what is best for sportsmen, the outdoor industry, recreation enthusiasts, and wildlife. By allowing the fund to expire, they serve no one's interest and create a deficit in our legacy as protectors of public land and public resources in this country.

This is not a controversial program. It protects public land for future use. There is no more an American goal than that, but it is held up by a leadership team that would rather do nothing.

Past Congresses have reauthorized the Land and Water Conservation Fund with support from both parties. It shouldn't be any different this time. The support is there.

On April 15, as the chart illustrates, a bill to permanently reauthorize the Land and Water Conservation Fund was introduced. To date, the bill boasts support from over 165 Members of Congress, both Republican and Democrats.

I have made a request—as the sequence of time that we have been waiting—asking for a full hearing, a markup, and an eventual vote on this floor.

We asked for a hearing on H.R. 1814. I made a request to hold a vote on H.R. 1814. These requests have fallen on deaf ears.

The clock is running out. House Republican leaders must act. It won't take much to get the Land and Water Conservation Fund back on track, but they have to say yes to moving forward and to doing a bipartisan legislation, which is what the colleagues of this Chamber are asking for. It is time for action.

We are calling, in a bipartisan way, on our colleagues to permanently reauthorize the Land and Water Conservation Fund. To not do so is not carrying out our full responsibilities as stewards of the public lands, but also, more importantly, when you have before you a request by over 165 Members on a bipartisan manner on a bill that has compromises within it that were reached at the Senate level as well, it appears to me that not to do this fund is to set up this fund for failure, to set up this fund for dismantling, and to set up this fund to redirect the purpose for which this fund was created 50 years ago.

Mr. Speaker, I yield to the gentlewoman from Massachusetts (Ms. TSONGAS), the ranking member for the Subcommittee on Federal Lands.

□ 1945

Ms. TSONGAS. Mr. Speaker, I would like to thank Ranking Member GRIJALVA for his leadership and advocacy on behalf of the Land and Water Conservation Fund.

We have a generational responsibility to protect our Nation's remaining natural and historic resources for our children and our grandchildren. The Land and Water Conservation Fund has been an instrumental tool, an invaluable tool in this effort.

For over 50 years, the Land and Water Conservation Fund has carried out a simple, bipartisan idea: use revenues from the depletion of one Federal resource—offshore oil and gas—to conserve another—our land and water—and provide recreation opportunities for all Americans. It does not cost taxpayer money or contribute to the Federal deficit, relying instead on royalties paid by oil and gas companies in exchange for their right to develop offshore resources in waters that belong to all of the American people.

LWCF has also proven to be a critical tool to protect some of our Nation's most significant cultural and historic sites, protecting places that have shaped and defined who we are as a people and a country and would not have been protected without support from the Federal Government.

This past weekend, I was honored to host Secretary of the Interior Sally Jewell at my annual River Day, an event I have held in my district for the past 9 years that celebrates the rivers that connect the Third Congressional District of Massachusetts and the many partners who work to protect these resources that provide clean drinking water, create tremendous recreational opportunities, and bring natural beauty to our daily life.

As part of River Day, Secretary Jewell and I visited Minute Man National Historical Park, which commemorates the famous shot heard 'round the world in the very beginnings of our country. Like many national parks and public lands across the country, Minute Man, and all those who visit, have directly benefited from the Land and Water Conservation Fund.

Barrett's Farm is the former home of Colonel James Barrett, the commander of the Middlesex militia during the Revolutionary War. His farm was used to store colonial militia weapons and was the objective of the British march on Concord that inspired Paul Revere's ride. British forces marched from Boston to seize the munitions stored at the farm, but Barrett's militia confronted the British soldiers at the North Bridge, where the shot heard 'round the world was fired, launching America's war for independence.

For many years, this important historic site, Barrett's Farm, was privately owned, restricted from the public, and was in a complete state of disrepair. Thanks to the Land and Water Conservation Fund, the National Park Service was able to purchase Barrett's Farm from a willing, private local foundation, ensuring that this nationally significant historical site is preserved to be enjoyed by visitors for many years to come.

Fifty years ago, our predecessors in this Congress had the wisdom and foresight to establish the Land and Water Conservation Fund for the benefit of future generations of Americans. Dismantling this program or letting its authorization expire disadvantages all in real and significant ways. I can't imagine the loss of the important piece of history of Barrett's Farm that the LWCF made possible to preserve.

I urge my colleagues to join me in supporting full funding and permanent reauthorization of the Land and Water Conservation Fund, making sure that it remains one of our Nation's most successful and effective conservation tools.

Mr. GRIJALVA. Mr. Speaker, I yield to the gentleman from California's 47th District (Mr. LOWENTHAL), the ranking member of the Subcommittee on Energy and Mineral Resources.

Mr. LOWENTHAL. Mr. Speaker, I thank Ranking Member GRIJALVA for calling us together for this Special Order hour to highlight the need for the Land and Water Conservation Fund and for his leadership in seeking a permanent reauthorization of the Land and Water Conservation Fund.

As has been pointed out, the Land and Water Conservation Fund is far and away our Nation's most important conservation program. The LWCF is a popular and successful bipartisan program for the conservation and protection of America's irreplaceable natural, historic, cultural, and outdoor landmarks.

Over its 50-year history, the fund has conserved more than 5 million acres for parks, for recreation, for forests, for refuges, and for other land through the Federal program, but that is just part of the LWCF. Also, more than 2.6 million acres has been saved in communities throughout every State in the Nation.

It has conserved iconic landscapes in every State. It is responsible for more than 40,000 State and local outdoor recreational projects at no cost, as has been pointed out, to the American taxpayer. In fact, according to a recent economic analysis, every dollar invested in the conservation of public lands through the LWCF leads to $4 in economic activities to local communities.

Our Nation's conserved public lands are the essential infrastructure for a

vibrant outdoor recreational economy that contributes over $646 billion to the economy each year and supports more than 1 in every 15 jobs in the United States.

That economic activity and job creation plays out locally all over the country, not only in the broad service and manufacturing sectors, but in the thousands upon thousands of recreational destination areas and the gateway communities where we all go to enjoy the outdoors. My home State of California has received more than $2.3 billion in LWCF funding over the past five decades, which has helped to protect some of our State's most treasured places.

The Land and Water Conservation Fund also plays a crucial role in building up the ability of our lands to reduce the damages caused by climate change. Our network of public lands plays a critical role in addressing the challenges that climate change poses to our forests, fish and wildlife, and riparian resources. America's forests naturally capture a remarkable 13 percent of U.S. carbon emissions each year, but the U.S. Forest Service projects that private forests, storing more than 2 billion tons of carbon, are at risk of development in addition. Coastal wetlands, we also know, can lessen the damages caused by major storms, and land conservation in the wildland-urban interface can reduce home losses from major fires.

Continued investment in the Land and Water Conservation Fund will be essential to help us buffer the impacts of a changing climate. If funding is allowed to expire, the American public will lose one of our greatest tools to ensure the protection of our public lands and waters and the ability of everyone to go outside and to enjoy these wonderful resources. We simply cannot let that happen.

Congress must honor the bipartisan commitment it made over 50 years ago and ensure that our children and our grandchildren get to enjoy America's treasured outdoor spaces the same way we have been able to enjoy those spaces. We must permanently reauthorize the LWCF.

Mr. GRIJALVA. Mr. Speaker, I yield to the gentleman from California's Second District (Mr. HUFFMAN), the ranking member on the Water, Power, and Oceans Subcommittee of the Committee on Natural Resources.

Mr. HUFFMAN. Mr. Speaker, for more than 50 years, the Land and Water Conservation Fund has protected America's natural heritage. This fund is one of our Nation's most important conservation tools. Every single year, millions of Americans hike the trails that this fund has helped build, they visit the national parks that this fund helped create, and they enjoy the wildland vistas that it helped protect.

This fund has supported more than 40,000 projects in nearly every county in every State in our Nation. In my own district on California's north coast, it has funded projects in Redwood National Park, in Six Rivers National Forest, and in the Point Reyes National Seashore.

Since 2004, it has helped add more than 1,000 acres to the King Range National Conservation Area, which is one of the most rugged and spectacular backpacking areas you will find anywhere in the continental United States. It is also known as the Lost Coast.

The positive impact that this fund has had is simply staggering. The Land and Water Conservation Fund has permanently protected 5 million acres of public lands, and that includes sections of American icons, like the Grand Canyon National Park and the Appalachian Trail. Best of all, it has done all of this at no taxpayer expense. The Land and Water Conservation Fund is financed by a portion of offshore drilling fees.

Congress needs to remember that preserving our natural heritage isn't just good for our environment; it is good for our economy. Outdoor recreation is a cornerstone for many local and State economies, bringing tourists from around the world to shop at local businesses, to eat at restaurants, to stay at hotels.

In California alone, outdoor recreation supports $85.4 billion in consumer spending and 732,000 jobs across the State; but in just 2 weeks, authorization of this fund will expire, leaving local economies in jeopardy, leaving our land managers struggling to make up for lost funding.

Fifty years ago, Congress created the Land and Water Conservation Fund with an overwhelming bipartisan vote. I hope Congress can come together now to support H.R. 1814, a bipartisan bill sponsored by my friend Mr. GRIJALVA, that permanently reauthorizes the Land and Water Conservation Fund. America's natural heritage and our economy depend on it.

Mr. GRIJALVA. Mr. Speaker, I yield to the gentlewoman from Washington's First District (Ms. DELBENE).

Ms. DELBENE. Mr. Speaker, I have the honor of representing one of the most beautiful and diverse districts in the country. It includes the Alpine Lakes Wilderness, the Mount Baker-Snoqualmie National Forest, the North Cascades National Park, and the North Creek Forest, all incredible areas for people throughout our region and across the country to enjoy.

Unfortunately, in just 14 days, the congressional authorization for the Land and Water Conservation Fund will expire. LWCF was established 50 years ago to maintain outdoor recreational opportunities nationwide. It is the only Federal program dedicated to the conservation of our national parks, forests, wildernesses, wildlife refuges, State and local parks, and working forests.

Since its inception, the fund has invested $637 million in Washington State projects alone, including three grants for the North Creek Forest, a 64-acre park I visited just last month. A community organization called Friends of North Creek Forest and a college student named Jordan from the University of Washington at Bothell gave me a tour of the forest.

For his senior thesis, Jordan has worked with the community and conservation volunteers to clean up the site and design new trails for hikers and hundreds of schoolchildren to enjoy. This forest is a safe and healthy place for our families and students to have fun and learn about species diversity and the importance of conservation efforts. This is just one project among thousands across the country.

Without a new authorization for this critical program, environmental conservation projects and Washington's outdoor recreational industry would be needlessly harmed because not only is the Land and Water Conservation Fund crucial for protecting the Pacific Northwest's beautiful spaces, it is also important for our State's economy as well as the entire country's. In Washington State alone, outdoor recreation supports nearly 200,000 jobs and contributes $20 billion a year to our economy.

The Land and Water Conservation Fund uses no taxpayer dollars and is funded through oil and gas receipts paid by energy companies. Unfortunately, in the past, Congress has diverted this money for other uses. That is why I, along with 159 of my colleagues, have cosponsored a bill to permanently reauthorize the fund.

My beautiful State boasts some of our Nation's most beautiful forests, mountains, and waterways, and taking care of these natural resources and protecting our environment is critical to preserving the quality of life that we cherish.

□ 2000

We can't risk defunding the great work of these environmental conservation projects, which is why Congress must reauthorize the Land and Water Conservation Fund.

I want to thank Congressman GRIJALVA for organizing this Special Order hour on such a critical issue.

Mr. GRIJALVA. Mr. Speaker, after September 30, the authorization for the Land and Water Conservation Fund expires. That date is a looming date for the Republican leadership of this House.

With it comes the talk and potential of a government shutdown. Other critical programs that face reauthorization are also ending on September 30.

Part of the issue of leadership is to allow the House to work its will. Until this House has the opportunity to deal with this issue of the Land and Water Conservation Fund, we will continue to not know its status and we will watch the agonizingly slow and painful dismantling and end of this program.

The reauthorization has, in its history, been bipartisan and bicameral.

This legislation enjoys bipartisan and bicameral support.

Both Republican and Democratic colleagues are part of the 165 sponsors of the legislation in the House. The compromise in that committee was between the ranking member and the chair of that committee in the Senate.

So I think it behooves us to look at this fund, for every day past the 30th of September $2.5 million will be lost to that fund, money that we cannot afford to lose.

Mr. Speaker, to wait for the ashes of the Land and Water Conservation Fund after the 30th and then to develop it without bipartisan input, without the Democrats playing any role at all in legislation that redefines the Fund and that includes purposes for which the Fund was never established and redirect its funds into areas which are far from the mission of the Fund when it was established 50 years ago, is effectively killing the Fund.

The cuts in our Federal land agencies and land management agencies that have endured in the last four or five budgets point to the fact that the Land and Water Conservation Fund has become an essential supplemental support to many of our public lands and the projects and outdoor activities and wildlife protections that the American people expect.

I suggest to the House that this reauthorization should be devoid of controversy and should be devoid of partisan bickering and political grandstanding. This is a routine item that requires action by the House.

Mr. Speaker, before the time runs out, fully funding and fully authorizing the Land and Water Conservation Fund on a permanent basis is what the public is asking for and is what 165 Members of this House are asking for.

I believe that the Republican leadership of this House has to act and allow the House of Representatives, the elected Representatives of the people of this Nation, to work its will and take that vote.

My colleagues have mentioned the economic benefit and priorities of the Land and Water Conservation Fund. Let me just add that a bipartisan poll found that 88 percent of the voters support continuing to set aside offshore oil and gas drilling fees that should go into the Land and Water Conservation Fund and 85 percent of Americans want the fund to be fully funded.

For every dollar that is spent on Land and Water Conservation Funds and that is invested, it results in a return of $4 in economic value from the natural resources goods and services alone.

I think it is worth noting that $900 million comes from those offshore oil and gas resources and $17 billion that is collected from those fees and resources that are collected from offshore drilling and gas and oil development goes for other purposes elsewhere in the government.

So we are talking essentially about a very small sum of money that many of us felt should have been raised a long time ago. We are jeopardizing this sum of money.

In jeopardizing this sum of money, we are further dismantling and further hurting the public's use of our public lands and, more importantly, the protections and cultural resource activities that occur as a result of the fund.

It is a simple matter. Bring it to a hearing. Bring it to a vote. I would urge the leadership of this House that it is way past time. To agonizingly wait for September 30 is not a function of government. It is cynical. It is wrong.

When you have a bill before you that enjoys the bipartisan support that H.R. 1814 enjoys, it is time to bring it to the floor and allow this Congress to vote and allow this bill to be reauthorized on a permanent level, on a permanent basis.

Mr. Speaker, I yield back the balance of my time.

IRAN NUCLEAR AGREEMENT

The SPEAKER pro tempore (Mr. BUCK). Under the Speaker's announced policy of January 6, 2015, the Chair recognizes the gentleman from Texas (Mr. GOHMERT) for 30 minutes.

Mr. GOHMERT. Mr. Speaker, actually, there are some people that it is more of a pleasure to work in this House with than others.

Congressman BUCK, you are one of those that it is a real honor and privilege to work with.

Mr. Speaker, I am back here on the floor to talk about one of the most important issues, maybe the most important issue, of this Congress, recent Congresses, maybe future Congresses, because it has to do with whether or not the Republican-marked majority in the Senate are going to just appear to oppose the Iranian agreement or if they are going to stop it.

The Corker-Cardin bill was done, I have no reason to doubt, with the best of intentions. I didn't vote for it. I could see what I was afraid was coming, and it is what has come. But those that voted for it had a legitimate basis for doing so.

Because the President of the United States, Barack Obama, had said this is basically an executive agreement, he doesn't need the Senate's vote. And that is true if it is not a treaty.

We had the Secretary of State say that he was—and he said it—negotiating a nonbinding agreement. Those were the kind of statements from which the Corker-Cardin bill was based.

And so that bill gave the House and the Senate each a vote on something that was considered to be a nonbinding executive agreement with Iran. However, after the U.N. Security Council voted on it, finally Congress got to see the so-called nonbinding agreement.

After the U.N. voted on it, then we keep getting messages about: Gee, you cannot stop this. Because to stop it would put us in breach of the agreement. How can we be in breach of a nonbinding agreement?

Well, the truth came out once we had a chance to read the so-called Iranian deal, Iranian agreement. It is a treaty. There is no question it is a treaty.

I don't care whose law you go under. You cannot amend a treaty with anything that falls short of being a treaty itself.

It is just like here in the House. You can't amend legislation unless you amend it with other legislation, although we have bureaucracies like the EPA and others who have just decided to go off on their own and start legislating against the clear and expressed intent of Congress. But it is not lawful. They are acting unlawfully. They are acting outside the bounds of the Constitution.

The President has usurped power that is not his. He has done so in setting out an amnesty. He spoke it, as any good monarch would, and then the Secretary of Homeland Security put it into memos.

They effectively changed law from what it was on naturalization and immigration passed by Congress, signed by the President. They just changed it with the President speaking it and then Jeh Johnson, the Secretary of Homeland Security, doing memos.

Well, that is one thing. It does damage to this country. But when we are talking about an agreement which, under most everybody's description, will allow Iran to get nuclear weapons, there is disagreement whether that will be later or sooner.

But it seems to be almost unanimous that, yes, it is going to allow them to get nukes, but it will be later. Others of us know. They have cheated on every agreement they have entered since 1979, when they came into existence as mullahs running a country.

Yes, President Carter welcomed the Ayatollah Khomeini as a man of peace—a peace of destruction—but they have broken every international agreement in which they participated in since 1979.

They have never been made to account or held accountable for taking our embassy employees hostage for over a year.

For heaven's sake, it is bad enough the administration negotiated with a man that is being charged with desertion in return for giving radical Islamists, murderers, and terrorists back to continue to create havoc and kill Americans and others, but now we are going to give them the ability to have an agreement.

Well, they have broken every agreement they have entered for 36 years. But this one, we think we in the Obama administration are so special that this time they are really not going to breach this agreement, despite the fact that the Ayatollah himself and the other top leaders still say death to America, they still say they are plotting the destruction or overthrow of

Israel, they still say they are plotting the destruction of the United States.

And all the time they are doing that, we have people who didn't learn enough from the disastrous agreement with North Korea that gave the North Koreans nuclear weapons. Now they are trying the same strategy.

If we are nice enough and let them have the wherewithal to produce nuclear weapons, then maybe they really won't do that.

And if they do, it will be years down the road. But you don't even know in Congress what the side deals are between the IAEA and Iran.

So where it says that this will hold Iran at bay for 8 years in this provision or until the IAEA states the broader conclusion that Iran's nuclear material is being used for peaceful purposes, whichever is sooner, we don't even know what the deal between the IAEA and Iran is.

I heard recently the IAEA has been quoted as saying that, as far as they know, their nuclear material is being used for peaceful purposes, but they haven't been allowed into the material facilities for years.

As soon as this administration were to decide the agreement is finalized and ratified, the IAEA could turn right around and say: As far as we know, it is peaceful materials, but we haven't been allowed into the military facilities where they are doing the real nuclear weapons work. They are going to give us samples, and the samples they gave us showed they are using it for peaceful purposes.

So surely they wouldn't lie, even though they have lied about every international agreement they have entered since 1979.

□ 2015

For some reason, these people think they wouldn't lie now. I am telling you that this Iranian agreement has to be stopped, and the United States voters gave the United States Senate over to a majority of Republicans in the last elections. As our great President has said, elections have consequences.

Now, he acts like the elections, where we got a majority, Republicans got a majority in the House, that that was not meaningful, and he acts like the voters giving the majority to Republicans in the Senate, that didn't count, but it does count.

The only way it is going to count, it is going to have consequences, is if the Senate stands up—and I would encourage them, their leaders. Mr. Speaker, I don't think I am asking too much to ask that the Republican leadership have the same or close to the same amount of backbone that HARRY REID did when he suspended cloture on confirmations. I hope that is not too much to ask.

Just have HARRY REID—just almost as much as HARRY REID has stood up for things he believes in, we are asking the Senate to, the Republicans in the Senate, please stand up, almost as much as HARRY REID did when he set aside cloture on confirmations.

Now, a number of us sent a letter to Senate Majority Leader MCCONNELL, down the hall, imploring him to treat the Iranian agreement as the treaty it is because, if they just go along with the fiction that the Iranian agreement does fall under the Corker bill and, therefore, it takes two-thirds to disapprove in the Senate, two-thirds to disapprove in the House, well, here in the House, we have said the Corker bill doesn't apply at this time for sure. I would submit it doesn't apply at all.

All we have to do is rely on our founding document, the Constitution, ratified, made effective 1789, written 1787, and this article II, section 2, second paragraph, beginning of the paragraph says the President ''shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur.''

The last thing the President wants is for us to follow the Constitution here because the Iranian agreement is a treaty. It modifies other treaties, like the nonproliferation treaty.

It also, as was specifically not contemplated in the Corker bill, it deals with allowing them to have weapons, purchase weapons, armaments, that was not supposed to be in the Iranian agreement.

It also addresses the sanctions allowing them to have over $100 billion, to $150 billion, so that they can use it for terrorist activity, so that more Americans and Israeli, Jews, Christians, can be terrorized and killed—and I shouldn't fail to mention moderate Muslims. They are at every bit as much risk—or more—as Christians and Jews because the first people they go after are Muslims that disagree with them.

It is clearly a treaty. All the Senate has to do is take the example that HARRY REID gave when he set aside cloture with 51 Democratic votes, so they could get through a whole bunch of judges confirmed.

It must have been in hopes that they could have judges get to the bench that might have been stopped otherwise, judges like Justice Ginsburg and Justice Kagan, who violated the law by not disqualifying themselves on the same-sex marriage ruling. They performed same-sex marriages.

The law requires them to, therefore, disqualify themselves because, by their actions and words, they made clear they thought it was constitutional. Their impartiality was beyond being reasonably questioned. They didn't have any impartiality.

I guess, when Leader REID, at the time, got 51 Democrats to remove cloture as a problem for their confirmations, he probably did get some more judges confirmed.

This is so much more serious—even then that, as serious as that is—because, if the Senate does not treat the Iranian agreement as the treaty it is, then the President's already saying he is going to treat it as being approved—ratified is what that means.

When our U.S. administration treats the Iranian agreement as ratified, then when our dear friend in the Middle East, Israel, defends itself, then the United States, under Commander in Chief Barack Obama, will have to be at war with Israel for defending themselves against Iran continuing to move toward nuclear weapons.

Now, it is possible, I don't think it will happen, but it is possible that squeamish in Israel could win the day by saying—when we said ''never again'' all those years, we meant never again, except we are going to let Iran have nukes and let them nuke us once they have nuclear weapons.

Other than the millions of Jews that may be killed with nuclear weapons Iran has, other than that, we mean never again, but I don't think that is what a majority of Israelis are going to accept.

I have such complete respect for Prime Minister Netanyahu—I disagree with him on issues; that is what friends often do. I don't believe when Prime Minister Netanyahu has said never again, he meant never again after the Iranians nuke Israeli cities. They are going to have to do something.

If the Senate, with the Republican majority, does not stand up and have a ratification vote on this treaty, the Iranian treaty, and in that vote, fail to get the two-thirds to concur, as our Constitution requires, then President Obama is going to go forward as if it were ratified; and the consequences in the Middle East and to the United States will be absolutely devastating.

As bad as the leadership is in North Korea, they are not radical Islamists. The leaders in North Korea do not advocate or at least haven't been advocating suicide bombers. They haven't been advocating that, if you die blowing up lots of innocent people in Israel or the United States, you go to paradise. They don't advocate that in North Korea.

This is 10 times—many, many, many times worse than North Korea having nukes. This is something that would be written about in history books years from now. If the Republican majority in the Senate doesn't stand up, it will be written that, when Iran got nuclear weapons—because the Republicans that were given the majority in the Senate, they were given the majority in the House, but they refused to use their majority to vote on ratification of what was clearly a treaty.

As a result, the President was able to move forward as if it had been ratified. Iran got nuclear weapons, and millions of people died, and it changed the course of Western civilization forever.

If they have their way, we are headed for a dark age with nukes leading the way, and that will be on our heads. The blood from all those lost lives, all of the murders, all of the bombings, all of

those that occur with the tens of billions of dollars that the Obama administration gives to Iran, all of those will not just be on President Obama's head, they will be on all of our heads because America gave us the majority in the House and Senate, and we didn't have the nerve to stop this horrendous, disastrous treaty with Iran.

Mr. Speaker, I even made an offer. I asked if the House just pass my resolution, which laid out this path for stopping this Iranian treaty, but it ended with the Senate calling a vote on ratification as a treaty the Iranian agreement is, and they fail to get two-thirds, then it can't be enforced in any United States court or any court anywhere around the world because our Constitution requires ratification, the Senate took the vote, and they did not ratify it.

I said, if the Senate follows up the House and does that, I won't run again. I know that will make a lot of people happy, especially those that I am making very angry tonight with what I have got to say. I know that there is a debate on, so probably most Republicans that are politically plugged in are watching the debate.

I skipped some of the debate. I cannot avoid taking the opportunity, at least one more time, to beg our Republicans in the Senate to stop this disaster to Western civilization so this chapter never has to be written about the demise of Western civilization going back to when the Senate refused to use their power to stop a horrendous treaty that gave to the biggest supporter of terrorism all of the instrumentality, all of the money they needed to set Western civilization back 100 years.

Here I am, Mr. Speaker. I promised you I wasn't going to take 30 minutes, but I had to take the time to beg the Senate: Use your majority; 51 votes is all it takes.

Yes, I know, I know, the President normally sends things over that get on the executive calendar, and that is when you vote on things for the President. I get that.

The President sent over this agreement. Now, he didn't call it a treaty, but you should recognize it is a treaty. You have got one of two ways to bring it to the floor. One is you can say it is part of the executive calendar.

He sent it over to us, and under our own procedure, we set that for a vote, but it is a treaty, so we are treating it as a treaty, and it is made through the executive calendar. I get that. You can do that in the Senate. Mr. Speaker, they could.

Or the other way is just to say: Look, the Constitution does not require that the President send us a treaty and say, Here is a treaty, now ratify it, for us to take a vote on a treaty on whether or not to ratify it.

That is not in the Constitution. It is in the Senate rules.

What does it take to suspend the Senate rules? It is 51 votes, and the Senate has that many votes that know how bad this deal is.

□ 2030

So either call it on the Executive Calendar because the President submitted, or suspend both the calendar rule and the cloture rule with 51 votes and then bring it to the floor of the Senate for a vote where you won't get the two-thirds needed to ratify it and we can all proclaim, ''This Iranian treaty is dead.'' Then we don't risk defending Iran against our friend Israel in the beginning of a war that should never have to start.

The alternative to this horrendous treaty is not war. As Michael Oren once said, the day Iran believes the United States is a credible threat to attack its nuclear facilities is the day they stop enriching uranium. And he is exactly right. I hope he doesn't mind my saying that, but he was exactly right.

War is not inevitable. It doesn't need to be. We don't need it. But if this Iranian treaty is not stopped by the Senate, it is going to be a war that we don't see coming—at least our leaders don't—and millions die. It doesn't have to happen. I hope and pray it won't. I urge the Senate to do the right thing: Have a vote on ratification, stop the Iranian treaty, and then we can get a better deal.

Mr. Speaker, I yield back the balance of my time.

RECESS

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

Accordingly (at 8 o'clock and 31 minutes p.m.), the House stood in recess.

□ 2204

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. COLLINS of Georgia) at 10 o'clock and 4 minutes p.m.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 348, RESPONSIBLY AND PROFESSIONALLY INVIGORATING DEVELOPMENT ACT OF 2015; PROVIDING FOR CONSIDERATION OF H.R. 758, LAWSUIT ABUSE REDUCTION ACT OF 2015 PROTECTION ACT; AND PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES

Ms. FOXX, from the Committee on Rules, submitted a privileged report (Rept. No. 114–261) on the resolution (H. Res. 420) providing for consideration of the bill (H.R. 348) to provide for improved coordination of agency actions in the preparation and adoption of environmental documents for permitting determinations, and for other purposes; providing for consideration of the bill (H.R. 758) to amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes; and providing for consideration of motions to suspend the rules, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3134, DEFUND PLANNED PARENTHOOD ACT OF 2015; AND PROVIDING FOR CONSIDERATION OF H.R. 3504, BORN-ALIVE ABORTION SURVIVORS PROTECTION ACT; AND FOR OTHER PURPOSES

Ms. FOXX, from the Committee on Rules, submitted a privileged report (Rept. No. 114–262) on the resolution (H. Res. 421) providing for consideration of the bill (H.R. 3134) to provide for a moratorium on Federal funding to Planned Parenthood Federation of America, Inc.; providing for consideration of the bill (H.R. 3504) to amend title 18, United States Code, to prohibit a health care practitioner from failing to exercise the proper degree of care in the case of a child who survives an abortion or attempted abortion; and for other purposes, which was referred to the House Calendar and ordered to be printed.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mrs. WAGNER (at the request of Mr. MCCARTHY) for today and for the balance of the week on account of the passing of her mother, Ruth Ann Trousdale.

ENROLLED BILL SIGNED

Karen L. Haas, Clerk of the House, reported and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 720. An act to improve intergovernmental planning for and communication during security incidents at domestic airports, and for other purposes.

ADJOURNMENT

Ms. FOXX. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 5 minutes p.m.), under its previous order, the House adjourned until tomorrow, Thursday, September 17, 2015, at 10 a.m. for morning-hour debate.

NOTICE OF PROPOSED RULEMAKING

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, September 16, 2015.

Hon. JOHN A. BOEHNER,
Speaker of the United States House of Representatives, The Capitol, Washington, DC.

DEAR MR. SPEAKER: Section 202(d) of the Congressional Accountability Act of 1995

(CAA), 2 U.S.C. §1312(d), requires the Board of Directors of the Office of Compliance (''the Board'') to issue regulations implementing Section 202 of the CAA relating to sections 101 through 105 of the Family and Medical Leave Act of 1993 (''FMLA''), 29 U.S.C. §§2611 through 2615, made applicable to the legislative branch by the CAA. 2 U.S.C. §1312(a)(1).

Section 304(b)(1) of the CAA, 2 U.S.C. §1384(b)(1), requires that the Board issue a general notice of proposed rulemaking by transmitting ''such notice to the Speaker of the House of Representatives and the President Pro Tempore of the Senate for publication in the Congressional Record on the first day of which both Houses are in session following such transmittal.''

On behalf of the Board, I am hereby transmitting the attached notice of proposed rulemaking to the Speaker of the House of Representatives. I request that this notice be published in the House section of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. In compliance with Section 304(b)(2) of the CAA, a comment period of 60 days after the publication of this notice of proposed rulemaking is being provided before adoption of the rules.

Any inquiries regarding this notice should be addressed to Barbara J. Sapin, Executive Director of the Office of Compliance, Room LA-200, 110 2nd Street, S.E., Washington, DC 20540; 202-724-9250.

Sincerely,

BARBARA L. CAMENS,
Chair of the Board of Directors,
Office of Compliance.

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

NOTICE OF PROPOSED RULEMAKING (NPRM OR NOTICE), AND REQUEST FOR COMMENTS FROM INTERESTED PARTIES.

Modifications to the rights and protections under the Family and Medical Leave Act of 1993 (FMLA), Notice of Proposed Rulemaking, as required by 2 U.S.C. §1331, Congressional Accountability Act of 1995, as amended (CAA).

Background:

The purpose of this Notice is to propose modifications to the existing legislative branch FMLA substantive regulations under section 202 of the CAA (2 U.S.C. §1302 et seq.), which applies the rights and protections of sections 101 through 105 of the FMLA to covered employees. These modifications are necessary in order to bring existing legislative branch FMLA regulations (adopted April 16, 1996) in line with recent statutory changes to the FMLA, 29 U.S.C. §2601 et seq.

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

Section 202(a) of the CAA provides that the rights and protections established by sections 101 through 105 of the FMLA (29 U.S.C. §§2611–2615) shall apply to covered employees.

Section 202(d)(1) and (2) of the CAA require that the Office of Compliance (OOC) Board of Directors (the Board), pursuant to section 1384 of the CAA, issue regulations implementing the rights and protections of the FMLA and that those regulations shall be ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in the subsection (a) [of section 202 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' The modifications to the regulations issued by the Board herein are on all matters for which section 202 of the CAA requires regulations to be issued.

Are there currently FMLA regulations in effect?

Yes. On January 22, 1996, the OOC Board adopted and submitted for publication in the Congressional Record the original FMLA final regulations implementing section 202 of the CAA, which applies certain rights and protections of the FMLA. On April 15, 1996, pursuant to section 304(c) of the CAA, the House and the Senate passed resolutions approving the final regulations. Specifically, the Senate passed S. Res. 242, providing for approval of the final regulations applicable to the Senate and the employees of the Senate; the House passed H. Res. 400 providing for approval of the final regulations applicable to the House and the employees of the House; and the House and the Senate passed S. Con. Res. 51, providing for approval of the final regulations applicable to employing offices and employees other than those offices and employees of the House and the Senate. After the Senate and the House passed these resolutions, the OOC Board formally issued the FMLA regulations on April 19, 1996.

What does the FMLA provide?

The FMLA entitles eligible employees of covered employers to take job-protected, unpaid leave, or to substitute appropriate accrued paid leave, for up to a total of 12 workweeks in a 12-month period: for the birth of the employee's son or daughter and to care for the newborn child; for the placement of a son or daughter with the employee for adoption or foster care; to care for the employee's spouse, parent, son, or daughter with a serious health condition; when the employee is unable to work due to the employee's own serious health condition; or for any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (''qualifying exigency leave''). An eligible employee may also take up to 26 workweeks of FMLA leave during a ''single 12-month period'' to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

FMLA leave may be taken in a block, or under certain circumstances, intermittently or on a reduced leave schedule basis. In addition to providing job-protected family and medical leave, employers must also maintain any preexisting group health plan coverage for an employee on FMLA-protected leave under the same conditions that would apply if the employee had not taken leave. 2 U.S.C. §1312(a)(1) (incorporating 29 U.S.C. §2614). Once the leave period is concluded, the employer is required to restore the employee to the same or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. *Id.* Under the FMLA statute, but not applicable to the legislative branch, if an employee believes that his or her FMLA rights have been violated, the employee may file a complaint with the Department of Labor (DOL) or file a private lawsuit in federal or state court. Under the CAA, a covered employee of the legislative branch may be awarded damages if the employing office has violated the employee's FMLA rights. The employee is entitled to reimbursement for any monetary loss incurred, equitable relief as appropriate, interest, attorneys' fees, expert witness fees, and court costs. Liquidated damages also may be awarded. *See* 29 U.S.C. §2617.

What changes do the proposed amendments make?

First, these proposed amendments add the military leave provisions of the FMLA enacted under the National Defense Authorization Acts (NDAA) for Fiscal Years 2008 and 2010 (Pub.L. 110–181, Div. A, Title V §§585(a)(2), (3)(A)–(D) and Pub.L. 111–84, Div. A, Title V §565(a)(1)(B) & (4)), which: extend the availability of FMLA leave to family members of the Regular Armed Forces for qualifying exigencies arising out of a servicemember's deployment; define those deployments covered under these provisions; extend FMLA military caregiver leave for family members of current servicemembers to include an injury or illness that existed prior to service and was aggravated in the line of duty on active duty; and extend FMLA military caregiver leave to family members of certain veterans with serious injuries or illnesses. This NPRM also sets forth a proposed revision to the regulation defining ''spouse'' under the FMLA in light of the DOL's February 25, 2015 Final Rule on the definition of spouse and the United States Supreme Court's decision in *Obergefell, et al., v. Hodges*, No. 14–556, 2015 WL 2473451 (U.S. June 26, 2015), which requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

Why are these changes to the FMLA regulations necessary?

The CAA requires that the FMLA regulations applicable to the legislative branch and promulgated by the OOC, be the same as substantive regulations issued by the Secretary of Labor, unless good cause is shown for deviation therefrom. On March 8, 2013, the DOL issued its Final Rule implementing its amended FMLA regulations (77 FR 8962), which provide for military caregiver leave for a veteran, qualifying exigency leave for parental care, and special leave calculations for flight crew employees. The OOC Board is required pursuant to the CAA to amend its regulations to achieve parity unless there is good cause shown to deviate from the DOL's regulations.

In addition, the FMLA amendments providing additional rights and protections for servicemembers and their families were enacted into law by the NDAA for Fiscal Years 2008 and 2010. The Congressional committee reports accompanying the bills containing these provisions do not comply with Section 102(b)(3) of the CAA in that, while the bills do contain sections relating ''to terms and conditions of employment,'' the accompanying reports do not ''describe the manner in which the provision of the bill [relating to terms and conditions of employment] . . . apply to the legislative branch'' or ''include a statement of the reasons the provision does not apply [to the legislative branch]'' (in the case of a provision not applicable to the legislative branch). 2 U.S.C. §1302(3); House Committee on Armed Services, H.Rpt. 110–146 (May 11, 2007), H.Rpt. 111–166 (June 18, 2009). Consequently, when the FMLA was amended to add these additional rights and protections, Congress failed to make clear its intent as to whether these additional rights and protections apply to the legislative branch.[1] Therefore, as there is no provision in the CAA that states that the CAA will be considered amended whenever the FMLA is amended, these proposed amendments to the regulations are necessary to resolve any ambiguity regarding the applicability of the 2008 and 2010 FMLA amendments to the legislative branch by ensuring that protections under the CAA are in line with existing public and private sector protections under the FMLA.[2] Accordingly, while these regulations may technically require employing offices to do more than what section 202 of the CAA currently requires, the Board recommends that Congress use its rulemaking authority to clarify that the rights and protections for legislative branch servicemembers and their families have been expanded in a manner consistent

with the 2008 and 2010 amendments to the FMLA.

What do the military family leave provisions provide?

Section 585(a) of the NDAA for Fiscal Year 2008 amends the FMLA to provide leave to eligible employees of covered employers to care for injured servicemembers and for any qualifying exigency arising out of the fact that a covered family member is on active duty or has been notified of an impending call to active duty status in support of a contingency operation (collectively referred to herein as ''military family leave''). The provisions of this amendment providing FMLA leave to care for a covered servicemember became effective on January 28, 2008, when the law was enacted. The provisions of this amendment providing for FMLA leave due to a qualifying exigency arising out of a covered family member's active duty (or call to active duty) status were effective on January 16, 2009.

Section 565(a) of the NDAA for Fiscal Year 2010, enacted on October 28, 2009, amends the military family leave provisions of the FMLA. Pub. Law 111–84. The Fiscal Year 2010 NDAA expands the availability of qualifying exigency leave and military caregiver leave. Qualifying exigency leave, which was made available to family members of the National Guard and Reserve components under the Fiscal Year 2008 NDAA, is expanded to include family members of the Regular Armed Forces. The entitlement to qualifying exigency leave is expanded by substituting the term ''covered active duty'' for ''active duty'' and defining covered active duty for a member of the Regular Armed Forces as ''duty during the deployment of the member with the Armed Forces to a foreign country'' and for a member of the Reserve components of the Armed Forces as ''duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.'' 29 U.S.C. §2611(14). Prior to the Fiscal Year 2010 NDAA amendments, there was no requirement that members of the National Guard and Reserves be deployed to a foreign country.

The Fiscal Year 2010 NDAA amendments expand the definition of a serious injury or illness for military caregiver leave for current members of the Armed Forces to include an injury or illness that existed prior to service and was aggravated in the line of duty on active duty. 29 U.S.C. §2611(18)(A). These amendments also expand the military caregiver leave provisions of the FMLA to allow family members to take military caregiver leave to care for certain veterans. The definition of a ''covered servicemember,'' which is the term the Act uses to indicate the group of military members for whom military caregiver leave may be taken, is broadened to include a veteran with a serious injury or illness who is receiving medical treatment, recuperation, or therapy, if the veteran was a member of the Armed Forces at any time during the period of five years preceding the date of the medical treatment, recuperation, or therapy. 29 U.S.C. §2611(15)(B). The amendments define a serious injury or illness for a veteran as a ''qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.'' 29 U.S.C. §2611(18)(B).

What is the effect of amending the definition of "spouse"?

Amending the definition of ''spouse'' brings the regulations in line with the DOL's February 25, 2015 Final Rule and the United States Supreme Court's decision in *Obergefell et al.* v. *Hodges*.

On February 25, 2015, the DOL published its Final Rule for 29 CFR 825 in the Federal Register, Vol. 80, No. 37, 9989. This Final Rule changed the definition of ''spouse'' under the FMLA in light of the United States Supreme Court's decision in *United States* v. *Windsor*, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. The DOL's Final Rule amends the definition of spouse so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live.

Also, on June 26, 2015, the United States Supreme Court issued *Obergefell et al.* v. *Hodges*, which requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

To date, the DOL has not indicated whether it plans to further amend the definition of spouse in light of the United States Supreme Court's decision in *Obergefell et al.* v. *Hodges*. Therefore, the Board invites comment regarding whether the Board should adopt the DOL's current definition of spouse or revise the definition of spouse as the Board has proposed in sections 825.102 and 825.122.

Minor editorial changes are proposed to sections 825.120, 825.121, 825.122, 825.127, 825.201 and 825.202 to make gender neutral references to husbands and wives, and mothers and fathers where appropriate so that they apply equally to opposite-sex and same-sex spouses. The OOC proposes using the terms ''spouses'' and ''parents,'' as appropriate, in these regulations. These editorial changes do not change the availability of FMLA leave but simply clarify its availability for all eligible employees who are legally married.

Procedural Summary:

How are substantive regulations proposed and approved under the CAA?

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

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

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

(3) after consideration of comments by the Board of Directors, the Board adopts regulations and transmits notice of such action (together with the regulations and a recommendation regarding the method for Congressional approval of the regulations) to the Speaker of the House and President Pro Tempore of the Senate for publication in the Congressional Record;

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

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

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

What is the approach taken by these proposed substantive regulations?

The Board will follow the procedures as enumerated above and as required by statute. The Board will review and respond to any comments received under step (2) of the outline above, and make any changes necessary to ensure that the regulations fully implement section 210 of the CAA and reflect the practices and policies particular to the legislative branch.

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

No. The Board of Directors has identified no ''good cause'' for varying the text of these regulations. Therefore, if these regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees. *See* 2 U.S.C. §1331(e)(2).

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

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

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

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

60-DAY COMMENT PERIOD REGARDING THE PROPOSED REGULATIONS

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

Comments regarding the OOC's proposed regulations set forth in this Notice are invited for a period of sixty (60) days following the date of the appearance of this Notice in the *Congressional Record*.

How do I submit comments?

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

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

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

Summary:

The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA, as amended, applies the rights and protections of thirteen federal labor and employment statutes to covered employees and employing offices within the legislative branch of the federal government. Section 202 of the CAA applies to employees covered by the CAA, the rights and protections established by sections 101

through 105 of the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. §§2611–2615. The above provisions of section 202 became effective on January 1, 1997. 2 U.S.C. §1312.

The Board of Directors of the Office of Compliance (OOC) is now publishing proposed amended regulations to implement section 202 of the CAA, 2 U.S.C. §§1301–1438, as applied to covered employees of the House of Representatives, the Senate, and certain Congressional instrumentalities listed below.

The purpose of these amended regulations is to implement section 202 of the CAA. In this Notice of Proposed Rulemaking (NPRM or Notice) the Board proposes that virtually identical regulations be adopted for the Senate, the House of Representatives, and the six Congressional instrumentalities. Accordingly:

(1) *Senate*. It is proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to entities within the Senate, and this proposal regarding the Senate entities is recommended by the OOC's Deputy Executive Director for the Senate.

(2) *House of Representatives*. It is further proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to entities within the House of Representatives, and this proposal regarding the House of Representatives entities is recommended by the OOC's Deputy Executive Director for the House of Representatives.

(3) *Certain Congressional instrumentalities*. It is further proposed that the amended regulations as described in this Notice be included in the body of regulations that shall apply to the Office of Congressional Accessibility Services, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol (including the Botanic Garden), the Office of the Attending Physician, and the Office of Compliance; and this proposal regarding these six Congressional instrumentalities is recommended by the OOC's Executive Director.

Dates: Comments are due within 60 days after the date of publication of this Notice in the *Congressional Record*.

Section-by-Section Discussion of Proposed Changes to the FMLA Regulations

The following is a section-by-section discussion of the proposed revisions. Where a change is proposed to a regulatory section, that section is discussed below. However, as the DOL has significantly reorganized its FMLA regulations, which the OOC's proposed regulations mirror, many of the sections are moved into other areas of the subpart. The OOC as a result will use the proposed section and numbers to provide explanation and analysis of changes. In addition, even if a section is not discussed, there may be minor editorial changes or corrections that do not warrant discussion. The titles to each section of the existing regulations are in the form of a question. The proposal would reword each question into the more common format of a descriptive title, and the OOC invites comments on whether this change is helpful. In addition, several sections have been restructured and reorganized to improve the accessibility of the information (*e.g.*, guidance on leave for pregnancy and birth of a child is addressed in one consolidated section; an employing office's notice obligations are combined in one section).

Section by Section Discussion

Subpart A—COVERAGE UNDER THE FAMILY AND MEDICAL LEAVE ACT

Section 825.102 Definitions.

For the reasons stated below, the Board finds good cause to depart from the DOL regulations with respect to some of the definitions. For example, the term ''Act'' as defined in the DOL regulations and referring to the FMLA can be confused with the Congressional Accountability Act (CAA). Accordingly, the definition of ''Act'' is excluded from the Board's proposed regulations. In addition, to avoid any confusion, the definition for ''Administrator'' in the DOL regulations has been deleted. Similarly, as there is no airline flight crew covered under the CAA, the definition of ''airline flight crew employee'' has been deleted in the Board's proposed regulations as have all references to ''airline flight crew employee.''

Because the DOL definitions of ''commerce and industry or activity affecting commerce'' and ''applicable monthly guarantee'' involve concepts that do not apply to employing offices covered by the CAA, the Board finds good cause to exclude these definitions from the proposed regulations.

Because the DOL's definition of ''eligible employee'' (paragraphs ii(3)(4)(5)(6)(7) in section 825.102) is not consistent with the definition of ''eligible employee'' in CAA section 202(a)(2)(B), the Board finds good cause to keep the definition of ''employee'' that is used in the current version of the OOC FMLA regulations and to exclude the definition in the DOL regulation.

Likewise, because the definition of ''employer'' in CAA section 202(a)(2)(A) is inconsistent with the definition in the DOL regulations, the Board finds good cause to keep the definition of ''employing office'' found in the current regulations.

In the paragraphs defining ''health care provider,'' to avoid confusion, the Board is substituting ''the Secretary'' with ''the Department of Labor.'' Thus, the OOC FMLA regulations include in the definition of ''health care provider'' as ''any other person determined by the *Department of Labor* to be capable of providing health care services.'' 825.102(1)(ii) (emphasis added).

Because these terms are not applicable to employing offices covered by the CAA, the Board has also found good cause to exclude from the proposed OOC regulations the DOL definitions of ''person'' and ''public agency.''

Under the paragraph defining ''physical or mental disability,'' the Board has replaced the language from the DOL regulations indicating that 29 CFR part 1630 *defines* these terms with language that states that regulations at 29 CFR part 1630 issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 *et seq.*, as amended, *provide guidance* to these terms. (Italics added).

The Board is proposing to adopt the following definition of ''spouse'':

Spouse means a husband or wife. For purposes of this definition, husband or wife refers to all individuals in lawfully recognized marriages. This definition includes an individual in a same-sex marriage. This definition also includes an individual in a common law marriage that either: (1) was entered into in a State that recognizes such marriages or, (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

Section 825.105 Counting employees for determining coverage.

This section does not apply to the CAA and will remain reserved in the OOC's regulations.

Section 825.106 Joint Employer Coverage.

As joint employment relationships are treated differently under the CAA than by the DOL, the Board finds good cause to keep the language in the current OOC regulations in paragraphs (b) through (e) of this section. Also, as it is not applicable under the CAA, the Board finds good cause to exclude from its definitions language relating to Professional Employer Organizations (PEOs) as joint employers. As the DOL has noted, PEOs contract with private small businesses to provide services that large businesses can afford, but small businesses cannot, such as compliance with government standards, employer liability management, retirement benefits, and other employment benefits. Congress already provides these services for its employees.

Sections 825.107–825.109 Successor in interest coverage; Public agency coverage; Federal agency coverage.

These sections do not apply to the CAA and will remain reserved in the OOC's regulations. However, the Board invites comment with respect to whether the DOL section 825.107, Successor in interest coverage, should be adopted for the legislative branch.

Section 825.110 Eligible employee.

The Board sees good cause to exclude from this section the following language from the DOL regulations, which is not applicable to the CAA:

''(3) Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite. (*See* §825.105(b) regarding employees who work outside the U.S.)''

Similarly, the Board sees good cause to exclude from the OOC regulations the following paragraph:

''(e) Whether 50 employees are employed within 75 miles to ascertain an employee's eligibility for FMLA benefits is determined when the employee gives notice of the need for leave. Whether the leave is to be taken at one time or on an intermittent or reduced leave schedule basis, once an employee is determined eligible in response to that notice of the need for leave, the employee's eligibility is not affected by any subsequent change in the number of employees employed at or within 75 miles of the employee's worksite, for that specific notice of the need for leave. Similarly, an employer may not terminate employee leave that has already started if the employee-count drops below 50. For example, if an employer employs 60 employees in August, but expects that the number of employees will drop to 40 in December, the employer must grant FMLA benefits to an otherwise eligible employee who gives notice of the need for leave in August.''

Section 825.111 Determining whether 50 employees are employed within 75 miles.

This section does not apply to the CAA and will remain reserved in the OOC regulations.

Section 825.120 Leave for pregnancy or birth.

References in the DOL's regulations to state law in this section and other sections throughout the DOL's regulations have not been adopted by the Board because state law does not apply to the legislative branch.

Further, in this section and other sections throughout the DOL regulations, any references to spouses who are employed at two different worksites of an employer located more than 75 miles from each other have not been adopted by the Board because such scenarios are not applicable to the legislative branch.

Subpart B—EMPLOYEE LEAVE ENTITLEMENTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

Section 825.206 Interaction with the FLSA.

Although the DOL amended its FMLA regulations to add computer employees to the list of exempt employees who do not lose their FLSA exempt status despite being provided unpaid FMLA leave, the Board finds good cause not to include ''computer employees'' to the list of employees who may

qualify as exempt from the overtime and minimum wage requirements of the FLSA. In light of the fact that the Board's September 29, 2004 Proposed Regulations implementing exemptions from the overtime pay requirements under the Fair Labor Standards Act of 1938 (FLSA) were never enacted into law and the existing OOC FLSA Regulations do not include exemptions for computer employees, the OOC's FMLA regulations should not include these employees in this section. The Board specifically seeks comments to this departure from the DOL regulations.

Further, any references in this section and other sections throughout the DOL regulations which place limitations on an employee who works for an employing office with fewer than 50 employees have not been adopted by the Board because such limitations do not apply to the legislative branch. *See* 825.111.

Section 825.207 Substitution of paid leave.

The DOL regulations under section 825.207(f) permit an employer to require that an employee's use of paid compensatory time for a FMLA reason can be used against the employee's FMLA leave entitlement.

As the Board does not know whether or under what circumstances, employing offices currently allow or require that paid compensatory time be used for a FMLA reason and be counted against the employee's FMLA leave entitlement, the Board proposes that the comparable OOC FMLA regulation read as follows:

Under the FLSA, an employing office always has the right to cash out an employee's compensatory time or to require the employee to use the time. Therefore, if an employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employing office requires such use pursuant to the FLSA, the time taken may be counted against the employee's FMLA leave entitlement.

The Board seeks comments from interested parties as to whether such a provision is appropriate for the legislative branch.

Section 825.209 Maintenance of employee benefits.

The Board has changed what it believes to be a typographical error in the DOL regulations and cross references this section with section 825.102 and not section 825.800 when referring to the definition of ''group health plan.''

Section 825.215 Equivalent position.

Any references from the DOL regulations in this section and other sections to the Employee Retirement Income Security Act (ERISA) have not been adopted by the Board because ERISA does not apply to the legislative branch.

Section 825.216 Limitations on employee's right to reinstatement.

The Board questions whether the following language in section 825.216(a)(3) of the DOL regulations applies to the legislative branch: ''On the other hand, if an employee was hired to perform work on a contract, and after that contract period the contract was awarded to another contractor, the successor contractor may be required to restore the employee if it is a successor employer. *See* § 825.107.''

The Board proposes that the OOC regulations contain the following language and requests comments from interested parties, especially with respect to caucus or committee employees: ''On the other hand, if an employee was hired to perform work for one employing office for a project for a specific time period, and after that time period has ended, the same employee was assigned to work at another employing office on the same project, the successor employing office may be required to restore the employee if it is a successor employing office.''

Section 825.217 Key employee, general rule.

For the reasons stated above, the Board finds good cause not to follow the DOL changes to section 825.217(b) which exempts computer employees from the minimum wage and overtime requirements of the FLSA. As the language in the FLSA is inconsistent with the OOC FLSA regulations, the Board believes that this exemption should not be included. The Board requests comments from interested parties on this deletion.

Section 825.220 Protection for employees who request leave or otherwise assert FMLA rights.

Except for the paragraph related to settlements, as noted below, the Board proposes to adopt the DOL amendments with respect to this section. Section 825.220 provides protection for employees who request leave or otherwise assert FMLA rights and includes new language discussing remedies when an employing office interferes with an employee's rights under the FMLA. This section further clarifies that the prohibition against interference includes prohibitions against retaliation as well as discrimination. The Board believes that there is good cause to make changes to the DOL's clarification of the settlement provision in paragraph (d) of this section. Sections 1414 and 1415 of the CAA govern awards and settlements made as a result of parties proceeding through an OOC process. While the Board recognizes that parties will now have the right to settle or release FMLA claims without the approval of the OOC or a court, parties seeking to release claims which were raised in an OOC process pursuant to CAA sections 1414 and 1415 must still comply with those provisions. Therefore, the Board proposes to insert the following language: ''Except for settlement agreements covered by 1414 and/or 1415 of the Congressional Accountability Act, this does not prevent the settlement or release of FMLA claims by employees based on past employing office conduct without the approval of the Office of Compliance or a court.''

Subpart C—EMPLOYEE AND EMPLOYING OFFICE RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA.

Section 825.300 Employing office notice requirements.

The Board proposes to follow the DOL regulations insofar as they consolidate the employing office notice requirements from sections 825.300, 825.301, 825.110 and 825.208 into one comprehensive section addressing an employing office's notice obligations. However, the Board finds good cause not to adopt the DOL regulations in section 825.300(a) General notice, but instead to keep the requirements found in the current OOC regulations under section 825.301(a). The DOL regulations, at section 825.300(a), address the requirement that employing offices post a notice on employee rights and responsibilities under the law and the civil monetary penalty provision in the law for employing offices who willfully violate the posting requirement. In 1995, while developing the current FMLA regulations, the OOC Board determined that ''while the CAA incorporates certain specific sections of the FMLA, the CAA explicitly did not incorporate the notice posting and recordkeeping requirements of sections 109 and 106(b) of the FMLA. For the reasons discussed with respect to the FLSA, as the CAA has not incorporated the notice posting and recordkeeping requirements of the FMLA, the Board will not do so.'' As a result, we find no authority that would require employing offices covered under the CAA to provide notice postings of employees' FMLA rights in the workplace. *See* November 28, 1995 OOC Notice of Proposed Rulemaking S17628. As to the remainder of the paragraphs in this section, the Board finds no reason to depart from the amendments adopted by the DOL.

The Board proposes to adopt section 825.300 regarding the eligibility notice (825.300(b)); the rights and responsibility notice (825.300(c)); the designation notice (825.300(d)); and the consequences of failing to provide notice (825.300(e)).

(b) *Eligibility notice.*

The Board proposes to adopt the DOL amendments with respect to this section. The Board also proposes to adopt the DOL regulations consolidating existing eligibility notice requirements in current sections 825.110 and 825.301 into one section, section 825.300(b) of the OOC regulations and to strengthen and clarify them. For example, section 825.300(b)(1) of the DOL regulations requires an employer to advise an employee of his or her eligibility status when the employee requests leave under the FMLA. The regulations extend the time frame for an employer to respond to an employee's request for FMLA leave from two business days to five business days. Further, the DOL regulations in section 825.300(b)(2) specify what information an employer must convey to an employee as to eligibility status. The Board also proposes in its regulations that an employing office must provide reasons to an employee if he or she is not eligible for FMLA leave, as do the DOL regulations. The regulations limit that notification to any one of the potential reasons why an employee fails to meet the eligibility requirements.

Further, the proposed OOC regulations require employing offices to include in the eligibility notice an explanation of conditions applicable to the use of paid leave that runs concurrently with unpaid FMLA. While this requirement is in the current regulations, it is expanded to require that employing offices also notify employees of their continuing entitlement to take unpaid FMLA leave if they do not comply with an employing office's required conditions for use of paid leave.

(c) *Rights and responsibilities notice.*

The Board is following the DOL regulations separating the notice of rights and responsibilities from the notice of eligibility. Accordingly, if the employee is eligible for FMLA leave, section 825.300(c) of the OOC regulations require the employing office to provide the employee with specific notice of his or her rights and obligations under the law and the consequences of failing to meet those obligations.

To simplify the timing of the notice of rights and responsibilities and to avoid unnecessary administrative burden on employing offices, section 825.300(c)(1) of the Board's proposed regulations requires employing offices to provide this notice to employees at the same time they provide the eligibility notice. Additionally, if the information in the notice of rights and responsibilities changes, section 825.300(c) requires the employing office to notify the employee of any changes within five business days of the first notice of the need for FMLA leave subsequent to any change. This timing requirement will ensure that employees receive timely notice of the expectations and obligations associated with their FMLA leave each leave year and also receive prompt notice of any change in those rights or responsibilities when leave is needed during the leave year.

In this section, employing offices are required to notify employees of the method used for establishing the 12-month period for

FMLA entitlement, or, in the case of military caregiver leave, the start date of the ''single 12-month period.''

Employing offices are not, however, required to provide the certification form with the notice of rights and responsibilities. Notice of any changes in the rights and responsibilities notice must be provided within five business days of the first notice of an employee's need for leave subsequent to any change. Electronic distribution of the notice of rights and responsibilities is allowed, so long as the employing office can demonstrate that the employee (who may already be on leave and who may not have access to employing office-provided computers) has access to the information electronically.

(d) *Designation notice.*

The Board proposes to adopt the DOL amendments with respect to this requirement. Section 825.300(d) outlines the requirements of the designation notice an employing office must provide to an employee. Once the employing office has enough information to determine whether the leave qualifies as FMLA leave, the employing office must notify the employee within five business days of making the determination whether the leave has or has not been designated as FMLA leave. This is an increase from the two-day time frame in the current OOC regulations. Further, only one designation notice is required for each FMLA-qualifying reason per leave year, regardless of whether the leave is taken as a continuous block of leave or on an intermittent or reduced leave schedule basis.

Further, the employing office must inform the employee of the number of hours that would be designated as FMLA leave, only upon employee request and no more often than every 30 days if FMLA leave was taken during that period. To the extent it is not possible to provide such information (such as in the case of unforeseeable intermittent leave), the employing office is required to provide such information to the employee every 30 days if the employee took leave during the 30-day period. The employing office is permitted to notify the employee of the hours counted against the FMLA leave entitlement orally and follow up with written notification on a pay stub at the next payday (unless the next payday is in less than one week, in which case the notice must be no later than the subsequent payday). If the employing office requires that paid leave be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employing office must inform the employee of this designation at the time the leave is designated as FMLA leave.

Although the designation notice has to be in writing, it may be in any form, including a notation on the employee's pay stub, and if the leave is not designated as FMLA leave, the notice to the employee may be in the form of a simple written statement. Employing offices can provide an employee with both the eligibility and designation notice at the same time in cases where the employing office has adequate information to designate leave as FMLA leave when an employee requests the leave.

Employing offices must provide written notice of any requirement for a fitness-for-duty certification, including whether the fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's position and, if so, to provide a list of the essential functions of the employee's position with the designation notice. If the employee handbook or other written documents clearly provides that a fitness-for-duty certificate will be required, written notice is not required, but oral notice must be provided.

Finally, the employing office is required to notify the employee if the information provided in the designation notice changes. For example, if an employee exhausts his or her FMLA leave entitlement and the leave will no longer be designated as FMLA leave, the employing office must provide the employee with written notice of this change consistent with this section.

(e) *Consequences of failing to provide notice.*

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.300(e) clarifies that failure to comply with the notice requirements set forth in this section could constitute interference with, restraint of, or denial of the use of FMLA leave. The Board proposes that the following language be included in the OOC regulations:

Consequences of failing to provide notice. Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered See 825.400(c).

Section 825.301 Designation of FMLA leave.

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.301 addresses an employing office's obligations regarding timely designation of leave as FMLA-qualifying and reiterates the requirement to notify the employee of the designation within five business days. Among other things, this section requires that the employing office's designation decision be based only on information received from the employee or the employee's representative and also provides that, if the employing office does not have sufficient information about the employee's reason for leave, the employing office should inquire further of the employee or of the employee's spokesperson.

Section 825.302 Employee notice requirements for foreseeable FMLA leave.

The Board proposes to adopt the DOL amendments with respect to this section. In general, Section 825.302 addresses an employee's obligation to provide notice of the need for foreseeable FMLA leave. This includes requiring an employee to give at least 30 days notice when the need for FMLA leave is foreseeable at least 30 days in advance or ''as soon as practicable'' if leave is foreseeable but 30 days notice is not practicable. In such cases, employees must respond to requests from employing offices to explain why it was not possible to give 30 days notice. Further, the language in this section defines ''as soon as practicable'' to be ''as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.'' This is a change from defining ''as soon as practicable'' as ''ordinarily within one or two business days.''

Further, when an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA but must provide: sufficient information that indicates that a condition renders the employee unable to perform the functions of the job, or if the leave is for a family member, that the condition renders the family member unable to perform daily activities; the anticipated duration of the absence; and whether the employee or the employee's family member intends to visit a health care provider or has a condition for which the employee or the employee's family member is under the continuing care of a health care provider. The regulations set forth the types of information that an employee may have to provide in order to put an employing office on notice of the employee's need for FMLA-protected leave. Rather than establish a list of information that must be provided in all cases, the regulations provide additional guidance to employees so that they would know what information to provide to their employing offices. The nature of the information necessary to put the employing office on notice of the need for FMLA leave will vary depending on the circumstances.

Employees seeking leave for previously certified FMLA leave must inform the employing office that the leave is for a condition, covered servicemember's serious injury or illness, or qualifying exigency that was previously certified or for which the employee has previously taken FMLA leave.

While an employee must still comply with the employing office's usual notice and procedural requirements for calling in absences and requesting leave, under the new regulations, language stating that an employing office cannot delay or deny FMLA leave if an employee fails to follow such procedures has been deleted. However, employing offices may need to inquire further to determine for which reason the leave is being taken, and employees will be required to respond to such inquiries.

Additionally, the regulations make clear that the requirement that an employee and employing office attempt to work out a schedule without unduly disrupting the employing office's operations applies only to military caregiver leave. It does not apply to qualifying exigency leave.

Section 825.303 Employee notice requirements for unforeseeable FMLA leave

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.303 addresses an employee's obligation to provide notice when the need for FMLA leave is unforeseeable. Section 825.303 retains the current standard that employees must provide notice of their need for unforeseeable leave ''as soon as practicable under the facts and circumstances of the particular case,'' but instead of expecting employees to give notice ''within no more than one or two working days of learning of the need for leave,'' in ''unusual circumstances,'' notice should be provided within the time prescribed by the employing office's usual and customary notice requirements applicable to such leave. Section 825.303 also retains the current standard that employees need not assert their rights under the FMLA or even mention the FMLA to put employing offices on notice of the need for unforeseeable FMLA leave, but adds the same language used in proposed section 825.302 clarifying what information must be provided in order to give sufficient notice to the employing office of the need for FMLA leave. New regulations in section 825.303 add that the employee has an obligation to respond to an employing office's questions designed to determine whether leave is FMLA-qualifying, explaining that calling in ''sick,'' without providing additional information, will not be sufficient notice.

Section 825.304 Employee failure to provide notice.

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.304 follows the DOL's reorganization of the rules that are applicable to leave foreseeable at least 30 days in advance, leave foreseeable less than 30 days in advance, and unforeseeable leave. This section retains language that FMLA leave cannot be delayed due to lack of required employee notice if

the employing office has not complied with its notice requirements.

Section 825.305 Certification, general rule.

The Board proposes to adopt the DOL amendments with respect to this section. Under the FMLA, as applied under the CAA, employing offices are permitted to require that employees provide a certification from their health care provider (or their family member's health care provider, as appropriate) to support the need for leave due to a serious health condition. Section 825.305 sets forth the general rules governing employing office requests for medical certification to substantiate an employee's need for FMLA leave due to a serious health condition. Military family leave provisions have been added to permit employing offices to require employees to provide a certification in the case of leave taken for a qualifying exigency or to care for a covered servicemember with a serious injury or illness. Section 825.305 applies generally to all types of certification. In most cases, for example, former references to ''medical certification'' have been changed to ''certification.''

In section 825.305, the employing office should request that an employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave commences. This time frame has been increased from two to five business days after notice of the need for FMLA leave is provided. Further, the employing office may request certification at some later date if the employing office later has reason to question the appropriateness of the leave or its duration. This section also adds a 15-day time period for providing a requested certification to all cases.

Definitions of incomplete and insufficient certifications have been added in this section, as well as a procedure for curing an incomplete or insufficient certification. This procedure requires that an employing office notify the employee in writing as to what additional information is necessary for the medical certification and provides seven calendar days in which the employee must provide the additional information. If an employee fails to submit a complete and sufficient certification, despite the opportunity to cure the deficiency, the employing office may deny the request for FMLA leave.

Section 825.305 also deletes an earlier provision that if a less stringent medical certification standard applies under the employing office's sick leave plan, only that lesser standard may be required when the employee substitutes any form of paid leave for FMLA leave and replaces it with a provision allowing employing offices to require a new certification on an annual basis for conditions lasting beyond a single leave year.

Section 825.306 Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

The Board proposes to adopt the DOL amendments with respect to this section. Section 825.306 addresses the information an employing office can require in the medical certification to substantiate the existence of a serious health condition (of the employee or a family member) and the employee's need for leave due to the condition, and adds: the health care provider's specialization; guidance as to what may constitute appropriate medical facts, including that a health care provider may provide a diagnosis; and whether intermittent or reduced schedule leave is medically necessary. Section 825.306 clarifies that where a serious health condition may also be a disability, employing offices are not prevented from following the procedures under the Americans with Disabilities Act (ADA), as applied under the CAA, for requesting medical information. Section 825.306 also contains new language that employing offices may not require employees to sign a release of their medical information as a condition of taking FMLA leave.

This section does not apply to the military family leave provisions. The Board's proposed regulations have revised the current optional certification form into two separate optional forms, one for the employee's own serious health condition and one for the serious health condition of a covered family member.

Section 825.307 Authentication and clarification of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member; second and third opinions.

The Board proposes to adopt the DOL's amendments covered under this section. Section 825.307 addresses the employing office's ability to clarify or authenticate a complete and sufficient FMLA certification. Section 825.307 defines the terms ''authentication'' and ''clarification.'' ''Authentication'' involves providing the health care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the provider. The regulations add that no additional medical information may be requested and the employee's permission is not required. In contrast, ''clarification'' involves contacting the employee's health care provider in order to understand the handwriting on the medical certification or to understand the meaning of a response. As is the case with authentication, no additional information beyond that included in the certification form may be requested. Any contact with the employee's health care provider must comply with the requirements of the HIPAA Privacy Rule.

It is no longer necessary that the employing office utilize a health care provider to make the contact with the employee's health care provider, but the regulations do clarify who may contact the employee's health care provider and ensure that the employee's direct supervisor is not the point of contact. Employee consent to the contact is no longer required. However, before the employing office contacts the employee's health care provider for clarification or authentication of the FMLA certification, the employee must first be given an opportunity to cure any deficiencies in the certification. Section 825.307 also provides requirements for an employing office's request for a second opinion, and adds language requiring the employee or the employee's family member to authorize his or her health care provider to release relevant medical information pertaining to the serious health condition at issue if such information is requested by the second opinion health care provider. Section 825.307 also increases the number of days the employing office has to provide an employee with a requested copy of a second or third opinion from two to five business days. This section of the regulations does not apply to the military family leave provisions.

Section 825.308 Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

The Board proposes to adopt the DOL amendments covered in this section. Section 825.308 of the regulations addresses the employing office's ability to seek recertification of an employee's medical condition. This section has been reorganized to clarify how often employing offices may seek recertification in situations where the minimum duration of the condition, as opposed to the duration of the period of incapacity, exceeds 30 days. Thus, an employing office may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless the medical certification indicates that the minimum duration of the condition is more than 30 days, then an employing office must wait until that minimum duration expires before requesting a recertification. In all cases, an employing office may request a recertification of a medical condition every six months in connection with an absence by the employee. An employing office may request recertification in less than 30 days if, among other things, the employee requests an extension of leave or circumstances described by the previous certification change significantly. This section clarifies that an employing office may request the same information on recertification as required for the initial certification and the employee has the same obligation to cooperate in providing recertification as he or she does in providing the initial certification.

Section 825.309 Certification for leave taken because of a qualifying exigency.

The Board proposes to adopt the DOL's regulations under this section. Under the military family leave provisions of the DOL regulations, an employing office may require that leave taken because of a qualifying exigency be supported by a certification and require that the employee provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation, as well as the dates of the covered military member's active duty service. While a form requesting this basic information may be used by the employing office, no information may be required beyond that specified in this section and in all instances the information on the form must relate only to the qualifying exigency for which the current need for leave exists. Section 825.309 also establishes the verification process for certifications.

This section also provides that the information required in a certification need only be provided to the employing office the first time an employee requests leave because of a qualifying exigency arising out of a particular active duty or call to active duty of a covered military member. While additional information may be needed to provide certification for subsequent requests for exigency leave, an employee is only required to give a copy of the active duty orders to the employing office once. A copy of new active duty orders or other documentation issued by the military only needs to be provided to the employing office if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty order of the same or a different covered military member. *See* DOL (Form WH–384) and OOC regulations proposed Form E.

An employing office may contact an appropriate unit of the Department of Defense to request verification that a covered military member has been called to active duty status (or notified of an impending call to active duty status) in support of a contingency operation. Again, no additional information may be requested by the employing office and the employee's permission is not required. This verification process will protect employees from unnecessary intrusion while still providing a useful tool for employing offices to verify the certification information given to them.

Consistent with the amendments to section 825.126(b)(6), with respect to Rest and Recuperation qualifying exigency leave, the employing office is permitted to request a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military indicating that the military member has been granted Rest and Recuperation leave, as well as the dates of the leave, in order to determine the employee's specific qualifying exigency leave period available for Rest and Recuperation. Employing offices may also contact the appropriate unit of the DOD to verify that the military member is on active duty or call to active duty status. The employee's permission is not required to conduct such verifications. The employing office may not, however, request any additional information.

Section 825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave).

The Board proposes to adopt the amendments covered in the DOL regulations under this section. While the military family leave provisions of the NDAA amended the FMLA's certification requirements to permit an employer to request certification for leave taken to care for a covered servicemember, the FMLA's existing certification requirements focus on providing information related to a serious health condition—a term that is not necessarily relevant to leave taken to care for a covered servicemember. At the same time, the military family leave provisions of the NDAA do not explicitly require that a sufficient certification for purposes of military caregiver leave provide relevant information regarding the covered servicemember's serious injury or illness. Section 825.310 of the DOL's regulations provide that when leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require an employee to support his or her request for leave with a sufficient certification. An employer may require that certain necessary information to support the request for leave be supported by a certification from one of the following authorized health care providers: (1) A DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider. Sections 825.310(b)–(c) of the DOL regulations set forth the information an employing office may request from an employee (or the authorized health care provider) in order to support the employee's request for leave. The DOL developed a new optional form, Form WH–385, which the Board adopted for proposed OOC Form F. The Board agrees that OOC Form F may be used to obtain appropriate information to support an employee's request for leave to care for a covered servicemember with a serious injury or illness. However, an employing office may use any form containing the following basic information: (1) whether the servicemember has incurred a serious injury or illness; (2) whether the injury or illness may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; (3) whether the injury or illness was incurred by the member in line of duty on active duty; and (4) whether the servicemember is undergoing medical treatment, recuperation, or therapy, is otherwise on outpatient status, or is otherwise on the temporary disability retired list. However, as is the case for any required certification for leave taken to care for a family member with a serious health condition, no information may be required beyond that specified above. In all instances, the information on any required certification must relate only to the serious injury or illness for which the current need for leave exists.

Additionally, section 825.310 of the proposed OOC regulations provides that an employing office requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification ''invitational travel orders'' (ITOs) or ''invitational travel authorizations'' (ITAs) issued by the DOD for a family member to join an injured or ill servicemember at his or her bedside. If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or an ITA, the regulations provide that an employing office may request further certification from the employee. Lastly this section provides that in all instances in which certification is requested, it is the employee's responsibility to provide the employing office with complete and sufficient certification and failure to do so may result in the denial of FMLA leave.

The regulations also permit an eligible employee who is a spouse, parent, son, daughter or next of kin of a covered servicemember to submit an ITO or ITA issued to another family member as sufficient certification for the duration of time specified in the ITO or ITA, even if the employee seeking leave is not the named recipient on the ITO or ITA. The regulations further permit an employing office to authenticate and clarify medical certifications submitted to support a request for leave to care for a covered servicemember using the procedures applicable to FMLA leave taken to care for a family member with a serious health condition. However, unlike the recertification, second and third opinion processes used for other types of FMLA leave, recertification, second and third opinions are not warranted for purposes of military caregiver leave when the certification has been completed by a DOD health care provider, a VA health care provider, a DOD TRICARE network authorized private health care provider, or a DOD non-network TRICARE authorized private health care provider, but are permitted when the certification has been completed by a health care provider who is not affiliated with the DOD, VA, or TRICARE.

An employee seeking to take military caregiver leave must provide the requested certification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

Section 825.312 Fitness-for-duty certification.

The Board proposes to adopt the amendments covered in the DOL's regulations under this section. Section 825.312 addresses the fitness for-duty certification that an employee may be required to submit upon return to work from FMLA leave. This section clarifies that employees have the same obligation to provide a complete certification or provide sufficient authorization to the health care provider in order for that person to provide the information directly to the employing office in the fitness-for-duty certification process as they do in the initial certification process. The employing office may require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's job, as long as the employing office provides the employee with a list of those essential job functions no later than the employing office provides the designation notice. The designation notice must indicate that the certification address the employee's ability to perform those essential functions. An employing office may contact the employee's health care provider directly, consistent with the procedure in proposed section 825.307(a), for purposes of authenticating or clarifying the fitness-for-duty certification. The employing office is required to advise the employee in the eligibility notice required by proposed section 825.300(b) if the employing office will require a fitness-for-duty certification to return to work. Employees are not entitled to the reinstatement protections of the Act if they do not provide the required fitness-for-duty certification or request additional FMLA leave.

Section 825.312 also requires that the employing office uniformly apply its policies permitting fitness-for-duty certifications to intermittent and reduced schedule leave users when reasonable safety concerns are present, but limits the frequency of such certifications to once in a 30-day period in which intermittent or reduced schedule leave was taken. ''Reasonable safety concerns'' means a reasonable belief of a significant risk of harm to the individual employee or others. In determining whether reasonable safety concerns exist, an employing office should consider the nature and severity of the potential harm and the likelihood that potential harm will occur. This is meant to be a high standard. Thus, the determination that there are reasonable safety concerns must rely on objective factual evidence, not subjective perceptions. Employing offices cannot, under this section, require such certifications in all intermittent or reduced leave schedule situations, but only where reasonable safety concerns are present. There is no fitness-for-duty certification form, nor is there any specific format such a certification must follow as long as it contains the required information. An employing office is allowed to require that the fitness-for-duty certification address the employee's ability to perform the essential functions of his or her position. However, the employing office can choose to accept a simple statement in place of the fitness-for-duty certification (or not require a fitness-for-duty certification at all).

There is no second and third opinion process for a fitness-for-duty certification. A fitness-for-duty certification need only address the condition for which FMLA leave was taken and the employee's ability to perform the essential functions of the job. The employee's health care provider determines whether a separate examination is required in order to determine the employee's fitness to return to duty under the FMLA. A medical examination at the employing office's expense may be required only after the employee has returned from FMLA leave and must be job-related and consistent with business necessity as required by the ADA. The employing office cannot delay the employee's return to work while arranging for and having the employee undergo a medical examination.

Section 825.313 Failure to provide certification.

The Board proposes to adopt the amendments covered in the DOL regulations under this section. Section 825.313 explains the consequences for an employee who fails to provide medical certification in a timely manner. An employing office may ''deny'' FMLA leave until the required certification is provided. This section also addresses the consequences of failing to provide timely recertification. Section 825.313 also clarifies that recertification does not apply to leave taken for a qualifying exigency or to care for a covered servicemember.

Employees must be provided at least 15 calendar days to provide the requested certification, and are entitled to additional

time when they are unable to meet that deadline despite their diligent, good-faith efforts. An employee's certification (or recertification) is not untimely until that period has passed. Employing offices may deny FMLA protection when an employee fails to provide a timely certification or recertification, but it does not require employing offices to do so. Employing offices always have the option of accepting an untimely certification and not denying FMLA protection to any absences that occurred during the period in which the certification was delayed.

Subpart D—Enforcement Mechanisms

Section 825.400 Enforcement, general rules.

The Board finds good cause not to adopt DOL section 825.400 because the enforcement of FMLA violations is different in the legislative branch as opposed to the workforces regulated by the DOL. The OOC section 825.400 remains the same.

Sections 825.401–825.404 Filing a complaint with the Federal Government; Violations of the posting requirement; Appealing the assessment of a penalty for willful violation of the posting requirement; Consequences for an employer when not paying the penalty assessment after a final order is issued.

These sections do not apply to the CAA and will remain reserved in the OOC regulations.

Subpart E—Recordkeeping Requirements

Section 825.500 Recordkeeping requirements.

This section does not apply to the CAA and will remain reserved in the OOC regulations.

Subpart F—Special Rules Applicable to Employees of Schools

Sections 825.600–825.604 Special rules for school employees, definitions; Special rules for school employees, limitations on intermittent leave; Special rules for school employees, limitations on leave near the end of an academic term; Special rules for school employees, duration of FMLA leave; Special rules for school employees, restoration to an equivalent position.

The Board proposes to adopt the amendments covered in the DOL regulations under these sections. Sections 825.600–825.604 cover the special rules applicable to instructional employees. When an eligible instructional employee needs intermittent leave or leave on a reduced schedule basis to care for a covered servicemember, the employee may choose to either (1) take leave for a period or periods of particular duration; or (2) transfer temporarily to an available alternative position with equivalent pay and benefits that better accommodates recurring periods of leave.

These sections also extend some of the limitations on leave near the end of an academic term to leave requested during this period to care for a covered servicemember. If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of the term, the employing office may require the employee to continue taking leave until the end of the term if the leave will last more than two weeks and the employee would return to work during the two-week period before the end of the term. Further, an employing office may require an instructional employee to continue taking leave until the end of the term if the employee begins leave that will last more than five working days for a purpose other than the employee's own serious health condition during the three-week period before the end of the term. The types of leave that are subject to the limitations are: (1) leave because of the birth of a son or daughter, (2) leave because of the placement of a son or daughter for adoption or foster care, (3) leave taken to care for a spouse, parent, or child with a serious health condition, and (4) leave taken to care for a covered servicemember.

Subpart G—Effect of Other Laws, Employing Office Practices, and Collective Bargaining Agreements on Employee Rights Under FMLA

Section 825.700 Interaction with employing office's policies.

The Board proposes to adopt the amendments covered in the DOL regulations under this section. Section 825.700 provides that an employing office may not limit the rights established by the FMLA through an employment benefit program or plan, but an employing office may provide greater leave rights than the FMLA requires. This section also provides that an employing office may amend existing leave programs, so long as they comply with the FMLA, and that nothing in the FMLA is intended to discourage employing offices from adopting or retaining more generous leave policies. The Board proposes to follow the DOL regulations and delete from the current OOC section 825.700(a) the following: ''If an employee takes paid or unpaid leave and the employing office does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement.'' As explained by the DOL, this last sentence of section 825.700(a) was deleted in order to conform to the U.S. Supreme Court's decision in Ragsdale v. Wolverine World Wide, 535 U.S. 81 (2002), which specifically invalidated this provision.

Section 825.701 Interaction with State laws.

This DOL section does not apply to the CAA and will remain reserved in the OOC regulations.

Section 825.702 Interaction with Federal and State anti-discrimination laws.

The Board proposes to adopt the amendments covered in the DOL regulations under this section. Section 825.702 addresses the interaction between the FMLA and other Federal and State antidiscrimination laws. Section 825.702 discusses the interaction between the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the FMLA. Under USERRA, a returning servicemember would be entitled to FMLA leave if, after including the hours that he or she would have worked for the civilian employing office during the period of military service, the employee would have met the FMLA eligibility threshold. This is not an expansion of FMLA rights through regulation; this is a requirement of USERRA.

With respect to the interaction of the FMLA and ADA, where both laws may apply, the applicability of each statute needs to be evaluated independently.

Further, the reference to employers who receive Federal financial assistance and employers who contract with the Federal government in this section has not been adopted by the Board because federal contractor employers are not covered by the CAA.

In its final regulations, the DOL removed the following optional-use forms and notices from the Appendix of the regulations, but continued to make them available to the public on the WHD Web site: Forms WH–380–E (Certification of Health Care Provider for Employee's Serious Health Condition); WH–380–F (Certification of Health Care Provider for Family Member's Serious Health Condition); WH–381 (Notice of Eligibility and Rights & Responsibilities); WH–382 (Designation Notice); WH–384 (Certification of Qualifying Exigency for Military Family Leave); WH–385 (Certification for Serious Injury or Illness of Current Servicemember for Military Family Leave); and WH–385–V (Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave). The Board proposes to revise its forms and to make the following OOC forms available on its website: Form A: Certification of Health Care Provider for Employee's Serious Health Condition; Form B: Certification of Health Care Provider for Family Member's Serious Health Condition; Form C: Notice of Eligibility and Rights and Responsibilities; Form D: Designation Notice to Employee of FMLA Leave; Form E: Certification of Qualifying Exigency for Military Family Leave; Form F: Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave; and Form G: Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave. The Board's proposed forms now include references to the Genetic Information Nondiscrimination Act of 2008, which is made applicable to employees covered under the CAA. The Board invites comment on whether these forms should be included in the regulations, or whether covered employees and employing offices should be directed to the DOL website for the appropriate forms. In any event, the use of a specific set of forms is optional and other forms requiring the same information may be used instead. In proposing these revised forms, the Board recognizes that the use of specific forms play a key role in employing offices' compliance with the FMLA and employees' ability to take FMLA protected leave when needed.

SUBSTANTIVE REGULATIONS PROPOSED BY THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE EXTENDING RIGHTS AND PROTECTIONS UNDER THE FAMILY AND MEDICAL ACT OF 1996, AS AMENDED

FINAL REGULATIONS

Part 825—Family and Medical Leave

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825.600 Special rules for school employees, definitions.
825.601 Special rules for school employees, limitations on intermittent leave.
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Subpart G—EFFECT OF OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS ON EMPLOYEE RIGHTS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA

825.700 Interaction with employing office's policies.
825.701 [Reserved]
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Subpart H—[Reserved]
FORMS

Form A: Certification of Health Care Provider for Employee's Serious Health Condition;
Form B: Certification of Health Care Provider for Family Member's Serious Health Condition;
Form C: Notice of Eligibility and Rights & Responsibilities;
Form D: Designation Notice to Employee of FMLA Leave;
Form E: Certification of Qualifying Exigency for Military Family Leave;
Form F: Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave;
Form G: Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave.

825.1 Purpose and scope.

(a) Section 202 of the Congressional Accountability Act (CAA) (2 U.S.C. 1312) applies the rights and protections of sections 101 through 105 of the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2611–2615) to covered employees. (The term ''covered employee'' is defined in section 101(3) of the CAA (2 U.S.C. 1301(3)). See 825.102 of these regulations for that definition.) The purpose of this part is to set forth the regulations to carry out the provisions of section 202 of the CAA.

(b) These regulations are issued by the Board of Directors (Board) of the Office of Compliance, pursuant to sections 202(d) and 304 of the CAA, which direct the Board to promulgate regulations implementing section 202 that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA] except insofar as the Board may determine, for good cause shown . . . that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' The regulations issued by the Board herein are on all matters for which section 202 of the CAA requires regulations to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of the promulgation of these regulations, that, with the exception of regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 202 of the CAA].''

(c) In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the legislative branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

SUBPART A—COVERAGE UNDER THE FAMILY AND MEDICAL LEAVE ACT

825.100 The Family and Medical Leave Act.

(a) The Family and Medical Leave Act of 1993 (FMLA), as made applicable by the Congressional Accountability Act (CAA), allows eligible employees of an employing office to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks in any 12 months (*see* 825.200(b)) because of the birth of a child and to care for the newborn child, because of the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, because the employee's own serious health condition makes the employee unable to perform the functions of his or her job, or because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty). In addition, eligible employees of a covered employing office may take job-protected, unpaid leave, or substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 26 workweeks in a single 12-month period to care for a covered servicemember with a serious injury or illness. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

(b) An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work instead of taking the leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay his or her share during the leave period. The employing office or a disbursing or other financial office of *the House of Representatives or* [italicized language is in only the House and Instrumentalities versions of the regulations] the Senate may recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's covered family member, the serious injury or illness of a covered servicemember, or another reason beyond the employee's control.

(c) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave.

(d) The employing office generally has a right to advance notice from the employee. In addition, the employing office may require an employee to submit certification to substantiate that the leave is due to the serious health condition of the employee or the employee's covered family member, due to the serious injury or illness of a covered servicemember, or because of a qualifying exigency. Failure to comply with these requirements may result in a delay in the start of FMLA leave. Pursuant to a uniformly applied policy, the employing office may also require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition (*see* 825.312 and 825.313)).

The employing office may delay restoring the employee to employment without such certificate relating to the health condition which caused the employee's absence.

825.101 Purpose of the FMLA.

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, for the care of a covered servicemember with a serious injury or illness, or because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status. The FMLA is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the FMLA accomplish these purposes in a manner that accommodates the legitimate interests of employing offices, and in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment in minimizing the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

(b) The FMLA was predicated on two fundamental concerns—the needs of the American workforce, and the development of high-performance organizations. Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

(c) The FMLA is both intended and expected to benefit employing offices as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

825.102 Definitions.

For purposes of this part:

ADA means the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*, as amended).

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

COBRA means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986 (Pub. Law 99–272, title X, section 10002; 100 Stat. 227; 29 U.S.C. 1161–1168).

Contingency operation means a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. *See also* 825.126(a)(2).

Continuing treatment by a health care provider means any one of the following:

(1) *Incapacity and treatment*. A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(i) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; or

(ii) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(iii) The requirement in paragraphs (i) and (ii) of this definition for treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.

(iv) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(v) The term ''extenuating circumstances'' in paragraph (i) means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. *See also* 825.115(a)(5).

(2) *Pregnancy or prenatal care*. Any period of incapacity due to pregnancy, or for prenatal care. *See also* 825.120.

(3) *Chronic conditions*. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, *etc.*).

(4) *Permanent or long-term conditions*. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(5) *Conditions requiring multiple treatments*. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(i) Restorative surgery after an accident or other injury; or

(ii) A condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), kidney disease (dialysis).

(6) Absences attributable to incapacity under paragraphs (2) or (3) of this definition qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

Covered active duty or call to covered active duty status means:

(1) In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and,

(2) In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. *See* 10 U.S.C. 101(a)(13)(B). *See also* 825.126(a).

Covered employee as defined in the CAA, means any employee of—(1) the House of Representatives; (2) the Senate; (3) the Office of Congressional Accessibility Services; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; (8) the Office of Compliance; or (9) the Office of Technology Assessment.

Covered servicemember means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness, or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. *See* 825.127(b)(2).

Eligible employee as defined in the CAA, means:

(1) A covered employee who has been employed for a total of at least 12 months in any employing office on the date on which any FMLA leave is to commence, except that an employing office need not consider any period of previous employment that occurred more than seven years before the date of the most recent hiring of the employee, *unless:*

(i) The break in service is occasioned by the fulfillment of the employee's Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et seq.*, covered service obligation (the period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by any employing office, but this section does not provide any greater entitlement to the employee than would be available under the USERRA, as made applicable by the CAA); or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employing office's intention to rehire the employee after the break in service (*e.g.*, for purposes of the employee furthering his or her education or for childrearing purposes); and

(2) Who, on the date on which any FMLA leave is to commence, has met the hours of service requirement by having been employed for at least 1,250 hours of service with an employing office during the previous 12-month period, *except that*:

(i) An employee returning from fulfilling his or her USERRA-covered service obligation shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining whether the employee met the hours of service requirement (accordingly, a person reemployed following absence from work due to or necessitated by USERRA-covered service has the hours that would have been worked for the employing office added to any hours actually worked during the previous 12-month period to meet the hours of service requirement); and

(ii) To determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

Employ means to suffer or permit to work.

Employee means an employee as defined by the CAA and includes an applicant for employment and a former employee.

Employee employed in an instructional capacity. *See* the definition of *Teacher* in this section.

Employee of the Capitol Police means any member or officer of the Capitol Police.

Employee of the House of Representatives means an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (9) under the definition of *covered employee* above.

Employee of the Office of the Architect of the Capitol means any employee of the Office of the Architect of the Capitol or the Botanic Garden.

Employee of the Senate means any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (9) under the definition of *covered employee* above.

Employing Office, as defined in the CAA, means:

(1) The personal office of a Member of the House of Representatives or of a Senator;

(2) A committee of the House of Representatives or the Senate or a joint committee;

(3) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) The Office of Congressional Accessibility Services, the United States Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

Employment benefits means all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office or through an employee benefit plan. The term does not include non-employment related obligations paid by employees through voluntary deductions such as supplemental insurance coverage. *See also* 825.209(a).

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*).

FMLA means the Family and Medical Leave Act of 1993, Public Law 103–3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 *et seq.*, as amended).

Group health plan means the Federal Employees Health Benefits Program and any other plan of, or contributed to by, an employing office (including a self-insured plan) to provide health care (directly or otherwise) to the employing office's employees, former employees, or the families of such employees or former employees. For purposes of FMLA, as made applicable by the CAA, the term *group health plan* shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employing office;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and,

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

Health care provider means:

(1) The FMLA, as made applicable by the CAA, defines health care provider as:

(i) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(ii) Any other person determined by the Department of Labor to be capable of providing health care services.

(2) Others ''capable of providing health care services'' include only:

(i) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and

(ii) Nurse practitioners, nurse-midwives and clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(iii) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

(iv) Any health care provider from whom an employing office or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(v) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(3) The phrase ''authorized to practice in the State'' as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the ''activities of daily living'' (ADLs) or ''instrumental activities of daily living'' (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, *etc.*

Instructional employee: See the definition of *Teacher* in this section.

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Invitational travel authorization (ITA) or *Invitational travel order* (ITO) mean orders issued by the Armed Forces to a family member to join an injured or ill servicemember at his or her bedside. *See also* 825.310(e).

Key employee means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite. *See also* 825.217.

Mental disability: See the definition of *Physical or mental disability* in this section.

Military caregiver leave means leave taken to care for a covered servicemember with a serious injury or illness under the Family and Medical Leave Act of 1993. *See also* 825.127.

Next of kin of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember

by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. *See also* 825.127(d)(3).

Office of Compliance means the independent office established in the legislative branch under section 301 of the CAA (2 U.S.C. 1381).

Outpatient status means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. *See also* 825.127(b)(1).

Parent means a biological, adoptive, step or foster father or mother or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents ''in law.''

*Parent of a covered servicemembe*r means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.'' *See also* 825.127(d)(2).

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, as amended, provide guidance to these terms.

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Reserve components of the Armed Forces, for purposes of qualifying exigency leave, include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation. *See also* 825.126(a)(2)(i).

Secretary means the Secretary of Labor or authorized representative.

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care as defined in 825.114 or continuing treatment by a health care provider as defined in 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of 825.113 are met.

Serious injury or illness means:

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(2) In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. *See also* 825.127(c).

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and ''incapable of self-care because of a mental or physical disability'' at the time that FMLA leave is to commence.

Son or daughter of a covered servicemember means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *See also* 825.127(d)(1).

Son or daughter on covered active duty or call to covered active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. *See also* 825.126(a)(5).

Spouse, as defined in the FMLA and as made applicable by the CAA, means a husband or wife. For purposes of this definition, husband or wife refers to all individuals in lawfully recognized marriages. This definition includes an individual in a same-sex marriage. This definition also includes an individual in a common law marriage that either:

(1) was entered into in a State that recognizes such marriages or,

(2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or *employee employed in an instructional capacity*, or *instructional employee*) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

TRICARE is the health care program serving active duty servicemembers, National Guard and Reserve members, retirees, their families, survivors, and certain former spouses worldwide.

825.103 [Removed and Reserved]

825.104 Covered employing offices.

(a) The FMLA, as made applicable by the CAA, covers all employing offices. As used in the CAA, the term employing office means:

(1) The personal office of a Member of the House of Representatives or of a Senator;

(2) A committee of the House of Representatives or the Senate or a joint committee;

(3) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) The Office of Congressional Accessibility Services, the United States Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(b) **[Reserved]**

(c) Separate entities will be deemed to be parts of a single employing office for purposes of the FMLA, as made applicable by the CAA, if they meet the ''integrated employer'' test. Where this test is met, the employees of all entities making up the integrated employer will be counted in determining employer coverage and employee eligibility. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality. Factors considered in determining whether two or more entities are an integrated employer include:

(1) Common management;

(2) Interrelation between operations;

(3) Centralized control of labor relations; and

(4) Degree of common financial control.

825.105 [Reserved].

825.106 Joint employer coverage.

(a) Where two or more employing offices exercise some control over the work or working conditions of the employee, the employing offices may be joint employers under FMLA, as made applicable by the CAA. Where the employee performs work which simultaneously benefits two or more employing offices, or works for two or more employing offices at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between employing offices to share an employee's services or to interchange employees;

(2) Where one employing office acts directly or indirectly in the interest of the other employing office in relation to the employee; or

(3) Where the employing offices are not completely disassociated with respect to the employee's employment and may be deemed

to share control of the employee, directly or indirectly, because one employing office controls, is controlled by, or is under common control with the other employing office.

(b) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality. For example, joint employment will ordinarily be found to exist when:

(1) An employee, who is employed by an employing office other than the personal office of a Member of the House of Representatives or of a Senator, is under the actual direction and control of the Member of the House of Representatives or Senator; or

(2) Two or more employing offices employ an individual to work on common issues or other matters for both or all of them.

(c) When employing offices employ a covered employee jointly, they may designate one of themselves to be the primary employing office, and the other or others to be the secondary employing office(s). Such a designation shall be made by written notice to the covered employee.

(d) If an employing office is designated a primary employing office pursuant to paragraph (c) of this section, only that employing office is responsible for giving required notices to the covered employee, providing FMLA leave, and maintenance of health benefits. Job restoration is the primary responsibility of the primary employing office, and the secondary employing office(s) may, subject to the limitations in 825.216, be responsible for accepting the employee returning from FMLA leave.

(e) If employing offices employ an employee jointly, but fail to designate a primary employing office pursuant to paragraph (c) of this section, then all of these employing offices shall be jointly and severally liable for giving required notices to the employee, for providing FMLA leave, for assuring that health benefits are maintained, and for job restoration. The employee may give notice of need for FMLA leave, as described in 825.302 and 825.303, to whichever of these employing offices the employee chooses. If the employee makes a written request for restoration to one of these employing offices, that employing office shall be primarily responsible for job restoration, and the other employing office(s) may, subject to the limitations in 825.216, be responsible for accepting the employee returning from FMLA leave.

825.107 [Reserved]

825.108 [Reserved]

825.109 [Reserved]

825.110 Eligible employees.

(a) An eligible employee is an employee of a covered employing office who:

(1) Has been employed by any employing office for at least 12 months, and

(2) Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.

(b) The 12 months an employee must have been employed by any employing office need not be consecutive months, *provided*:

(1) Subject to the exceptions provided in paragraph (b)(2) of this section, employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by the employing office for at least 12 months.

(2) Employment periods preceding a break in service of more than seven years must be counted in determining whether the employee has been employed by the employing office for at least 12 months where:

(i) The employee's break in service is occasioned by the fulfillment of his or her Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, *et seq.*, covered service obligation. The period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by the employing office. However, this section does not provide any greater entitlement to the employee than would be available under the USERRA; or

(ii) A written agreement, including a collective bargaining agreement, exists concerning the employing office's intention to rehire the employee after the break in service (*e.g.*, for purposes of the employee furthering his or her education or for childrearing purposes).

(3) If an employee worked for two or more employing offices sequentially, the time worked will be aggregated to determine whether it equals 12 months.

(4) If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation) during which other benefits or compensation are provided by the employing office (*e.g.*, Federal Employees' Compensation, group health plan benefits, *etc.*), the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as at least 12 months, 52 weeks is deemed to be equal to 12 months.

(5) Nothing in this section prevents employing offices from considering employment prior to a continuous break in service of more than seven years when determining whether an employee has met the 12-month employment requirement. However, if an employing office chooses to recognize such prior employment, the employing office must do so uniformly, with respect to all employees with similar breaks in service.

(c)(1) If an employee was employed by two or more employing offices, either sequentially or concurrently, the hours of service will be aggregated to determine whether the minimum of 1,250 hours has been reached.

(2) Except as provided in paragraph (c)(3) of this section, whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA), as applied by section 203 of the CAA (2 U.S.C. 1313), for determining compensable hours of work. The determining factor is the number of hours an employee has worked for one or more employing offices. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employing office. Any accurate accounting of actual hours worked under the FLSA's principles may be used.

(3) An employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. Accordingly, a person reemployed following USERRA-covered service has the hours that would have been worked for the employing office added to any hours actually worked during the previous 12-month period to meet the hours of service requirement. In order to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

(4) In the event an employing office does not maintain an accurate record of hours worked by an employee, including for employees who are exempt from FLSA's requirement that a record be kept of their hours worked (*e.g.*, bona fide executive, administrative, and professional employees as defined in the FLSA Regulations, 29 CFR part 541, and as made applicable by the CAA, the employing office has the burden of showing that the employee has not worked the requisite hours. An employing office must be able to clearly demonstrate, for example, that full-time teachers (*see* 825.102 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution (who often work outside the classroom or at their homes) did not work 1,250 hours during the previous 12 months in order to claim that the teachers are not eligible for FMLA leave.

(d) The determination of whether an employee has worked for any employing office for at least 1,250 hours in the past 12 months and has been employed by any employing office for a total of at least 12 months must be made as of the date the FMLA leave is to start. An employee may be on non-FMLA leave at the time he or she meets the 12-month eligibility requirement, and in that event, any portion of the leave taken for an FMLA-qualifying reason after the employee meets the eligibility requirement would be FMLA leave. *See* 825.300(b) for rules governing the content of the eligibility notice given to employees.

(e) **[Reserved]**

825.111 [Reserved]

825.112 Qualifying reasons for leave, general rule.

(a) *Circumstances qualifying for leave*. Employing offices covered by FMLA as made applicable by the CAA are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child (*see* 825.120);

(2) For placement with the employee of a son or daughter for adoption or foster care (*see* 825.121);

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition (*see* 825.113 and 825.122); and

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job (*see* 825.113 and 825.123);

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active status) (*see* 825.122 and 825.126); and

(6) To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember (*see* 825.122 and 825.127).

(b) *Equal Application*. The right to take leave under FMLA, as made applicable by the CAA, applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption, or foster care of a child.

(c) *Active employee*. In situations where the employing office/employee relationship has been interrupted, such as an employee who has been on layoff, the employee must be recalled or otherwise be re-employed before being eligible for FMLA leave. Under such circumstances, an eligible employee is immediately entitled to further FMLA leave for a qualifying reason.

825.113 Serious health condition.

(a) For purposes of FMLA, *serious health condition* entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves inpatient care as defined in 825.114 or

continuing treatment by a health care provider as defined in 825.115.

(b) The term *incapacity* means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

(c) The term *treatment* includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (*e.g.*, an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (*e.g.*, oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bedrest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(d) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, *etc.*, are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.

825.114 Inpatient care.

Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in 825.113(b), or any subsequent treatment in connection with such inpatient care.

825.115 Continuing treatment.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(a) *Incapacity and treatment.* A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(1) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

(3) The requirement in paragraphs (a)(1) and (2) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

(4) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.

(5) The term *extenuating circumstances* in paragraph (a)(1) of this section means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period.

(b) *Pregnancy or prenatal care.* Any period of incapacity due to pregnancy, or for prenatal care. See also 825.120.

(c) *Chronic conditions.* Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (*e.g.*, asthma, diabetes, epilepsy, *etc.*).

(d) *Permanent or long-term conditions.* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(e) *Conditions requiring multiple treatments.* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(1) Restorative surgery after an accident or other injury; or

(2) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), or kidney disease (dialysis).

(f) Absences attributable to incapacity under paragraphs (b) or (c) of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

825.116 [Removed and Reserved]

825.117 [Removed and Reserved]

825.118 [Removed and Reserved]

825.119 Leave for treatment of substance abuse.

(a) Substance abuse may be a serious health condition if the conditions of 825.113 through 825.115 are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(b) Treatment for substance abuse does not prevent an employing office from taking employment action against an employee. The employing office may not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment. However, if the employing office has an established policy, applied in a non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking FMLA leave. An employee may also take FMLA leave to care for a covered family member who is receiving treatment for substance abuse. The employing office may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

825.120 Leave for pregnancy or birth.

(a) *General rules.* Eligible employees are entitled to FMLA leave for pregnancy or birth of a child as follows:

(1) Both parents are entitled to FMLA leave for the birth of their child.

(2) Both parents are entitled to FMLA leave to be with the healthy newborn child (*i.e.*, bonding time) during the 12-month period beginning on the date of birth. An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth. If the employing office permits bonding leave to be taken beyond this period, such leave will not qualify as FMLA leave. Under this section, both parents are entitled to FMLA leave even if the newborn does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a healthy, newborn child, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition. Note, too, that many state pregnancy disability laws specify a period of disability either before or after the birth of a child; such periods would also be considered FMLA leave for a serious health condition of the birth mother, and would not be subject to the combined limit.

(4) The expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work. The expectant mother is entitled to leave for incapacity due to pregnancy

even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days.

(5) A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for her following the birth of a child if she has a serious health condition. See 825.124.

(6) Both parents are entitled to FMLA leave if needed to care for a child with a serious health condition if the requirements of 825.113 through 825.115 and 825.122(d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for their newborn child with a serious health condition, even if both are employed by the same employing office, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) *Intermittent and reduced schedule leave*. An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy newborn child only if the employing office agrees. For example, an employing office and employee may agree to a part-time work schedule after the birth. If the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employing office's agreement is not required for intermittent leave required by the serious health condition of the expectant mother or newborn child. *See* 825.202–825.205 for general rules governing the use of intermittent and reduced schedule leave. *See* 825.121 for rules governing leave for adoption or foster care. *See* 825.601 for special rules applicable to instructional employees of schools.

825.121 Leave for adoption or foster care.

(a) *General rules*. Eligible employees are entitled to FMLA leave for placement with the employee of a son or daughter for adoption or foster care as follows:

(1) Employees may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counseling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption. The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose.

(2) An employee's entitlement to leave for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement. If the employing office permits leave for adoption or foster care to be taken beyond this period, such leave will not qualify as FMLA leave. Under this section, the employee is entitled to FMLA leave even if the adopted or foster child does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the placement of the employee's son or daughter or to care for the child after placement, for the birth of the employee's son or daughter or to care for the child after birth, or to care for the employee's parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a healthy, newly placed child, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition.

(4) An eligible employee is entitled to FMLA leave in order to care for an adopted or foster child with a serious health condition if the requirements of 825.113 through 825.115 and 825.122(d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for an adopted or foster child with a serious health condition, even if both are employed by the same employing office, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) *Use of intermittent and reduced schedule leave*. An eligible employee may use intermittent or reduced schedule leave after the placement of a healthy child for adoption or foster care only if the employing office agrees. Thus, for example, the employing office and employee may agree to a part-time work schedule after the placement for bonding purposes. If the employing office agrees to permit intermittent or reduced schedule leave for the placement for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave. The employing office's agreement is not required for intermittent leave required by the serious health condition of the adopted or foster child. *See* 825.202–825.205 for general rules governing the use of intermittent and reduced schedule leave. *See* 825.120 for general rules governing leave for pregnancy and birth of a child. *See* 825.601 for special rules applicable to instructional employees of schools.

825.122 Definitions of covered servicemember, spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on covered active duty or call to covered active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember.

(a) *Covered servicemember* means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness. *Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. *See* 825.127(b)(2).

(b) *Spouse*, as defined in the FMLA and as made applicable by the CAA, means a husband or wife. For purposes of this definition, husband or wife refers to all individuals in lawfully recognized marriages. This definition includes an individual in a same-sex marriage. This definition also includes an individual in a common law marriage that either:

(1) was entered into in a State that recognizes such marriages or,

(2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

(c) *Parent*. Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined in paragraph (d) of this section. This term does not include parents ''in law.''

(d) *Son or daughter*. For purposes of FMLA leave taken for birth or adoption, or to care for a family member with a serious health condition, son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and ''incapable of self-care because of a mental or physical disability'' at the time that FMLA leave is to commence.

(1) *Incapable of self-care* means that the individual requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADLs) or instrumental activities of daily living (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, *etc*.

(2) *Physical or mental disability* means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.

(3) Persons who are ''in loco parentis'' include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(e) *Next of kin of a covered servicemember* means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless

the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. *See* 825.127(d)(3).

(f) *Adoption* means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave. *See* 825.121 for rules governing leave for adoption.

(g) *Foster care* means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody. *See* 825.121 for rules governing leave for foster care.

(h) *Son or daughter on covered active duty or call to covered active duty status* means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. *See* 825.126(a)(5).

(i) *Son or daughter of a covered servicemember* means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. *See* 825.127(d)(1).

(j) *Parent of a covered servicemember* means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.'' *See* 825.127(d)(2).

(k) *Documenting relationships*. For purposes of confirmation of family relationship, the employing office may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, *etc*. The employing office is entitled to examine documentation such as a birth certificate, *etc*., but the employee is entitled to the return of the official document submitted for this purpose.

825.123 Unable to perform the functions of the position.

(a) *Definition*. An employee is unable to perform the functions of the position where the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended and made applicable by Section 201(a) of the CAA (2 U.S.C. 1311(a)(3)). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

(b) *Statement of functions*. An employing office has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. A sufficient medical certification must specify what functions of the employee's position the employee is unable to perform so that the employing office can then determine whether the employee is unable to perform one or more essential functions of the employee's position. For purposes of FMLA, the essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave commenced, whichever is earlier. *See* 825.306.

825.124 Needed to care for a family member or covered servicemember.

(a) The medical certification provision that an employee is needed to care for a family member or covered servicemember encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor. The term also includes providing psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care.

(b) The term also includes situations where the employee may be needed to substitute for others who normally care for the family member or covered servicemember, or to make arrangements for changes in care, such as transfer to a nursing home. The employee need not be the only individual or family member available to care for the family member or covered servicemember.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member or covered servicemember includes not only a situation where the condition of the family member or covered servicemember itself is intermittent, but also where the employee is only needed intermittently—such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party. *See* 825.202–825.205 for rules governing the use of intermittent or reduced schedule leave.

825.125 Definition of health care provider.

(a) The FMLA, as made applicable by the CAA, defines *health care provider* as:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(2) Any other person determined by the Office of Compliance to be capable of providing health care services.

(3) In making a determination referred to in subparagraph (a)(2), and absent good cause shown to do otherwise, the Office of Compliance will follow any determination made by the Department of Labor (under section 101(6)(B) of FMLA (29 U.S.C. 2611(6)(B))) that a person is capable of providing health care services, provided the determination by the Department of Labor was not made at the request of a person who was then a covered employee.

(b) Others capable of providing health care services include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employing office that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(4) Any health care provider from whom an employing office or the employing office's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(c) The phrase authorized to practice in the State as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

825.126 Leave because of a qualifying exigency.

(a) Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).

(1) *Covered active duty or call to covered active duty status* in the case of a member of the Regular Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Regular components of the Armed Forces will generally specify if the member is deployed to a foreign country.

(2) *Covered active duty or call to covered active duty status* in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes

calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. See 10 U.S.C. 101(a)(13)(B).

(i) For purposes of covered active duty or call to covered active duty status, the Reserve components of the Armed Forces include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation pursuant to one of the provisions of law identified in paragraph (a)(2).

(ii) The active duty orders of a member of the Reserve components will generally specify if the military member is serving in support of a contingency operation by citation to the relevant section of Title 10 of the United States Code and/or by reference to the specific name of the contingency operation and will specify that the deployment is to a foreign country.

(3) *Deployment of the member with the Armed Forces to a foreign country* means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters.

(4) A call to covered active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (a)(2) of this section.

(5) *Son or daughter on covered active duty or call to covered active duty status* means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

(b) An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.* (i) To address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty seven or less calendar days prior to the date of deployment;

(ii) Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty;

(2) *Military events and related activities.* (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;

(3) *Childcare and school activities.* For the purposes of leave for childcare and school activities listed in (i) through (iv) of this paragraph, a child of the military member must be the military member's biological, adopted, or foster child, stepchild, legal ward, or child for whom the military member stands in loco parentis, who is either under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(i) To arrange for alternative childcare for a child of the military member when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement;

(ii) To provide childcare for a child of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member;

(4) *Financial and legal arrangements.* (i) To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(ii) To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status;

(5) *Counseling.* To attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member;

(6) *Rest and Recuperation.* (i) To spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment;

(ii) Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave;

(7) *Post-deployment activities.* (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status; and

(ii) To address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services;

(8) *Parental care.* For purposes of leave for parental care listed in (i) through (iv) of this paragraph, the parent of the military member must be incapable of self-care and must be the military member's biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age. A parent who is incapable of self-care means that the parent requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living. Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, *etc.* As with all instances of qualifying exigency leave, the military member must be the spouse, son, daughter, or parent of the employee requesting qualifying exigency leave.

(i) To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;

(ii) To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

(iii) To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and

(iv) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings;

(9) *Additional activities.* To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employing office and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

825.127 Leave to care for a covered servicemember with a serious injury or illness (military caregiver leave).

(a) Eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious illness or injury.

(b) *Covered servicemember* means:

(1) A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in *outpatient status*; or is otherwise on the temporary disability retired list, for a serious injury or illness. Outpatient status means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(2) A covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. *Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. An eligible employee must commence leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period described in paragraph (e)(1) of this section may extend beyond the five-year period.

(i) For an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and who was discharged or released under conditions other than dishonorable prior to the effective date of this Final Rule, the period between October 28, 2009 and the effective date of this Final Rule shall not count towards the determination of the five-year period for covered veteran status.

(c) A *serious injury or illness* means:

(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and,

(2) In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces), and manifested itself before or after the member became a veteran, and is:

(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(d) In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

(1) *Son or daughter of a covered servicemember* means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

(2) *Parent of a covered servicemember* means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents ''in law.''

(3) *Next of kin of a covered servicemember* means the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. An employing office is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to 825.122(k).

(e) An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period.

(1) The single 12-month period described in paragraph (e) of this section begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date, regardless of the method used by the employing office to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement described in paragraph (e) of this section is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

(3) An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period described in paragraph (e) of this section, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: because of the birth of a son or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee's own serious health condition; or because of a qualifying exigency. Thus, for example, an eligible employee may, during the single 12-month period, take 16 workweeks of FMLA leave to care for a covered servicemember and 10 workweeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the single 12-month period, even if the employee takes fewer than 14 workweeks of FMLA leave to care for a covered servicemember.

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employing office is responsible for designating leave, paid or unpaid, as FMLA-qualifying, and for giving notice of the designation to the employee as provided in 825.300. In the case of leave that qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the single 12-month period described in paragraph (e) of this section, the employing office must designate such leave as leave to care for a covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the single 12-month period described in paragraph (e) of this section must not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, employing offices may retroactively designate leave as leave to care for a covered servicemember pursuant to 825.301(d).

(f) Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 26 workweeks of leave during the single 12-month period described in paragraph (e) of this section if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 26 workweeks of FMLA leave.

Subpart B—EMPLOYEE LEAVE ENTITLEMENTS UNDER THE FAMILY AND MEDICAL LEAVE ACT, AS MADE APPLICABLE BY THE CONGRESSIONAL ACCOUNTABILITY ACT

825.200 Amount of Leave.

(a) Except in the case of leave to care for a covered servicemember with a serious injury or illness, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of the employee's son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition;

(4) Because of a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job; and

(5) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty status (or has been notified of an impending call or order to active duty).

(b) An employing office is permitted to choose any one of the following methods for determining the 12-month period in which the 12 weeks of leave entitlement described in paragraph (a) of this section occurs:

(1) The calendar year;

(2) Any fixed 12-month leave year, such as a fiscal year or a year starting on an employee's anniversary date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave under paragraph (a) begins; or

(4) A ''rolling'' 12-month period measured backward from the date an employee uses any FMLA leave as described in paragraph (a).

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the ''rolling'' 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 2008, four weeks beginning June 1, 2008, and four weeks beginning December 1, 2008, the employee would not be entitled to any additional leave until February 1, 2009. However, beginning on February 1, 2009, the employee would again be eligible to take FMLA leave, recouping the right to take the leave in the same manner and amounts in which it was used in the previous year. Thus, the employee would recoup (and be entitled to use) one additional day of FMLA leave each day for four weeks, commencing February 1, 2009. The employee would also begin to recoup additional days beginning on June 1, 2009, and additional days beginning on December 1, 2009. Accordingly, employing offices using the rolling 12-month period may need to calculate whether the employee is entitled to take FMLA leave each time that leave is requested, and employees taking FMLA leave on such a basis may fall in and out of FMLA protection based on their FMLA usage in the prior 12 months. For example, in the example above, if the employee needs six weeks of leave for a serious health condition commencing February 1, 2009, only the first four weeks of the leave would be FMLA-protected.

(d)(1) Employing offices will be allowed to choose any one of the alternatives in paragraph (b) of this section for the leave entitlements described in paragraph (a) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employing office wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the CAA's FMLA leave requirements.

(2) [Reserved]

(e) If an employing office fails to select one of the options in paragraph (b) of this section for measuring the 12-month period for the leave entitlements described in paragraph (a), the option that provides the most beneficial outcome for the employee will be used. The employing office may subsequently select an option only by providing the 60-day notice to all employees of the option the employing office intends to implement. During the running of the 60-day period any other employee who needs FMLA leave may use the option providing the most beneficial outcome to that employee. At the conclusion of the 60-day period the employing office may implement the selected option.

(f) An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness. An employing office shall determine the single 12-month period in which the 26 weeks of leave entitlement described in this paragraph occurs using the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins. *See* 825.127(e)(1).

(g) During the single 12-month period described in paragraph (f), an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. *See* 825.127(e)(3).

(h) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employing office's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employing office closing the office for repairs), the days the employing office's activities have ceased do not count against the employee's FMLA leave entitlement. Methods for determining an employee's 12-week leave entitlement are also described in 825.205.

(i)(1) If employing offices jointly employ an employee, and if they designate a primary employing office pursuant to 825.106(c), the primary employing office may choose any one of the alternatives in paragraph (b) of this section for measuring the 12-month period, provided that the alternative chosen is applied consistently and uniformly to all employees of the primary employing office including the jointly employed employee.

(2) If employing offices fail to designate a primary employing office pursuant to 825.106(c), an employee jointly employed by the employing offices may, by so notifying one of the employing offices, select that employing office to be the primary employing office of the employee for purposes of the application of paragraphs (d) and (e) of this section.

825.201 Leave to care for a parent.

(a) *General rule*. An eligible employee is entitled to FMLA leave if needed to care for the employee's parent with a serious health condition. Care for parents-in-law is not covered by the FMLA. *See* 825.122(c) for definition of parent.

(b) *Same employing office limitation*. Spouses who are eligible for FMLA leave and are employed by the same covered employing office may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employing office. It would apply, for example, even though the spouses are employed at two different worksites of an employing office. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave. Where the spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a parent, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition. *See also* 825.127(d).

825.202 Intermittent leave or reduced leave schedule.

(a) *Definition*. FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. *Intermittent leave* is FMLA leave taken in separate blocks of time due to a single qualifying reason. A *reduced leave schedule* is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

(b) *Medical necessity*. For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition and in the certification of a serious injury or illness, if required by the employing office, addresses the medical necessity of intermittent leave or leave on a reduced leave schedule. *See* 825.306, 825.310. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a serious health condition or of a covered servicemember's serious injury or illness, or for recovery from treatment or recovery from a serious health condition or a covered servicemember's serious injury or illness. It may also be taken to provide care or psychological comfort to a covered family member with a serious health condition or a covered

servicemember with a serious injury or illness.

(1) Intermittent leave may be taken for a serious health condition of a spouse, parent, son, or daughter, for the employee's own serious health condition, or a serious injury or illness of a covered servicemember which requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.

(2) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition or a serious injury or illness of a covered servicemember, even if he or she does not receive treatment by a health care provider. *See* 825.113 and 825.127.

(c) *Birth or placement*. When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employing office agrees. Such a schedule reduction might occur, for example, where an employee, with the employing office's agreement, works part-time after the birth of a child, or takes leave in several segments. The employing office's agreement is not required, however, for leave during which the expectant mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition. *See* 825.204 for rules governing transfer to an alternative position that better accommodates intermittent leave. *See also* 825.120 (pregnancy) and 825.121 (adoption and foster care).

(d) *Qualifying exigency*. Leave due to a qualifying exigency may be taken on an intermittent or reduced leave schedule basis.

825.203 Scheduling of intermittent or reduced schedule leave.

Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered servicemember. *See* 825.202. Eligible employees may also take FMLA leave on an intermittent or reduced schedule basis when necessary because of a qualifying exigency. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employing office's operations.

825.204 Transfer of an employee to an alternative position during intermittent leave or reduced schedule leave.

(a) *Transfer or reassignment*. If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember, including during a period of recovery from one's own serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury or illness of a covered servicemember, or if the employing office agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the employing office may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. *See* 825.601 for special rules applicable to instructional employees of schools.

(b) *Compliance*. Transfer to an alternative position may require compliance with any applicable collective bargaining agreement and Federal law (such as the Americans with Disabilities Act, as made applicable by the CAA). Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced scheduled leave.

(c) *Equivalent pay and benefits*. The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employing office may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the pay and benefits of the employee's regular job. The employing office may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of four hours per day could be transferred to a half-time job, or could remain in the employee's same job on a part-time schedule, paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employing office may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employing office may proportionately reduce benefits such as vacation leave where an employing office's normal practice is to base such benefits on the number of hours worked.

(d) *Employing office limitations*. An employing office may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. For example, a white collar employee may not be assigned to perform laborer's work; an employee working the day shift may not be reassigned to the graveyard shift; an employee working in the headquarters facility may not be reassigned to a branch a significant distance away from the employee's normal job location. Any such attempt on the part of the employing office to make such a transfer will be held to be contrary to the prohibited acts provisions of the FMLA, as made applicable by the CAA.

(e) *Reinstatement of employee*. When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job he or she left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

825.205 Increments of FMLA leave for intermittent or reduced schedule leave.

(a) *Minimum increment*. (1) When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employing office must account for the leave using an increment no greater than the shortest period of time that the employing office uses to account for use of other forms of leave provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. An employing office may not require an employee to take more leave than is necessary to address the circumstances that precipitated the need for the leave, provided that the leave is counted using the shortest increment of leave used to account for any other type of leave. *See also* 825.205(a)(2) for the physical impossibility exception, and 825.600 and 825.601 for special rules applicable to employees of schools. If an employing office uses different increments to account for different types of leave, the employing office must account for FMLA leave in the smallest increment used to account for any other type of leave. For example, if an employing office accounts for the use of annual leave in increments of one hour and the use of sick leave in increments of one-half hour, then FMLA leave use must be accounted for using increments no larger than one-half hour. If an employing office accounts for use of leave in varying increments at different times of the day or shift, the employing office may also account for FMLA leave in varying increments, provided that the increment used for FMLA leave is no greater than the smallest increment used for any other type of leave during the period in which the FMLA leave is taken. If an employing office accounts for other forms of leave use in increments greater than one hour, the employing office must account for FMLA leave use in increments no greater than one hour. An employing office may account for FMLA leave in shorter increments than used for other forms of leave. For example, an employing office that accounts for other forms of leave in one hour increments may account for FMLA leave in a shorter increment when the employee arrives at work several minutes late, and the employing office wants the employee to begin work immediately. Such accounting for FMLA leave will not alter the increment considered to be the shortest period used to account for other forms of leave or the use of FMLA leave in other circumstances. In all cases, employees may not be charged FMLA leave for periods during which they are working.

(2) Where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift, such as where a flight attendant or a railroad conductor is scheduled to work aboard an airplane or train, or a laboratory employee is unable to enter or leave a sealed ''clean room'' during a certain period of time and no equivalent position is available, the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement. The period of the physical impossibility is limited to the period during which the employing office is unable to permit the employee to work prior to a period of FMLA leave or return the employee to the same or equivalent position due to the physical impossibility after a period of FMLA leave. *See* 825.214.

(b) *Calculation of leave*. (1) When an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. The actual workweek is the basis of leave entitlement. Therefore, if an employee who would otherwise work 40 hours a week takes off eight hours, the employee would use one-fifth (⅕) of a week of FMLA leave. Similarly, if a full-time employee who would otherwise work eight hour days works four-hour days under a reduced leave schedule, the employee would use one half (½) week of FMLA leave each week. Where an employee works a part-

time schedule or variable hours, the amount of FMLA leave that an employee uses is determined on a pro rata or proportional basis. If an employee who would otherwise work 30 hours per week, but works only 20 hours a week under a reduced leave schedule, the employee's 10 hours of leave would constitute one-third (1/3) of a week of FMLA leave for each week the employee works the reduced leave schedule. An employing office may convert these fractions to their hourly equivalent so long as the conversion equitably reflects the employee's total normally scheduled hours. An employee does not accrue FMLA-protected leave at any particular hourly rate. An eligible employee is entitled to up to a total of 12 workweeks of leave, or 26 workweeks in the case of military caregiver leave, and the total number of hours contained in those workweeks is necessarily dependent on the specific hours the employee would have worked but for the use of leave. *See also* 825.601 and 825.602 on special rules for schools.

(2) If an employing office has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA, and prior to the notice of need for FMLA leave), the hours worked under the new schedule are to be used for making this calculation.

(3) If an employee's schedule varies from week to week to such an extent that an employing office is unable to determine with any certainty how many hours the employee would otherwise have worked (but for the taking of FMLA leave), a weekly average of the hours worked over the 12 months prior to the beginning of the leave period (including any hours for which the employee took leave of any type) would be used for calculating the employee's leave entitlement.

(c) *Overtime*. If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee's ability to work overtime, the hours which the employee would have been required to work may be counted against the employee's FMLA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be required to work for 48 hours in a particular week, but due to a serious health condition the employee is unable to work more than 40 hours that week, the employee would utilize eight hours of FMLA-protected leave out of the 48–hour workweek, or one-sixth (1/6) of a week of FMLA leave. Voluntary overtime hours that an employee does not work due to an FMLA-qualifying reason may not be counted against the employee's FMLA leave entitlement.

825.206 Interaction with the FLSA.

(a) Leave taken under FMLA, as made applicable by the CAA, may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), as made applicable by the CAA, as a salaried executive, administrative, or professional employee (under regulations issued by the Board, at part 541), providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employing office may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. The fact that an employing office provides FMLA leave, whether paid or unpaid, and maintains records regarding FMLA leave, will not be relevant to the determination whether an employee is exempt within the meaning of the Board's regulations at part 541.

(b) For an employee paid in accordance with a fluctuating workweek method of payment for overtime, where permitted by section 203 of the CAA (2 U.S.C. 1313), the employing office, during the period in which intermittent or reduced schedule FMLA leave is scheduled to be taken, may compensate an employee on an hourly basis and pay only for the hours the employee works, including time and one-half the employee's regular rate for overtime hours. The change to payment on an hourly basis would include the entire period during which the employee is taking intermittent leave, including weeks in which no leave is taken. The hourly rate shall be determined by dividing the employee's weekly salary by the employee's normal or average schedule of hours worked during weeks in which FMLA leave is not being taken. If an employing office chooses to follow this exception from the fluctuating workweek method of payment, the employing office must do so uniformly, with respect to all employees paid on a fluctuating workweek basis for whom FMLA leave is taken on an intermittent or reduced leave schedule basis. If an employing office does not elect to convert the employee's compensation to hourly pay, no deduction may be taken for FMLA leave absences. Once the need for intermittent or reduced scheduled leave is over, the employee may be restored to payment on a fluctuating workweek basis.

(c) This special exception to the salary basis requirements of the FLSA exemption or fluctuating workweek payment requirements applies only to employees of covered employing offices who are eligible for FMLA leave, and to leave which qualifies as FMLA leave. Hourly or other deductions which are not in accordance with the Board's FLSA regulations at part 541 or with a permissible fluctuating workweek method of payment for overtime may not be taken, for example, where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption. Nor may deductions which are not permitted by the Board's FLSA regulations at part 541 or by a permissible fluctuating workweek method of payment for overtime be taken from such an employee's salary for any leave which does not qualify as FMLA leave, for example, deductions from an employee's pay for leave required under an employing office's policy or practice for a reason which does not qualify as FMLA leave, *e.g.*, leave to care for a grandparent or for a medical condition which does not qualify as a serious health condition; or for leave which is more generous than provided by the FMLA, as made applicable by the CAA, such as leave in excess of 12 weeks in a year. Employing offices may comply with the employing office's own policy/practice under these circumstances and maintain the employee's eligibility for exemption or for the fluctuating workweek method of pay by not taking hourly deductions from the employee's pay, in accordance with FLSA requirements, as made applicable by the CAA, or may take such deductions, treating the employee as an hourly employee and pay overtime premium pay for hours worked over 40 in a workweek.

825.207 Substitution of paid leave.

(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA, as made applicable by the CAA, permits an eligible employee to choose to substitute accrued paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employing office may require the employee to substitute accrued paid leave for unpaid FMLA leave. The term substitute means that the paid leave provided by the employing office, and accrued pursuant to established policies of the employing office, will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay pursuant to the employing office's applicable paid leave policy during the period of otherwise unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employing office's normal leave policy. When an employee chooses, or an employing office requires, substitution of accrued paid leave, the employing office must inform the employee that the employee must satisfy any procedural requirements of the paid leave policy only in connection with the receipt of such payment. See 825.300(c). If an employee does not comply with the additional requirements in an employing office's paid leave policy, the employee is not entitled to substitute accrued paid leave, but the employee remains entitled to take unpaid FMLA leave. Employing offices may not discriminate against employees on FMLA leave in the administration of their paid leave policies.

(b) If neither the employee nor the employing office elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employing office's plan.

(c) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the employee's FMLA leave entitlement. For example, paid sick leave used for a medical condition which is not a serious health condition or serious injury or illness does not count against the employee's FMLA leave entitlement.

(d) Leave taken pursuant to a disability leave plan would be considered FMLA leave for a serious health condition and counted in the leave entitlement permitted under FMLA if it meets the criteria set forth above in 825.112 through 825.115. In such cases, the employing office may designate the leave as FMLA leave and count the leave against the employee's FMLA leave entitlement. Because leave pursuant to a disability benefit plan is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the employing office may require the substitution of paid leave. However, employing offices and employees may agree to have paid leave supplement the disability plan benefits, such as in the case where a plan only provides replacement income for two-thirds of an employee's salary.

(e) The FMLA, as made applicable by the CAA, provides that a serious health condition may result from injury to the employee on or off the job. If the employing office designates the leave as FMLA leave in accordance with 825.300(d), the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, the provision for substitution of the employee's accrued paid leave is not applicable, and neither the employee nor the employing office may require the substitution of paid leave. However, employing offices and employees may agree, to have paid leave supplement workers' compensation benefits, such as in the case where workers' compensation only provides replacement income for two-thirds of an employee's salary. If the health care provider treating the employee for the workers' compensation injury certifies the employee is able to return to a light duty job but is unable to return to the

same or equivalent job, the employee may decline the employing office's offer of a light duty job. As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and either the employee may elect or the employing office may require the use of accrued paid leave. *See also* 825.210(f), 825.216(d), 825.220(d), 825.307(a) and 825.702 (d)(1) and (2) regarding the relationship between workers' compensation absences and FMLA leave.

(f) Under the FLSA, as made applicable by the CAA, an employing office always has the right to cash out an employee's compensatory time or to require the employee to use the time. Therefore, if an employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employing office requires such use pursuant to the FLSA, the time taken may be counted against the employee's FMLA leave entitlement.

825.208 [Removed and reserved]

825.209 Maintenance of employee benefits.

(a) During any FMLA leave, an employing office must maintain the employee's coverage under the Federal Employees Health Benefits Program or any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employing offices are subject to the requirements of the FMLA, as made applicable by the CAA, to maintain health coverage. The definition of group health plan is set forth in 825.102. For purposes of FMLA, the term group health plan shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

(1) No contributions are made by the employing office;

(2) Participation in the program is completely voluntary for employees;

(3) The sole functions of the employing office with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

(4) The employing office receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deduction; and

(5) The premium charged with respect to such coverage does not increase in the event the employment relationship terminates.

(b) The same group health plan benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, *etc.*, must be maintained during leave if provided in an employing office's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) If an employing office provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employing office changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage. Any other plan changes (e.g., in coverage, premiums, deductibles, etc.) which apply to all employees of the workforce would also apply to an employee on FMLA leave.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the group health plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employing office.

(e) An employee may choose not to retain group health plan coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, including family or dependent coverages, without any qualifying period, physical examination, exclusion of pre-existing conditions, *etc. See* 825.212(c).

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) or 5 U.S.C. 8905a, whichever is applicable, and for key employees (as discussed below), an employing office's obligation to maintain health benefits during leave (and to restore the employee to the same or equivalent employment) under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave (e.g., if the employee's position is eliminated as part of a nondiscriminatory reduction in force and the employee would not have been transferred to another position); an employee informs the employing office of his or her intent not to return from leave (including before starting the leave if the employing office is so informed before the leave starts); or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period.

(g) If a key employee (*see* 825.218) does not return from leave when notified by the employing office that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health plan benefits continues unless and until the employee advises the employing office that the employee does not desire restoration to employment at the end of the leave period, or the FMLA leave entitlement is exhausted, or reinstatement is actually denied.

(h) An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (*e.g.*, holiday pay) is to be determined by the employing office's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

825.210 Employee payment of group health benefit premiums.

(a) Group health plan benefits must be maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates. Maintenance of health insurance policies which are not a part of the employing office's group health plan, as described in 825.209(a), are the sole responsibility of the employee. The employee and the insurer should make necessary arrangements for payment of premiums during periods of unpaid FMLA leave.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employing office has a number of options for obtaining payment from the employee. The employing office may require that payment be made to the employing office or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employing office may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA or 5 U.S.C. 8905a, whichever is applicable;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employing office's existing rules for payment by employees on leave without pay would be followed, provided that such rules do not require prepayment (*i.e.*, prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had continued to work instead of taking leave; or

(5) Another system voluntarily agreed to between the employing office and the employee, which may include prepayment of premiums (*e.g.*, through increased payroll deductions when the need for the FMLA leave is foreseeable).

(d) The employing office must provide the employee with advance written notice of the terms and conditions under which these payments must be made. *See* 825. 300(c).

(e) An employing office may not require more of an employee using unpaid FMLA leave than the employing office requires of other employees on leave without pay.

(f) An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employing office for payment of group health plan benefits when simultaneously taking FMLA leave. *See* 825.207(e).

825.211 Maintenance of benefits under multi-employer health plans.

(a) A multi-employer health plan is a plan to which more than one employing office is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employing offices.

(b) An employing office under a multi-employer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employing offices party to the plan.

(c) During the duration of an employee's FMLA leave, coverage by the group health plan, and benefits provided pursuant to the plan, must be maintained at the level of coverage and benefits which were applicable to the employee at the time FMLA leave commenced.

(d) An employee using FMLA leave cannot be required to use banked hours or pay a

greater premium than the employee would have been required to pay if the employee had been continuously employed.

(e) As provided in 825.209(f) of this part, group health plan coverage must be maintained for an employee on FMLA leave until:

(1) The employee's FMLA leave entitlement is exhausted;

(2) The employing office can show that the employee would have been laid off and the employment relationship terminated; or

(3) The employee provides unequivocal notice of intent not to return to work.

825.212 Employee failure to pay health plan premium payments.

(a)(1) In the absence of an established employing office policy providing a longer grace period, an employing office's obligations to maintain health insurance coverage cease under FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employing office must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date. If the employing office has established policies regarding other forms of unpaid leave that provide for the employing office to cease coverage retroactively to the date the unpaid premium payment was due, the employing office may drop the employee from coverage retroactively in accordance with that policy, provided the 15-day notice was given. In the absence of such a policy, coverage for the employee may be terminated at the end of the 30-day grace period, where the required 15-day notice has been provided.

(2) An employing office has no obligation regarding the maintenance of a health insurance policy which is not a group health plan. *See* 825.209(a).

(3) All other obligations of an employing office under FMLA would continue; for example, the employing office continues to have an obligation to reinstate an employee upon return from leave.

(b) The employing office may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employing office maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employing office must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. *See* 825.215(d)(1)-(5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employing office terminates an employee's insurance in accordance with this section and fails to restore the employee's health insurance as required by this section upon the employee's return, the employing office may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.

825.213 Employing office recovery of benefit costs.

(a) In addition to the circumstances discussed in 825.212(b), an employing office may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember, which would otherwise entitle the employee to leave under FMLA; or

(2) Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are necessarily broad. They include such situations as where a parent chooses to stay home with a newborn child who has a serious health condition; an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; a relative or individual other than a covered family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a key employee who decides not to return to work upon being notified of the employing office's intention to deny restoration because of substantial and grievous economic injury to the employing office's operations and is not reinstated by the employing office. Other circumstances beyond the employee's control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent chooses not to return to work to stay home with a well, newborn child.

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of either a serious health condition of the employee or employee's family member, or a serious injury or illness of a covered servicemember, thereby precluding the employing office from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employing office may require medical certification of the employee's or the family member's serious health condition or the covered servicemember's serious injury or illness. Such certification is not required unless requested by the employing office. The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employing office's request. For purposes of medical certification, the employee may use the optional forms developed for this purpose. *See* 825.306(b), 825.310(c)-(d) and Forms A, B, and F. If the employing office requests medical certification and the employee does not provide such certification in a timely manner (within 30 days), or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the employing office may recover 100 percent of the health benefit premiums it paid during the period of unpaid FMLA leave.

(b) Under some circumstances an employing office may elect to maintain other benefits, *e.g.*, life insurance, disability insurance, *etc.*, by paying the employee's (share of) premiums during periods of unpaid FMLA leave. For example, to ensure the employing office can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. If the employing office elects to maintain such benefits during the leave, at the conclusion of leave, the employing office is entitled to recover only the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

(c) An employee who returns to work for at least 30 calendar days is considered to have returned to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.

(d) When an employee elects or an employing office requires paid leave to be substituted for FMLA leave, the employing office may not recover its (share of) health insurance or other non-health benefit premiums for any period of FMLA leave covered by paid leave. Because paid leave provided under a plan covering temporary disabilities (including workers' compensation) is not unpaid, recovery of health insurance premiums does not apply to such paid leave.

(e) The amount that self-insured employing offices may recover is limited to only the employing office's share of allowable premiums as would be calculated under COBRA, excluding the two percent fee for administrative costs.

(f) When an employee fails to return to work, any health and non-health benefit premiums which this section of the regulations permits an employing office to recover are a debt owed by the non-returning employee to the employing office. The existence of this debt caused by the employee's failure to return to work does not alter the employing office's responsibilities for health benefit coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. To the extent recovery is allowed, the employing office may recover the costs through deduction from any sums due to the employee (*e.g.*, unpaid wages, vacation pay, *etc.*), provided such deductions do not otherwise violate applicable wage payment or other laws. Alternatively, the employing office may initiate legal action against the employee to recover such costs.

825.214 Employee right to reinstatement.

General Rule. On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. *See also* 825.106(e) for the obligations of employing offices that are joint employers.

825.215 Equivalent position.

(a) *Equivalent position*. An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, prerequisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(b) *Conditions to qualify*. If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, *etc.*, as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work.

(c) *Equivalent Pay*. (1) An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employing

office's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(2) Equivalent pay includes any bonus or payment, whether it is discretionary or nondiscretionary, made to employees consistent with the provisions of paragraph (c)(1) of this section. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then the employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

(d) *Equivalent benefits.* Benefits include all benefits provided or made available to employees by an employing office, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employing office through an employee benefit plan.

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire work force, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began (including family or dependent coverages). For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employing offices may find it necessary to modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave. See 825.213(b).

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, however, (*e.g.*, paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

(3) If, while on unpaid FMLA leave, an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays, the employing office is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employing office has no established policy, the employee and the employing office are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Also, if the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions or participation purposes, an employee on unpaid FMLA leave on that date shall be deemed to have been employed on that date. However, unpaid FMLA leave periods need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. For example if the benefit plan is predicated on a pre-established number of hours worked each year and the employee does not have sufficient hours as a result of taking unpaid FMLA leave, the benefit is lost. (In this regard, 825.209 addresses health benefits.)

(e) *Equivalent terms and conditions of employment.* An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite (*i.e.*, one that does not involve a significant increase in commuting time or distance) from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employing office transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses, and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employing office from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employing office to accept a different position against the employee's wishes.

(f) *De minimis exception.* The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to de minimis, intangible, or unmeasurable aspects of the job.

825.216 Limitations on an employee's right to reinstatement.

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employing office must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example:

(1) If an employee is laid off during the course of taking FMLA leave and employment is terminated, the employing office's responsibility to continue FMLA leave, maintain group health plan benefits and restore the employee ceases at the time the employee is laid off, provided the employing office has no continuing obligations under a collective bargaining agreement or otherwise. An employing office would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to restoration. Restoration to a job slated for lay-off when the employee's original position is not would not meet the requirements of an equivalent position.

(2) If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(3) If an employee was hired for a specific term or only to perform work on a discrete project, the employing office has no obligation to restore the employee if the employment term or project is over and the employing office would not otherwise have continued to employ the employee. On the other hand, if an employee was hired to perform work for one employing office for a specific time period, and after that time period has ended, the work was assigned to another employing office, the successor employing office may be required to restore the employee if it is a successor employing office. *See* 825.107.

(b) In addition to the circumstances explained above, an employing office may deny job restoration to salaried eligible employees (key employees, as defined in 825.217(c)), if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employing office; or may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work under the conditions described in 825.312.

(c) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the FMLA. The employing office's obligations may, however, be governed by the Americans with Disabilities Act (ADA), as amended and as made applicable by the CAA. *See* 825.702.

(d) An employee who fraudulently obtains FMLA leave from an employing office is not protected by the job restoration or maintenance of health benefits provisions of the FMLA, as made applicable by the CAA.

(e) If the employing office has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employing office which does not have such a policy may not deny benefits to which an employee is entitled under FMLA, as made applicable by the CAA, on this basis unless the FMLA leave was fraudulently obtained as in paragraph (d) of this section.

825.217 Key employee, general rule.

(a) A *key employee* is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employing office within 75 miles of the employee's worksite.

(b) The term *salaried* means paid on a salary basis, within the meaning of the Board's regulations at part 541, implementing section 203 of the CAA (2 U.S.C. 1313), regarding employees who may qualify as exempt from

the minimum wage and overtime requirements of the FLSA, as made applicable by the CAA, as executive, administrative, and professional employees).

(c) A key employee must be among the highest paid 10 percent of all the employees—both salaried and non-salaried, eligible and ineligible—who are employed by the employing office within 75 miles of the worksite.

(1) In determining which employees are among the highest paid 10 percent, year- to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, *e.g.*, benefits or prerequisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time the employee gives notice of the need for leave. No more than 10 percent of the employing office's employees within 75 miles of the worksite may be key employees.

825.218 Substantial and grievous economic injury.

(a) In order to deny restoration to a key employee, an employing office must determine that the restoration of the employee to employment will cause substantial and grievous economic injury to the operations of the employing office, not whether the absence of the employee will cause such substantial and grievous injury.

(b) An employing office may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the employing office of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employing office which must be sustained. If the reinstatement of a key employee threatens the economic viability of the employing office, that would constitute substantial and grievous economic injury. A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employing office would experience in the normal course would certainly not constitute substantial and grievous economic injury.

(d) FMLA's substantial and grievous economic injury standard is different from and more stringent than the undue hardship test under the ADA. *See also* 825.702.

825.219 Rights of a key employee

(a) An employing office that believes that reinstatement may be denied to a key employee, must give written notice to the employee at the time the employee gives notice of the need for FMLA leave (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employing office must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employing office should determine that substantial and grievous economic injury to the employing office's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after being notified of a need for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and, therefore, there would be no need to provide such notice. However, an employing office who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) As soon as an employing office makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has given notice of the need for FMLA leave or is using FMLA leave is reinstated, the employing office shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. It is anticipated that an employing office will ordinarily be able to give such notice prior to the employee starting leave. The employing office must serve this notice either in person or by certified mail. This notice must explain the basis for the employing office's finding that substantial and grievous economic injury will result, and, if leave has commenced, must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee on leave does not return to work in response to the employing office's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employing office may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until the employee either gives notice that he or she no longer wishes to return to work, or the employing office actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employing office's notice. The employing office must then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employing office shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

825.220 Protection for employees who request leave or otherwise assert FMLA rights.

(a) The FMLA, as made applicable by the CAA, prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employing office is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the FMLA, as made applicable by the CAA.

(2) An employing office is prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) for opposing or complaining about any unlawful practice under the FMLA, as made applicable by the CAA.

(3) All employing offices are prohibited from discharging or in any other way discriminating against any covered employee (whether or not an eligible employee) because that covered employee has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to the FMLA, as made applicable by the CAA;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA, as made applicable by the CAA.

(b) Any violations of the FMLA, as made applicable by the CAA, or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA, as made applicable by the CAA. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* 825.400(c). Interfering with the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employing office to avoid responsibilities under FMLA, for example:

(1) [Reserved]

(2) Changing the essential functions of the job in order to preclude the taking of leave; or

(3) Reducing hours available to work in order to avoid employee eligibility.

(c) The FMLA's prohibition against interference prohibits an employing office from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights. For example, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employing offices cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under no fault attendance policies. *See* 825.215.

(d) Employees cannot waive, nor may employing offices induce employees to waive, their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot trade off the right to take FMLA leave against some other benefit offered by the employing office. Except for settlement agreements covered by 1414 and/or 1415 of the Congressional Accountability Act, this does not prevent the settlement or release of FMLA claims by employees based on past employing office conduct without the approval of the Office of Compliance or a court. Nor does it prevent an employee's voluntary and uncoerced acceptance (not as a condition of employment) of a light duty assignment while recovering from a serious health condition. *See* 825.702(d). An employee's acceptance of such light duty assignment does not constitute a waiver of the employee's prospective rights, including the right to be restored to the same position the employee held at the time the employee's FMLA leave commenced or to an equivalent position. The employee's right to restoration, however, ceases at the end of the applicable 12-month FMLA leave year.

(e) Individuals, and not merely covered employees, are protected from retaliation for opposing (e.g., filing a complaint about) any practice which is unlawful under the FMLA, as made applicable by the CAA. They are similarly protected if they oppose any practice which they reasonably believe to be a

violation of the FMLA, as made applicable by the CAA, or regulations.

Subpart C—EMPLOYEE AND EMPLOYING OFFICE RIGHTS AND OBLIGATIONS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA

825.300 Employing office notice requirements.

(a)(1) If an employing office has any eligible employees and has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning both entitlements and employee obligations under the FMLA, as made applicable by the CAA, must be included in the handbook or other document. For example, if an employing office provides an employee handbook to all employees that describes the employing office's policies regarding leave, wages, attendance, and similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employing office's policies regarding the FMLA, as made applicable by the CAA. Informational publications describing the provisions of the FMLA, as made applicable by the CAA, are available from the Office of Compliance and may be incorporated in such employing office handbooks or written policies.

(2) If such an employing office does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employing office shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA, as made applicable by the CAA. This notice shall be provided to employees each time notice is given pursuant to paragraph (c), and in accordance with the provisions of that paragraph. Employing offices may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the Office of Compliance to provide such guidance.

(b) *Eligibility notice*. (1) When an employee requests FMLA leave, or when the employing office acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employing office must notify the employee of the employee's eligibility to take FMLA leave within five business days, absent extenuating circumstances. *See* 825.110 for definition of an eligible employee. Employee eligibility is determined (and notice must be provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period. *See* 825.127(c) and 825.200(b). All FMLA absences for the same qualifying reason are considered a single leave and employee eligibility as to that reason for leave does not change during the applicable 12-month period.

(2) The eligibility notice must state whether the employee is eligible for FMLA leave as defined in 825.110. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employing office and the hours of service with the employing office during the 12-month period. Notification of eligibility may be oral or in writing; employing offices may use Form C to provide such notification to employees. The employing office is obligated to translate this notice in any situation in which it is obligated to do so in 825.300(a)(4).

(3) If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed (*e.g.*, if the employee has not met the hours of service requirement in the 12 months preceding the commencement of leave for the subsequent qualifying reason), the employing office must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances.

(c) *Rights and responsibilities notice*. (1) Employing offices shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. The employing office is obligated to translate this notice in any situation in which it is obligated to do so in 825.300(a)(4). This notice shall be provided to the employee each time the eligibility notice is provided pursuant to paragraph (b) of this section. If leave has already begun, the notice should be mailed to the employee's address of record. Such specific notice must include, as appropriate:

(i) That the leave may be designated and counted against the employee's annual FMLA leave entitlement if qualifying (*see* 825.300(c) and 825.301) and the applicable 12-month period for FMLA entitlement (*see* 825.127(c), 825.200(b), (f), and (g));

(ii) Any requirements for the employee to furnish certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status, and the consequences of failing to do so (*see* 825.305, 825.309, 825.310, 825.313);

(iii) The employee's right to substitute paid leave, whether the employing office will require the substitution of paid leave, the conditions related to any substitution, and the employee's entitlement to take unpaid FMLA leave if the employee does not meet the conditions for paid leave (*see* 825.207);

(iv) Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (*see* 825.210), and the possible consequences of failure to make such payments on a timely basis (*i.e.*, the circumstances under which coverage may lapse);

(v) The employee's status as a key employee and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (*see* 825.218);

(vi) The employee's right to maintenance of benefits during the FMLA leave and restoration to the same or an equivalent job upon return from FMLA leave (*see* 825.214 and 825.604); and

(vii) The employee's potential liability for payment of health insurance premiums paid by the employing office during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (*see* 825.213).

(2) The notice of rights and responsibilities may include other information—*e.g.*, whether the employing office will require periodic reports of the employee's status and intent to return to work—but is not required to do so.

(3) The notice of rights and responsibilities may be accompanied by any required certification form.

(4) If the specific information provided by the notice of rights and responsibilities changes, the employing office shall, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed. For example, if the initial leave period was paid leave and the subsequent leave period would be unpaid leave, the employing office may need to give notice of the arrangements for making premium payments.

(5) Employing offices are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA, as made applicable under the CAA.

(6) A prototype notice of rights and responsibilities may be obtained in Form C, or from the Office of Compliance. Employing offices may adapt the prototype notice as appropriate to meet these notice requirements. The notice of rights and responsibilities may be distributed electronically so long as it otherwise meets the requirements of this section.

(d) *Designation notice*. (1) The employing office is responsible in all circumstances for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee as provided in this section. When the employing office has enough information to determine whether the leave is being taken for a FMLA-qualifying reason (*e.g.*, after receiving a certification), the employing office must notify the employee whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. Only one notice of designation is required for each FMLA-qualifying reason per applicable 12-month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or intermittent or reduced schedule leave. If the employing office determines that the leave will not be designated as FMLA-qualifying (*e.g.*, if the leave is not for a reason covered by FMLA or the FMLA leave entitlement has been exhausted), the employing office must notify the employee of that determination. If the employing office requires paid leave to be substituted for unpaid FMLA leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, the employing office must inform the employee of this designation at the time of designating the FMLA leave.

(2) If the employing office has sufficient information to designate the leave as FMLA leave immediately after receiving notice of the employee's need for leave, the employing office may provide the employee with the designation notice at that time.

(3) If the employing office will require the employee to present a fitness-for-duty certification to be restored to employment, the employing office must provide notice of such requirement with the designation notice. If the employing office will require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the employee's position, the employing office must so indicate in the designation notice, and must include a list of the essential functions of the employee's position. *See* 825.312. If the employing office's handbook or other written documents (if any) describing the employing office's leave policies clearly provide that a fitness-for-duty certification will be required in specific circumstances (*e.g.*, by stating that fitness-for-duty certification will be required in all cases of back injuries for employees in a certain occupation), the employing office is not required to provide written notice of the requirement with the designation notice, but must provide oral notice no later than with the designation notice.

(4) The designation notice must be in writing. A prototype designation notice is contained in Form D or may be obtained from the Office of Compliance. If the leave is not designated as FMLA leave because it does not meet the requirements of the FMLA, as made applicable by the CAA, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

(5) If the information provided by the employing office to the employee in the designation notice changes (*e.g.*, the employee exhausts the FMLA leave entitlement), the employing office shall provide, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, written notice of the change.

(6) The employing office must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave needed is known at the time the employing office designates the leave as FMLA-qualifying, the employing office must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If it is not possible to provide the hours, days, or weeks that will be counted against the employee's FMLA leave entitlement (such as in the case of unforeseeable intermittent leave), then the employing office must provide notice of the amount of leave counted against the employee's FMLA leave entitlement upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's FMLA entitlement may be oral or in writing. If such notice is oral, it shall be confirmed in writing no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). Such written notice may be in any form, including a notation on the employee's pay stub.

(e) *Consequences of failing to provide notice*. Failure to follow the notice requirements set forth in this section may constitute an interference with, restraint, or denial of the exercise of an employee's FMLA rights. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* 825.400(c).

825.301 Designation of FMLA leave.

(a) *Employing office responsibilities*. The employing office's decision to designate leave as FMLA-qualifying must be based only on information received from the employee or the employee's spokesperson (*e.g.*, if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, *etc.*, may provide notice to the employing office of the need to take FMLA leave). In any circumstance where the employing office does not have sufficient information about the reason for an employee's use of leave, the employing office should inquire further of the employee or the spokesperson to ascertain whether leave is potentially FMLA-qualifying. Once the employing office has acquired knowledge that the leave is being taken for a FMLA-qualifying reason, the employing office must notify the employee as provided in 825.300(d).

(b) *Employee responsibilities*. An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave and otherwise satisfy the notice requirements set forth in 825.302 or 825.303 depending on whether the need for leave is foreseeable or unforeseeable. An employee giving notice of the need for FMLA leave must explain the reasons for the needed leave so as to allow the employing office to determine whether the leave qualifies under the FMLA, as made applicable by the CAA. If the employee fails to explain the reasons, leave may be denied. In many cases, in explaining the reasons for a request to use leave, especially when the need for the leave was unexpected or unforeseen, an employee will provide sufficient information for the employing office to designate the leave as FMLA leave. An employee using accrued paid leave may in some cases not spontaneously explain the reasons or their plans for using their accrued leave. However, if an employee requesting to use paid leave for a FMLA-qualifying reason does not explain the reason for the leave and the employing office denies the employee's request, the employee will need to provide sufficient information to establish a FMLA-qualifying reason for the needed leave so that the employing office is aware that the leave may not be denied and may designate that the paid leave be appropriately counted against (substituted for) the employee's FMLA leave entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for a FMLA-qualifying reason will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employing office may count the leave used after the FMLA-qualifying reason against the employee's FMLA leave entitlement.

(c) *Disputes*. If there is a dispute between an employing office and an employee as to whether leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employing office. Such discussions and the decision must be documented.

(d) *Retroactive designation*. If an employing office does not designate leave as required by 825.300, the employing office may retroactively designate leave as FMLA leave with appropriate notice to the employee as required by 825.300 provided that the employing office's failure to timely designate leave does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, an employing office and an employee can mutually agree that leave be retroactively designated as FMLA leave.

(e) *Remedies*. If an employing office's failure to timely designate leave in accordance with 825.300 causes the employee to suffer harm, it may constitute an interference with, restraint of, or denial of the exercise of an employee's FMLA rights. An employing office may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable or other relief, including employment, reinstatement, promotion, or any other relief tailored to the harm suffered. *See* 825.400(c). For example, if an employing office that was put on notice that an employee needed FMLA leave failed to designate the leave properly, but the employee's own serious health condition prevented him or her from returning to work during that time period regardless of the designation, an employee may not be able to show that the employee suffered harm as a result of the employing office's actions. However, if an employee took leave to provide care for a son or daughter with a serious health condition believing it would not count toward his or her FMLA entitlement, and the employee planned to later use that FMLA leave to provide care for a spouse who would need assistance when recovering from surgery planned for a later date, the employee may be able to show that harm has occurred as a result of the employing office's failure to designate properly. The employee might establish this by showing that he or she would have arranged for an alternative caregiver for the seriously-ill son or daughter if the leave had been designated timely.

825.302 Employee notice requirements for foreseeable FMLA leave.

(a) *Timing of notice*. An employee must provide the employing office at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption. For foreseeable leave due to a qualifying exigency, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable. Whether FMLA leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise the employing office as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. In those cases where the employee is required to provide at least 30 days notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from the employing office for such information.

(b) *As soon as practicable* means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

(c) *Content of notice*. An employee shall provide at least verbal notice sufficient to make the employing office aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty), and that the requested leave is for one of the reasons listed in 825.126(b); if the leave is for a family member, that the condition renders the family member unable to perform daily activities, or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA. When an employee seeks leave due to a FMLA-qualifying reason, for which the employing office has

previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave. In all cases, the employing office should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employing office may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave. *See* 825.305. An employing office may also request certification to support the need for leave for a qualifying exigency or for military caregiver leave. *See* 825.309, 825.310. When an employee has been previously certified for leave due to more than one FMLA-qualifying reason, the employing office may need to inquire further to determine for which qualifying reason the leave is needed. An employee has an obligation to respond to an employing office's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employing office inquiries regarding the leave request may result in denial of FMLA protection if the employing office is unable to determine whether the leave is FMLA-qualifying.

(d) *Complying with the employing office policy*. An employing office may require an employee to comply with the employing office's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employing office may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. An employee also may be required by an employing office's policy to contact a specific individual. Unusual circumstances would include situations such as when an employee is unable to comply with the employing office's policy that requests for leave should be made by contacting a specific number because on the day the employee needs to provide notice of his or her need for FMLA leave there is no one to answer the call-in number and the voice mail box is full. Where an employee does not comply with the employing office's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied. However, FMLA-protected leave may not be delayed or denied where the employing office's policy requires notice to be given sooner than set forth in paragraph (a) of this section and the employee provides timely notice as set forth in paragraph (a) of this section.

(e) *Scheduling planned medical treatment*. When planning medical treatment, the employee must consult with the employing office and make a reasonable effort to schedule the treatment so as not to disrupt unduly the employing office's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employing offices prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employing office and the employee. For example, if an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employing office to make a reasonable effort to arrange the schedule of treatments so as not to unduly disrupt the employing office's operations, the employing office may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject to the approval of the health care provider. *See* 825.203 and 825.205.

(f) Intermittent leave or leave on a reduced leave schedule must be medically necessary due to a serious health condition or a serious injury or illness. An employee shall advise the employing office, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employing office shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employing office's operations, subject to the approval of the health care provider.

(g) An employing office may waive employees' FMLA notice requirements. *See* 825.304.

825.303 Employee notice requirements for unforeseeable FMLA leave.

(a) *Timing of notice*. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the employing office as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the employing office's usual and customary notice requirements applicable to such leave. *See* 825.303(c). Notice may be given by the employee's spokesperson (*e.g.*, spouse, adult family member, or other responsible party) if the employee is unable to do so personally. For example, if an employee's child has a severe asthma attack and the employee takes the child to the emergency room, the employee would not be required to leave his or her child in order to report the absence while the child is receiving emergency treatment. However, if the child's asthma attack required only the use of an inhaler at home followed by a period of rest, the employee would be expected to call the employing office promptly after ensuring the child has used the inhaler.

(b) *Content of notice*. An employee shall provide sufficient information for an employing office to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee is pregnant or has been hospitalized overnight; whether the employee or the employee's family member is under the continuing care of a health care provider; if the leave is due to a qualifying exigency, that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty), that the requested leave is for one of the reasons listed in 825.126(b), and the anticipated duration of the absence; or if the leave is for a family member that the condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness; and the anticipated duration of the absence, if known. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA, as made applicable by the CAA, or even mention the FMLA. When an employee seeks leave due to a qualifying reason, for which the employing office has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. Calling in ''sick'' without providing more information will not be considered sufficient notice to trigger an employing office's obligations under the FMLA, as made applicable by the CAA. The employing office will be expected to obtain any additional required information through informal means. An employee has an obligation to respond to an employing office's questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable employing office inquiries office regarding the leave request may result in denial of FMLA protection if the employing office is unable to determine whether the leave is FMLA-qualifying.

(c) *Complying with employing office policy*. When the need for leave is not foreseeable, an employee must comply with the employing office's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. For example, an employing office may require employees to call a designated number or a specific individual to request leave. However, if an employee requires emergency medical treatment, he or she would not be required to follow the call-in procedure until his or her condition is stabilized and he or she has access to, and is able to use, a phone. Similarly, in the case of an emergency requiring leave because of a FMLA-qualifying reason, written advance notice pursuant to an employing office's internal rules and procedures may not be required when FMLA leave is involved. If an employee does not comply with the employing office's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

825.304 Employee failure to provide notice.

(a) *Proper notice required*. In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employing office's proper posting, at the worksite where the employee is employed, of the information regarding the FMLA provided (pursuant to section 301(h)(2) of the CAA, 2 U.S.C. 1381(h)(2)) by the Office of Compliance to the employing office in a manner suitable for posting.

(b) *Foreseeable leave—30 days*. When the need for FMLA leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the employing office may delay FMLA coverage until 30 days after the date the employee provides notice. The need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient to establish the leave was clearly foreseeable 30 days in advance.

(c) *Foreseeable leave—less than 30 days*. When the need for FMLA leave is foreseeable fewer than 30 days in advance and an employee fails to give notice as soon as practicable under the particular facts and circumstances, the extent to which an employing office may delay FMLA coverage for leave depends on the facts of the particular case. For example, if an employee reasonably should have given the employing office two weeks' notice but instead only provided one week's notice, then the employing office may delay FMLA-protected leave for one week (thus, if the employing office elects to delay FMLA coverage and the employee nonetheless takes leave one week after providing the notice (*i.e.*, a week before the two week notice period has been met) the leave will not be FMLA-protected).

(d) *Unforeseeable leave*. When the need for FMLA leave is unforeseeable and an employee fails to give notice in accordance with 825.303, the extent to which an employing office may delay FMLA coverage for leave depends on the facts of the particular case. For

example, if it would have been practicable for an employee to have given the employing office notice of the need for leave very soon after the need arises consistent with the employing office's policy, but instead the employee provided notice two days after the leave began, then the employing office may delay FMLA coverage of the leave by two days.

(e) *Waiver of notice*. An employing office may waive employees' FMLA notice obligations or the employing office's own internal rules on leave notice requirements. If an employing office does not waive the employee's obligations under its internal leave rules, the employing office may take appropriate action under its internal rules and procedures for failure to follow its usual and customary notification rules, absent unusual circumstances, as long as the actions are taken in a manner that does not discriminate against employees taking FMLA leave and the rules are not inconsistent with 825.303(a).

825.305 Certification, general rule.

(a) *General*. An employing office may require that an employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's family member. An employing office may also require that an employee's leave because of a qualifying exigency or to care for a covered servicemember with a serious injury or illness be supported by a certification, as described in 825.309 and 825.310, respectively. An employing office must give notice of a requirement for certification each time a certification is required; such notice must be written notice whenever required by 825.300(c). An employing office's oral request to an employee to furnish any subsequent certification is sufficient.

(b) *Timing*. In most cases, the employing office should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave commences. The employing office may request certification at some later date if the employing office later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the employing office within 15 calendar days after the employing office's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the employing office provides more than 15 calendar days to return the requested certification.

(c) *Complete and sufficient certification*. The employee must provide a complete and sufficient certification to the employing office if required by the employing office in accordance with 825.306, 825.309, and 825.310. The employing office shall advise an employee whenever the employing office finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the employing office receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the employing office receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. The employing office must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the employing office are not cured in the resubmitted certification, the employing office may deny the taking of FMLA leave, in accordance with 825.313. A certification that is not returned to the employing office is not considered incomplete or insufficient, but constitutes a failure to provide certification.

(d) *Consequences*. At the time the employing office requests certification, the employing office must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. If the employee fails to provide the employing office with a complete and sufficient certification, despite the opportunity to cure the certification as provided in paragraph (c) of this section, or fails to provide any certification, the employing office may deny the taking of FMLA leave, in accordance with 825.313. It is the employee's responsibility either to furnish a complete and sufficient certification or to furnish the health care provider providing the certification with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the employing office to support the employee's FMLA request. This provision will apply in any case where an employing office requests a certification permitted by these regulations, whether it is the initial certification, a recertification, a second or third opinion, or a fitness-for-duty certificate, including any clarifications necessary to determine if such certifications are authentic and sufficient. *See* 825.306, 825.307, 825.308, and 825.312.

(e) *Annual medical certification*. Where the employee's need for leave due to the employee's own serious health condition, or the serious health condition of the employee's covered family member, lasts beyond a single leave year (as defined in 825.200), the employing office may require the employee to provide a new medical certification in each subsequent leave year. Such new medical certifications are subject to the provisions for authentication and clarification set forth in 825.307, including second and third opinions.

825.306 Content of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) *Required information*. When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, an employing office may require an employee to obtain a medical certification from a health care provider that sets forth the following information:

(1) The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;

(2) The approximate date on which the serious health condition commenced, and its probable duration;

(3) A statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (physical therapy, for example), or any other regimen of continuing treatment;

(4) If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job as well as the nature of any other work restrictions, and the likely duration of such inability (see 825.123(b) and (c));

(5) If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care, as described in 825.124, and an estimate of the frequency and duration of the leave required to care for the family member;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment of the employee's or a covered family member's serious health condition, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the dates and duration of such treatments and any periods of recovery;

(7) If an employee requests leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for such intermittent or reduced schedule leave and an estimate of the frequency and duration of the episodes of incapacity; and

(8) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, a statement that such leave is medically necessary to care for the family member, as described in 825.124 and 825.203(b), which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

(b) The Office of Compliance has developed two optional forms (Form A and Form B) for use in obtaining medical certification, including second and third opinions, from health care providers that meets FMLA's certification requirements, as made applicable by the CAA. (*See* Forms A and B.) Optional Form A is for use when the employee's need for leave is due to the employee's own serious health condition. Optional Form B is for use when the employee needs leave to care for a family member with a serious health condition. These optional forms reflect certification requirements so as to permit the health care provider to furnish appropriate medical information. Forms A and B are modeled closely on Form WH–380E and Form WH–380F, as revised, which were developed by the Department of Labor (*see* 29 C.F.R. Part 825). The employing office may use the Office of Compliance's forms, or Form WH–380E and Form WH–380F, as revised, or another form containing the same basic information; however, no information may be required beyond that specified in 825.306, 825.307, and 825.308. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists.

(c) If an employee is on FMLA leave running concurrently with a workers' compensation absence, and the provisions of the workers' compensation statute permit the employing office or the employing office's representative to request additional information from the employee's workers' compensation health care provider, the FMLA does not prevent the employing office from following the applicable workers' compensation provisions and information received under those provisions may be considered in determining the employee's entitlement to FMLA-protected leave. Similarly, an employing office may request additional information in accordance with a paid leave policy or disability plan that requires greater information to qualify for payments or benefits, provided that the employing office informs the employee that the additional information only needs to be provided in connection with receipt of such payments or benefits. Any information received pursuant

to such policy or plan may be considered in determining the employee's entitlement to FMLA-protected leave. If the employee fails to provide the information required for receipt of such payments or benefits, such failure will not affect the employee's entitlement to take unpaid FMLA leave. *See* 825.207(a).

(d) If an employee's serious health condition may also be a disability within the meaning of the Americans with Disabilities Act (ADA), as amended and as made applicable by the CAA, the FMLA does not prevent the employing office from following the procedures for requesting medical information under the ADA. Any information received pursuant to these procedures may be considered in determining the employee's entitlement to FMLA-protected leave.

(e) While an employee may choose to comply with the certification requirement by providing the employing office with an authorization, release, or waiver allowing the employing office to communicate directly with the health care provider of the employee or his or her covered family member, the employee may not be required to provide such an authorization, release, or waiver. In all instances in which certification is requested, it is the employee's responsibility to provide the employing office with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. *See* 825.305(d).

825.307 Authentication and clarification of medical certification for leave taken because of an employee's own serious health condition or the serious health condition of a family member; second and third opinions.

(a) *Clarification and authentication*. If an employee submits a complete and sufficient certification signed by the health care provider, the employing office may not request additional information from the health care provider. However, the employing office may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the employing office has given the employee an opportunity to cure any deficiencies as set forth in 825.305(c). To make such contact, the employing office must use a health care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances, however, may the employee's direct supervisor contact the employee's health care provider.

For purposes of these regulations, *authentication* means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested. *Clarification* means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. Employing offices may not ask health care providers for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, (*see* 45 CFR parts 160 and 164), which governs the privacy of individually-identifiable health information created or held by HIPAA-covered entities, must be satisfied when individually-identifiable health information of an employee is shared with an employing office by a HIPAA-covered health care provider. If an employee chooses not to provide the employing office with authorization allowing the employing office to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employing office may deny the taking of FMLA leave if the certification is unclear. *See* 825.305(d). It is the employee's responsibility to provide the employing office with a complete and sufficient certification and to clarify the certification if necessary.

(b) *Second Opinion*. (1) An employing office that has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employing office's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the FMLA, as made applicable by the CAA, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employing office's established leave policies. In addition, the consequences set forth in 825.305(d) will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a second opinion in order to render a sufficient and complete second opinion.

(2) The employing office is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employing office. The employing office may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employing office is located in an area where access to health care is extremely limited (*e.g.*, a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) *Third opinion*. If the opinions of the employee's and the employing office's designated health care providers differ, the employing office may require the employee to obtain certification from a third health care provider, again at the employing office's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the employing office and the employee. The employing office and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employing office does not attempt in good faith to reach agreement, the employing office will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employing office that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith. In addition, the consequences set forth in 825.305(d) will apply if the employee or the employee's family member fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition at issue if requested by the health care provider designated to provide a third opinion in order to render a sufficient and complete third opinion.

(d) *Copies of opinions*. The employing office is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within five business days unless extenuating circumstances prevent such action.

(e) *Travel expenses*. If the employing office requires the employee to obtain either a second or third opinion the employing office must reimburse an employee or family member for any reasonable ''out of pocket'' travel expenses incurred to obtain the second and third medical opinions. The employing office may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.

(f) *Medical certification abroad*. In circumstances in which the employee or a family member is visiting in another country, or a family member resides in another country, and a serious health condition develops, the employing office shall accept a medical certification as well as second and third opinions from a health care provider who practices in that country. Where a certification by a foreign health care provider is in a language other than English, the employee must provide the employing office with a written translation of the certification upon request.

825.308 Recertifications for leave taken because of an employee's own serious health condition or the serious health condition of a family member.

(a) *30-day rule*. An employing office may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless paragraphs (b) or (c) of this section apply.

(b) *More than 30 days*. If the medical certification indicates that the minimum duration of the condition is more than 30 days, an employing office must wait until that minimum duration expires before requesting a recertification, unless paragraph (c) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the employing office must wait 40 days before requesting a recertification. In all cases, an employing office may request a recertification of a medical condition every six months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (e.g., for a lifetime condition), the employing office would be permitted to request recertification every six months in connection with an absence.

(c) *Less than 30 days*. An employing office may request recertification in less than 30 days if:

(1) The employee requests an extension of leave;

(2) Circumstances described by the previous certification have changed significantly (*e.g.*, the duration or frequency of the absence, the nature or severity of the illness, complications). For example, if a medical certification stated that an employee would need leave for one to two days when the employee suffered a migraine headache and the employee's absences for his or her last two migraines lasted four days each, then the increased duration of absence might constitute a significant change in circumstances allowing the employing office to request a recertification in less than 30 days. Likewise, if an employee had a pattern of using unscheduled FMLA leave for migraines in conjunction with his or her scheduled days off, then the timing of the absences also might constitute a significant change in circumstances sufficient for an employing office to request a recertification more frequently than every 30 days; or

(3) The employing office receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, if an employee is on FMLA leave for four weeks due to the employee's knee surgery, including recuperation, and the employee plays in company softball league games during the employee's third week of FMLA leave, such information might be sufficient to cast doubt upon the continuing validity of the certification allowing the employing office to request a recertification in less than 30 days.

(d) *Timing*. The employee must provide the requested recertification to the employing office within the time frame requested by the employing office (which must allow at least 15 calendar days after the employing office's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(e) *Content*. The employing office may ask for the same information when obtaining recertification as that permitted for the original certification as set forth in 825.306. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or adequate authorization to the health care provider) in the recertification process as in the initial certification process. *See* 825.305(d). As part of the information allowed to be obtained on recertification for leave taken because of a serious health condition, the employing office may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

(f) Any recertification requested by the employing office shall be at the employee's expense unless the employing office provides otherwise. No second or third opinion on recertification may be required.

825.309 Certification for leave taken because of a qualifying exigency.

(a) *Active Duty Orders*. The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member (*see* 825.126(a)), an employing office may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided to the employing office once. A copy of new active duty orders or other documentation issued by the military may be required by the employing office if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member;

(b) *Required information*. An employing office may require that leave for any qualifying exigency specified in 825.126 be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation which supports the request for leave; such documentation, for example, may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency;

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting; and

(6) If the qualifying exigency involves *Rest and Recuperation* leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military which indicates that the military member has been granted Rest and Recuperation leave, and the dates of the military member's Rest and Recuperation leave.

(c) The Office of Compliance has developed an optional form (Form E) for employees' use in obtaining a certification that meets FMLA's certification requirements. (*See* Form E). This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave because of a qualifying exigency. Form E, or another form containing the same basic information, may be used by the employing office; however, no information may be required beyond that specified in this section.

(d) *Verification*. If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the employing office may not request additional information from the employee. However, if the qualifying exigency involves meeting with a third party, the employing office may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the employing office. An employing office also may contact an appropriate unit of the Department of Defense to request verification that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty); no additional information may be requested and the employee's permission is not required.

825.310 Certification for leave taken to care for a covered servicemember (military caregiver leave).

(a) *Required information from health care provider*. When leave is taken to care for a covered servicemember with a serious injury or illness, an employing office may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember. For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification:

(1) A United States Department of Defense (''DOD'') health care provider;

(2) A United States Department of Veterans Affairs (''VA'') health care provider;

(3) A DOD TRICARE network authorized private health care provider;

(4) A DOD non-network TRICARE authorized private health care provider; or

(5) Any health care provider as defined in 825.125.

(b) If the authorized health care provider is unable to make certain military-related determinations outlined below, the authorized health care provider may rely on determinations from an authorized DOD representative (such as a DOD recovery care coordinator) or an authorized VA representative. An employing office may request that the health care provider provide the following information:

(1) The name, address, and appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty, and whether the health care provider is one of the following:

(i) A DOD health care provider;

(ii) A VA health care provider;

(iii) A DOD TRICARE network authorized private health care provider;

(iv) A DOD non-network TRICARE authorized private health care provider; or

(v) A health care provider as defined in 825.125.

(2) Whether the covered servicemember's injury or illness was incurred in the line of duty on active duty or, if not, whether the covered servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty;

(3) The approximate date on which the serious injury or illness commenced, or was aggravated, and its probable duration;

(4) A statement or description of appropriate medical facts regarding the covered servicemember's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave.

(i) In the case of a current member of the Armed Forces, such medical facts must include information on whether the injury or illness may render the covered servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating and whether the member is receiving medical treatment, recuperation, or therapy;

(ii) In the case of a covered veteran, such medical facts must include:

(A) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is the continuation of an injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating; or

(B) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and that such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(C) Information on whether the veteran is receiving medical treatment, recuperation, or therapy for an injury or illness that is a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(D) Documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(5) Information sufficient to establish that the covered servicemember is in need of care, as described in 825.124, and whether the covered servicemember will need care for a single continuous period of time, including any time for treatment and recovery, and an estimate as to the beginning and ending dates for this period of time;

(6) If an employee requests leave on an intermittent or reduced schedule basis for planned medical treatment appointments for the covered servicemember, whether there is a medical necessity for the covered servicemember to have such periodic care and an estimate of the treatment schedule of such appointments;

(7) If an employee requests leave on an intermittent or reduced schedule basis to care for a covered servicemember other than for planned medical treatment (*e.g.*, episodic flare-ups of a medical condition), whether there is a medical necessity for the covered servicemember to have such periodic care, which can include assisting in the covered servicemember's recovery, and an estimate of the frequency and duration of the periodic care.

(c) *Required information from employee and/or covered servicemember*. In addition to the information that may be requested under 825.310(b), an employing office may also request that such certification set forth the following information provided by an employee and/or covered servicemember:

(1) The name and address of the employing office of the employee requesting leave to care for a covered servicemember, the name of the employee requesting such leave, and the name of the covered servicemember for whom the employee is requesting leave to care;

(2) The relationship of the employee to the covered servicemember for whom the employee is requesting leave to care;

(3) Whether the covered servicemember is a current member of the Armed Forces, the National Guard or Reserves, and the covered servicemember's military branch, rank, and current unit assignment;

(4) Whether the covered servicemember is assigned to a military medical facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit), and the name of the medical treatment facility or unit;

(5) Whether the covered servicemember is on the temporary disability retired list;

(6) Whether the covered servicemember is a veteran, the date of separation from military service, and whether the separation was other than dishonorable. The employing office may require the employee to provide documentation issued by the military which indicates that the covered servicemember is a veteran, the date of separation, and that the separation is other than dishonorable. Where an employing office requires such documentation, an employee may provide a copy of the veteran's Certificate of Release or Discharge from Active Duty issued by the U.S. Department of Defense (DD Form 214) or other proof of veteran status. *See* 825.127(c)(2).

(7) A description of the care to be provided to the covered servicemember and an estimate of the leave needed to provide the care.

(d) The Office of Compliance has developed an optional form (Form F) for employees' use in obtaining certification that meets FMLA's certification requirements. (*See* Form F). This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered servicemember with a serious injury or illness. Form F, or Form WH–385 (developed by the Department of Labor), or another form containing the same basic information, may be used by the employing office; however, no information may be required beyond that specified in this section. In all instances the information on the certification must relate only to the serious injury or illness for which the current need for leave exists. An employing office may seek authentication and/or clarification of the certification under 825.307. However, second and third opinions under 825.307 are not permitted for leave to care for a covered servicemember. Additionally, recertifications under 825.308 are not permitted for leave to care for a covered servicemember. An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(j) of the FMLA.

(e) An employing office requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification, in lieu of the Office of Compliance's optional certification form (Form F) or an employing office's own certification form, invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis. An eligible employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that leave taken on an intermittent basis during the period of time specified in the ITO or ITA is medically necessary. An ITO or ITA is sufficient certification for an employee entitled to take FMLA leave to care for a covered servicemember regardless of whether the employee is named in the order or authorization.

(1) If an employee will need leave to care for a covered servicemember beyond the expiration date specified in an ITO or ITA, an employing office may request that the employee have one of the authorized health care providers listed under 825.310(a) complete the Office of Compliance optional certification form (Form F) or an employing office's own form, as requisite certification for the remainder of the employee's necessary leave period.

(2) An employing office may seek authentication and clarification of the ITO or ITA under 825.307. An employing office may not utilize the second or third opinion process outlined in 825.307 or the recertification process under 825.308 during the period of time in which leave is supported by an ITO or ITA.

(3) An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(k) when an employee supports his or her request for FMLA leave with a copy of an ITO or ITA.

(f) An employing office requiring an employee to submit a certification for leave to care for a covered servicemember must accept as sufficient certification of the servicemember's serious injury or illness documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. Such documentation is sufficient certification of the servicemember's serious injury or illness to support the employee's request for military caregiver leave regardless of whether the employee is the named caregiver in the enrollment documentation.

(1) An employing office may seek authentication and clarification of the documentation indicating the servicemember's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers under 825.307. An employing office may not utilize the second or third opinion process outlined in 825.307 or the recertification process under 825.308 when the servicemember's serious injury or illness is shown by documentation of enrollment in this program.

(2) An employing office may require an employee to provide confirmation of covered family relationship to the seriously injured or ill servicemember pursuant to 825.122(k) when an employee supports his or her request for FMLA leave with a copy of such enrollment documentation. An employing office may also require an employee to provide documentation, such as a veteran's Form DD–214, showing that the discharge was other than dishonorable and the date of the veteran's discharge.

(g) Where medical certification is requested by an employing office, an employee may not be held liable for administrative delays in the issuance of military documents, despite the employee's diligent, good-faith efforts to obtain such documents. *See* 825.305(b). In all instances in which certification is requested, it is the employee's responsibility to provide the employing office with complete and sufficient certification and failure to do so may result in the denial of FMLA leave. *See* 825.305(d).

825.311 Intent to return to work.

(a) An employing office may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employing office's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employing office's obligations under FMLA, as made applicable by the CAA, to maintain health benefits (subject to COBRA requirements or 5 U.S.C. 8905a, whichever is applicable) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

(c) It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the employing office may require that the employee provide the employing office reasonable notice (*i.e.*, within two business days) of the changed circumstances where foreseeable. The employing office may also obtain information on such changed circumstances through requested status reports.

825.312 Fitness-for-duty certification.

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employing office may

have a uniformly-applied policy or practice that requires all similarly-situated employees (*i.e.*, same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or providing sufficient authorization to the health care provider to provide the information directly to the employing office) in the fitness-for-duty certification process as in the initial certification process. *See* 825.305(d).

(b) An employing office may seek a fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification from the employee's health care provider must certify that the employee is able to resume work. Additionally, an employing office may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In order to require such a certification, an employing office must provide an employee with a list of the essential functions of the employee's job no later than with the designation notice required by 825.300(d), and must indicate in the designation notice that the certification must address the employee's ability to perform those essential functions. If the employing office satisfies these requirements, the employee's health care provider must certify that the employee can perform the identified essential functions of his or her job. Following the procedures set forth in 825.307(a), the employing office may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken. The employing office may not delay the employee's return to work while contact with the health care provider is being made. No second or third opinions on a fitness-for-duty certification may be required.

(c) The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification.

(d) The designation notice required in 825.300(d) shall advise the employee if the employing office will require a fitness-for-duty certification to return to work and whether that fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's job.

(e) An employing office may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employing office has failed to provide the notice required in paragraph (d) of this section. If an employing office provides the notice required, an employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA. *See* 825.313(d).

(f) An employing office is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule. However, an employing office is entitled to a certification of fitness to return to duty for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took such leave. If an employing office chooses to require a fitness-for-duty certification under such circumstances, the employing office shall inform the employee at the same time it issues the designation notice that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days. Alternatively, an employing office can set a different interval for requiring a fitness-for-duty certification as long as it does not exceed once every 30 days and as long as the employing office advises the employee of the requirement in advance of the employee taking the intermittent or reduced schedule leave. The employing office may not terminate the employment of the employee while awaiting such a certification of fitness to return to duty for an intermittent or reduced schedule leave absence. *Reasonable safety concerns* means a reasonable belief of significant risk of harm to the individual employee or others. In determining whether reasonable safety concerns exist, an employing office should consider the nature and severity of the potential harm and the likelihood that potential harm will occur.

(g) If the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied.

(h) Requirements under the Americans with Disabilities Act (ADA), as amended and as made applicable by the CAA, apply. After an employee returns from FMLA leave, the ADA requires any medical examination at an employing office's expense by the employing office's health care provider be job-related and consistent with business necessity. For example, an attorney could not be required to submit to a medical examination or inquiry just because her leg had been amputated. The essential functions of an attorney's job do not require use of both legs; therefore such an inquiry would not be job related. An employing office may require a warehouse laborer, whose back impairment affects the ability to lift, to be examined by an orthopedist, but may not require this employee to submit to an HIV test where the test is not related to either the essential functions of his or her job or to his/her impairment. If an employee's serious health condition may also be a disability within the meaning of the ADA, as made applicable by the CAA, the FMLA does not prevent the employing office from following the procedures for requesting medical information under the ADA.

825.313 Failure to provide certification.

(a) *Foreseeable leave*. In the case of foreseeable leave, if an employee fails to provide certification in a timely manner as required by 825.305, then an employing office may deny FMLA coverage until the required certification is provided. For example, if an employee has 15 days to provide a certification and does not provide the certification for 45 days without sufficient reason for the delay, the employing office can deny FMLA protections for the 30-day period following the expiration of the 15-day time period, if the employee takes leave during such period.

(b) *Unforeseeable leave*. In the case of unforeseeable leave, an employing office may deny FMLA coverage for the requested leave if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances. For example, in the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. Absent such extenuating circumstances, if the employee fails to timely return the certification, the employing office can deny FMLA protections for the leave following the expiration of the 15-day time period until a sufficient certification is provided. If the employee never produces the certification, the leave is not FMLA leave.

(c) *Recertification*. An employee must provide recertification within the time requested by the employing office (which must allow at least 15 calendar days after the request) or as soon as practicable under the particular facts and circumstances. If an employee fails to provide a recertification within a reasonable time under the particular facts and circumstances, then the employing office may deny continuation of the FMLA leave protections until the employee produces a sufficient recertification. If the employee never produces the recertification, the leave is not FMLA leave. Recertification does not apply to leave taken for a qualifying exigency or to care for a covered servicemember.

(d) *Fitness-for-duty certification*. When requested by the employing office pursuant to a uniformly applied policy for similarly-situated employees, the employee must provide medical certification, at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work (*see* 825.312(a)) if the employing office has provided the required notice (*see* 825.300(e)); the employing office may delay restoration until the certification is provided. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated. *See also* 825.213(a)(3).

SUBPART D—ENFORCEMENT MECHANISMS

825.400 Enforcement of FMLA rights, as made applicable by the CAA.

(a) To commence a proceeding, a covered employee alleging a violation of the rights and protections of the FMLA, made applicable by the CAA, must request counseling by the Office of Compliance not later than 180 days after the date of the alleged violation. If a covered employee misses this deadline, the covered employee will be unable to obtain a remedy under the CAA.

(b) The following procedures are available under title IV of the CAA for covered employees who believe that their rights under FMLA, as made applicable by the CAA, have been violated:

(1) counseling;

(2) mediation; and

(3) election of either—

(A) a formal complaint, filed with the Office of Compliance, and a hearing before a hearing officer, subject to review by the Board of Directors of the Office of Compliance, and judicial review in the United States Court of Appeals for the Federal Circuit; or

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

(c) Regulations of the Office of Compliance describing and governing these procedures are found at **www.compliance.gov.**

825.401 [Reserved]

825.402 [Reserved]

825.403 [Reserved]

825.404 [Reserved]

SUBPART E—[RESERVED]

SUBPART F—SPECIAL RULES APPLICABLE TO EMPLOYEES OF SCHOOLS

825.600 Special rules for school employees, definitions.

(a) Certain special rules apply to employees of local educational agencies, including public school boards and elementary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and preschools.

(b) Educational institutions are covered by FMLA, as made applicable by the CAA (and these special rules). The usual requirements for employees to be eligible do apply.

(c) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. *Instructional employees* are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(d) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

825.601 Special rules for school employees, limitations on intermittent leave.

(a) Leave taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. An instructional employee who is on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

(1) If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered servicemember, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employing office may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would not be subject to transfer to an alternative position. *Periods of a particular duration* means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (*see* 825.302) to be taken intermittently or on a reduced leave schedule, the employing office may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employing office may require the employee to delay the taking of leave until the notice provision is met.

825.602 Special rules for school employees, limitations on leave near the end of an academic term.

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(1) An instructional employee begins leave more than five weeks before the end of a term. The employing office may require the employee to continue taking leave until the end of the term if—

(i) The leave will last at least three weeks, and

(ii) The employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave during the five-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employing office may require the employee to continue taking leave until the end of the term if—

(i) The leave will last more than two weeks, and

(ii) The employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave during the three-week period before the end of a term because of the birth of a son or daughter; the placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent with a serious health condition; or to care for a covered servicemember. The employing office may require the employee to continue taking leave until the end of the term if the leave will last more than five working days.

(b) For purposes of these provisions, *academic term* means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA, as made applicable by the CAA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employing office could require the employee to stay out on leave until the end of the term.

825.603 Special rules for school employees, duration of FMLA leave.

(a) If an employee chooses to take leave for periods of a particular duration in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. The employing office has the option not to require the employee to stay on leave until the end of the school term. Therefore, any additional leave required by the employing office to the end of the school term is not counted as FMLA leave; however, the employing office shall be required to maintain the employee's group health insurance and restore the employee to the same or equivalent job including other benefits at the conclusion of the leave.

825.604 Special rules for school employees, restoration to an equivalent position.

The determination of how an employee is to be restored to an equivalent position upon return from FMLA leave will be made on the basis of ''established school board policies and practices, private school policies and practices, and collective bargaining agreements.'' The ''established policies'' and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to an equivalent position must provide substantially the same protections as provided in the FMLA, as made applicable by the CAA, for reinstated employees. *See* 825.215. In other words, the policy or collective bargaining agreement must provide for restoration to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. For example, an employee may not be restored to a position requiring additional licensure or certification.

SUBPART G—EFFECT OF OTHER LAWS, EMPLOYING OFFICE PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS ON EMPLOYEE RIGHTS UNDER THE FMLA, AS MADE APPLICABLE BY THE CAA.

825.700 Interaction with employing office's policies.

(a) An employing office must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the FMLA, as made applicable by the CAA, may not be diminished by any employment benefit program or plan. For example, a provision of a collective bargaining agreement (CBA) which provides for reinstatement to a position that is not equivalent because of seniority (*e.g.*, provides lesser pay) is superseded by FMLA. If an employing office provides greater unpaid family leave rights than are afforded by FMLA, the employing office is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA or 5 U.S.C. 8905a, whichever is applicable), to the additional leave period not covered by FMLA.

(b) Nothing in the FMLA, as made applicable by the CAA, prevents an employing office from amending existing leave and employee benefit programs, provided they comply with FMLA, as made applicable by the CAA. However, nothing in the FMLA, as made applicable by the CAA, is intended to discourage employing offices from adopting or retaining more generous leave policies.

825.701 [Reserved]

825.702 Interaction with anti-discrimination laws, as applied by section 201 of the CAA.

(a) Nothing in FMLA modifies or affects any applicable law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (*e.g.*, Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act and as made applicable by the CAA). FMLA's legislative history explains that FMLA is ''not intended to modify or affect the Rehabilitation Act of 1973, as amended, the regulations concerning employment which have been promulgated pursuant to that statute, or the Americans with Disabilities Act of 1990 [as amended] or the regulations issued under that act. Thus, the leave provisions of the [FMLA] are wholly distinct

from the reasonable accommodation obligations of employers covered under the [ADA] . . . or the Federal government itself. The purpose of the FMLA, as applied by the CAA, is to make leave available to eligible employees and [employing offices] within its coverage, and not to limit already existing rights and protection.'' S. Rep. No. 3, 103d Cong., 1st Sess. 38 (1993). An employing office must therefore provide leave under whichever statutory provision provides the greater rights to employees. When an employer violates both FMLA and a discrimination law, an employee may be able to recover under either or both statutes (double relief may not be awarded for the same loss; when remedies coincide a claimant may be allowed to utilize whichever avenue of relief is desired. *Laffey v. Northwest Airlines, Inc.*, 567 F.2d 429, 445 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978).

(b) If an employee is a qualified individual with a disability within the meaning of the Americans with Disabilities Act (ADA), the employing office must make reasonable accommodations, *etc.*, barring undue hardship, in accordance with the ADA. At the same time, the employing office must afford an employee his or her FMLA rights. ADA's ''*disability*'' and FMLA's ''*serious health condition*'' are different concepts, and must be analyzed separately. FMLA entitles eligible employees to 12 weeks of leave in any 12-month period due to their own serious health condition, whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employing offices to maintain employees' group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period, whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

(c)(1) A reasonable accommodation under the ADA might be accomplished by providing an individual with a disability with a part-time job with no health benefits, assuming the employing office did not ordinarily provide health insurance for part-time employees. However, FMLA would permit an employee to work a reduced leave schedule until the equivalent of 12 workweeks of leave were used, with group health benefits maintained during this period. FMLA permits an employing office to temporarily transfer an employee who is taking leave intermittently or on a reduced leave schedule to an alternative position, whereas the ADA allows an accommodation of reassignment to an equivalent, vacant position only if the employee cannot perform the essential functions of the employee's present position and an accommodation is not possible in the employee's present position, or an accommodation in the employee's present position would cause an undue hardship. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a qualified individual with a disability.

(2) A qualified individual with a disability who is also an eligible employee entitled to FMLA leave requests 10 weeks of medical leave as a reasonable accommodation, which the employing office grants because it is not an undue hardship. The employing office advises the employee that the 10 weeks of leave is also being designated as FMLA leave and will count towards the employee's FMLA leave entitlement. This designation does not prevent the parties from also treating the leave as a reasonable accommodation and reinstating the employee into the same job, as required by the ADA, rather than an equivalent position under FMLA, if that is the greater right available to the employee. At the same time, the employee would be entitled under FMLA to have the employing office maintain group health plan coverage during the leave, as that requirement provides the greater right to the employee.

(3) If the same employee needed to work part-time (a reduced leave schedule) after returning to his or her same job, the employee would still be entitled under FMLA to have group health plan coverage maintained for the remainder of the two-week equivalent of FMLA leave entitlement, notwithstanding an employing office policy that part-time employees do not receive health insurance. This employee would be entitled under the ADA to reasonable accommodations to enable the employee to perform the essential functions of the part-time position. In addition, because the employee is working a part-time schedule as a reasonable accommodation, the FMLA's provision for temporary assignment to a different alternative position would not apply. Once the employee has exhausted his or her remaining FMLA leave entitlement while working the reduced (part-time) schedule, if the employee is a qualified individual with a disability, and if the employee is unable to return to the same full-time position at that time, the employee might continue to work part-time as a reasonable accommodation, barring undue hardship; the employee would then be entitled to only those employment benefits ordinarily provided by the employing office to part-time employees.

(4) At the end of the FMLA leave entitlement, an employing office is required under FMLA to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employing office's FMLA obligations would be satisfied if the employing office offered the employee an equivalent full-time position. If the employee were unable to perform the essential functions of that equivalent position even with reasonable accommodation, because of a disability, the ADA may require the employing office to make a reasonable accommodation at that time by allowing the employee to work part-time or by reassigning the employee to a vacant position, barring undue hardship.

(d)(1) If FMLA entitles an employee to leave, an employing office may not, in lieu of FMLA leave entitlement, require an employee to take a job with a reasonable accommodation. However, ADA may require that an employing office offer an employee the opportunity to take such a position. An employing office may not change the essential functions of the job in order to deny FMLA leave. *See* 825.220(b).

(2) An employee may be on a workers' compensation absence due to an on-the-job injury or illness which also qualifies as a serious health condition under FMLA. The workers' compensation absence and FMLA leave may run concurrently (subject to proper notice and designation by the employing office). At some point the health care provider providing medical care pursuant to the workers' compensation injury may certify the employee is able to return to work in a light duty position. If the employing office offers such a position, the employee is permitted but not required to accept the position. *See* 825.220(d). As a result, the employee may no longer qualify for payments from the workers' compensation benefit plan, but the employee is entitled to continue on unpaid FMLA leave either until the employee is able to return to the same or equivalent job the employee left or until the 12-week FMLA leave entitlement is exhausted. *See* 825.207 (e). If the employee returning from the workers' compensation injury is a qualified individual with a disability, he or she will have rights under the ADA.

(e) If an employing office requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related and consistent with business necessity.

(f) Under Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, and as made applicable by the CAA, an employing office should provide the same benefits for women who are pregnant as the employing office provides to other employees with short-term disabilities. Because Title VII does not require employees to be employed for a certain period of time to be protected, an employee employed for less than 12 months by the employing office (and, therefore, not an ''eligible'' employee under FMLA, as made applicable by the CAA) may not be denied maternity leave if the employing office normally provides short-term disability benefits to employees with the same tenure who are experiencing other short-term disabilities.

(g) Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301, *et seq.*, veterans are entitled to receive all rights and benefits of employment that they would have obtained if they had been continuously employed. Therefore, under USERRA, a returning servicemember would be eligible for FMLA leave if the months and hours that he or she would have worked for the civilian employing office during the period of absence due to or necessitated by USERRA-covered service, combined with the months employed and the hours actually worked, meet the FMLA eligibility threshold of 12 months of employment and the hours of service requirement. *See* 825.110(b)(2)(i) and (c)(2) and 825.802(c).

(h) For further information on Federal antidiscrimination laws applied by section 201 of the CAA (2 U.S.C. 1311), including Title VII, the Rehabilitation Act, and the ADA, individuals are encouraged to contact the Office of Compliance.

ENDNOTES

1. In contrast, the committee report accompanying the bill containing the ADA Amendments Act of 2008 complied with section 102(b)(3) of the CAA and contained a provision that indicated an intent to apply the ADA Amendments to the legislative branch. Committee on Education and Labor, H.Rpt. 110–730 § VII (June 23, 2008).

2. By regulation, the Board can require employing offices to provide the additional rights and protections for servicemembers and their families added to the FMLA since 1996. This is because, unlike executive branch agencies, the rulemaking power of the Board (after Congressional approval) is ''an exercise of the rulemaking power of the House of Representatives and the Senate'' under the Constitution. 2 U.S.C. § 1431(1). The rulemaking power of Congress under the Constitution, U.S. Const. Art. 1, § 5, cl. 2, is a ''broad grant of authority'' that allows each house of Congress to determine its own internal rules bounded only by ''constitutional restraints and fundamental rights.'' *Consumers Union of U.S., Inc. v. Periodical Correspondents' Ass'n*, 515 F.2d 1341, 1343 (D.C. Cir. 1975); *United States v. Ballin*, 144 U.S. 1, 5 (1892).

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification of Health Care Provider for Employee's Serious Health Condition
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form A

SECTION I: For Completion by the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.306-825.308. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

Employing office name and contact: _____

Employee's job title: _____ Regular work schedule: _____

Employee's essential job functions: _____

_____

Check if job description is attached: ☐

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA, as made applicable by the CAA, permits an employing office to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employing office, your response is required to obtain or retain the benefit of FMLA protections. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. OOC regulations at 825.313.Your employing office must give you at least 15 calendar days to return this form. OOC regulations at 825.305(b).

Your Name: _____
First Middle Last

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA, as made applicable by the CAA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests

as defined in 29 C.F.R §1635.3(f), genetic services, as defined in 29 C.F.R. §1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. §1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____) _____ - _____ Fax: (_____) _____ - _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

   Probable duration of condition: _____

   Mark below as applicable:

   Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
   ☐ No ☐ Yes If so, dates of admission:

   _____

   Date(s) you treated the patient for condition:

   _____

   Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☐ Yes

   Was medication, other than over-the-counter medication, prescribed? ☐ No ☐ Yes

   Was the patient referred to other health care provider(s) for evaluation or treatment (*e.g.*, physical therapist)?
   ☐ No ☐ Yes If so, state the nature of such treatments and expected duration of treatment:

   _____

2. Is the medical condition pregnancy? ☐ No ☐ Yes If so, expected delivery date: _____

3. Use the information provided by the employing office in Section I to answer this question. If the employing office fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

   Is the employee unable to perform any of his/her job functions due to the condition: ☐ No ☐ Yes

   If so, identify the job functions the employee is unable to perform:

   _____

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

   _____

   _____

   _____

   _____

_____

_____

_____

PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ☐ No ☐ Yes

   If so, estimate the beginning and ending dates for the period of incapacity: _____

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ☐ No ☐ Yes

   If so, are the treatments or the reduced number of hours of work medically necessary? ☐ No ☐ Yes

   Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

   _____

   Estimate the part-time or reduced work schedule the employee needs, if any:

   _____ hour(s) per day; _____ days per week from _____ through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ☐ No ☐ Yes

   Is it medically necessary for the employee to be absent from work during the flare-ups? ☐ No ☐ Yes

   If so, explain: _____

   _____

   Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (*e.g.*, 1 episode every 3 months lasting 1-2 days):

   Frequency: _____ times per _____ week(s) _____ month(s)

   Duration: _____ hours or _____ day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

_____

_____

_____

_____

Signature of Health Care Provider **Date**

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification of Health Care Provider for Family Member's Serious Health Condition

(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form B

SECTION I: For Completion by the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.306-825.308. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

Employing office name and contact: _____

_____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA, as made applicable by the CAA, permits an employing office to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employing office, your response is required to obtain or retain the benefit of FMLA protections. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. OOC regulations at 825.313. Your employing office must give you at least 15 calendar days to return this form to your employing office. OOC regulations at 825.305(b).

Your Name: _____
First Middle Last

Name of family member for whom you will provide care: _____
First Middle Last

Relationship of family member to you: _____

If family member is your son or daughter, date of birth: _____

Describe care you will provide to your family member and estimate leave needed to provide care:

_____

_____

_____

_____ _____

Employee Signature Date

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA, as made applicable by the CAA, to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests as defined in 29 C.F.R §1635.3(f), or genetic services, as defined in 29 C.F.R. §1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____) _____ - _____ Fax: (_____) _____ - _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

   Probable duration of condition: _____

   Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

   ☐ No ☐ Yes If so, dates of admission: _____

   Date(s) you treated the patient for condition: _____

   Was medication, other than over-the-counter medication, prescribed? ☐ No ☐ Yes

   Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☐ Yes

   Was the patient referred to other health care provider(s) for evaluation or treatment (*e.g.*, physical therapist)?

   ☐ No ☐ Yes If so, state the nature of such treatments and expected duration of treatment:

   _____

   _____

2. Is the medical condition pregnancy? ☐ No ☐ Yes If so, expected delivery date: _____

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

   _____

   _____

_____

_____

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ☐ No ☐ Yes

   Estimate the beginning and ending dates for the period of incapacity: _____

   During this time, will the patient need care? ☐ No ☐ Yes

   Explain the care needed by the patient and why such care is medically necessary: _____

   _____

   _____

   _____

   _____

   _____

5. Will the patient require follow-up treatments, including any time for recovery? ☐ No ☐ Yes

   Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

   _____

   Explain the care needed by the patient, and why such care is medically necessary: _____

   _____

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? ☐ No ☐ Yes

   Estimate the hours the patient needs care on an intermittent basis, if any:

   _____ hour(s) per day;_____ days per week from _____ through _____

   Explain the care needed by the patient, and why such care is medically necessary: _____

   _____

   _____

   _____

   _____

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? ☐ No ☐ Yes

   Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (*e.g.*, 1 episode every 3 months lasting 1-2 days):

   Frequency: _____ times per _____ week(s) _____ month(s)

   Duration: _____ hours or _____ day(s) per episode

   Does the patient need care during these flare-ups? ☐ No ☐ Yes

   Explain the care needed by the patient, and why such care is medically necessary: _____

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

_____

_____

_____

_____

_____ _____

Signature of Health Care Provider Date:

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Notice of Eligibility Rights and Responsibilities
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form C

In general, to be eligible a covered employee must have worked for an employing office for at least 12 months and have worked at least 1,250 hours in the 12 months preceding the leave. While use of this form by employing offices is optional, a fully completed form provides employees with the information required by the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.300(b), which must be provided within five business days of the employee notifying the employing office of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by the Board's FMLA regulations at 825.300(b), (c).

[Part A – NOTICE OF ELIGIBILITY]

TO: _____
Employee

FROM: _____
Employing Office Representative

DATE: _____

On _____, you informed us that you needed leave beginning on _____ for:

☐ The birth of a child, or placement of a child with you for adoption or foster care;

☐ Your own serious health condition;

☐ Because you are needed to care for your ☐ spouse; ☐ child; ☐ parent due to his/her serious health condition.

☐ Because of a qualifying exigency arising out of the fact that your ☐ spouse; ☐ son or daughter; ☐ parent is on covered active duty or call to covered active duty status with the Armed Forces.

☐ Because you are the ☐ spouse; ☐ son or daughter; ☐ parent; ☐ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

☐ Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)

☐ Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):

- ☐ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _____ months towards this requirement.
- ☐ You have not met the FMLA's 1,250-hours-worked requirement.

If you have any questions, contact: _____ or view the FMLA poster located in _____.

[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. **However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by _____.** (If a certification is requested, employing offices must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

☐ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request ___ **is**/___ **is not** enclosed.

☐ Sufficient documentation to establish the required relationship between you and your family member.

☐ Other information needed (such as documentation for military family leave): _____

_____

_____

☐ No additional information requested

If your leave does qualify as FMLA leave, you will have the following **responsibilities** while on FMLA leave (only checked blanks apply):

☐ Contact _____ at _____ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

☐ You will be required to use your available paid ___ **sick**, ___ **vacation**, and/or ___**other leave** during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.

☐ Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We ___**have**/___ **have not** determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.

☐ While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every _____. (Indicate interval of periodic reports, as appropriate for the particular leave situation).

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following **rights** while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:

☐ the calendar year (January – December).

☐ a fixed leave year based on_____.

☐ the 12-month period measured forward from the date of your first FMLA leave usage.

☐ a "rolling" 12-month period measured backward from the date of any FMLA leave usage.

- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on _____.

- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.

- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)

- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

- If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have ____ **sick**, ____**vacation**, and/or ___ **other leave** run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

☐ For a copy of conditions applicable to sick/vacation/other leave usage please refer to _____ available at: _____.

☐ Applicable conditions for use of paid leave: _____

_____

_____

_____

_____

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact: _____ at _____.

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Designation Notice

(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form D

Leave covered under the Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), must be designated as FMLA-protected and the employing office must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employing office may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employing office must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form by employing offices is optional, a fully completed form provides an easy method of providing employees with the written information required by the regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.300(d), 825.301, and 825.305(c).

To: _____

Date: _____

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on _____ and decided:

____ **Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave.**

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

____ Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: _____.

____ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised (check if applicable):

____ You have requested to use paid leave during your FMLA leave. Any paid leave taken for this reason will count against your FMLA leave entitlement.

____ We are requiring you to substitute or use paid leave during your FMLA leave.

____ You will be required to present a fitness-for-duty certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. A list of the essential functions of your position __ **is** __**is not** attached. If attached, the fitness-for-duty certification must address your ability to perform these functions.

____ **Additional information is needed to determine if your FMLA leave request can be approved:**

____ The certification you have provided is not complete and sufficient to determine whether the FMLA applies to your leave request. You must provide the following information no later than _____,
(Provide at least seven calendar days)
unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.

_____
(Specify information needed to make certification complete and sufficient)

_____

____ We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

____ Your FMLA Leave request is Not Approved.

____ The FMLA does not apply to your leave request.

____ You have exhausted your FMLA leave entitlement in the applicable 12-month period.

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification of Qualifying Exigency for Military Family Leave
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form E

SECTION I: For Completion by the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA leave due to a qualifying exigency to submit a certification. Please complete Section I before giving this form to your employee. Your response is voluntary, and while you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.309.

Employing office name: _____

Contact Information: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II fully and completely. The FMLA, as made applicable by the CAA, permits an employing office to require that you submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a qualifying exigency. Several questions in this section seek a response as to the frequency or duration of the qualifying exigency. Be as specific as you can; terms such as "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Your response is required to obtain a benefit. OOC regulations at 825.310. While you are not required to provide this information, failure to do so may result in a denial of your request for FMLA leave. Your employing office must give you at least 15 calendar days to return this form to your employing office.

Your Name: _____
First Middle Last

Name of military member on covered active duty or call to covered active duty status:

_____
First Middle Last

Relationship of military member to you: _____

Period of military member's covered active duty: _____

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a military member's covered active duty or call to covered active duty status. Please check one of the following and attach the indicated document to support that the military member is on covered active duty or call to covered active duty status.

___ A copy of the military member's covered active duty orders is attached.

___ Other documentation from the military certifying that the military member is on covered active duty (or has been notified of an impending call to covered active duty) is attached.

___ I have previously provided my employing office with sufficient written documentation confirming the military member's covered active duty or call to covered active duty status.

PART A: QUALIFYING REASON FOR LEAVE

1. Describe the reason you are requesting FMLA leave due to a qualifying exigency (including the specific reason you are requesting leave):

_____

_____

_____

_____

2. A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming the military member's Rest and Recuperation leave; a document confirming an appointment with a third party, such as a counselor or school official, or staff at a care facility; or a copy of a bill for services for the handling of legal or financial affairs. Available written documentation supporting this request for leave is attached.
Yes ☐ No ☐ None Available ☐

PART B: AMOUNT OF LEAVE NEEDED:

1. Approximate date exigency commenced: _____

Probable duration of exigency: _____

2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency? ☐ Yes ☐ No

If so, estimate the beginning and ending dates for the period of absence:

_____

3. Will you need to be absent from work periodically to address this qualifying exigency? ☐ Yes ☐ No

Estimate schedule of leave, including the dates of any scheduled meetings or appointments:

_____

_____

_____

Estimate the frequency and duration of each appointment, meeting, or leave event, including any travel time (*i.e.*, 1 deployment-related meeting every month lasting 4 hours):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours _____ day(s) per event.

PART C:

If leave is requested to meet with a third party (such as to arrange for childcare, to attend counseling, to attend meetings with school, childcare or parental care providers, to make financial or legal arrangements, to act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address, and appropriate contact

information of the individual or entity with whom you are meeting (*i.e.*, either the telephone or fax number or email address of the individual or entity). This information may be used by your employing office to verify that the information contained on this form is accurate.

Name of Individual: _____ Title: _____

Organization: _____

Address: _____

Telephone: (_____)_____ Fax: (_____)_____

Email: _____

Describe nature of meeting: _____

_____

_____

_____

_____

_____

_____

_____

PART D:

I certify that the information I provided above is true and correct.

_____ _____

Signature of Employee Date:

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification for Serious Injury or Illness of a Current Servicemember – for Military Family Leave
(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form F

Notice to the EMPLOYING OFFICE

INSTRUCTIONS to the EMPLOYING OFFICE: The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking FMLA leave due to a serious injury or illness of a current servicemember to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.310. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

SECTION I: For Completion by the EMPLOYEE and/or the CURRENT SERVICEMEMBER for whom the Employee is Requesting Leave

INSTRUCTIONS to the EMPLOYEE or CURRENT SERVICEMEMBER: Please complete Section I before having Section II completed. The FMLA, as made applicable by the CAA, permits an employing office to require that an employee submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a serious injury or illness of a servicemember. If requested by the employing office, your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of an employee's FMLA request. Board's regulations at 825.310(f). The employing office must give an employee at least 15 calendar days to return this form to the employing office.

SECTION II: For Completion by a UNITED STATES DEPARTMENT OF DEFENSE ("DOD") HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in the OOC regulations at 825.125.

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed on Page 2 has requested leave under the FMLA, as made applicable by the CAA, to care for a family member who is a current member of the Regular Armed Forces, the National Guard, or the Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification to support a request for FMLA leave due to a covered servicemember's serious injury or illness includes written documentation confirming that the servicemember's injury or illness was incurred in the line of duty on active duty or if not, that the current servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that the current servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Several questions seek a response as

to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the servicemember's condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. §1635.3(f), or genetic services, as defined in 29 C.F.R. §1635.3(e).

SECTION I: For Completion by the EMPLOYEE and/or the CURRENT SERVICEMEMBER for whom the Employee Is Requesting Leave:

(This section must be completed first before any of the below sections can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and Address of Employing Office (this is the employing office of the employee requesting leave to care for the current servicemember):

_____

Name of Employee Requesting Leave to Care for Current Servicemember:

_____

Name of the Current Servicemember (for whom employee is requesting leave to care):

_____

Relationship of Employee to the Current Servicemember:

☐ Spouse ☐ Parent ☐ Son ☐ Daughter ☐ Next of Kin

Part B: SERVICEMEMBER INFORMATION

(1) Is the Servicemember a Current Member of the Regular Armed Forces, the National Guard or Reserves?
☐ Yes ☐ No

If yes, please provide the servicemember's military branch, rank and unit currently assigned to:

_____

Is the servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit)?
☐ Yes ☐ No

If yes, please provide the name of the medical treatment facility or unit:

_____

(2) Is the Servicemember on the Temporary Disability Retired List (TDRL)?
☐ Yes ☐ No

Part C: CARE TO BE PROVIDED TO THE SERVICEMEMBER

Describe the Care to Be Provided to the Current Servicemember and an Estimate of the Leave Needed to Provide the Care:

_____

_____

SECTION II: For Completion by a United States Department of Defense ("DOD") Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in the OOC regulations at 825.125.

If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator).

(Please ensure that Section I above has been completed before completing this section. Please be sure to sign the form on the last page.)

Part A: HEALTH CARE PROVIDER INFORMATION

Health Care Provider's Name and Business Address:

_____

Type of Practice/Medical Specialty:

_____

Please state whether you are either: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; (4) a DOD non-network TRICARE authorized private health care provider; or (5) a health care provider as defined in the OOC regulations at 825.125:

_____

Telephone: (_____) _____ - _____ Fax: (_____) _____ - _____

Email: _____

PART B: MEDICAL STATUS

(1) The current Servicemember's medical condition is classified as (Check One of the Appropriate Boxes):

☐ **(VSI) Very Seriously Ill/Injured** – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **(SI) Seriously Ill/Injured** – Illness/injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

☐ **OTHER Ill/Injured** – a serious injury or illness that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

☐ **NONE OF THE ABOVE** (Note to Employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a "serious health condition" under 825.113 of the FMLA,

as made applicable by the CAA. If such leave is requested, you may be required to complete the OOC's optional certification form (Form B) or an employing office-provided form seeking the same information.)

(2) Is the current Servicemember being treated for a condition which was incurred or gravitated by service in the line of duty on active duty in the Armed Forces? ☐ Yes ☐ No

(3) Approximate date condition commenced: _____

(4) Probable duration of condition and/or need for care: _____

(5) Is the servicemember undergoing medical treatment, recuperation, or therapy for this condition? ☐ Yes ☐ No

If yes, please describe medical treatment, recuperation or therapy:

_____

PART C: SERVICEMEMBER'S NEED FOR CARE BY FAMILY MEMBER

(1) Will the servicemember need care for a single continuous period of time, including any time for treatment and recovery? ☐ Yes ☐ No

If yes, estimate the beginning and ending dates for this period of time:

_____

(2) Will the servicemember require periodic follow-up treatment appointments? ☐ Yes ☐ No

If yes, estimate the treatment schedule: _____

(3) Is there a medical necessity for the servicemember to have periodic care for these follow-up treatment appointments? ☐ Yes ☐ No.

(4) Is there a medical necessity for the servicemember to have periodic care for other than scheduled follow-up treatment appointments (*e.g.*, episodic flare-ups of medical condition)? ☐ Yes ☐ No.

If yes, please estimate the frequency and duration of the periodic care:

_____

_____

Signature of Health Care Provider: _____ **Date**:_____

Office of Compliance
advancing safety, health, and workplace rights in the legislative branch

Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

(Family and Medical Leave Act, as made applicable by the Congressional Accountability Act)

Form G

Notice to the EMPLOYING OFFICE

The Family and Medical Leave Act (FMLA), as made applicable by the Congressional Accountability Act (CAA), provides that an employing office may require an employee seeking military caregiver leave under the FMLA leave due to a serious injury or illness of a covered veteran to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations issued by the Office of Compliance (OOC) Board of Directors (the Board) at 825.310. Employing offices must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files, if the Americans with Disabilities Act and/or the Genetic Information Nondiscrimination Act apply, as made applicable by the CAA.

SECTION I: For Completion by the EMPLOYEE and/or the VETERAN for whom the employee is requesting leave

INSTRUCTIONS to the EMPLOYEE and/or VETERAN: Please complete Section I before having Section II completed. The FMLA, as made applicable by the CAA, permits an employing office to require that an employee submit a timely, complete, and sufficient certification to support a request for military caregiver leave under the FMLA leave due to a serious injury or illness of a covered veteran. If requested by the employing office, your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of an employee's FMLA request. OOC regulations at 825.310(g). The employing office must give an employee at least 15 calendar days to return this form to the employing office.

(This section must be completed before Section II can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and address of employing office (this is the employing office of the employee requesting leave to care for a veteran):

_____

Name of employee requesting leave to care for a veteran:

_____
First Middle Last

Name of veteran (for whom employee is requesting leave):

_____
First Middle Last

Relationship of employee to veteran:

☐ Spouse ☐ Parent ☐ Son ☐ Daughter ☐ Next of Kin ☐ _____ (please specify relationship):

Part B: VETERAN INFORMATION

(1) Date of the veteran's discharge: _____

(2) Was the veteran **dishonorably** discharged or released from the Armed Forces (including the National Guard or Reserves)? ☐ Yes ☐ No

(3) Please provide the veteran's military branch, rank and unit at the time of discharge:

_____

(4) Is the veteran receiving medical treatment, recuperation, or therapy for an injury or illness?
☐ Yes ☐ No

Part C: CARE TO BE PROVIDED TO THE VETERAN

Describe the care to be provided to the veteran and an estimate of the leave needed to provide the care:

_____

_____

SECTION II: For completion by: (1) a United States Department of Defense ("DOD") health care provider; (2) a United States Department of Veterans Affairs ("VA") health care provider; (3) a DOD TRICARE network authorized private health care provider; (4) a DOD non-network TRICARE authorized private health care provider; or (5) a health care provider as defined in the OOC regulations at 825.125.

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee named in Section I has requested leave under the military caregiver leave provision of the FMLA, as made applicable by the CAA, to care for a family member who is a veteran. For purposes of FMLA military caregiver leave, a serious injury or illness means an injury or illness incurred by the servicemember in the line of duty on active duty in the Armed Forces (or that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the servicemember became a veteran, and is:

(i) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
(ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
(iii) a physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
(iv) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans' Affairs Program of Comprehensive Assistance for Family Caregivers.

A complete and sufficient certification to support a request for FMLA military caregiver leave due to a covered veteran's serious injury or illness includes written documentation confirming that the veteran's injury or illness was incurred in the line of duty on active duty or existed before the beginning of the veteran's active duty and was aggravated by service in the line of duty on active duty, and that the veteran is undergoing treatment, recuperation, or therapy for such injury or illness by a health care provider listed above. Answer fully and completely all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA military caregiver leave coverage. Limit your responses to the veteran's condition for which the

employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. §1635.3(f), or genetic services, as defined in 29 C.F.R. §1635.3(e).

(Please ensure that Section I has been completed before completing this section. Please be sure to sign the form on the last page and return this form to the employee requesting leave (See Section I, Part A above). **DO NOT SEND THE COMPLETED FORM TO THE OFFICE OF COMPLIANCE.)**

Part A: HEALTH CARE PROVIDER INFORMATION

Health care provider's name and business address: _____

_____

Telephone: (_____) _____ - _____ Fax: (_____) _____ - _____

Email: _____

Type of Practice/Medical Specialty: _____

Please indicate if you are:

- ☐ a DOD health care provider
- ☐ a VA health care provider
- ☐ a DOD TRICARE network authorized private health care provider
- ☐ a DOD non-network TRICARE authorized private health care provider
- ☐ other health care provider

PART B: MEDICAL STATUS

Note: If you are unable to make certain of the military-related determinations contained in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as, DOD Recovery Care Coordinator) or an authorized VA representative.

(1) The Veteran's medical condition is:

- ☐ A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating.
- ☐ A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service Related Disability Rating (VASRD) of 50% or higher, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave.
- ☐ A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment.
- ☐ An injury, including a psychological injury, on the basis of which the covered veteran is enrolled in the Department of Veterans' Affairs Program of Comprehensive Assistance for Family Caregivers.
- ☐ None of the above.

(2) Is the veteran being treated for a condition which was incurred or aggravated by service in the line of duty on active duty in the Armed Forces? ☐ Yes ☐ No

(3) Approximate date condition commenced: _____

(4) Probable duration of condition and/or need for care: _____

(5) Is the veteran undergoing medical treatment, recuperation, or therapy for this condition? ☐ Yes ☐ No

If yes, please describe medical treatment, recuperation or therapy: _____

_____

PART C: VETERAN'S NEED FOR CARE BY FAMILY MEMBER

"Need for care" encompasses both physical and psychological care. It includes situations where, for example, due to his or her serious injury or illness, the veteran is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport him or herself to the doctor. It also includes providing psychological comfort and reassurance which would be beneficial to the veteran who is receiving inpatient or home care.

(1) Will the veteran need care for a single continuous period of time, including any time for treatment and recovery? ☐ Yes ☐ No

If yes, estimate the beginning and ending dates for this period of time: _____

(2) Will the veteran require periodic follow-up treatment appointments? ☐ Yes ☐ No

If yes, estimate the treatment schedule: _____

(3) Is there a medical necessity for the veteran to have periodic care for these follow-up treatment appointments? ☐ Yes ☐ No

(4) Is there a medical necessity for the veteran to have periodic care for other than scheduled follow-up treatment appointments (*e.g.*, episodic flare-ups of medical condition)? ☐ Yes ☐ No

If yes, please estimate the frequency and duration of the periodic care: _____

_____

_____

Signature of Health Care Provider: _____ **Date**: _____

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XIV, executive communications were taken from the Speaker's table and referred as follows:

2782. A letter from the Under Secretary, Personnel and Readiness, Department of Defense, transmitting a letter on the approved retirement of Lieutenant General David R. Hogg, United States Army, and his advancement to the grade of lieutenant general on the retired list, in accordance with 10 U.S.C. 777; to the Committee on Armed Services.

2783. A letter from the Attorney-Advisor, Federal Highway Administration, Department of Transportation, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998, Pub. L. 105-277, 5 U.S.C. 3345-3349d; to the Committee on Oversight and Government Reform.

2784. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Security Zone; Martha's Vineyard, Massachusetts [Docket No.: USCG-2015-0731] (RIN: 1625-AA87) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2785. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Safety Zone; U.S. Army Exercise, Des Plaines River, Channahon, IL [Docket No.: USCG-2015-0760] (RIN: 1625-AA00) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2786. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's final rule — Safety Zones; Eighth Coast Guard District Annual and Recurring Safety Zones Update [Docket No.: USCG-2013-1060] (RIN: 1625-AA00) received September 8, 2016, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2787. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's final rule — Special Local Regulations; Eighth Coast Guard District Annual and Recurring Marine Events Update [Docket No.: USCG-2013-1061] (RIN: 1625-AA08) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2788. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Safety Zone; Waddington Homecoming Fireworks, St. Lawrence River, Ogden Island, NY [Docket No.: USCG-2015-0715] (RIN: 1625-AA00) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2789. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Safety Zone; NOBLE DISCOVERER, Outer Continental Shelf Drillship, Chukchi Sea, AK [Docket No.: USCG-2015-0248] (RIN: 1625-AA00) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2790. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Safety Zone — Oil Exploration Staging Area in Dutch Harbor, AK [Docket No.: USCG-2015-0246] (RIN: 1625-AA00) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2791. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's final rule — Safety Zones; Cleveland Dragon Boat Festival and Head of the Cuyahoga, Cuyahoga River, Cleveland, OH [Docket No.: USCG-2014-0082] (RIN: 1625-AA00) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2792. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Safety Zone; Upper Mississippi River MM 180.0 to 180.5; St. Louis, MO [Docket No.: USCG-2015-0704] (RIN: 1625-AA00) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2793. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Safety Zone; Incredoubleman Triathlon; Henderson Bay, Lake Ontario, Sackets Harbor, NY [Docket No.: USCG-2015-0509] (RIN: 1625-AA00) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2794. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Safety Zone; Unexploded Ordnance Removal, Vero Beach, FL [Docket No.: USCG-2015-0737] (RIN: 1625-AA00) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2795. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's final rule — Safety Zone, Schuylkill River; Philadelphia, PA [Docket No.: USCG-2015-0094] (RIN: 1625-AA00) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2796. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Safety Zones and Regulated Navigation Area; Shell Arctic Drilling/Exploration Vessel and Associated Voluntary First Amendment Area, Portland, OR [Docket No.: USCG-2015-0543] (RIN: 1625-AA00; 1625-AA11) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2797. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Special Local Regulation, Tennessee River 647.0 to 648.0; Knoxville, TN [Docket No.: USCG-2015-0337] (RIN: 1625-AA08) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2798. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary interim rule — Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone; San Diego Bay, San Diego, CA [Docket No.: USCG-2015-0568] (RIN: 1625-AA08) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2799. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary interim rule — Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone; San Diego Bay, San Diego, CA [Docket No.: USCG-2015-0738] (RIN: 1625-AA08) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2800. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's temporary final rule — Special Local Regulations for Marine Events, Wrightsville Channel; Wrightsville Beach, NC [Docket No.: USCG-2015-0663] (RIN: 1625-AA08) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2801. A letter from the Attorney-Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulation; Perth Amboy, New Jersey [Docket No.: USCG-2015-0374] (RIN: 1625-AA09) received September 8, 2015, pursuant to 5 U.S.C. 801(a)(1)(A); Added by Public Law 104-121, Sec. 251; to the Committee on Transportation and Infrastructure.

2802. A letter from the Chair of the Board of Directors, Office of Compliance, transmitting a notice of proposed rulemaking to the rights and protections under the Family and Medical Leave Act of 1993, as required by Sec. 304(b)(1) of the Congressional Accountability Act of 1995, and 2 U.S.C. 1384(b)(1); jointly to the Committees on House Administration and Education and the Workforce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. COLLINS of Georgia: Committee on Rules. House Resolution 420. Resolution providing for consideration of the bill (H.R. 348) to provide for improved coordination of agency actions in the preparation and adoption of environmental documents for permitting determinations, and for other purposes; providing for consideration of the bill (H.R. 758) to amend rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes; and providing for consideration of motions to suspend the rules. (Rept. 114–261). Referred to the House Calendar.

Ms. FOXX: Committee on Rules. House Resolution 421. Resolution providing for consideration of the bill (H.R. 3134) to provide for a moratorium on Federal funding to Planned Parenthood Federation of America, Inc.; providing for consideration of the bill (H.R. 3504) to amend title 18, United States Code, to prohibit a health care practitioner from failing to exercise the proper degree of care in the case of a child who survives an abortion or attempted abortion; and for other purposes. (Rept. 114–262). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. UPTON:

H.R. 8. A bill to modernize energy infrastructure, build a 21st century energy and manufacturing workforce, bolster America's energy security and diplomacy, and promote energy efficiency and government accountability, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Science, Space, and Technology, Education and the Workforce, Oversight and Government Reform, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SENSENBRENNER (for himself, Ms. MOORE, Mr. KIND, Mr. RIBBLE, Mr. GROTHMAN, Mr. POCAN, Mr. NOLAN, and Ms. ESTY):

H.R. 3511. A bill to clarify the status of the North Country, Ice Age, and New England National Scenic Trails as units of the National Park System, and for other purposes; to the Committee on Natural Resources.

By Mr. SCOTT of Virginia (for himself, Mr. HINOJOSA, Ms. HAHN, Ms. MAXINE WATERS of California, Mrs. DAVIS of California, Mr. GRIJALVA, Mr. COURTNEY, Ms. FUDGE, Mr. POLIS, Mr. SABLAN, Ms. WILSON of Florida, Ms. BONAMICI, Mr. POCAN, Mr. TAKANO, Mr. JEFFRIES, Ms. CLARK of Massachusetts, Ms. ADAMS, Mr. DESAULNIER, Ms. BASS, Mr. BLUMENAUER, Mr. BUTTERFIELD, Mr. CAPUANO, Mr. CÁRDENAS, Ms. CASTOR of Florida, Ms. JUDY CHU of California, Mr. CICILLINE, Mr. CLAY, Mr. DEFAZIO, Mr. ELLISON, Mr. FATTAH, Ms. FRANKEL of Florida, Mr. GALLEGO, Mr. GUTIÉRREZ, Mr. HECK of Washington, Ms. KAPTUR, Ms. KELLY of Illinois, Mr. LANGEVIN, Mr. MCDERMOTT, Ms. MOORE, Mr. MURPHY of Florida, Mr. PIERLUISI, Mr. RANGEL, Mr. RICHMOND, Ms. ROYBAL-ALLARD, Mr. RYAN of Ohio, Mr. THOMPSON of Mississippi, Ms. ESHOO, Mr. DOGGETT, and Mr. SWALWELL of California):

H.R. 3512. A bill to amend the Higher Education Act of 1965 to clarify the Federal Pell Grant duration limits of borrowers who attend an institution of higher education that closes or commits fraud or other misconduct, and for other purposes; to the Committee on Education and the Workforce.

By Mr. CUMMINGS (for himself, Mr. ELLISON, Ms. NORTON, and Mr. SARBANES):

H.R. 3513. A bill to ensure greater affordability of prescription drugs; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SCOTT of Virginia (for himself, Mr. POLIS, Mr. HINOJOSA, Mr. GRIJALVA, Mr. SABLAN, Mr. TAKANO, Ms. CLARK of Massachusetts, Ms. ADAMS, Ms. JUDY CHU of California, Ms. DELAURO, Ms. EDWARDS, Mr. ENGEL, Mr. FARR, Mr. GUTIÉRREZ, Ms. LEE, Mr. LEWIS, Mr. NADLER, Mrs. NAPOLITANO, Mr. NORCROSS, Ms. NORTON, Mr. PASCRELL, Mr. RYAN of Ohio, Ms. SCHAKOWSKY, Mr. SERRANO, Mrs. WATSON COLEMAN, Mrs. DAVIS of California, Mr. POCAN, Mr. DESAULNIER, Mr. BLUMENAUER, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BRADY of Pennsylvania, Mr. GENE GREEN of Texas, Mr. HONDA, Ms. KAPTUR, Ms. LINDA T. SÁNCHEZ of California, Mr. VAN HOLLEN, Ms. BONAMICI, Mr. JEFFRIES, and Ms. BROWN of Florida):

H.R. 3514. A bill to amend the National Labor Relations Act to strengthen protections for employees wishing to advocate for improved wages, hours, or other terms or conditions of employment and to provide for stronger remedies for interference with these rights, and for other purposes; to the Committee on Education and the Workforce.

By Mr. SMITH of New Jersey (for himself, Mrs. HARTZLER, Ms. FOXX, and Mr. FRANKS of Arizona):

H.R. 3515. A bill to amend title 18, United States Code, to prohibit dismemberment abortions, and for other purposes; to the Committee on the Judiciary.

By Mr. SAM JOHNSON of Texas (for himself, Mr. BRADY of Texas, Ms. JENKINS of Kansas, Mr. SMITH of Missouri, Mr. COLE, Mr. TIBERI, Mrs. BLACK, Mr. KELLY of Pennsylvania, Mr. YOUNG of Indiana, Mr. ROSKAM, Mr. SMITH of Nebraska, Mr. REED, and Mr. BOUSTANY):

H.R. 3516. A bill to amend the Social Security Act relating to the use of determinations made by the Commissioner; to the Committee on Ways and Means.

By Mr. THOMPSON of Mississippi:

H.R. 3517. A bill to amend title 36, United States Code to enhance oversight of the American National Red Cross by the Government Accountability Office and Inspectors General at the Departments of Homeland Security, Treasury, and State, and require the Department of Homeland Security to conduct a pilot program with the American National Red Cross to research and develop mechanisms for the Department to better leverage social media to improve preparedness and response capabilities, and for other purposes; to the Committee on Foreign Affairs, and in addition to the Committees on Transportation and Infrastructure, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TED LIEU of California (for himself and Mr. AMASH):

H.R. 3518. A bill to amend title 28, United States Code, to prohibit the use of amounts from the Asset Forfeiture Fund for the Domestic Cannabis Suppression/Eradication Program of the Drug Enforcement Administration, and for other purposes; to the Committee on the Judiciary.

By Mr. ELLISON:

H.R. 3519. A bill to establish pilot programs to encourage the use of shared appreciation mortgage modifications, and for other purposes; to the Committee on Financial Services.

By Mr. BRADY of Texas (for himself and Mrs. CAPPS):

H.R. 3520. A bill to amend the Public Health Service Act to establish an interagency coordinating committee on pulmonary hypertension, and for other purposes; to the Committee on Energy and Commerce.

By Mr. JOLLY:

H.R. 3521. A bill to authorize grants for data collection for use in stock assessments of red snapper and other reef fish species in the Gulf of Mexico, and for other purposes; to the Committee on Natural Resources.

By Mr. BEYER (for himself, Mr. ELLISON, Mr. SWALWELL of California, Ms. JACKSON LEE, Mr. GARAMENDI, Mr. MEEKS, Mr. HIGGINS, Mr. CUMMINGS, Mr. HONDA, and Mr. BLUMENAUER):

H.R. 3522. A bill to amend the National Voter Registration Act of 1993 to require each State to implement a process under which individuals who are 16 years of age may apply to register to vote in elections for Federal office in the State, to direct the Election Assistance Commission to make grants to States to increase the involvement of minors in public election activities, and for other purposes; to the Committee on House Administration.

By Ms. BROWNLEY of California (for herself, Ms. EDWARDS, Mrs. NAPOLITANO, Ms. TITUS, Mrs. BEATTY, Mr. RICHMOND, Ms. BORDALLO, Mr. PASCRELL, Mr. CARTWRIGHT, Mrs. BUSTOS, Ms. NORTON, Mr. VARGAS, Ms. ESHOO, Mr. MEEKS, Mr. THOMPSON of California, Ms. JACKSON LEE, Mr. VAN HOLLEN, Mr. THOMPSON of Mississippi, Mr. JOHNSON of Georgia, Mr. HINOJOSA, Mr. TONKO, Ms. MAXINE WATERS of California, Mr. LIPINSKI, Mr. HONDA, Mr. MCGOVERN, Mr. KILMER, Mr. HIGGINS, Mr. CAPUANO, Ms. CLARK of Massachusetts, Ms. KUSTER, Mr. MCNERNEY, Mrs. KIRKPATRICK, Ms. ROYBAL-ALLARD, Ms. HAHN, and Mr. KEATING):

H.R. 3523. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide for the eligibility of Transportation Security Administration employees to receive public safety officers' death benefits, and for other purposes; to the Committee on the Judiciary.

By Mr. COHEN (for himself, Mr. ELLISON, Ms. TSONGAS, Ms. CLARK of Massachusetts, Mr. GRIJALVA, Ms. NORTON, Mr. MCGOVERN, Ms. ESHOO, Mr. CUMMINGS, Mr. BUTTERFIELD, Mr. TAKANO, Mr. HONDA, Mr. VAN HOLLEN, Ms. LEE, Mr. SERRANO, Ms. JACKSON LEE, Mr. POCAN, and Ms. SCHAKOWSKY):

H.R. 3524. A bill to amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions; to the Committee on Financial Services.

By Mr. ENGEL:

H.R. 3525. A bill to direct the Secretary of Energy to establish a pilot program to award grants and loan guarantees to hospitals to carry out projects for the purpose of reducing energy costs and increasing resilience to improve security; to the Committee on Energy and Commerce.

By Mr. GRIJALVA (for himself, Mr. SCHIFF, Mr. HONDA, Ms. BROWNLEY of California, Mr. VAN HOLLEN, Mr. CARTWRIGHT, Ms. TITUS, Ms. BORDALLO, Mr. BLUMENAUER, Ms. BROWN of Florida, Mr. CÁRDENAS, Mr. COHEN, Mr. CONYERS, Mrs. DAVIS of California, Ms. EDWARDS, Mr. FARR, Ms. NORTON, Mr. KEATING, Mr. TED LIEU of California, Mr. LOEBSACK, Mr. LOWENTHAL, Mr. LYNCH, Mr. MEEKS, Mr. QUIGLEY, Mr. RANGEL, Ms. ROYBAL-ALLARD, Mr. SHERMAN, and Ms. JUDY CHU of California):

H.R. 3526. A bill to amend the Endangered Species Act of 1973 to extend the import- and export-related provision of that Act to species proposed for listing as threatened or endangered under that Act; to the Committee on Natural Resources, and in addition to the Committees on Foreign Affairs, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. LUMMIS:

H.R. 3527. A bill to designate the mountain at the Devils Tower National Monument, Wyoming, as Devils Tower, and for other purposes; to the Committee on Natural Resources.

By Ms. NORTON:

H.R. 3528. A bill to amend the Congressional Accountability Act of 1995 to provide enhanced enforcement authority for occupational safety and health protections applicable to the legislative branch, to provide whistleblower protections and other antidiscrimination protections for employees of the legislative branch, and for other purposes; to the Committee on House Administration, and in addition to the Committees on the Judiciary, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. MIMI WALTERS of California:

H.R. 3529. A bill to require the Administrator of the National Aeronautics and Space Administration to study the feasibility of constructing an aramid synthetic fiber aqueduct to transport water from Oregon to California, and for other purposes; to the Committee on Science, Space, and Technology.

By Ms. MAXINE WATERS of California (for herself, Mr. HONDA, Mr. GRIJALVA, Mr. FATTAH, Mr. BRADY of Pennsylvania, Mr. ELLISON, Ms. LEE, Ms. NORTON, Mr. POCAN, and Mr. COHEN):

H.R. 3530. A bill to eliminate mandatory minimum sentences for all drug offenses; to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. LEE (for herself, Ms. MCCOLLUM, Mr. GRIJALVA, Mr. BEYER, Ms. JUDY CHU of California, Mr. FARR, Mr. MCDERMOTT, Ms. ROYBAL-ALLARD, Mr. SERRANO, Ms. JACKSON LEE, Mr. FATTAH, Ms. WILSON of Florida, and Mr. LEWIS):

H. Con. Res. 77. Concurrent resolution recognizing the 70th anniversary of the establishment of the United Nations; to the Committee on Foreign Affairs.

By Mr. PERRY:

H. Res. 422. A resolution honoring the Red Land Little League Team of Lewisberry, Pennsylvania for the performance of the team in the 2015 Little League World Series; to the Committee on Oversight and Government Reform.

By Mr. ZINKE (for himself, Mr. WHITFIELD, Mr. WILSON of South Carolina, Mr. GRAVES of Missouri, Mr. HUNTER, Mr. CRAMER, Mr. WALZ, Mr. HURD of Texas, Mr. JONES, Mr. ASHFORD, Mr. BISHOP of Utah, Mr. MARINO, Mr. MACARTHUR, Mr. BABIN, Mr. BUCSHON, Mr. JODY B. HICE of Georgia, Mr. MCHENRY, Mr. NUNES, Mr. HILL, Mr. BENISHEK, Mr. NEUGEBAUER, Mr. LANGEVIN, Mr. FARENTHOLD, Mr. LAMBORN, Mr. LYNCH, Mrs. LOVE, Mr. BYRNE, and Mr. PETERS):

H. Res. 423. A resolution expressing support for the designation of October 2015 as Special Operations Forces Appreciation Month in order to honor members of United States Special Operations Forces for their service and sacrifice on behalf of the United States; to the Committee on Oversight and Government Reform.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

129. The SPEAKER presented a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 19, urging the Congress of the United States to enact legislation allowing immigrants to serve in the military if they are eligible under the President's Executive Order for Deferred Action for Childhood Arrivals or Executive Order for Deferred Action for Parents of Americans and Lawful Permanent Residents; jointly to the Committees on Armed Services and the Judiciary.

130. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 18, urging the Congress of the United States to support H.R. 167, the federal Wildfire Disaster Funding Act; jointly to the Committees on the Budget, Agriculture, and Natural Resources.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 7 of rule XII of the Rules of the House of Representatives, the following statements are submitted regarding the specific powers granted to Congress in the Constitution to enact the accompanying bill or joint resolution.

By Mr. UPTON:

H.R. 8.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 3 of the United States Constitution

By Mr. SENSENBRENNER:

H.R. 3511.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 18

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

By Mr. SCOTT of Virginia:

H.R. 3512.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8 of the Constitution of the United States.

By Mr. CUMMINGS:

H.R. 3513.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 3—To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

By Mr. SCOTT of Virginia:

H.R. 3514.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8 of the Constitution of the United States.

By Mr. SMITH of New Jersey:

H.R. 3515.

Congress has the power to enact this legislation pursuant to the following:

Congress has the authority to protection unborn children under the Supreme Court's Commerce Clause precedents and under the Constitution's grants of powers to Congress under the Equal Protection, Due Process, and Enforcement Clauses of the Fourteenth Amendment.

By Mr. SAM JOHNSON of Texas:

H.R. 3516.

Congress has the power to enact this legislation pursuant to the following:

Clause 1 of section 8 of article I of the Constitution, to ''provide for the common defense and general welfare of the United States.''

By Mr. THOMPSON of Mississippi:

H.R. 3517.

Congress has the power to enact this legislation pursuant to the following:

The U.S. Constitution, including Article I, section 8.

By Mr. TED LIEU of California:

H.R. 3518.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 1 of the U.S. Constitution (relating to the general welfare of the United States).

By Mr. ELLISON:

H.R. 3519.

Congress has the power to enact this legislation pursuant to the following:

Congress has the power to enact this legislation pursuant to Article I, Section 8, Clause 1.

By Mr. BRADY of Texas:

H.R. 3520.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 1 of the Constitution.

By Mr. JOLLY:

H.R. 3521.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8

By Mr. BEYER:

H.R. 3522.

Congress has the power to enact this legislation pursuant to the following:

This bill is enacted pursuant to the power granted to Congress under Article I of the United States Constitution and its subsequent amendments, and further clarified and interpreted by the Supreme Court of the United States.

By Ms. BROWNLEY of California:

H.R. 3523.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8 of the U.S. Constitution.

By Mr. COHEN:

H.R. 3524.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 3 (relating to the power to regulate foreign and interstate commerce) of the United States Constitution.

By Mr. ENGEL:

H.R. 3525.

Congress has the power to enact this legislation pursuant to the following:

The bill is enacted pursuant to the power granted to Congress under the following provisions of the United States Constitution:

Article I, Section 1;

Article I, Section 8, Clause 1;

Article I, Section 8, Clause 3; and

Article I, Section 8, Clause 18.

By Mr. GRIJALVA:

H.R. 3526.

Congress has the power to enact this legislation pursuant to the following:

Article I, section 8

By Mrs. LUMMIS:

H.R. 3527.

Congress has the power to enact this legislation pursuant to the following:

Article IV, Section 3, Clause 2: ''The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;''

By Ms. NORTON:

H.R. 3528.

Congress has the power to enact this legislation pursuant to the following:

clause 18 of section 8 of article I of the Constitution.

By Mrs. MIMI WALTERS of California:

H.R. 3529.

Congress has the power to enact this legislation pursuant to the following:

Article 1, Section 8 of the Constitution: To make all Laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof

By Ms. MAXINE WATERS of California:

H.R. 3530.

Congress has the power to enact this legislation pursuant to the following:

Article I, Section 8, Clause 18

The Congress shall have Power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills—and resolutions, as follows:

H.R. 184: Mr. BRADY of Texas.
H.R. 188: Ms. EDWARDS and Mr. YOUNG of Alaska.
H.R. 209: Mr. PASCRELL, Mr. BILIRAKIS, Ms. ESHOO, Ms. DEGETTE, Ms. MATSUI, Mr. POMPEO, and Mr. LANCE.
H.R. 265: Ms. EDWARDS.
H.R. 300: Mr. BROOKS of Alabama.
H.R. 306: Mr. NADLER.
H.R. 317: Ms. LOFGREN and Miss RICE of New York.
H.R. 343: Mr. STIVERS.
H.R. 347: Mr. HECK of Washington.
H.R. 381: Mr. ELLISON and Mr. SABLAN.
H.R. 423: Mr. JONES.
H.R. 540: Ms. HAHN.
H.R. 546: Ms. ESTY and Mr. DONOVAN.
H.R. 572: Mr. KILMER.
H.R. 583: Mr. HUDSON and Mr. FARENTHOLD.
H.R. 592: Mr. RUPPERSBERGER and Mr. DESJARLAIS.
H.R. 665: Ms. PINGREE and Mr. WITTMAN.
H.R. 702: Mr. CÁRDENAS, Mr. SCALISE, Mr. TROTT, and Mr. GOODLATTE.
H.R. 711: Mr. BABIN.
H.R. 748: Mr. PERLMUTTER.
H.R. 765: Mr. COSTELLO of Pennsylvania, Mr. NUNES, and Mr. RENACCI.
H.R. 771: Mr. LONG.
H.R. 816: Mr. ROKITA.
H.R. 842: Mr. STIVERS and Mr. WESTMORELAND.
H.R. 845: Mr. MCCLINTOCK.
H.R. 846: Mr. NORCROSS and Mr. SHERMAN.
H.R. 869: Mr. ELLISON, Mr. WALZ, and Ms. MCCOLLUM.
H.R. 879: Mrs. COMSTOCK, Mr. WEBER of Texas, Mr. WHITFIELD, and Mr. AMODEI.
H.R. 881: Mr. ROUZER.
H.R. 902: Ms. MICHELLE LUJAN GRISHAM of New Mexico.
H.R. 921: Mr. HUDSON.
H.R. 980: Mr. SIMPSON.
H.R. 985: Mr. DAVID SCOTT of Georgia.
H.R. 1013: Mr. NADLER.
H.R. 1062: Mr. HURD of Texas.
H.R. 1086: Mr. HURD of Texas.
H.R. 1133: Ms. LINDA T. SÁNCHEZ of California and Mr. GRAYSON.
H.R. 1142: Ms. MCCOLLUM.
H.R. 1188: Mr. HARDY and Mr. GRAYSON.
H.R. 1221: Mr. GRAYSON.
H.R. 1247: Mr. JONES.
H.R. 1258: Mrs. TORRES, Mr. KING of New York, and Mr. ASHFORD.
H.R. 1271: Ms. EDWARDS.
H.R. 1276: Ms. EDWARDS.
H.R. 1301: Mr. RODNEY DAVIS of Illinois and Ms. BORDALLO.
H.R. 1383: Ms. EDWARDS.
H.R. 1384: Mr. HONDA.
H.R. 1391: Ms. MENG.
H.R. 1399: Mr. BARR.
H.R. 1422: Mr. GRAYSON.
H.R. 1427: Mr. MEEHAN and Ms. SINEMA.
H.R. 1475: Mr. JOYCE and Mrs. LUMMIS.
H.R. 1478: Mr. HECK of Washington.
H.R. 1490: Mr. CARTWRIGHT.
H.R. 1492: Mr. VEASEY.
H.R. 1515: Ms. MAXINE WATERS of California.
H.R. 1516: Mr. POMPEO and Mr. SWALWELL of California.
H.R. 1526: Mr. HECK of Nevada and Ms. EDWARDS.
H.R. 1534: Ms. CLARK of Massachusetts.
H.R. 1542: Mr. AMODEI.
H.R. 1552: Mr. TED LIEU of California.
H.R. 1566: Ms. DELBENE.
H.R. 1600: Mr. DEUTCH, Ms. SINEMA, and Ms. EDDIE BERNICE JOHNSON of Texas.
H.R. 1608: Mr. DEUTCH and Ms. MICHELLE LUJAN GRISHAM of New Mexico.
H.R. 1624: Mr. YOUNG of Alaska, Mr. JONES, Mrs. TORRES, Mr. WEBSTER of Florida, Mr. SANFORD, and Mr. AUSTIN SCOTT of Georgia.
H.R. 1635: Mr. LOEBSACK, Mr. NADLER, and Mr. MILLER of Florida.
H.R. 1643: Mr. SCHRADER.
H.R. 1644: Mr. CHABOT.
H.R. 1670: Mr. FITZPATRICK and Mr. TIBERI.
H.R. 1671: Mr. GOODLATTE.
H.R. 1686: Mr. KIND.
H.R. 1692: Ms. BROWNLEY of California.
H.R. 1706: Mr. LANGEVIN and Ms. LOFGREN.
H.R. 1718: Ms. KAPTUR.
H.R. 1728: Ms. ESTY and Mr. LEVIN.
H.R. 1752: Mr. CARTER of Georgia.
H.R. 1769: Mr. ASHFORD, Mr. TAKANO, and Mr. LANCE.
H.R. 1779: Ms. SCHAKOWSKY, Mr. PETERS, and Mr. NADLER.
H.R. 1786: Mr. GUTIÉRREZ, Mr. DEUTCH, Ms. SINEMA, Mrs. TORRES, Ms. LEE, Mr. LOEBSACK, Mr. COLE, Mr. HONDA, Ms. MCCOLLUM, Mr. FATTAH, and Mr. JENKINS of West Virginia.
H.R. 1859: Mrs. COMSTOCK and Mr. COOK.
H.R. 1941: Mr. QUIGLEY.
H.R. 1948: Mr. LEVIN.
H.R. 1969: Mrs. NAPOLITANO and Mr. AMODEI.
H.R. 2005: Ms. EDWARDS.
H.R. 2010: Mr. GIBBS and Mr. ROE of Tennessee.
H.R. 2050: Ms. SPEIER and Mr. VELA.
H.R. 2061: Mr. COSTELLO of Pennsylvania and Miss RICE of New York.
H.R. 2114: Mr. MCGOVERN and Mr. SERRANO.
H.R. 2156: Ms. SINEMA.
H.R. 2169: Mr. HONDA.
H.R. 2209: Mr. MEEKS.
H.R. 2234: Ms. EDWARDS.
H.R. 2278: Mr. FARENTHOLD.
H.R. 2293: Mr. BISHOP of Michigan, Ms. VELÁZQUEZ, Mr. MURPHY of Florida, Mr. LEVIN, and Mrs. TORRES.
H.R. 2315: Mr. BRENDAN F. BOYLE of Pennsylvania.
H.R. 2366: Mr. GRAVES of Missouri and Mr. WALBERG.
H.R. 2404: Mr. REED, Mr. TAKAI, and Ms. SINEMA.
H.R. 2460: Ms. GABBARD.
H.R. 2463: Mr. LEVIN.
H.R. 2510: Mr. COSTELLO of Pennsylvania.
H.R. 2520: Mr. COHEN.
H.R. 2521: Mr. YARMUTH.
H.R. 2572: Mr. RUPPERSBERGER.
H.R. 2595: Mr. CARTWRIGHT.
H.R. 2602: Mr. CARTWRIGHT.
H.R. 2622: Ms. JUDY CHU of California.
H.R. 2639: Mr. HUFFMAN.
H.R. 2675: Mr. AMODEI.
H.R. 2698: Mr. AUSTIN SCOTT of Georgia.
H.R. 2715: Ms. ESTY, Mr. WELCH, Mr. PETERS, and Mr. HUFFMAN.
H.R. 2726: Ms. MCCOLLUM.
H.R. 2737: Mr. LOWENTHAL and Mr. MCGOVERN.
H.R. 2738: Ms. LOFGREN.
H.R. 2739: Mr. JOLLY and Mr. ENGEL.
H.R. 2752: Mr. AMODEI.
H.R. 2763: Mr. HUFFMAN.
H.R. 2769: Mr. ROTHFUS.
H.R. 2800: Mr. POLIQUIN.
H.R. 2808: Mrs. WATSON COLEMAN.
H.R. 2811: Mr. MCGOVERN.
H.R. 2824: Mr. CONNOLLY and Mr. CARTWRIGHT.
H.R. 2844: Mr. PALLONE, Ms. JUDY CHU of California, Mr. PAYNE, and Mr. JEFFRIES.
H.R. 2850: Mr. BLUMENAUER.
H.R. 2855: Mr. HONDA and Mr. GARAMENDI.
H.R. 2858: Mr. LEVIN, Mr. SMITH of Washington, and Mr. LOBIONDO.
H.R. 2861: Mr. SWALWELL of California and Ms. JUDY CHU of California.
H.R. 2867: Ms. CASTOR of Florida, Ms. EDDIE BERNICE JOHNSON of Texas, and Mr. NEAL.
H.R. 2901: Mrs. WAGNER, Mr. HUIZENGA of Michigan, and Mr. BARR.
H.R. 2903: Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. UPTON, Mr. LONG, and Mr. BUCK.
H.R. 2909: Mr. GARAMENDI.
H.R. 2915: Ms. MCSALLY.
H.R. 2933: Mr. PETERS.
H.R. 2940: Ms. MCSALLY, Mr. MURPHY of Pennsylvania, Mr. COSTELLO of Pennsylvania, and Mr. KELLY of Pennsylvania.
H.R. 2948: Mr. RUSH.
H.R. 2972: Ms. MATSUI.
H.R. 2980: Mr. QUIGLEY and Mrs. BEATTY.
H.R. 3011: Mr. HUELSKAMP.
H.R. 3033: Mr. STIVERS, Mr. LOEBSACK, and Mr. YOUNG of Iowa.
H.R. 3051: Mr. NADLER and Mrs. BEATTY.
H.R. 3071: Ms. MICHELLE LUJAN GRISHAM of New Mexico.
H.R. 3084: Mr. HANNA, Mr. NADLER, and Mr. JOYCE.
H.R. 3108: Mr. HUFFMAN.
H.R. 3120: Mr. KELLY of Pennsylvania.
H.R. 3129: Mr. FORBES and Mr. AUSTIN SCOTT of Georgia.
H.R. 3134: Mr. MCCLINTOCK and Mr. FITZPATRICK.
H.R. 3137: Mr. VALADAO
H.R. 3141: Mrs. LAWRENCE.
H.R. 3150: Ms. MICHELLE LUJAN-GRISHAM of New Mexico, Ms. DUCKWORTH, Ms. MENG, Mr. CARTWRIGHT, Ms. MCCOLLUM, and Mr. SWALWELL of California.
H.R. 3202: Mr. GRIJALVA, Mr. CARTER of Georgia, and Ms. CASTOR of Florida.
H.R. 3221: Mr. SCHIFF.
H.R. 3222: Mr. BARR.
H.R. 3226: Mr. BLUMENAUER.
H.R. 3229: Mr. WESTERMAN, Mr. RODNEY DAVIS of Illinois, and Mr. BOST.
H.R. 3243: Ms. MATSUI and Mr. CARTWRIGHT.
H.R. 3268: Mr. COFFMAN, Mr. BISHOP of Michigan, Mrs. TORRES, Mr. SWALWELL of California, Ms. VELÁZQUEZ, Mr. TED LIEU of California, Mr. CÁRDENAS,, Mr. MURPHY of Pennsylvania, and Ms. KUSTER.
H.R. 3314: Mr. BURGESS.
H.R. 3338: Mr. PERRY, Mr. BARLETTA, Mr. DONOVAN, Mr. RODNEY DAVIS of Illinois, Mr. LUETKEMEYER, Mr. VAN HOLLEN, Mr. HILL, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. WILLIAMS, Mr. TOM PRICE of Georgia, and Mr. DESANTIS.
H.R. 3339: Ms. MICHELLE LUJAN GRISHAM of New Mexico.
H.R. 3340: Mr. ROYCE and Mr. WILLIAMS.
H.R. 3364: Mr. LEVIN, Ms. BROWNLEY of California, Mr. CÁRDENAS, and Ms. SLAUGHTER.
H.R. 3378: Ms. SCHAKOWSKY.
H.R. 3381: Mr. LANCE and Mr. CARTWRIGHT.

H.R. 3423: Mr. LEVIN, Ms. GABBARD, Ms. ESTY, Mr. FOSTER, Mr. WELCH, and Mrs. BUSTOS.

H.R. 3428: Mr. MILLER of Florida.

H.R. 3429: Mr. VALADAO, Mr. FINCHER, Mr. FORTENBERRY, Mr. PALAZZO, Mr. ROONEY of Florida, Mr. RIBBLE, and Mr. KELLY of Mississippi.

H.R. 3442: Mr. MEEHAN and Mr. SMITH of Texas.

H.R. 3443: Mr. ROUZER.

H.R. 3454: Mrs. MILLER of Michigan.

H.R. 3455: Mr. NADLER and Miss RICE of New York.

H.R. 3456: Miss RICE of New York.

H.R. 3457: Mr. AUSTIN SCOTT of Georgia, Mr. WILLIAMS, Mr. SENSENBRENNER, Mr. JONES, Mr. MOOLENAAR, Mr. EMMER of Minnesota, Mr. LATTA, Mrs. BROOKS of Indiana, Mr. HUIZENGA of Michigan, Mr. ZINKE, Mr. HILL, Mr. BUCHANAN, Mr. THOMPSON of Pennsylvania, Mr. SHUSTER, Mr. LANCE, Mr. MARINO, Mrs. BLACK, Mr. YODER, Ms. JENKINS of Kansas, Mr. ROE of Tennessee, Mr. SESSIONS, Mr. MCCAUL, Mr. ROONEY of Florida, Mr. TOM PRICE of Georgia, Mr. KING of New York, Mr. JOYCE, Mr. FINCHER, Mr. MACARTHUR, Mrs. WAGNER, Mr. COLE, Mr. PERRY, Mr. BYRNE, Mr. SMITH of Missouri, Mr. MURPHY of Pennsylvania, Mr. SHIMKUS, and Mr. ROTHFUS.

H.R. 3495: Mr. STEWART, Mr. MURPHY of Pennsylvania, Mr. ROGERS of Alabama, Mr. WESTERMAN, and Mr. FLORES.

H.R. 3497: Mr. MEEKS, Mr. FARR, Mr. GRIJALVA, Mr. VAN HOLLEN, Ms. JACKSON LEE, and Mr. MCGOVERN.

H.R. 3504: Mr. ROSKAM, Mr. SHUSTER, Mr. WESTERMAN, Mr. HARPER, Mrs. NOEM, Mr. MULVANEY, Mr. RODNEY DAVIS of Illinois, Mr. SCHWEIKERT, Mr. YOUNG of Indiana, Mrs. ROBY, and Mr. BARTON.

H.J. Res. 50: Mr. WESTMORELAND.

H.J. Res. 66: Mr. ROUZER.

H. Con. Res. 67: Mr. ROUZER.

H. Con. Res. 75: Mr. GUINTA, Mr. HILL, Mr. MURPHY of Pennsylvania, Mr. POMPEO, Mr. SCHWEIKERT, Mr. TIPTON, Ms. SCHAKOWSKY, Mrs. COMSTOCK, and Mr. SMITH of New Jersey.

H. Res. 28: Mr. MCKINLEY.

H. Res. 54: Ms. DEGETTE.

H. Res. 111: Mr. FORBES.

H. Res. 140: Ms. MATSUI.

H. Res. 207: Mr. DENHAM, Mrs. LOWEY, Mr. THOMPSON of Pennsylvania, and Ms. KUSTER.

H. Res. 210: Mr. JOLLY, Mr. COURTNEY, and Mr. ELLISON.

H. Res. 267: Mr. VEASEY.

H. Res. 277: Ms. ROS-LEHTINEN.

H. Res. 293: Mr. ZELDIN, Mr. CURBELO of Florida, Mr. MEADOWS, Mr. CHABOT, Mr. SIRES, Mr. FRANKS of Arizona, Mr. DIAZ-BALART, and Mr. BRENDAN F. BOYLE of Pennsylvania.

H. Res. 294: Ms. JENKINS of Kansas.

H. Res. 346: Ms. BROWNLEY of California, Mr. FARENTHOLD, Mr. MILLER of Florida, Mr. DONOVAN, Mr. MURPHY of Pennsylvania, Mr. SCHWEIKERT, Mr. WEBER of Texas and Mr. RODNEY DAVIS of Illinois.

H. Res. 348: Ms. ESHOO, Ms. PINGREE, Mr. VEASEY, Mr. RICHMOND, and Ms. DELAURO.

H. Res. 390: Mr. CARTWRIGHT.

H. Res. 392: Mr. SANFORD.

H. Res. 393: Ms. DUCKWORTH, Ms. ROYBAL-ALLARD, Ms. CLARKE of New York, Mr. RANGEL, Mr. CARTWRIGHT, and Mr. FOSTER.

H. Res. 394: Ms. SCHAKOWSKY, Mr. VISCLOSKY, Mr. DEFAZIO, Mr. ROTHFUS, and Mr. ENGEL.

H. Res. 417: Mr. WESTMORELAND.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, OR LIMITED TARIFF BENEFITS

Under clause 9 of rule XXI, lists or statements on congressional earmarks, limited tax benefits, or limited tariff benefits were submitted as follows:

OFFERED BY MR. GOODLATTE

The provisions that warranted a referral to the Committee on Judiciary in H.R. 3504 do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

The amendment to be offered by Representative GOODLATTE, or a designee, to H.R. 348, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.