From:	Shire, Gavin
To:	Paul Ross
Subject:	Media log for Feb 9
Date:	Friday, February 10, 2017 8:17:24 AM
Attachments:	FWS Media Inquiries Feb 9.xlsx

Gavin Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-2649 (o)
703-346-9123 (c)
gavin_shire@fws.gov

HQ		
Outlet	**Reporter Name**	**Info Requested**
Journal of the International Double Reed Society	Whitney Holly	Clarifying rules on traveling with instruments containing rosewood
High Country News	Ben Goldfarb	Correction request: opinion piece incorrectly
Associated Press	Matt Brown	Rusty patched bumble bee/NRDC release on listing delay due to Exec. Order
GoMN News in Minneapolis.	Adam Uren	Effects of the regulations order on the rusty patched bumble bee/NRDC news release
Poughkeepsie Journal	John Ferro	Follow-up questions on refuge revenue sharing and property value of Shawangunk Grasslands NWR
Politico	Esther Whieldon	Updates on the ESA and ESA 101
Wall Street Journal	Will Connors	Comment on legislation to delist gray wolves, current numbers and do we still consider wolves recovered
Tribune Media	Travis McKnight	Follow up questions from his previoous inquiry

R1		
Outlet	**Reporter Name**	**Info Requested**
KNDU (NBC, Tri-Cities, Washington)		Mid-Columbia Refuge Complex to do a story on the effects of all the cold and snow on wildlife. Stemmed from a cougar sighting in the area

R6		
Outlet	**Reporter Name**	**Info Requested**
St. George News	Julie Applegate	Inquiriy related to a landowner withdrawing his land from the Red Cliffs Desert Reserve, itsaffect on the Reserve and the HCP

Freelance	Luke Alie	Rocky Flats National Wildlife Refuge Tour for a Radiolab-inspired series on Superfund sites.

R2		
Outlet	**Reporter Name**	**Info Requested**
Japanese documentary film unit		Follw-up to previous inquiry regarding filming on national wildlife refuges along the border with Mexico
PBS NewsHour	Mark Scialla	Follow-up to Feb 8 request to interview scientists about impacts of a border wall on wildlife

R3		
Outlet	**Reporter Name**	**Info Requested**
Fox News	Terace Garnier	Effective date of listing of rusty patched bumble bee.
AP	John Flesher	Effective date of listing of rusty patched bumble bee.
St. Louis Public Radio	Eli Chen	Requested copy of Fed Register notice of delay Rusty Patched Bumble Bee effective date

R4		
Outlet	**Reporter Name**	**Info Requested**
FoxNews	Terace Garnier	Listing of the Rusty patched bumble bee
Once Q La Primera 1190 AM, Radio Show: "Vision Latina"	Abraham Segundo	Live interview at Arthur R. Marshall Loxahatchee National Wildlife Refuge about the refuge's annual Everglades Day public event.
Island Sun Newspaper, Sanibel, FL		"Ding" Darling Wildlife Society Fundraiser at Community House for J.N. "Ding" Darling NWR
Out and About Southwest Florida on ABC Channel #7		Wants to do a feature story on "Ding" Darling NWR as an area tourist attraction

Islander, Newspaper Sanibel, FL	Meghan McCoy	Death of former Sanibel mayor and environmentalist Mark "Bird" Westall

R5		
Outlet	**Reporter Name**	**Info Requested**
Portland Press Herald	Mary Pols	Listing of the Rusty patched bumble bee
Boston Globe	David Abel	Listing of the Rusty patched bumble bee

Number of inquiries	Response Provided
1	Working with IA on responses, original request came in to MA e-mail 1/31 Writer and editor made correction asap
1	Referred to Heather Swift, DOI
1	Sent to DOI/Heather for response
1	Working with R5 and HQ Refuges
3	We don't have any current updates to share and provided our ESA web site for a 101
1	We do not have a position on the legislation, the current gray wolf population is accurate (https://www.fws.gov/home/wolfrecovery/), wolves are biologically recovered and we are conducting winter counts
1	Provided him the ECOS databes link for questions about other species with pending petitions but declined to answer additional questions related to the wall

Number of inquiries	Response Provided
1	Provided taped interview covering impacts of the weather on waterfowl (avian cholera), deer, elk, insects, mountain lions, etc.

Number of inquiries	Response Provided
1	OTR response: FWS is currently evaluating if this withdrawal will impact the Reserve, HCP and ongoing discussions regarding the HCP renewal. The HCP does allow for a landowner to withdraw from the Reserve. However, if any development or other land uses on the property would result in take of the desert tortoise, the landowner would need to apply for an Incidental Take Permit in order to avoid violation of the Endangered Species Act. Application of a permit requires an HCP, part of which must provide measures that would fully offset the impacts of the take to the maximum extent possible.

1	we discussed the site's various histories from Native American to present, the future visitor center, our upcoming listening session, the xeric tall grass prairie ecosystem, etc. No ETA on a release date yet, as he is still interviewing other parties, editing audio, and conducting research.

Number of inquiries	Response Provided
2	Filming is allowed on the Refuge in any area that is open to the public, the Refuge simply requires some paperwork be filled out prior to filming. For additional access to border areas, recommended they contact Border Patrol. Coordinated with A. B. Wade at USGS and directed them to talk to scientists there who have published studies on barrier impacts.

Number of inquiries	Response Provided
1	Referred to DOI
1	Referred to DOI
1	Provided Federal Register link and referred them to DOI with any other questions.

Number of inquiries	Response Provided
1	Field Office sent the reporter the link to the Federal Register Notice for Delay of Effective Date for listing. The Public Affairs Specialist also told the reporter about a Carolina heelsplitter habitat restoration project that the field office is working on with Lancaster County, SC.
1	The interview was conducted in Spanish the afternoon of February 9
1	Provided assistance for a positive story about local residents/donors supporting "Ding" NWR.
1	Declined because they want to charge FWS $495.00 to film/hour

1	Ranger Jeff Combs spoke to Meghan about "Bird" Westall's impact on visitors and his guided tours in the refuge. Wildlife Refuge Manager Paul Tritaik e-mailed a quote about "Bird's" impact on the conservation of this island and the refuge.

Number of inquiries	Response Provided
1	Referred to DOI
1	Referred to DOI

From: Pavelka, Mark
To: Morris, Charisa
Subject: Re: Work Breakdown Structure/Threats Analysis Tables/Effects Pathway Analysis
Date: Friday, February 10, 2017 11:30:02 AM

Thanks for the heads up - we've been writing a few bullets for public affairs; seems the "Trump Wall" articles citing IPaC have caught the attention of a few people...

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Seeing you is at the top of my list of priorities while in DC - I'll let you know as soon as dates firm up.

Cheers, Mark

On Tue, Jan 31, 2017 at 4:07 PM, Morris, Charisa <charisa_morris@fws.gov> wrote:

> Any updates on travel dates? :-)
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> Also, folks may be reaching out to you to get some IPaC bullets, or info on how updated the data on the southern border is, FYI.
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>> Absolutely - I'd be glad to come your way :-)
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>> On Wed, Jan 4, 2017 at 5:59 PM, Charisa Morris <charisa_morris@fws.gov> wrote:
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>>> Let's do it! Any chance you can bring the party to DC? Happy hours in VA are difficult for me, as I work until 6:30 or 7 and I live in MD.
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responded..."yea right, I really doubt the Service's Chief of Staff is going to come to MO and work on an HCP".

I told you a few years back I would be working for you soon!!!

Sincerely, if you know anyone who has these skills and would be willing to help carry-out a workshop in MO in April/May 2017, please pass this message along or let me know their names.

Thank you and have the happiest of holiday seasons.

Tom

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Missouri State-wide Forest Management HCP (bats, mussels, fish)

The purpose of the workshop is to accelerate the states HCP development process - by working through key areas of their HCP - in an intense and structured workshop setting. Our preliminary objectives for the workshop are to:

- Affirm the HCPs purpose and need; objectives and scope; approach and organization; and assumptions and concerns. Note: most of this information will be developed before the workshop through the Section 6 HCP planning assistance grant proposal development process.
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From: Morris, Charisa
To: Pavelka, Mark
Subject: Re: Work Breakdown Structure/Threats Analysis Tables/Effects Pathway Analysis
Date: Monday, February 13, 2017 12:04:05 PM

Sounds good - thanks, Mark!

On Fri, Feb 10, 2017 at 2:29 PM, Pavelka, Mark <mark_pavelka@fws.gov> wrote:

> Thanks for the heads up - we've been writing a few bullets for public affairs; seems the "Trump Wall" articles citing IPaC have caught the attention of a few people...
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From:	Charles Blair
To:	charisa_morris@fws.gov
Cc:	cynthia_martinez@fws.gov
Subject:	Border fence information
Date:	Friday, March 10, 2017 2:23:14 PM

Charisa

The previous email on this subject is in reference to Steve Guertin's request that if we have concern for sensitive areas or resources we get it on the table right away. I think he made that request before you arrived at the meeting. I sent notes of the meeting to Cynthia and copied the Refuge Chief in Region 2. I assume he passed it along to his folks.

Is there a format that we want to use to compile the information?

Sent from my iPad

From:	Gustavson, Angela
To:	Angela Gustavson
Subject:	Congressional Affairs Update
Date:	Friday, March 17, 2017 10:30:06 AM
Attachments:	3.17.17.docx

Good afternoon,

The Congressional Affairs Update for this week is attached.

This week, Acting Director Jim Kurth testified at a hearing before the Senate Committee on Environment and Public Works titled "Examining Innovative Solutions to Control Invasive Species and Promote Wildlife Conservation".

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2253
Mobile: 202-909-5105
angela_gustavson@fws.gov

CONGRESSIONAL AFFAIRS UPDATE

Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

March 17, 2017

2017 Congressional Recess Schedule

Senate	Holidays & Special Days	House
Mar. 16 – Mar. 17	**St. Patrick's Day** Mar. 17	Mar. 14 – Mar. 23
Apr. 10 – Apr. 21	**Easter** Apr. 16	Apr. 10 – Apr. 21
		May 8 – May 12
May 29 – Jun. 2	**Memorial Day** May 29	
		May 30 – Jun. 2
Jul. 3 – Jul. 7	**Independence Day** Jul. 4	Jul. 3 – Jul. 7
		Aug. 1 – Sep. 1
Jul. 31 – Sep. 4	**Labor Day** Sep. 4	Sep. 4
Sep. 21 – Sep. 22		Sep. 18 – Sep. 22
Oct. 9 – Oct. 13	**Columbus Day** Oct. 9	Oct. 9
		Oct. 16 – Oct. 20
	Veterans Day Nov. 10 (Observed)	
Nov. 20 – Nov. 24	**Thanksgiving Day** Nov. 23	Nov. 20 – Nov. 24
Dec. 18 – Dec. 29	**Christmas Day** Dec. 25	Dec. 25

HEARINGS AND MARKUPS OF INTEREST

<u>Fish and Wildlife Service Testifies Before Senate Committee</u>
On Wednesday, March 15, the Senate Committee on Environment and Public Works held an oversight hearing titled "Examining Innovative Solutions to Control Invasive Species and Promote Wildlife Conservation". Acting Director Jim Kurth testified on behalf of the U.S. Fish and Wildlife Service. Acting Director Kurth discussed the Service's Partners for Fish and Wildlife Program, innovative techniques and partnerships the Service is using to control invasive species, and new technologies for combating wildlife trafficking. Most members of the Committee were in attendance for at least part of the hearing. Committee members spoke to many issues of interest to the Service, including:

- **Chairman John Barrasso (R-WY)** discussed examples of innovative new technologies being used to reduce poaching and control invasive species. He asked about reauthorization of the Service's Partners for Fish and Wildlife Program.

- **Ranking Member Thomas Carper (D-DE)** asked how landowners join the Service's Partners for Fish and Wildlife Program. He discussed the economic impacts of invasive species and asked how implementation of the innovative ideas outlined in panelist testimony would affect the number of species on the list of threatened and endangered species. He also asked about China's commitment to ban their domestic trade in ivory.
- **Senator James Inhofe (R-OK)** asked about ways to leverage hunters and anglers in the fight against invasive species. He also asked about the status of the American burying beetle and the lesser prairie-chicken.
- **Senator Sheldon Whitehouse (D-RI)** discussed the relevance of coastal states in addressing invasive species and the issue of illegal, unregulated fishing, and also asked whether panelists consider climate change in their invasive species planning.
- **Senator Joni Ernst (R-IA)** asked if state and local agencies have sufficient latitude from federal partners to make wildlife and invasive species management decisions.
- **Senator Tammy Duckworth (D-IL)** asked about the role of innovations at locks and dams in curbing invasive species.
- **Senator Mike Rounds (R-SD)** asked what steps federal agencies need to take to improve the scientific information they use for invasive species management.
- **Senator Cory Booker (D-NJ)** discussed treatment of wildlife in management practices and asked about the rule concerning Non-Subsistence Take of Wildlife on National Wildlife Refuges in Alaska.

For more information, please visit:
https://www.epw.senate.gov/public/index.cfm/hearings?ID=40C0CE17-9913-4336-AE5A-5EEF87975159

Senate Committee Holds Hearing on Improving Energy Infrastructure

On Tuesday, March 14, the Senate Committee on Energy and Natural Resources held an oversight hearing on opportunities to improve American energy infrastructure. Of interest to the Service, **Senator Steve Daines (R-MT)** discussed coordination among federal agencies to facilitate energy development and pipeline construction on federal lands. **Senator Catherine Cortez Masto (D-NV)** discussed the dual goals of protecting lands and expanding access to renewable energy, especially as expansion of access involves building transmission lines that cross federal lands.

For more information, please visit: https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=E9162CC8-8156-46E1-9F27-06B3BD8C423F

House Subcommittee Holds Hearing on Marine Monuments and Sanctuaries

On Wednesday, March 15, the House Natural Resources Subcommittee on Water, Power and Oceans held an oversight hearing titled "Examining the Creation and Management of Marine Monuments and Sanctuaries." For more information, please visit:
http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=401648

House Subcommittee Held Hearing on National Park and National Forest Infrastructure

On Thursday, March 16, the House Natural Resources Subcommittee on Federal Lands held an oversight hearing titled "Identifying Innovative Infrastructure Ideas for the National Park Service

and Forest Service." For more information, please visit:
http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=401663

UPCOMING HEARINGS

Senate Committee Hearing on Opportunities to Improve Infrastructure on Federal Lands
On Tuesday, March 21, the Senate Committee on Energy and Natural Resources will hold an oversight hearing titled "Opportunities to Improve and Expand Infrastructure Important to Federal Lands, Recreation, Water, and Resources. The hearing is scheduled for 10:00 a.m. in 366 Dirksen Senate Office Building.

For more information, please visit:
https://www.energy.senate.gov/public/index.cfm/2017/3/hearing-to-receive-testimony-on-opportunities-to-improve-and-expand-infrastructure-important-to-federal-lands-recreation-water-and-resources

INTRODUCED LEGISLATION OF INTEREST

S.664 — A bill to approve the settlement of the water rights claims of the Navajo in Utah, to authorize construction of projects in connection therewith, and for other purposes.
Sponsor: Sen. Hatch, Orrin G. [R-UT] (Introduced 03/15/2017) Cosponsors: (0)
Committees: Senate - Indian Affairs
Latest Action: 03/15/2017 Read twice and referred to the Committee on Indian Affairs.

S.641 — A bill to prioritize funding for an expanded and sustained national investment in basic science research.
Sponsor: Sen. Durbin, Richard J. [D-IL] (Introduced 03/15/2017) Cosponsors: (1)
Committees: Senate - Budget
Latest Action: 03/15/2017 Read twice and referred to the Committee on the Budget. (text of measure as introduced: CR S1844-1845)

S.627 — A bill to establish the Maritime Washington Heritage Area in the State of Washington, and for other purposes.
Sponsor: Sen. Cantwell, Maria [D-WA] (Introduced 03/14/2017) Cosponsors: (0)
Committees: Senate - Energy and Natural Resources
Latest Action: 03/14/2017 Read twice and referred to the Committee on Energy and Natural Resources.

S.621 — A bill to establish an advisory committee to issue nonbinding government wide guidelines on making public information available on the Internet, to require publicly available Government information held by the executive branch to be made available on the Internet, to express the sense of Congress that publicly available information held by the legislative and judicial branches should be available on the Internet, and for other purposes.
Sponsor: Sen. Tester, Jon [D-MT] (Introduced 03/14/2017) Cosponsors: (0)
Committees: Senate - Homeland Security and Governmental Affairs

Latest Action: 03/14/2017 Read twice and referred to the Committee on Homeland Security and Governmental Affairs

S.617 — A bill to amend the Wild and Scenic Rivers Act to designate certain segments of the Farmington River and Salmon Brook in the State of Connecticut as components of the National Wild and Scenic Rivers System, and for other purposes.
Sponsor: Sen. Murphy, Christopher [D-CT] (Introduced 03/14/2017) Cosponsors: (0)
Committees: Senate - Energy and Natural Resources
Latest Action: 03/14/2017 Read twice and referred to the Committee on Energy and Natural Resources.

H.R.1584 — To amend the Marine Mammal Protection Act of 1972 to prohibit the taking, importation, and exportation of Orcas and Orca products for public display, and for other purposes.
Sponsor: Rep. Schiff, Adam B. [D-CA-28] (Introduced 03/16/2017) Cosponsors: (15)
Committees: House - Natural Resources, Agriculture
Latest Action: 03/16/2017 Referred to House Agriculture

H.R.1580 — To authorize the Director of the United States Geological Survey to conduct monitoring, assessment, science, and research, in support of the binational fisheries within the Great Lakes Basin, and for other purposes.
Sponsor: Rep. Quigley, Mike [D-IL-5] (Introduced 03/16/2017) Cosponsors: (10)
Committees: House - Natural Resources
Latest Action: 03/16/2017 Referred to the House Committee on Natural Resources.

H.R.1579 — To require drinking water systems to assess and address their vulnerabilities to climate change, source water degradation, and intentional acts to ensure security and resiliency.
Sponsor: Rep. Peters, Scott H. [D-CA-52] (Introduced 03/16/2017) Cosponsors: (2)
Committees: House - Energy and Commerce
Latest Action: 03/16/2017 Referred to the House Committee on Energy and Commerce.

H.R.1577 — To require the Secretary of the Interior submit a report to Congress evaluating the Capital Investment Strategy and its results, and for other purposes.
Sponsor: Rep. McSally, Martha [R-AZ-2] (Introduced 03/16/2017) Cosponsors: (2)
Committees: House - Natural Resources
Latest Action: 03/16/2017 Referred to the House Committee on Natural Resources.

H.R.1569 — To prioritize funding for an expanded and sustained national investment in basic science research.
Sponsor: Rep. Foster, Bill [D-IL-11] (Introduced 03/16/2017) Cosponsors: (0)
Committees: House - Budget, Science, Space, and Technology, Armed Services
Latest Action: 03/16/2017 Referred to House Armed Services

H.R.1558 — To amend the National Flood Insurance Act of 1968 to ensure community accountability for areas repetitively damaged by floods, and for other purposes.

Sponsor: Rep. Royce, Edward R. [R-CA-39] (Introduced 03/16/2017) Cosponsors: (1)
Committees: House - Financial Services
Latest Action: 03/16/2017 Referred to the House Committee on Financial Services.

H.R.1557 — To withdraw certain lands in Los Angeles County, California, from entry, appropriation, or disposal under the public land laws, and for other purposes.
Sponsor: Rep. Knight, Stephen [R-CA-25] (Introduced 03/16/2017) Cosponsors: (3)
Committees: House - Natural Resources
Latest Action: 03/16/2017 Referred to the House Committee on Natural Resources.

H.R.1552 — To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects, and for other purposes.
Sponsor: Rep. Ross, Dennis A. [R-FL-15] (Introduced 03/15/2017) Cosponsors: (0)
Committees: House - Oversight and Government Reform
Latest Action: 03/15/2017 Referred to the House Committee on Oversight and Government Reform.

H.R.1538 — To amend the Federal Power Act to require the Federal Energy Regulatory Commission to minimize infringement on the exercise and enjoyment of property rights in issuing hydropower licenses, and for other purposes.
Sponsor: Rep. Griffith, H. Morgan [R-VA-9] (Introduced 03/15/2017) Cosponsors: (4)
Committees: House - Energy and Commerce
Latest Action: 03/15/2017 Referred to the House Committee on Energy and Commerce.

H.R.1535 — To amend the Wild and Scenic Rivers Act to designate certain segments of the Farmington River and Salmon Brook in the State of Connecticut as components of the National Wild and Scenic Rivers System, and for other purposes.
Sponsor: Rep. Esty, Elizabeth H. [D-CT-5] (Introduced 03/15/2017) Cosponsors: (1)
Committees: House - Natural Resources
Latest Action: 03/15/2017 Referred to the House Committee on Natural Resources.

H.R.1532 — To reaffirm that certain land has been taken into trust for the benefit of the Poarch Band of Creek Indians, and for other purposes.
Sponsor: Rep. Byrne, Bradley [R-AL-1] (Introduced 03/15/2017) Cosponsors: (5)
Committees: House - Natural Resources
Latest Action: 03/15/2017 Referred to the House Committee on Natural Resources.

H.R.1531 — To amend the Internal Revenue Code of 1986 to provide for the use of funds in the Hazardous Substance Superfund for the purposes for which they were collected, to ensure adequate resources for the cleanup of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.
Sponsor: Rep. Blumenauer, Earl [D-OR-3] (Introduced 03/15/2017) Cosponsors: (14)
Committees: House - Ways and Means, Transportation and Infrastructure, Energy and Commerce, Budget

Latest Action: 03/15/2017 Referred to House Budget

H.R.1525 — To prohibit Federal officials and employees from entering into settlements that provide for payment of attorney's fees by the Federal Government in certain environmental law cases.
Sponsor: Rep. Smith, Jason [R-MO-8] (Introduced 03/13/2017) Cosponsors: (5)
Committees: House - Judiciary, Transportation and Infrastructure, Natural Resources, Energy and Commerce
Latest Action: 03/13/2017 Referred to House Energy and Commerce

H.R.1524 — To amend the Internal Revenue Code of 1986 to extend the financing of the Superfund.
Sponsor: Rep. Pallone, Frank, Jr. [D-NJ-6] (Introduced 03/13/2017) Cosponsors: (2)
Committees: House - Ways and Means
Latest Action: 03/13/2017 Referred to the House Committee on Ways and Means.

H.R.1518 — To establish the Maritime Washington National Heritage Area in the State of Washington, and for other purposes.
Sponsor: Rep. Kilmer, Derek [D-WA-6] (Introduced 03/13/2017) Cosponsors: (1)
Committees: House - Natural Resources
Latest Action: 03/13/2017 Referred to the House Committee on Natural Resources.

H.R.1504 — To amend the Act popularly known as the Rivers and Harbors Appropriation Act of 1915 to prohibit the establishment of certain anchorage grounds within five miles of a nuclear power plant, a location on the national register of historic places, a superfund site, or critical habitat of an endangered species, and for other purposes.
Sponsor: Rep. Maloney, Sean Patrick [D-NY-18] (Introduced 03/10/2017) Cosponsors: (1)
Committees: House - Transportation and Infrastructure
Latest Action: 03/10/2017 Referred to the House Committee on Transportation and Infrastructure.

H.R.1491 — To reaffirm the action of the Secretary of the Interior to take land into trust for the benefit of the Santa Ynez Band of Chumash Mission Indians, and for other purposes.
Sponsor: Rep. LaMalfa, Doug [R-CA-1] (Introduced 03/10/2017) Cosponsors: (0)
Committees: House - Natural Resources
Latest Action: 03/10/2017 Referred to the House Committee on Natural Resources.

H.R.1477 — To prohibit the use of Federal funds to build a wall along the southern border, and for other purposes.
Sponsor: Rep. Moore, Gwen [D-WI-4] (Introduced 03/09/2017) Cosponsors: (27)
Committees: House - Homeland Security, Foreign Affairs
Latest Action: 03/09/2017 Referred to House Foreign Affairs

H.R.1460 — To require the identification of certain persons who participated in a rule making in publications related to such rule making, and for other purposes.

Sponsor: Rep. Young, David [R-IA-3] (Introduced 03/09/2017) Cosponsors: (1)
Committees: House - Judiciary
Latest Action: 03/09/2017 Referred to the House Committee on the Judiciary.

H.R.1456 — To prohibit the sale of shark fins, and for other purposes.
Sponsor: Rep. Royce, Edward R. [R-CA-39] (Introduced 03/09/2017) Cosponsors: (32)
Committees: House - Natural Resources
Latest Action: 03/09/2017 Referred to the House Committee on Natural Resources.

H.Res.195 — Expressing the commitment of the House of Representatives to conservative environmental stewardship.
Sponsor: Rep. Stefanik, Elise M. [R-NY-21] (Introduced 03/13/2017) Cosponsors: (16)
Committees: House - Energy and Commerce
Latest Action: 03/13/2017 Referred to the House Committee on Energy and Commerce.

From:	Guertin, Stephen
To:	FWS Directorate & Deputies
Subject:	Notes for this afternoon"s VTC
Date:	Wednesday, April 26, 2017 10:29:41 AM

Will go over this in high level detail. Read ahead for VTC on transition planning update. Comprehensive look in chronological order.

January 2017

Initial hiring freeze

January 30 2017

Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs

March 13 2017

Presidential Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch

Within 180 days submit a proposed plan to reorganize the agency

April 12 2017

M-17-22 -- Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce

- Immediate actions to achieve near-term workforce reductions and cost savings including planning for funding levels in pending 2018 request
- Develop plan to maximize employee performance
- Submit an **Agency Reform Plan** with 2019 budget in September

April 14 2017

Hiring Controls memo for DOI

- Address immediate actions outlined above
- Lateral reassignments
- DC and Denver frozen
- Outside DC and Denver < GS 11 field work not office work
- However, budget levels and reorganization planning higher drivers so we really don't have a lot of flex
- Additional guidance coming on rest of M-17-22 particularly the **Agency Reform Plan**
- Secretary talks about pushing resources to the field and joint command structures in the field. What will DOI look like in 100 years?
- Internal Service Directorate led team to start studies

Budget:

FY 2017

Current CR expires end of this week; debate on border barrier looks to be postponed; media reports continued debate on policy riders for Interior / EPA. Likely another CR to buy more time? Maybe a signed bill?

FY 2018

March 16 2017

America First – A Budget Blueprint to Make America Great Again

The President's 2018 Budget requests $11.6 billion for DOI, a $1.5 billion or 12 % decrease from the 2017 annualized CR level.

- Strengthens the Nation's energy security by increasing funding for DOI programs that support environmentally responsible development of energy on public lands and offshore waters. Streamline permitting process.
- Supports stewardship capacity for land management operations. Streamlines operations while providing the necessary resources for DOI to continue to protect and conserve America's public lands and beautiful natural resources, provide access to public lands for the next generation of outdoor enthusiasts, and ensure visitor safety.

Operations Guidance:

The Secretary has signed Secretarial Orders relevant to the Service and several tasking orders:

1. We have already taken steps to implement **SO 3346** to revoke Director's Order No 219 on the use of nontoxic ammunition and fishing tackle.

2. We have turned in our detailed response and recommendations on **SO 3347** on Conservation Stewardship and Outdoor Recreation (access and outdoor recreation). We had thirty days to complete this very detailed and ambitious deliverable which will now be reviewed by the DOI political leadership team, formulated into a Secretarial Action Plan, and shared with the Wildlife Hunting Heritage Conservation Council and Sport Fishing and Boating Partnership Council for their feedback and recommendations for a final Secretarial Action Plan. We will continue to support these policy level conversations as they move forward.

4. **SO 3349** on American energy independence

- **SO 3349** "energy independence" order revokes the previous Administration's mitigation directive, ordering each bureau and office to "reconsider, modify, or rescind" related policies on mitigation or climate change. We turned in data calls.

- **SO 3349** directs the Bureau of Land Management to "expeditiously" rescind its hydraulic fracturing regulations and gave BLM 21 days to review the methane flaring rule to determine whether it's "fully consistent" with the EO.

- **SO 3349** gave the directors of the National Park Service and Fish and Wildlife Service 21 to evaluate their oil and gas rules.

- **SO 3349** gave all bureaus and offices 21 days to identify regulations that potentially burden the "development or utilization of domestically produced energy resources, with particular attention to oil, natural gas, coal and nuclear resources." The deputy Interior secretary then has six days to produce a plan to comply with the EO energy order.

Secretary has announced a team comprising Dan Jorjani and Jim Cason and reps from each Assistant Secretary's office to evaluate / make recommendations.

April 12 2001

Managing Grants, Cooperative Agreements and Other Significant Decisions.

Report all grants and agreements >$100,000 or more before final award. We have

asked WSFR to develop and deploy a centralized assignment / tracking system to gather this information. Report all proposed RODs and other significant actions before final decision. We have asked ES, NWR and MBM to construct a tracking system.

Next expected actions:

Review Of National Monument Designations.

Executive Order Wednesday directing Interior Secretary Ryan Zinke "to review the designation of tens of millions of acres of land as 'national monuments.'" According to Secretary Zinke, "the order will cover several dozen monuments across the country designated since 1996 that total 100,000 acres or more, including two recent monuments in Utah." Secretary Zinke "says he'll provide a preliminary review with a recommendation on Bears Ears in 45 days."

Trump To Order Expansion Of Offshore Drilling.

The New York Times (4/25, Davenport) reports that President Trump on Friday will sign an executive order "aimed at opening up protected waters in the Atlantic and Arctic Oceans to offshore drilling."

Employee Engagement:

Secretary Zinke has repeatedly talked about improving employee morale.

A reminder, **FEVS will launch May 3 with an expected close of June 14.** We expect a Director's message to come out by the launch date, and will likely send out a few reminders from HQ.

Now would be a great time to consider additional region- and program-specific messaging to your employees, both at launch time and throughout the survey period. There is no one prescribed way, and we appreciate any efforts to help us get the word out, both formally and informally.

With all the changes going on, more important than ever to get that feedback from our colleagues.

From:	Brian Segee
To:	congresstodhs@hq.dhs.gov; secretary_of_the_interior@ios.doi.gov; kevin.mcaleenan@cbp.dhs.gov; jim_kurth@fws.gov
Subject:	ESA/NEPA NOI: Border wall prototypes
Date:	Thursday, June 1, 2017 4:30:09 PM
Attachments:	Border wall prototype ESA and NEPA NOI FINAL 2017_06_01.pdf

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Please see attached Notice of Intent to Sue under the Endangered Species Act and National Environmental Policy Act. This NOI was also sent today via priority, certified mail.

Regards,

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Brian Segee
Senior Attorney | Endangered Species Program
Center for Biological Diversity
P.O. Box 1646
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(805) 750-8852
bsegee@biologicaldiversity.org
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

June 1, 2017

John F. Kelly, Secretary
Department of Homeland Security
Washington, D.C. 20528
congresstodhs@hq.dhs.gov

Kevin K. McAleenan, Acting Commissioner
U.S. Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Ave., N.W.
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Ryan Zinke, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
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Jim Kurth, Acting Director
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240
Jim_Kurth@fws.gov

Sent Via Certified and Electronic Mail

Re: Notice of Violations of the Endangered Species Act and National Environmental Policy Act in Relation to Border Wall Prototype Project

Dear Secretaries Kelly and Zinke, Acting Director Kurth, and Acting Commissioner McAleenan:

On behalf of Center for Biological Diversity, we hereby provide notice, pursuant to Section 11(g)[1] of the Endangered Species Act[2] ("ESA") that the Department of Homeland Security ("DHS") and its component agency U.S. Customs and Border Protection ("CBP") are in violation of Section 7(a)(2) of the ESA[3] for their failure to consult with U.S. Fish and Wildlife Service ("FWS") in order to ensure that the border wall prototype project (Phase II of the border wall request for proposal contractual process) does not jeopardize the continued existence of impacted threatened or endangered species, or result in the destruction or adverse modification of their critical habitat, and is further in violation of Section 9(a)(1)(B) of the ESA for the likely "take" of threatened or endangered species caused by construction and related activities undertaken as part of the border wall prototype project. This letter also provides notice of violations of the National Environmental Policy Act ("NEPA")[4], although such notice is not required under law.

[1] 16 U.S.C. § 1540(g)
[2] 16 U.S.C. § 1531 *et seq*.
[3] 16 U.S.C. § 1536(a)(2)
[4] 42 U.S.C. § 4321 *et seq*.

Brian Segee, Senior Attorney • P.O. Box 1646 • Ojai, CA 93024-1646
Phone: (805) 750.8852 • bsegee@biologicaldiversity.org • www.BiologicalDiversity.org

The Center for Biological Diversity ("Center") is a non-profit, public interest environmental organization headquartered in Tucson, with regional offices in Oakland and Los Angeles, and numerous additional offices located throughout the United States, as well as in Baja California Sur, Mexico, dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has more than 1.3 million members and on-line activists.

The Center has long advocated for better incorporation of environmental considerations into DHS border security planning and decisionmaking, and our ESA advocacy has resulted in the protection of numerous threatened and endangered species within the borderlands region, and the designation of hundreds of thousands of acres of their critical habitat.

The threshold for triggering an agency's duties under the ESA and NEPA is low—if an agency takes an action that may have environmental impacts or that "may affect" a listed species or critical habitat, then NEPA must be conducted and ESA section 7 consultation is required.[5] DHS and CBP, however, have provided no evidence to the public or to the Center that it has initiated or completed the required environmental analyses under either of these laws. On May 2, 2017, the Center submitted Freedom of Information Act ("FOIA") requests to DHS and CBP for records related to the border wall prototype project, including for all records related to compliance with NEPA and the ESA. The agencies have acknowledged that request, but stated that they will not provide responsive records for 3-6 months, long after the prototype project is scheduled to be completed.

A. The Endangered Species Act

The ESA is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."[6] Its fundamental purposes are "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species . . . ."[7] To achieve these objectives, the ESA directs the U.S. Fish and Wildlife Service ("FWS") to determine which species of plants and animals are "threatened" and "endangered" and place them on the endangered species list.[8] An "endangered" or "threatened" species is one "in danger of extinction throughout all or a significant portion of its range," or "likely to become endangered in the near future throughout all or a significant portion of its range," respectively.[9]

Once a species is listed, the ESA provides a variety of procedural and substantive protections to ensure not only the species' continued survival, but its ultimate recovery. One central protection, Section 7(a)(2), mandates that all federal agencies avoid actions that: (1) jeopardize listed

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[5] 50 C.F.R. § 402.14(a).
[6] *TVA v. Hill*, 437 U.S. 180 (1978).
[7] 16 U.S.C. § 1531(b).
[8] *Id*. § 1533.
[9] *Id*. § 1532(6), (20).

species; or (2) destroy or adversely modify designated critical habitat.[10] Federal agency actions include those projects or programs "authorized, funded, or carried out by such agency."[11] To comply with these Section 7(a)(2) safeguards, the federal agency taking action and FWS take part in a cooperative analysis of potential impacts to listed species and their designated critical habitat known as a consultation process.

First, the agency must obtain "a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area" from FWS.[12] If a species or critical habitat may be present, the agency must prepare a biological assessment to determine whether the proposed action "may affect" or "is not likely to adversely affect" any listed species or critical habitat.[13]

Federal agencies must initiate formal consultation with FWS when their actions "may affect" a listed species or designated critical habitat.[14] The standard for consultation is low: "[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement."[15] Effects that must be considered as part of this inquiry include "direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline."[16] Indirect effects are "those that are caused by the proposed action and are later in time, but still are reasonably certain to occur."[17]

Through the formal consultation process, FWS prepares a "biological opinion" as to whether the action jeopardizes the species or destroys or adversely modifies critical habitat and, if so, suggests "reasonable and prudent alternatives."[18] During the consultation process, both agencies must "use the best scientific and commercial data available."[19]

In addition to duties under Section 7(a)(2), federal agencies are required under ESA Section 7(a)(1) to "utilize their authority for the conservation [*i.e.* recovery] of endangered species and

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[10] *Id*. § 1536(a)(2)
[11] 50 C.F.R. § 402.02.
[12] 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(c)–(d).
[13] 16 U.S.C. § 1536(c)(1); 50 C.F.R. §§ 402.12(f), 402.14(a), (b)(1).
[14] 50 C.F.R. § 402.14(a).
[15] *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 496 (9th Cir. 2011) (*quoting* 51 Fed. Reg. 19,949).
[16] 50 C.F.R. § 402.02.
[17] *Id*.
[18] 16 U.S.C. § 1536(b)(3)(A).
[19] *Id*. § 1536(a)(2); 50 CFR § 402.14(d).

threatened species."[20] As stated by the Ninth Circuit, agencies have an "affirmative obligation[] to conserve under section 7(a)(1)."[21]

Finally, Section 9 of the ESA prohibits the "taking" of any endangered species.[22] The ESA defines the term "take" broadly to include "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."[23] "Take" includes indirect as well as direct harm and need not be purposeful.[24] The ESA provides a limited exception to the prohibition on take under Section 9 for taking that is in compliance with an incidental take statement ("ITS").[25] Any take of a listed species that is not in compliance with an ITS violates Section 9.[26]

B. National Environmental Policy Act

NEPA is the "basic national charter for protection of the environment."[27] It was enacted with the ambitious objectives of "encouraging productive and enjoyable harmony between man and his environment . . . promoting efforts which will prevent or eliminate damage to the environment and biosphere and stimulating the health and welfare of man; and enriching the understanding of the ecological systems and natural resources important to the Nation . . . ."[28] In order to achieve these goals, NEPA contains several "action forcing" procedures, most significantly the mandate to prepare an environmental impact statement on major Federal actions "significantly affecting the quality of the human environment."[29]

The Supreme Court has found that the preparation of an EIS promotes NEPA's broad environmental objectives in two primary ways: "It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision."[30] The Council on Environmental Quality ("CEQ") was

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[20] 16 U.S.C. § 1536(a)(1); *see also* 16 U.S.C. § 1531(c)(1) ("It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species.").
[21] *Pyramid Lake Paiute Tribe v. U.S. Dep't of Navy*, 898 F.2d 1410, 1416-17 (9th Cir. 1990)
[22] 16 U.S.C. §1538(a).
[23] *Id*. § 1532(19) (emphasis added).
[24] *See Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or*., 515 U.S. 687, 704 (1995).
[25] *See* 16 U.S.C. § 1536 (o)(2).
[26] *See Arizona Cattle Growers' Ass'n v. U.S. Fish & Wildlife, Bureau of Land Mgmt*., 273 F.3d 1229, 1239 (9th Cir. 2001).
[27] 40 C.F.R. § 1500.1(a).
[28] 42 U.S.C. § 4321.
[29] *Robertson v. Methow Valley Citizen Council*, 490 U.S. 332, 348 (1989); 42 U.S.C. § 4332 (2)(C).
[30] *Methow Valley Citizens Council*, 490 U.S. at 349.

created to administer NEPA and has promulgated NEPA regulations, which are binding on all federal agencies.[31]

The scope of NEPA is quite broad, mandating disclosure and consideration of direct, indirect, and cumulative environmental effects.[32] Direct effects are caused by the action and occur at the same time and place as the proposed project.[33] Indirect effects are caused by the action and are later in time or farther removed in distances, but are still reasonably foreseeable.[34] These effects include "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative."[35] A cumulative impact is defined as: "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of which agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." [36]

C. The Border Wall Prototype Project (Phase II of the Border Wall RFP Process)

Within days of taking office, on January 25, 2017 President Donald J. Trump issued an Executive Order on "Border Security and Immigration Enforcement Improvements," directing DHS to construct a "secure, contiguous, and impassable physical barrier" along the entirety of the nearly 2,000 mile long U.S.-Mexico border, in order "to prevent illegal immigration, drug and human trafficking, and acts of terrorism." The E.O. defines "wall" to mean "a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier." (Sec. 3(e)).

DHS Secretary John Kelly issued an implementing memorandum for the Border Security E.O. on February 17, 2017 ("Kelly memorandum"). The Kelly memorandum directs CBP to "immediately begin planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, along the land border with Mexico in accordance with existing law, in the most appropriate locations and utilizing appropriate materials and technology to most effectively achieve operational control of the border." In addition, the Kelly memorandum directs the DHS Under Secretary for Management, in consultation with the CBP Commissioner, to "immediately identify and allocate all sources of available funding for the planning, design, construction, and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrols and access roads, and develop requirements for total ownership cost of this project, including preparing Congressional budget request for the current fiscal year (e.g., supplemental budget requests) and subsequent fiscal years."

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[31] *See* 42 U.S.C. §§ 4342, 4344; 40 C.F.R. §§ 1500–1508.
[32] 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.27(b)(7).
[33] 40 C.F.R. § 1508.8(a).
[34] *Id*. § 1508.8(b).
[35] *Id*. § 1508.8.
[36] *Id*. § 1508.7.

In accordance with the Border Security E.O. and Kelly memorandum, on March 17, 2017 DHS released two Requests for Proposals ("RFP") [37]—one for a "Solid Concrete Border Wall Prototype"[38] and the second for an "Other Border Wall Prototype."[39] The "threshold requirements" for the two prototypes are identical, with the exception that the "other border wall prototype" does not have to be constructed of "reinforced concrete."[40] These contractual thresholds include requirements that the wall design "shall be physically imposing in height."[41] The government's "nominal concept is for a 30-foot high wall," and designs "with heights of less than 18 feet are not acceptable."[42] The RFPs further specify that the wall designs "shall prevent digging or tunneling below it for a minimum of 6 feet below the lowest adjacent grade," "shall be constructible to slopes up to 45 percent," and shall be built in a manner that it would take at least an hour to breach with a "sledgehammer, car jack, pickaxe, chisel, battery operated impact tools, battery operated cutting tools, Oxy/acetylene torch or other similar hand-held tools."[43]

Phase I of the RFPs required bidders to submit Concept Papers by April 4, 2017. Up to 20 Offerors from Phase I could be invited to contract for participation in Phase II of the bidding process.[44] Although media reports have indicated that DHS has notified bidders of their selection for the Phase II process, DHS and CBP apparently do not intend to release this information to the public, or to other bidders.[45] As stated in one article, CBP issued an "online notice" stating that "the agency will not release the names of the companies that made it to the prototype stage, or the number of contractors who would be extended that opportunity."[46]

Phase II requires the Contractors to "provide for the design and construction of a full-scale prototype," which "shall be 30 feet long," and "will be constructed at a location in San Diego, CA as determined by the Government."[47]

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[37] *See* https://www.cbp.gov/newsroom/national-media-release/cbp-requests-proposals-border-wall-prototypes
[38] *See* https://www.fbo.gov/index?s=opportunity&mode=form&id=daeee003143839cf4c8cd684694812ef&tab=core&_cview=1
[39] https://www.fbo.gov/index?s=opportunity&mode=form&id=893ca637e9c19e4be3845dcd4567a1a9&tab=core&_cview=1. Due to the similarity between the two RFPs, citations to the documents shall hereafter be simply "RFP," without distinguishing between the two.
[40] RFP, at Attachment 1 (Statement of Work), p. 2.
[41] *Id*.
[42] *Id*.
[43] *Id*.
[44] RFP, at p. 40.
[45] Kirsten Crow, "In Texas, companies await word on Trump's border wall." *USA Today*, May 19, 2017.
[46] *Id*.
[47] RFP, Attachment 1, at p. 3.

The RFP further provides that the chosen bidders "shall design and construct a 10 ft. by 10 ft. mock-up of an exemplar section" of their prototype designs at the San Diego location, in order "to allow the Government to test and evaluate the anti-destruct characteristics of the bidder's wall design."[48] This mock-up "shall meet all technical requirements except the anti-dig, anti-climb, and aesthetics."[49] Finally, the mock-up shall be constructed within two weeks after the notice to proceed ("NTP") and "shall be constructed concurrent to prototype construction," and after completion, the bidder "shall remove the structure and dispose of it properly" within seven calendar days.[50]

The prototype construction shall be completed within 30 calendar days of the NTP.[51] The Government estimates that the price of each prototype design shall range between $200,000 and $500,000. Chosen contractors "will be provided approximately 200 feet (in width) of right of way for the construction of the prototype."[52] The RFP specifies that the Contractor "shall be responsible for any staging areas as required at an offsite location (i.e. no staging on the border wall will be made available by the Government."). DHS, however, "will be responsible for any legally required environmental impact studies or other environmental compliance."[53] Unlike the mock-up design, the RFP does not require removal of prototype construction, but permits the Government to direct such removal. In the event of such order, the bidder shall complete the removal and site restoration within 14 calendar days.[54]

D. Environmental Setting of the Presumed Border Wall Prototype Location

The precise location of the prototype construction remains undisclosed to the public, with the exception of the chosen bidders (as many as 20).[55] As noted above, the RFP states only that the construction will be "at a location in San Diego, CA as determined by the Government."[56] The

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[48] *Id*.
[49] RFP, Attachment 1, at p. 4.
[50] *Id*.
[51] RFP, Attachment 1, at p. 5.
[52] RFP, Amendment 6, at p. 5.
[53] Potential bidders repeatedly asked DHS to address environmental requirements throughout the Phase I process. *See* RFP, Amendment 4, at p. 2; RFP, Amendment 5, at p. 6 (stating that DHS "is not expecting offerors to conduct independent environmental impact studies" in response to bidder concerns that NEPA is applicable to border wall construction and noting that a "lack of such information could be grounds for a protest of the award of any and all IDIQ contracts and task orders."); *id*. (same answer in response to concerns about "environmental impact due to disrupting the migratory patterns of animals."); RFP, Amendment 6, at p. 4 (same); RFP, Amendment 6, at p. 7 (same).
[54] RFP, Attachment 1, at p. 5.
[55] RFP, Amendment 6, at p. 6 ("Additional information regarding the surrounding information will be provided in Phase II to the down-selected offerors. Additionally, the Government will hold a site visit at the prototype location after the release of the Phase II solicitation.").
[56] RFP, Attachment 1, at p. 3.

agencies have, however, provided information and tours to select media outlets.[57] The resultant press articles and television segments depict the presumed location to be in the vicinity of the eastern edge of Otay Mesa, near the eastern terminus of the approximate 14-mile long, westernmost segment of the current border wall beginning at the Pacific Ocean.

As stated in the implementing plan for the San Diego County Multiple Species Conservation Program ("MSCP"), the Otay Mesa area "consists primarily of a large mesa, with slopes and deep canyons draining into the Otay River Valley or towards Mexico."[58] Although DHS and CBP are not signatories to or bound by the plan, the MSCP describes "the optimum future condition envisioned for the Otay Mesa area [as] a network of open and relatively undisturbed canyons containing a full ensemble of native species which provide functional wildlife habitat and movement capability," while acknowledging that Border Patrol access roads will be "integrated into the area."[59]

During promulgation of the MSCP, public commenters noted that past Border Patrol activities had resulted in the filling of a vernal pool on Otay Mesa and other environmental impacts.[60] The response to comments noted that DHS (then INS) was not subject to the MSCP but that its activities "will continue to be subject to [ESA] consultation with [FWS] and that the County's take authorizations would not cover their activities.[61]

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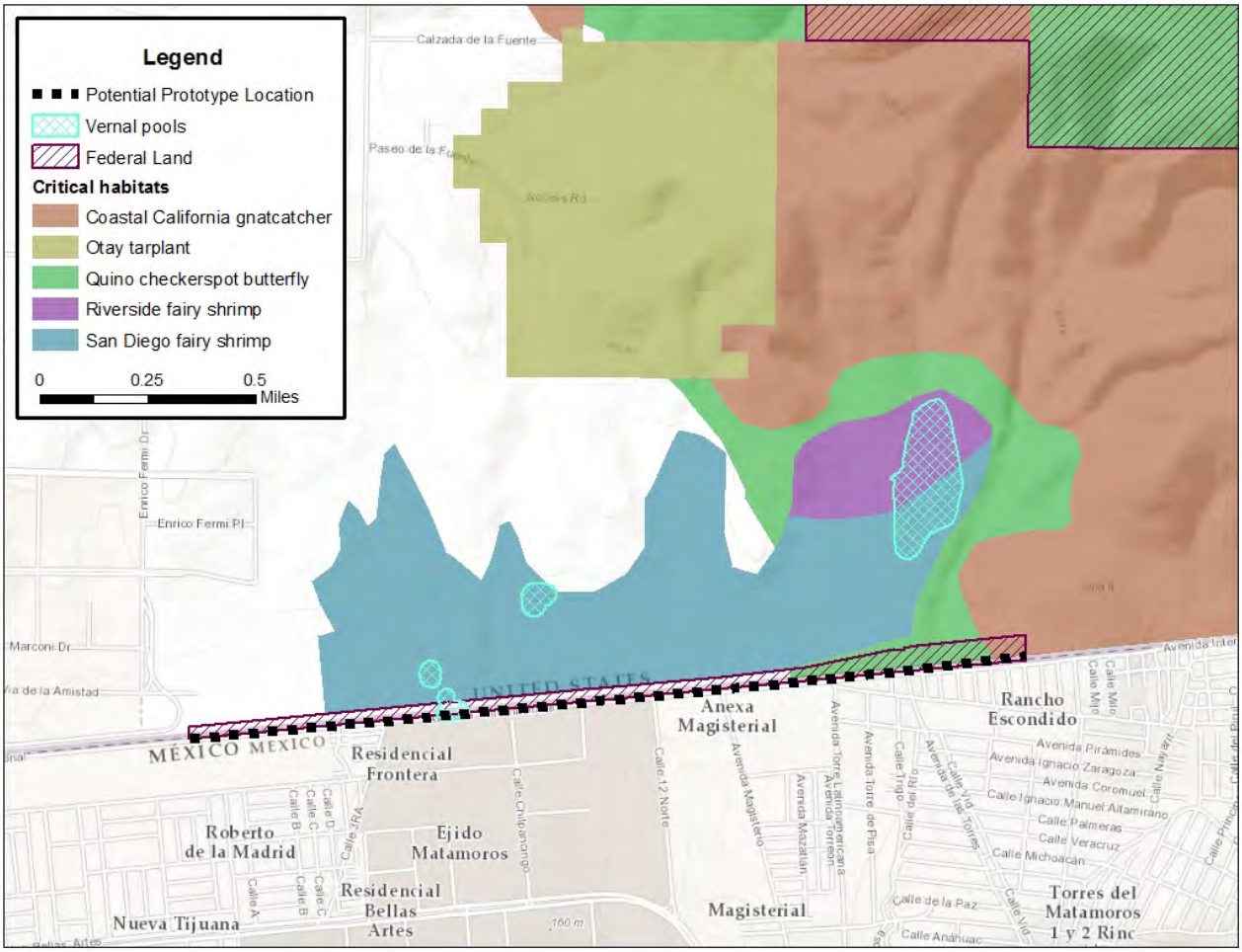
[57] *See*, *e.g.*, CBS8.com, "*The Border Wall: First Video of Otay Mountain Prototype Location*." April 28, 2017. Available at: http://www.cbs8.com/story/35282531/the-border-wall-first-video-of-otay-mountain-prototype-location

[58] San Diego County Multiple Species Conservation Program, Framework Management Plan (Attachment A).

[59] *Id*.

[60] MSCP Final Environmental Impact Report ("FEIR"), at p. 76-4

[61] *Id*.; *see also* FEIR, at p. 20-1 ("The wildlife agencies work with the Border Patrol and review their proposed actions through NEPA and Section 7 of the [ESA] to ensure they are able to effectively carry out their mission while avoiding and minimizing impacts to sensitive species.").



Map 1: Prototype Location, Federal Lands, and ESA Critical Habitat

E. Threatened and Endangered Species at the Presumed Border Wall Prototype Location

As depicted in the preceding map, the presumed prototype border wall location is within or in close proximity to known vernal pool locations, as well as designated critical habitat for several threatened and endangered species, including Quino checkerspot butterfly (*Euphydryas editha quino*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), California coastal gnatcatcher (*Polioptila californica californica*), and Otay tarplant (*Deinandra conjugens*). More detailed information for three of these species follows.

1. Quino Checkerspot Butterfly

FWS listed the Quino checkerspot butterfly on January 16, 1997, due to direct and indirect human impacts including habitat loss and fragmentation, invasion of nonnative plants, and

catastrophic natural events such as increased frequency of drought and wildfire.[62] At listing, Quino populations were reduced by more than 95 percent across their range.[63]

The eastern portion of the presumed prototype construction location is within Quino checkerspot butterfly critical habitat unit 8, encompassing Otay Valley and West Otay Mountain, among other areas.[64] The recovery plan (p. 50, 51, 54) states that Quino occupancy in the Otay Mountain area "extends across the international border" and it "is possible that the West Otay Mountain and Marron Valley Occurrence Complexes belong to a metapopulation dependent on local mainland or 'source 'populations in Mexico."

Map 2: Quino Checkerspot Butterfly Critical Habitat

2. San Diego Fairy Shrimp

FWS listed the San Diego fairy shrimp as endangered on February 3, 1997, due primarily to the loss of habitat due to human activities, mainly urban development and agricultural conversion.[65] FWS reported San Diego fairy shrimp were known to inhabit 25 vernal pool complexes in San Diego, Orange, and Santa Barbara counties, and northwestern Baja California, Mexico.[66] At the

[62] 63 Fed. Reg. 2,313 (January 16, 1997)
[63] FWS, Quino Checkerspot Butterfly 5-Year Review (2009), at p. 2.
[64] 74 Fed. Reg. 28,802 (July 17, 2009).
[65] 62 Fed. Reg. 4925, 4932 (Feb. 3, 1997)
[66] *Id*.

time of listing, the San Diego fairy shrimp was given a FWS recovery priority of 2C, indicating the species faced a high degree of threat but had a high potential for recovery.

Critical habitat for the San Diego fairy shrimp, as determined by FWS in 2012, overlaps with the proposed prototype site at critical habitat Unit 5 (Subunit 5D).[67] At the time of listing, this unit was occupied and contained the features essential to conservation of San Diego fairy shrimp. It is the southernmost unit of critical habitat, which FWS concluded is "essential to the conservation of the San Diego fairy shrimp because it helps to maintain the ecological distribution and genetic diversity of the species."[68] This unit contains vernal pools that support San Diego fairy shrimp populations of the distinct "Group A" genetic clade (Bohonak 2004, p 3-9). FWS concluded "the conservation of the remaining vernal pools in this unit is essential to maintain continuity in the range between the U.S. and Mexico as well as the genetic diversity of the species."[69]

Subunit 5D, the area that overlaps with the proposed prototype site, consists of 391 acres of habitat occupied by the species at both the time of listing and at the time of the 5-year review in 2008.[70] The vernal pool complexes in this subunit had not yet been directly impacted by development or habitat fragmentation as of 2007.[71]

At the time of critical habitat designation, FWS concluded that populations of San Diego fairy shrimp in Subunit 5D are the closest U.S. population to any populations in Mexico, and the preservation of vernal pool complexes near to one another would be increasingly important to these ecosystems to provide continuity in the range between the U.S. and Mexico.[72] Further, FWS explicitly concluded that development along the international border threatens the species via destruction of vernal pools or their watersheds, isolation of pools and fragmentation of pool systems, and alterations in the hydrology of adjacent pools.[73]

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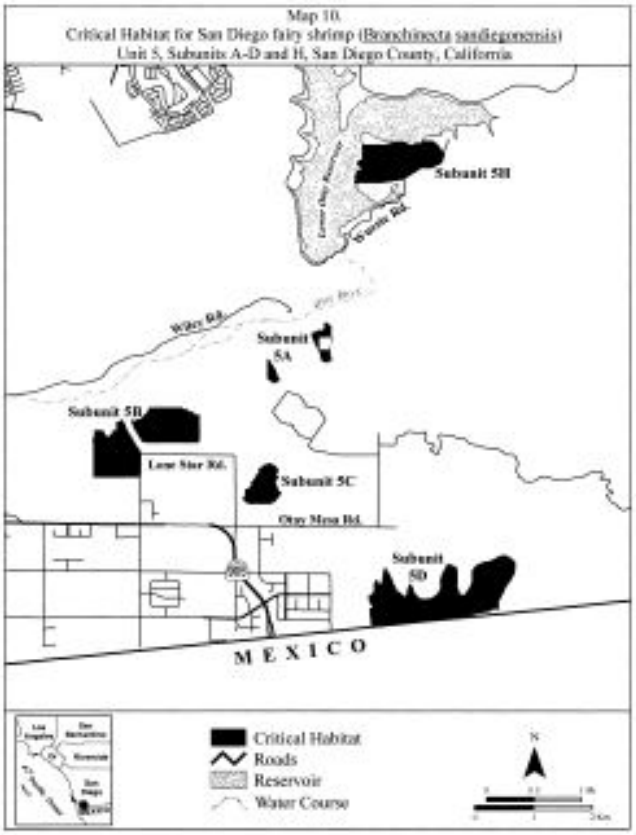
[67] 72 Fed. Reg. 70648, 70653 (2007).
[68] *Id*.
[69] *Id*.
[70] *Id*. at 70674.
[71] *Id*.
[72] *Id*.
[73] USFWS, San Diego Fairy Shrimp 5-Year Review, 11 (2008)



Map 3: San Diego Fairy Shrimp Critical Habitat

3. Riverside Fairy Shrimp

FWS listed the Riverside fairy shrimp on August 3, 1993 due mainly to habitat loss or destruction.[74] At the time of listing, vernal pool habitat in San Diego County had declined by an estimated 97 percent with similar declines elsewhere.[75] By the time of listing, FWS knew the species to inhabit only five vernal pool complexes within the United States and two complexes in Baja California, Mexico.[76] All sites were considered under imminent threat of development or other anthropogenic impacts, but FWS concluded that Otay Mesa—the area where the proposed prototype site is—had the most threats of habitat damage of all of the sites in which Riverside fairy shrimp occurred.[77]

As with the San Diego fairy shrimp, development of border security and associated infrastructure threatens the Riverside fairy shrimp along the international border. Development in the area of the proposed prototype site could have direct impacts to fairy shrimp habitat, *i.e.*, destruction of

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[74] 58 Fed. Reg. 41,384 (August 3, 1993).
[75] USFWS, Riverside Fairy Shrimp 5-Year Review (2008), at p. 42.
[76] 58 Fed. Reg. 41,384
[77] *Id*.

vernal pools or their watersheds, isolation of pools and fragmentation of pool systems, and alterations in the hydrology of adjacent pools.[78]

F. DHS and CBP Violations of the Endangered Species Act and National Environmental Policy Act

The proposed border wall prototype construction project is a federal action subject to NEPA's requirements. As described in the RFP, the project will consist of as many as 20 bidders concurrently constructing full prototype designs and mock-ups of those designs on federally-owned land in San Diego County. Additional information provided by DHS to select media outlets depicts the location to be in the eastern portion of Otay Mesa. While the RFP specifies that the bidders will be required to remove the mock-ups, it does not institute similar requirements on the full prototype designs. These designs will be constructed in an area with high environmental and natural resources values, with documented occurrences of several threatened and endangered species, and potentially within designated critical habitat for one or more of those species. In addition, the NEPA process would shed further light on numerous other environmental issues not addressed in this letter, including potential hydrological and other impacts, cultural resource impacts, and impacts on non-listed sensitive and rare species, such as burrowing owl.

However, DHS and CBP have apparently failed to conduct any environmental analysis for the prototype project. Even in the event that the agencies have completed such analysis, DHS and CBP are failing to provide such records to the public, even in response to FOIA requests, in a timely and meaningful manner. The agencies' lack of environmental analysis and/or refusal to provide public notice and opportunity to comment on that analysis, undermines NEPA's specific requirements, as well as its overall dual purposes of better informing agency decisionmaking so that potential environmental impacts can be avoided or mitigated, and of conducting a public and transparent analysis of the environmental impacts of governmental action.

Similarly, consultation under ESA Section 7 is required whenever a discretionary agency action "may affect" any listed species or its critical habitat.[79] ESA implementing regulations define "action" as "all activities or programs of any kind authorized, funded, or carried out . . . by Federal agencies."[80] As detailed in this letter, the DHS and CBP border wall prototype construction project will potentially directly, indirectly, and cumulatively impact several threatened and endangered species. Despite this fact, DHS and CBP have apparently failed to initiate or complete ESA section 7 (a)(2) consultation with FWS in order to ensure that the ongoing implementation of the prototype border wall construction project does not jeopardize the continued existence of any listed species or adversely modify or destroy the designated critical habitat for any of those species. In addition, DHS and CBP have failed to take any affirmative

[78] USFWS, Riverside Fairy Shrimp 5-Year Review, 12 (2008)
[79] 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a)
[80] 50 C.F.R. § 402.02 (emphasis added)

action to conserve the threatened and endangered species that may be impacted by the project. Accordingly, DHS and CBP are also violating Section 7 (a)(1) of the ESA.

Finally, DHS and CBP have failed to conduct surveys or other investigations into endangered species presence and by these failures may needlessly result in impacts to critically imperiled species that could otherwise be avoided or mitigated. These failures may also result in the direct take of listed species, in violation of section 9 of the ESA.

G. Conclusion

Thank you for your attention to the allegations contained in this notice letter. Should DHS and CBP fail to remedy the ESA violations of law within 60 days, the Center for Biological Diversity intends to pursue this matter in Federal District Court. As prior notice is not required for NEPA violations, the Center for Biological Diversity may immediately pursue relief for those violations at any time. Please contact me at (805) 750-8852 should you wish to discuss this notice letter in further detail.

Sincerely Yours,

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From:	Gustavson, Angela
To:	Angela Gustavson
Subject:	Congressional Affairs Update
Date:	Friday, June 16, 2017 12:50:27 PM
Attachments:	6.16.17.docx

Good afternoon,

The Congressional Affairs Update for this week is attached. There are a number of items of interest to the Service, including:

Secretary Zinke will testify at three hearings next week on the Department of the Interior's FY 2018 budget proposal.

Next week, there is a hearing in Senate Energy and Natural Resources on large landscape conservation. In addition, next week House Subcommittees will begin marking up the National Defense Authorization Act.

The House Natural Resources Committee cancelled a hearing that had been planned for this week on the "Sportsmen's Heritage and Recreational Enhancement (SHARE) Act."

Have a good weekend,

Angela

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CONGRESSIONAL AFFAIRS UPDATE

Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

June 16, 2017

2017 Congressional Recess Schedule

Senate	Holidays & Special Days	House
Jul. 3 – Jul. 7	**Independence Day** Jul. 4	Jul. 3 – Jul. 7
Aug. 1 – Sep. 1		Aug. 1 – Sep. 1
Sep. 4	**Labor Day** Sep. 4	Sep. 4
Sep. 21 – Sep. 22		Sep. 15 – Sep. 22
Oct. 9 – Oct. 13	**Columbus Day** Oct. 9	Oct. 9
		Oct. 16 – Oct. 20
Nov. 10	**Veterans Day** Nov. 10 (Observed)	Nov. 10
Nov. 20 – Nov. 24	**Thanksgiving Day** Nov. 23	Nov. 20 – Nov. 24
Dec. 18 – Dec. 29	**Christmas Day** Dec. 25	Dec. 18 – Dec. 29

HEARINGS AND MARKUPS OF INTEREST

Senate Subcommittee Discussed Water Bills

On Wednesday, June 14, the Senate Environment and Public Works Subcommittee on Water and Power held a legislative hearing on a variety of water bills, including:

- **S. 677**, the Water Supply Permitting Coordination Act, a bill to authorize the Secretary of the Interior to coordinate Federal and State permitting processes related to the construction of new surface water storage projects on lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture and to designate the Bureau of Reclamation as the lead agency for permit processing, and for other purposes,
- **S. 1012,** the New Mexico Drought Preparedness Act, which contains provisions that support water infrastructure and wells at National Wildlife Refuges,
- **S. 1029**, to amend the Public Utility Regulatory Policies Act of 1978 to exempt certain small hydroelectric power projects that are applying for relicensing under the Federal Power Act from the licensing requirements of that Act; and
- **S. 1030,** to require the Federal Energy Regulatory Commission to submit to Congress a report on certain hydropower projects.

Scott Cameron, Acting Assistant Secretary for Water and Science, testified before the subcommittee. **Full Committee Chairman John Barrasso (R-WY)** and **Sen. Angus King (I-**

ME), Ranking Member for the Subcommittee, spoke in support of their legislation (S. 677 and S.1029, respectively). Both members discussed lengthy federal permitting processes and their interests in assigning a single lead agency for required environmental reviews.

For more information, please visit: https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=06934274-2C3A-4B4D-B654-13DB07144318

House Subcommittee Cancels Hearing on Draft Sportsmen's Legislation

The House Natural Resources Subcommittee on Federal Lands cancelled, until further notice, a legislative hearing on a discussion draft of the "Sportsmen's Heritage and Recreational Enhancement (SHARE) Act" that was scheduled for Tuesday, June 14. The SHARE Act has several provisions of interest to the Service:

- TITLE I—Fishing Protection Act
- TITLE II—Target Practice and Marksmanship Training Support Act
- TITLE IV—Wildlife and Hunting Heritage Conservation Council Advisory Committee
- TITLE VI—Farmer and Hunter Protection Act
- TITLE X—Open Book on Equal Access to Justice
- TITLE XIV—Polar Bear Conservation and Fairness Act
- TITLE XV— North American Wetlands Conservation Extension
- TITLE XVI—Gray Wolves
- TITLE XVII—Hearing Protection

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=402112

House Subcommittee Discusses Draft Forest Management Legislation

On Thursday, June 15, the House Natural Resources Subcommittee on Federal Lands held a legislative hearing on a discussion draft of the "Resilient Federal Forests Act of 2017." The bill seeks to streamline environmental review for certain forest management activities and provides for an arbitration pilot program in place of existing litigation and judicial review, among other provisions. Subcommittee members spoke to many issues of interest to the Service, including:

- **Chairman Tom McClintock (R-CA-4)** discussed differences in the health of federal forests and private forests, even when they are adjacent to each other, due to differing management techniques and questioned the impact of climate change on forests.
- **Ranking Member Colleen Hanabusa (D-HI-1)** asked witnesses how the National Environmental Policy Act and the Endangered Species Act facilitate healthy forests.
- **Representative Bruce Westerman (R-AR-4)**, sponsor of the draft legislation, discussed how timber harvest can contribute to healthy ecosystems and economies.
- **Representative Liz Cheney (R-WY-AL)** and **Representative Steve Pearce (R-NM-2)** asked how environmental litigation affects agencies' budgets and management decisions.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=402130

House Committee Marks Up Two Flood Insurance Bills

On Thursday June 15, the House Financial Services Committee advanced two bills aimed at reforming the National Flood Insurance Program (NFIP). The "National Flood Insurance Program Policyholder Protection Act," H.R. 2868, sponsored by Rep. Lee Zeldin (R-NY-1), passed 53-0. The bill would support research on flood insurance coverage for urban properties and allow more insurance flexibility in preventing damage to high-rise buildings. The "21st Century Flood Reform Act," H.R. 2874, sponsored by Rep. Sean Duffy (R-WI-7) passed 30-26. The bill increases the role of private markets in order to stabilize NFIP premium rates, and would also end grandfathering of new construction after four years. These bills are ready for consideration by the full House. The Committee will reconvene next week to mark up the remaining five NFIP bills.

For more information, please visit:
https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=402001

House Appropriations Committee Discusses Border Security Budget

On Tuesday, June 13, the House Appropriations Subcommittee on Homeland Security held a hearing to discuss the Fiscal Year 2018 budget request for Immigration and Customs Enforcement and Customs and Border Protection. **Representative Henry Cuellar (D-TX-28)** discussed Santa Ana National Wildlife Refuge as it pertains to a proposed levee wall on the border in the Rio Grande Valley; he expressed concerns that the Refuge could end up on the Mexico side of the levee.

For more information, please visit:
https://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=394892

UPCOMING HEARINGS

Senate Subcommittee to Discuss Large Landscape Conservation

On Tuesday, June 20, the Senate Energy and Natural Resources Subcommittee on Public Lands, Forests and Mining will hold an oversight hearing titled, "Collaborative Initiatives: Restoring watersheds and large landscapes across boundaries through State and Federal partnerships." The hearing is scheduled for 2:30 p.m. in 366 Dirksen Senate Office Building. For more information, please visit: https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=7A8EBF69-61E6-481F-86FD-858E967A6E71

Senate Committee to Hold Hearing on Department of the Interior's Budget Proposal

On Tuesday, June 20, the Senate Energy and Natural Resources Committee will hold a hearing to consider the President's budget request for the Department of the Interior for Fiscal Year 2018. Secretary of the Interior Ryan Zinke will testify. The hearing is scheduled for 10:00 a.m. in 366 Dirksen Senate Office Building. For more information, please visit:
https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=F4784F4A-BD46-40C5-8929-E349A46ED42B

Senate Subcommittee to Hold hearing on Department of the Interior's Budget Proposal
On Wednesday, June 21, the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies will hold a hearing to consider the President's budget request for the Department of the Interior for Fiscal Year 2018. Secretary of the Interior Ryan Zinke will testify. The hearing is scheduled for 9:30 a.m. in 124 Dirksen Senate Office Building. For more information, please visit: https://www.appropriations.senate.gov/hearings/review-of-the-us-department-of-the-interior-budget-request-for-fy2018

House Committee to Continue Markup of Flood Insurance Bills
On Wednesday, June 21, the House Financial Services Committee will meet to consider the following bills:

- H.R. 1422, the "Flood Insurance Market Parity and Modernization Act"
- H.R. 1558, the "Repeatedly Flooded Communities Preparation Act"
- H.R. 2246, the "Taxpayer Exposure Mitigation Act of 2017"
- H.R. 2565, To require the use of replacement cost value in determining the premium rates for flood insurance coverage under the National Flood Insurance Act, and for other purposes.
- H.R. 2875, the "National Flood Insurance Program Administrative Reform Act of 2017"

The markup is scheduled for 10:00 a.m. in 2128 Rayburn House Office Building. For more information, please visit:
https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=402032

House Committee to Hold Hearing on Department of the Interior's Budget Proposal
On Thursday, June 22, the House Natural Resources Committee will hold an oversight hearing titled, "Examining the Department of the Interior's Spending Priorities and the President's Fiscal Year 2018 Budget Proposal." Secretary of the Interior Ryan Zinke will testify. The hearing is scheduled for 9:30 a.m. in 1324 Longworth House Office Building. For more information, please visit: https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=402138

House Subcommittees to Hold Markups of National Defense Authorization Act
On June 21 and 22, the subcommittees of the House Armed Services Committee will hold markups of H.R. 2810, the National Defense Authorization Act for Fiscal Year 2018. Of interest to the Service is the Subcommittee on Readiness markup, which is scheduled to take place on Thursday, June 22 at 9:00 a.m. in 2212 Rayburn House Office Building. For more information, please visit: https://armedservices.house.gov/legislation/markups/hr-2810-national-defense-authorization-act-fiscal-year-2018-2

INTRODUCED LEGISLATION OF INTEREST

S.1368 — A bill to reauthorize the National Flood Insurance Program, and for other purposes.
Sponsor: Sen. Menendez, Robert [D-NJ] (Introduced 06/15/2017) Cosponsors: (7)
Committees: Senate - Banking, Housing, and Urban Affairs

Latest Action: 06/15/2017 Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.

S.1363 — A bill to streamline the process for broadband facility location applications on Federal land, and for other purposes.
Sponsor: Sen. Heller, Dean [R-NV] (Introduced 06/15/2017) Cosponsors: (1)
Committees: Senate - Energy and Natural Resources
Latest Action: 06/15/2017 Read twice and referred to the Committee on Energy and Natural Resources.

S.1340 — A bill to provide for an expedited permitting process for critical energy infrastructure projects relating to the establishment of a regional energy hub in Appalachia, and for other purposes.
Sponsor: Sen. Capito, Shelley Moore [R-WV] (Introduced 06/12/2017) Cosponsors: (0)
Committees: Senate - Energy and Natural Resources
Latest Action: 06/12/2017 Read twice and referred to the Committee on Energy and Natural Resources.

S.1337 — A bill to amend the Energy Policy Act of 2005 to make certain strategic energy infrastructure projects eligible for certain loan guarantees, and for other purposes.
Sponsor: Sen. Manchin, Joe, III [D-WV] (Introduced 06/12/2017) Cosponsors: (2)
Committees: Senate - Energy and Natural Resources
Latest Action: 06/12/2017 Read twice and referred to the Committee on Energy and Natural Resources.

S.1336 — A bill to amend the Energy Policy Act of 2005 to reauthorize hydroelectric production incentives and hydroelectric efficiency improvement incentives, and for other purposes.
Sponsor: Sen. Gardner, Cory [R-CO] (Introduced 06/12/2017) Cosponsors: (0)
Committees: Senate - Energy and Natural Resources
Latest Action: 06/12/2017 Read twice and referred to the Committee on Energy and Natural Resources.

H.R.2923 — To designate the Gulf of Mexico Alliance as a regional coordination partnership of Federal and State actions related to the management of the Gulf of Mexico ecosystem, and for other purposes.
Sponsor: Rep. Graves, Garret [R-LA-6] (Introduced 06/15/2017) Cosponsors: (2)
Committees: House - Transportation and Infrastructure, Natural Resources, Science, Space, and Technology
Latest Action: 06/15/2017 Referred to House Science, Space, and Technology

H.R.2921 — To establish a vegetation management pilot program on National Forest System land to better protect utility infrastructure from passing wildfire, and for other purposes.

Sponsor: Rep. Cramer, Kevin [R-ND-At Large] (Introduced 06/15/2017) Cosponsors: (8)
Committees: House - Agriculture, Natural Resources
Latest Action: 06/15/2017 Referred to House Natural Resources

H.R.2917 — To amend the Federal Water Pollution Control Act to clarify when the Administrator of the Environmental Protection Agency has the authority to prohibit the specification of a defined area, or deny or restrict the use of a defined area for specification, as a disposal site under section 404 of such Act, and for other purposes.
Sponsor: Rep. Gibbs, Bob [R-OH-7] (Introduced 06/15/2017) Cosponsors: (14)
Committees: House - Transportation and Infrastructure
Latest Action: 06/15/2017 Referred to the House Committee on Transportation and Infrastructure

H.R.2907 — To amend the Mineral Leasing Act to require the Secretary of the Interior to develop and publish an all-of-the-above quadrennial Federal onshore energy production strategy to meet domestic energy needs, and for other purposes.
Sponsor: Rep. Tipton, Scott R. [R-CO-3] (Introduced 06/15/2017) Cosponsors: (0)
Committees: House - Natural Resources
Latest Action: 06/15/2017 Referred to the House Committee on Natural Resources.

H.R.2898 — To amend the Secure Rural Schools and Community Self-Determination Act of 2000 to modify the appointment and composition of resource advisory committees.
Sponsor: Rep. O'Halleran, Tom [D-AZ-1] (Introduced 06/13/2017) Cosponsors: (1)
Committees: House - Agriculture, Natural Resources
Latest Action: 06/13/2017 Referred to House Natural Resources

H.R.2883 — To establish a more uniform, transparent, and modern process to authorize the construction, connection, operation, and maintenance of international border-crossing facilities for the import and export of oil and natural gas and the transmission of electricity.
Sponsor: Rep. Mullin, Markwayne [R-OK-2] (Introduced 06/12/2017) Cosponsors: (1)
Committees: House - Energy and Commerce, Transportation and Infrastructure, Natural Resources
Latest Action: 06/12/2017 Referred to House Natural Resources

H.R.2882 — To authorize Federal agencies to establish prize competitions for innovation or adaptation management development relating to ocean acidification.
Sponsor: Rep. Kilmer, Derek [D-WA-6] (Introduced 06/12/2017) Cosponsors: (1)
Committees: House - Science, Space, and Technology
Latest Action: 06/12/2017 Referred to the House Committee on Science, Space, and Technology.

H.R.2880 — To amend the Federal Power Act to promote closed-loop pumped storage hydropower, and for other purposes.
Sponsor: Rep. Griffith, H. Morgan [R-VA-9] (Introduced 06/12/2017) Cosponsors: (0)

Committees: House - Energy and Commerce
Latest Action: 06/12/2017 Referred to the House Committee on Energy and Commerce.

H.R.2877 — To amend the National Flood Insurance Act of 1968 to prohibit any subsidy for flood insurance coverage for any property owned or operated by the President, and for other purposes.
Sponsor: Rep. Blumenauer, Earl [D-OR-3] (Introduced 06/12/2017) Cosponsors: (6)
Committees: House - Financial Services
Latest Action: 06/12/2017 Referred to the House Committee on Financial Services.

H.R.2875 — National Flood Insurance Program Administrative Reform Act of 2017
Sponsor: Rep. Velazquez, Nydia M. [D-NY-7] (Introduced 06/12/2017) Cosponsors: (2)
Committees: House - Financial Services
Latest Action: 06/12/2017 Referred to the House Committee on Financial Services.

H.R.2874 — 21st Century Flood Reform Act
Sponsor: Rep. Duffy, Sean P. [R-WI-7] (Introduced 06/12/2017) Cosponsors: (0)
Committees: House - Financial Services
Latest Action: 06/15/2017 Ordered to be Reported (Amended) by the Yeas and Nays: 30 - 26.

H.R.2872 — To amend the Federal Power Act to promote hydropower development at existing non-powered dams, and for other purposes.
Sponsor: Rep. Bucshon, Larry [R-IN-8] (Introduced 06/12/2017) Cosponsors: (0)
Committees: House - Energy and Commerce
Latest Action: 06/12/2017 Referred to the House Committee on Energy and Commerce.

H.R.2846 — Federal Agency Customer Experience Act of 2017
Sponsor: Rep. Farenthold, Blake [R-TX-27] (Introduced 06/08/2017) Cosponsors: (1)
Committees: House - Oversight and Government Reform
Latest Action: 06/08/2017 Referred to the House Committee on Oversight and Government Reform.

From: Todd Willens
To: greg_j_sheehan@fws.gov; casey_hammond@ios.doi.gov; Aurelia Skipwith
Subject: Fwd: NY Times inquiry re: border wall protest
Date: Wednesday, August 9, 2017 5:10:52 PM

Is the refuge aware? Are permits required? Law enforcement ready?

Todd Willens
Assistant Deputy Secretary
Acting Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior
1849 C Street, NW - MIB Room 6116
Washington, DC 20240

Begin forwarded message:

> **From:** Laura Rigas <laura_rigas@ios.doi.gov>
> **Date:** August 9, 2017 at 6:29:40 PM EDT
> **To:** Downey Magallanes <downey_magallanes@ios.doi.gov>, Douglas Domenech <douglas_domenech@ios.doi.gov>, Todd Willens <todd_willens@ios.doi.gov>
> **Cc:** Russell Newell <russell_newell@ios.doi.gov>
> **Subject: Fwd: NY Times inquiry re: border wall protest**
>
> FYI.
>
> Laura Keehner Rigas
> Communications Director
> U.S. Department of the Interior
> (202) 897-7022 cell
> @Interior
>
> Begin forwarded message:
>
>> **From:** Gavin Shire <gavin_shire@fws.gov>
>> **Date:** August 9, 2017 at 5:27:58 PM CDT
>> **To:** Heather Swift <heather_swift@ios.doi.gov>, Russell Newell <russell_newell@ios.doi.gov>, Laura Rigas <laura_rigas@ios.doi.gov>, Paul Ross <paul_ross@ios.doi.gov>, Barbara Wainman <barbara_wainman@fws.gov>, Laury Parramore <laury_parramore@fws.gov>, Brian Hires <brian_hires@fws.gov>, Vanessa Kauffman <vanessa_kauffman@fws.gov>, Matthew Huggler <matthew_huggler@fws.gov>
>> **Subject: Fwd: NY Times inquiry re: border wall protest**
>>
>> FYI

G

Sent from my iPhone

Begin forwarded message:

> **From:** "Maestas, Aislinn" <aislinn_maestas@fws.gov>
> **Date:** August 9, 2017 at 5:30:52 PM EDT
> **To:** Gavin Shire <gavin_shire@fws.gov>
> **Cc:** Keenan Adams <keenan_adams@fws.gov>
> **Subject: NY Times inquiry re: border wall protest**
>
> Good afternoon Gavin,
>
> I received a call today from Michael Hardy at the NY Times. He said he is planning to cover the protest at the Santa Ana NWR this weekend. He asked for our position on the proposed border wall. I provided him or statement and referred him to CBP. He asked a follow up question re: consultation and I reiterated our position (we are one of many agencies being informed as CBP works to implement the President's Executive Order).
>
> Let me know if you have questions.
>
> - Aislinn
>
> --
> **Aislinn Maestas**
> Public Affairs Specialist
> External Affairs
> Southwest Region, US Fish and Wildlife Service
> Phone: 505-248-6599
> aislinn_maestas@fws.gov

From: Charisa Morris
To: Aurelia Skipwith
Subject: Re: NY Times inquiry re: border wall protest
Date: Wednesday, August 9, 2017 5:42:49 PM

Thanks for the call! I will contact Ben Tuggle immediately. The region is aware and prepared, but I will have him confirm any particulars in writing.

Sent from my iPhone

On Aug 9, 2017, at 8:28 PM, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov> wrote:

> FYI: I left message with Greg. I'll call you shortly.
>
> Aurelia Skipwith
> Deputy Assistant Secretary
> for Fish and Wildlife and Parks
>
> U.S. Department of Interior
> 1849 C Street NW, Room 3148
> Washington, DC 20240
> 202-208-5837
>
> Begin forwarded message:
>
>> **From:** Todd Willens <todd_willens@ios.doi.gov>
>> **Date:** August 9, 2017 at 8:09:52 PM EDT
>> **To:** greg_j_sheehan@fws.gov, casey_hammond@ios.doi.gov,
>> Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>
>> **Subject: Fwd: NY Times inquiry re: border wall protest**
>>
>> Is the refuge aware? Are permits required? Law enforcement ready?
>>
>> Todd Willens
>> Assistant Deputy Secretary
>> Acting Assistant Secretary for Fish and Wildlife and Parks
>> U.S. Department of the Interior
>> 1849 C Street, NW - MIB Room 6116
>> Washington, DC 20240
>>
>> Begin forwarded message:
>>
>>> **From:** Laura Rigas <laura_rigas@ios.doi.gov>
>>> **Date:** August 9, 2017 at 6:29:40 PM EDT
>>> **To:** Downey Magallanes
>>> <downey_magallanes@ios.doi.gov>, Douglas

Domenech <douglas_domenech@ios.doi.gov>, Todd Willens <todd_willens@ios.doi.gov>
Cc: Russell Newell <russell_newell@ios.doi.gov>
Subject: Fwd: NY Times inquiry re: border wall protest

FYI.

Laura Keehner Rigas
Communications Director
U.S. Department of the Interior
(202) 897-7022 cell
@Interior

Begin forwarded message:

> **From:** Gavin Shire <gavin_shire@fws.gov>
> **Date:** August 9, 2017 at 5:27:58 PM CDT
> **To:** Heather Swift <heather_swift@ios.doi.gov>, Russell Newell <russell_newell@ios.doi.gov>, Laura Rigas <laura_rigas@ios.doi.gov>, Paul Ross <paul_ross@ios.doi.gov>, Barbara Wainman <barbara_wainman@fws.gov>, Laury Parramore <laury_parramore@fws.gov>, Brian Hires <brian_hires@fws.gov>, Vanessa Kauffman <vanessa_kauffman@fws.gov>, Matthew Huggler <matthew_huggler@fws.gov>
> **Subject: Fwd: NY Times inquiry re: border wall protest**
>
> FYI
>
> G
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Maestas, Aislinn" <aislinn_maestas@fws.gov>
> > **Date:** August 9, 2017 at 5:30:52 PM EDT
> > **To:** Gavin Shire <gavin_shire@fws.gov>

Cc: Keenan Adams <keenan_adams@fws.gov>
Subject: NY Times inquiry re: border wall protest

Good afternoon Gavin,

I received a call today from Michael Hardy at the NY Times. He said he is planning to cover the protest at the Santa Ana NWR this weekend. He asked for our position on the proposed border wall. I provided him or statement and referred him to CBP. He asked a follow up question re: consultation and I reiterated our position (we are one of many agencies being informed as CBP works to implement the President's Executive Order).

Let me know if you have questions.

- Aislinn

--
Aislinn Maestas
Public Affairs Specialist
External Affairs
Southwest Region, US Fish and Wildlife Service
Phone: 505-248-6599
aislinn_maestas@fws.gov

From: Aurelia Skipwith
To: Charisa Morris
Subject: Re: NY Times inquiry re: border wall protest
Date: Wednesday, August 9, 2017 5:44:32 PM

Thank you! I'll cc you on the response to Todd.

Aurelia Skipwith
Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of Interior
1849 C Street NW, Room 3148
Washington, DC 20240
202-208-5837

On Aug 9, 2017, at 8:41 PM, Charisa Morris <charisa_morris@fws.gov> wrote:

> Thanks for the call! I will contact Ben Tuggle immediately. The region is aware and prepared, but I will have him confirm any particulars in writing.
>
> Sent from my iPhone
>
> On Aug 9, 2017, at 8:28 PM, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov> wrote:
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>> FYI: I left message with Greg. I'll call you shortly.
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>> Deputy Assistant Secretary
>> for Fish and Wildlife and Parks
>>
>> U.S. Department of Interior
>> 1849 C Street NW, Room 3148
>> Washington, DC 20240
>> 202-208-5837
>>
>> Begin forwarded message:
>>
>>> **From:** Todd Willens <todd_willens@ios.doi.gov>
>>> **Date:** August 9, 2017 at 8:09:52 PM EDT
>>> **To:** greg_j_sheehan@fws.gov, casey_hammond@ios.doi.gov, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>
>>> **Subject: Fwd: NY Times inquiry re: border wall protest**

Is the refuge aware? Are permits required? Law enforcement ready?

Todd Willens
Assistant Deputy Secretary
Acting Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior
1849 C Street, NW - MIB Room 6116
Washington, DC 20240

Begin forwarded message:

> **From:** Laura Rigas <laura_rigas@ios.doi.gov>
> **Date:** August 9, 2017 at 6:29:40 PM EDT
> **To:** Downey Magallanes <downey_magallanes@ios.doi.gov>, Douglas Domenech <douglas_domenech@ios.doi.gov>, Todd Willens <todd_willens@ios.doi.gov>
> **Cc:** Russell Newell <russell_newell@ios.doi.gov>
> **Subject: Fwd: NY Times inquiry re: border wall protest**
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> FYI.
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> Laura Keehner Rigas
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> U.S. Department of the Interior
> (202) 897-7022 cell
> @Interior
>
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Barbara Wainman <barbara_wainman@fws.gov>, Laury Parramore <laury_parramore@fws.gov>, Brian Hires <brian_hires@fws.gov>, Vanessa Kauffman <vanessa_kauffman@fws.gov>, Matthew Huggler <matthew_huggler@fws.gov>
Subject: Fwd: NY Times inquiry re: border wall protest

FYI

G

Sent from my iPhone

Begin forwarded message:

> **From:** "Maestas, Aislinn" <aislinn_maestas@fws.gov>
> **Date:** August 9, 2017 at 5:30:52 PM EDT
> **To:** Gavin Shire <gavin_shire@fws.gov>
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> **Subject: NY Times inquiry re: border wall protest**
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Let me know if you have questions.

- Aislinn

--

Aislinn Maestas
Public Affairs Specialist
External Affairs
Southwest Region, US Fish and Wildlife Service
Phone: 505-248-6599
aislinn_maestas@fws.gov

From: Aurelia Skipwith
To: Charisa Morris
Subject: Fwd: NY Times inquiry re: border wall protest
Date: Wednesday, August 9, 2017 5:54:24 PM

FYI: I left message with Greg. I'll call you shortly.

Aurelia Skipwith
Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of Interior
1849 C Street NW, Room 3148
Washington, DC 20240
202-208-5837

Begin forwarded message:

> **From:** Todd Willens <todd_willens@ios.doi.gov>
> **Date:** August 9, 2017 at 8:09:52 PM EDT
> **To:** greg_j_sheehan@fws.gov, casey_hammond@ios.doi.gov, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>
> **Subject: Fwd: NY Times inquiry re: border wall protest**
>
> Is the refuge aware? Are permits required? Law enforcement ready?
>
> Todd Willens
> Assistant Deputy Secretary
> Acting Assistant Secretary for Fish and Wildlife and Parks
> U.S. Department of the Interior
> 1849 C Street, NW - MIB Room 6116
> Washington, DC 20240
>
> Begin forwarded message:
>
>> **From:** Laura Rigas <laura_rigas@ios.doi.gov>
>> **Date:** August 9, 2017 at 6:29:40 PM EDT
>> **To:** Downey Magallanes <downey_magallanes@ios.doi.gov>, Douglas Domenech <douglas_domenech@ios.doi.gov>, Todd Willens <todd_willens@ios.doi.gov>
>> **Cc:** Russell Newell <russell_newell@ios.doi.gov>
>> **Subject: Fwd: NY Times inquiry re: border wall protest**
>>
>> FYI.
>>
>> Laura Keehner Rigas
>> Communications Director

U.S. Department of the Interior
(202) 897-7022 cell
@Interior

Begin forwarded message:

> **From:** Gavin Shire <gavin_shire@fws.gov>
> **Date:** August 9, 2017 at 5:27:58 PM CDT
> **To:** Heather Swift <heather_swift@ios.doi.gov>, Russell Newell <russell_newell@ios.doi.gov>, Laura Rigas <laura_rigas@ios.doi.gov>, Paul Ross <paul_ross@ios.doi.gov>, Barbara Wainman <barbara_wainman@fws.gov>, Laury Parramore <laury_parramore@fws.gov>, Brian Hires <brian_hires@fws.gov>, Vanessa Kauffman <vanessa_kauffman@fws.gov>, Matthew Huggler <matthew_huggler@fws.gov>
> **Subject: Fwd: NY Times inquiry re: border wall protest**
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> FYI
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>
> Sent from my iPhone
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> > **From:** "Maestas, Aislinn" <aislinn_maestas@fws.gov>
> > **Date:** August 9, 2017 at 5:30:52 PM EDT
> > **To:** Gavin Shire <gavin_shire@fws.gov>
> > **Cc:** Keenan Adams <keenan_adams@fws.gov>
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many agencies being informed as CBP works to implement the President's Executive Order).

Let me know if you have questions.

- Aislinn

--

Aislinn Maestas
Public Affairs Specialist
External Affairs
Southwest Region, US Fish and Wildlife Service
Phone: 505-248-6599
aislinn_maestas@fws.gov

From:	Aurelia Skipwith
To:	Todd Willens
Cc:	greg_j_sheehan@fws.gov; casey_hammond@ios.doi.gov
Subject:	Re: NY Times inquiry re: border wall protest
Date:	Wednesday, August 9, 2017 5:55:18 PM

I'm following up on this. I tried to get a hold of Greg and the Deputies. I'll now go to COS Charisa.

Aurelia Skipwith
Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of Interior
1849 C Street NW, Room 3148
Washington, DC 20240
202-208-5837

On Aug 9, 2017, at 8:09 PM, Todd Willens <todd_willens@ios.doi.gov> wrote:

> Is the refuge aware? Are permits required? Law enforcement ready?
>
> Todd Willens
> Assistant Deputy Secretary
> Acting Assistant Secretary for Fish and Wildlife and Parks
> U.S. Department of the Interior
> 1849 C Street, NW - MIB Room 6116
> Washington, DC 20240
>
> Begin forwarded message:
>
>> **From:** Laura Rigas <laura_rigas@ios.doi.gov>
>> **Date:** August 9, 2017 at 6:29:40 PM EDT
>> **To:** Downey Magallanes <downey_magallanes@ios.doi.gov>, Douglas Domenech <douglas_domenech@ios.doi.gov>, Todd Willens <todd_willens@ios.doi.gov>
>> **Cc:** Russell Newell <russell_newell@ios.doi.gov>
>> **Subject: Fwd: NY Times inquiry re: border wall protest**
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>> FYI.
>>
>> Laura Keehner Rigas
>> Communications Director
>> U.S. Department of the Interior
>> (202) 897-7022 cell
>> @Interior
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Date: August 9, 2017 at 5:27:58 PM CDT
To: Heather Swift <heather_swift@ios.doi.gov>, Russell Newell <russell_newell@ios.doi.gov>, Laura Rigas <laura_rigas@ios.doi.gov>, Paul Ross <paul_ross@ios.doi.gov>, Barbara Wainman <barbara_wainman@fws.gov>, Laury Parramore <laury_parramore@fws.gov>, Brian Hires <brian_hires@fws.gov>, Vanessa Kauffman <vanessa_kauffman@fws.gov>, Matthew Huggler <matthew_huggler@fws.gov>
Subject: Fwd: NY Times inquiry re: border wall protest

FYI

G

Sent from my iPhone

Begin forwarded message:

> **From:** "Maestas, Aislinn" <aislinn_maestas@fws.gov>
> **Date:** August 9, 2017 at 5:30:52 PM EDT
> **To:** Gavin Shire <gavin_shire@fws.gov>
> **Cc:** Keenan Adams <keenan_adams@fws.gov>
> **Subject: NY Times inquiry re: border wall protest**
>
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>
> Let me know if you have questions.

- Aislinn

--

Aislinn Maestas
Public Affairs Specialist
External Affairs
Southwest Region, US Fish and Wildlife Service
Phone: 505-248-6599
aislinn_maestas@fws.gov

From:	Aurelia Skipwith
To:	Todd Willens
Cc:	greg_j_sheehan@fws.gov; casey_hammond@ios.doi.gov; Charisa Morris
Subject:	Re: NY Times inquiry re: border wall protest
Date:	Wednesday, August 9, 2017 5:55:46 PM

Todd,
I spoke with COS Charisa and she informed me that the region is aware and prepared. She's reaching out to
Ben Tuggle, the regional law enforcement, who will be able to confirm any particulars.
Charisa will inform all of us on this email as she gets in information.

Thank you, Charisa.

Aurelia Skipwith
Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of Interior
1849 C Street NW, Room 3148
Washington, DC 20240
202-208-5837

On Aug 9, 2017, at 8:09 PM, Todd Willens <todd_willens@ios.doi.gov> wrote:

> Is the refuge aware? Are permits required? Law enforcement ready?
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> Todd Willens
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> Acting Assistant Secretary for Fish and Wildlife and Parks
> U.S. Department of the Interior
> 1849 C Street, NW - MIB Room 6116
> Washington, DC 20240
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>> **Cc:** Russell Newell <russell_newell@ios.doi.gov>
>> **Subject: Fwd: NY Times inquiry re: border wall protest**
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>> FYI.
>>
>> Laura Keehner Rigas
>> Communications Director

U.S. Department of the Interior
(202) 897-7022 cell
@Interior

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> **Subject: Fwd: NY Times inquiry re: border wall protest**
>
> FYI
>
> G
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Maestas, Aislinn" <aislinn_maestas@fws.gov>
> > **Date:** August 9, 2017 at 5:30:52 PM EDT
> > **To:** Gavin Shire <gavin_shire@fws.gov>
> > **Cc:** Keenan Adams <keenan_adams@fws.gov>
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many agencies being informed as CBP works to implement the President's Executive Order).

Let me know if you have questions.

- Aislinn

--

Aislinn Maestas
Public Affairs Specialist
External Affairs
Southwest Region, US Fish and Wildlife Service
Phone: 505-248-6599
aislinn_maestas@fws.gov

From:	Charisa Morris
To:	Aurelia Skipwith
Cc:	Greg Sheehan; Jim Kurth; Stephen Guertin; Maureen Foster
Subject:	Re: NY Times inquiry re: border wall protest
Date:	Wednesday, August 9, 2017 6:04:40 PM

Hi Aurelia -

Just to follow up, I've left messages with both the regional director and his deputy on their cell phones-we will get you a situation report with the questions below answered by tomorrow morning.

Thanks!
Charisa

Sent from my iPhone

On Aug 9, 2017, at 8:28 PM, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov> wrote:

> FYI: I left message with Greg. I'll call you shortly.
>
> Aurelia Skipwith
> Deputy Assistant Secretary
> for Fish and Wildlife and Parks
>
> U.S. Department of Interior
> 1849 C Street NW, Room 3148
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>> Todd Willens
>> Assistant Deputy Secretary
>> Acting Assistant Secretary for Fish and Wildlife and Parks
>> U.S. Department of the Interior
>> 1849 C Street, NW - MIB Room 6116
>> Washington, DC 20240

Begin forwarded message:

> **From:** Laura Rigas <laura_rigas@ios.doi.gov>
> **Date:** August 9, 2017 at 6:29:40 PM EDT
> **To:** Downey Magallanes <downey_magallanes@ios.doi.gov>, Douglas Domenech <douglas_domenech@ios.doi.gov>, Todd Willens <todd_willens@ios.doi.gov>
> **Cc:** Russell Newell <russell_newell@ios.doi.gov>
> **Subject: Fwd: NY Times inquiry re: border wall protest**
>
> FYI.
>
> Laura Keehner Rigas
> Communications Director
> U.S. Department of the Interior
> (202) 897-7022 cell
> @Interior
>
> Begin forwarded message:
>
> > **From:** Gavin Shire <gavin_shire@fws.gov>
> > **Date:** August 9, 2017 at 5:27:58 PM CDT
> > **To:** Heather Swift <heather_swift@ios.doi.gov>, Russell Newell <russell_newell@ios.doi.gov>, Laura Rigas <laura_rigas@ios.doi.gov>, Paul Ross <paul_ross@ios.doi.gov>, Barbara Wainman <barbara_wainman@fws.gov>, Laury Parramore <laury_parramore@fws.gov>, Brian Hires <brian_hires@fws.gov>, Vanessa Kauffman <vanessa_kauffman@fws.gov>, Matthew Huggler <matthew_huggler@fws.gov>
> > **Subject: Fwd: NY Times inquiry re: border wall protest**
> >
> > FYI
> >
> > G
> >
> > Sent from my iPhone
> >
> > Begin forwarded message:

From: "Maestas, Aislinn" <aislinn_maestas@fws.gov>
Date: August 9, 2017 at 5:30:52 PM EDT
To: Gavin Shire <gavin_shire@fws.gov>
Cc: Keenan Adams <keenan_adams@fws.gov>
Subject: NY Times inquiry re: border wall protest

Good afternoon Gavin,

I received a call today from Michael Hardy at the NY Times. He said he is planning to cover the protest at the Santa Ana NWR this weekend. He asked for our position on the proposed border wall. I provided him or statement and referred him to CBP. He asked a follow up question re: consultation and I reiterated our position (we are one of many agencies being informed as CBP works to implement the President's Executive Order).

Let me know if you have questions.

- Aislinn

--
Aislinn Maestas
Public Affairs Specialist
External Affairs
Southwest Region, US Fish and Wildlife Service
Phone: 505-248-6599
aislinn_maestas@fws.gov

From: Aurelia Skipwith
To: Charisa Morris
Cc: Greg Sheehan; Jim Kurth; Stephen Guertin; Maureen Foster
Subject: Re: NY Times inquiry re: border wall protest
Date: Wednesday, August 9, 2017 6:06:25 PM

Thank you very much, Charisa.

Aurelia Skipwith
Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of Interior
1849 C Street NW, Room 3148
Washington, DC 20240
202-208-5837

On Aug 9, 2017, at 8:57 PM, Charisa Morris <charisa_morris@fws.gov> wrote:

> Hi Aurelia -
>
> Just to follow up, I've left messages with both the regional director and his deputy on their cell phones-we will get you a situation report with the questions below answered by tomorrow morning.
>
> Thanks!
> Charisa
>
> Sent from my iPhone
>
> On Aug 9, 2017, at 8:28 PM, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov> wrote:
>
>> FYI: I left message with Greg. I'll call you shortly.
>>
>> Aurelia Skipwith
>> Deputy Assistant Secretary
>> for Fish and Wildlife and Parks
>>
>> U.S. Department of Interior
>> 1849 C Street NW, Room 3148
>> Washington, DC 20240
>> 202-208-5837
>>
>> Begin forwarded message:
>>
>>> **From:** Todd Willens <todd_willens@ios.doi.gov>
>>> **Date:** August 9, 2017 at 8:09:52 PM EDT

To: greg_j_sheehan@fws.gov, casey_hammond@ios.doi.gov, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>
Subject: Fwd: NY Times inquiry re: border wall protest

Is the refuge aware? Are permits required? Law enforcement ready?

Todd Willens
Assistant Deputy Secretary
Acting Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior
1849 C Street, NW - MIB Room 6116
Washington, DC 20240

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> **Cc:** Russell Newell <russell_newell@ios.doi.gov>
> **Subject: Fwd: NY Times inquiry re: border wall protest**
>
> FYI.
>
> Laura Keehner Rigas
> Communications Director
> U.S. Department of the Interior
> (202) 897-7022 cell
> @Interior
>
> Begin forwarded message:
>
> > **From:** Gavin Shire <gavin_shire@fws.gov>
> > **Date:** August 9, 2017 at 5:27:58 PM CDT
> > **To:** Heather Swift

<heather_swift@ios.doi.gov>,
Russell Newell
<russell_newell@ios.doi.gov>,
Laura Rigas
<laura_rigas@ios.doi.gov>,
Paul Ross
<paul_ross@ios.doi.gov>,
Barbara Wainman
<barbara_wainman@fws.gov>,
Laury Parramore
<laury_parramore@fws.gov>,
Brian Hires
<brian_hires@fws.gov>,
Vanessa Kauffman
<vanessa_kauffman@fws.gov>,
Matthew Huggler
<matthew_huggler@fws.gov>
Subject: Fwd: NY Times inquiry re: border wall protest

FYI

G

Sent from my iPhone

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> **Cc:** Keenan Adams <keenan_adams@fws.gov>
> **Subject: NY Times inquiry re: border wall protest**
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> Good afternoon Gavin,
>
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Let me know if you have questions.

- Aislinn

--

Aislinn Maestas
Public Affairs Specialist
External Affairs
Southwest Region, US Fish and Wildlife Service
Phone: 505-248-6599
aislinn_maestas@fws.gov

From:	Aurelia Skipwith
To:	Todd Willens
Cc:	Casey Hammond; Gregory Sheehan
Subject:	Fwd: NY Times inquiry re: border wall protest
Date:	Wednesday, August 9, 2017 6:11:10 PM

Aurelia Skipwith
Deputy Assistant Secretary
for Fish and Wildlife and Parks

U.S. Department of Interior
1849 C Street NW, Room 3148
Washington, DC 20240
202-208-5837

Begin forwarded message:

> **From:** Charisa Morris <charisa_morris@fws.gov>
> **Date:** August 9, 2017 at 8:57:26 PM EDT
> **To:** Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>
> **Cc:** Greg Sheehan <greg_j_sheehan@fws.gov>, Jim Kurth <Jim_Kurth@fws.gov>, Stephen Guertin <Stephen_Guertin@fws.gov>, Maureen Foster <maureen_foster@ios.doi.gov>
> **Subject: Re: NY Times inquiry re: border wall protest**
>
> Hi Aurelia -
>
> Just to follow up, I've left messages with both the regional director and his deputy on their cell phones-we will get you a situation report with the questions below answered by tomorrow morning.
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>> Aurelia Skipwith
>> Deputy Assistant Secretary
>> for Fish and Wildlife and Parks
>>
>> U.S. Department of Interior

1849 C Street NW, Room 3148
Washington, DC 20240
202-208-5837

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> **Date:** August 9, 2017 at 8:09:52 PM EDT
> **To:** greg_j_sheehan@fws.gov, casey_hammond@ios.doi.gov, Aurelia Skipwith <aurelia_skipwith@ios.doi.gov>
> **Subject: Fwd: NY Times inquiry re: border wall protest**
>
> Is the refuge aware? Are permits required? Law enforcement ready?
>
> Todd Willens
> Assistant Deputy Secretary
> Acting Assistant Secretary for Fish and Wildlife and Parks
> U.S. Department of the Interior
> 1849 C Street, NW - MIB Room 6116
> Washington, DC 20240
>
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>> **Subject: Fwd: NY Times inquiry re: border wall protest**
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>>
>> Laura Keehner Rigas
>> Communications Director
>> U.S. Department of the Interior
>> (202) 897-7022 cell
>> @Interior

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Subject: Fwd: NY Times inquiry re: border wall protest

FYI

G

Sent from my iPhone

Begin forwarded message:

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Date: August 9, 2017 at 5:30:52 PM EDT
To: Gavin Shire <gavin_shire@fws.gov>
Cc: Keenan Adams <keenan_adams@fws.gov>
Subject: NY

Times inquiry re: border wall protest

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Let me know if you have questions.

- Aislinn

--

Aislinn Maestas
Public Affairs Specialist
External Affairs
Southwest Region, US Fish and Wildlife Service
Phone: 505-248-6599
aislinn_maestas@fws.gov

From:	Adams, Keenan
To:	Gavin Shire
Cc:	Aislinn Maestas; Matthew Trott; Chris Tincher; Charisa Morris; Michael Gale
Subject:	Re: Another media inquiry for report - NPR Border Inquiry
Date:	Friday, August 11, 2017 9:36:31 AM

Expect a larger/robust set of inquiries Monday am.

We'll have a SitRep to you and Chariss late SundayPM or MondayAM

On Fri, Aug 11, 2017 at 10:33 AM, Chris Tincher <chris_tincher@fws.gov> wrote:

> Hi,
> I submitted our weekly report with Media contacts and FishBites last night. Aislinn is getting more media inquiries this morning in advance of the protest expected to occur this weekend. See note from Aislinn below.
> I am returning to Phoenix now.
>
> Christine Tincher
> U.S. Fish and Wildlife Service
> Southwest Region
> (602) 242-0210 (o)
> (505) 449-8776 (mobile)
> Email: chris_tincher@fws.gov
>
> Begin forwarded message:
>
>> **From:** "Maestas, Aislinn" <aislinn_maestas@fws.gov>
>> **Date:** August 11, 2017 at 10:59:29 AM CDT
>> **To:** Chris Tincher <chris_tincher@fws.gov>
>> **Subject: NPR Border Inquiry**
>>
>> For the weekly report:
>>
>> **Media Contact Report**
>>
>> - **Media publication:** NPR
>> - **Topic:** Border wall
>> - **Publication date**: Monday (likely)
>> - **Current Status:** Asked us to provide someone for interview, either on the record on background. Told him we are not doing any interviews at this time and offered to send him our statement. He will be at the protest this weekend.
>>
>> --
>> **Aislinn Maestas**

Public Affairs Specialist
External Affairs
Southwest Region, US Fish and Wildlife Service
Phone: 505-248-6599
aislinn_maestas@fws.gov

--
Keenan Adams

Acting Assistant Regional Director - External Affairs
August & September 2017
U.S. Fish and Wildlife Service - Southwest Region
Office: 505-248-6285

Make everything as simple as possible, but not simpler. ~Albert Einstein

From: Todd Willens
To: greg_j_sheehan@fws.gov; casey_hammond@ios.doi.gov
Subject: Fwd: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues
Date: Wednesday, August 16, 2017 11:54:45 AM

FYI.

Todd Willens
Assistant Deputy Secretary
Acting Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior
1849 C Street, NW - MIB Room 6116
Washington, DC 20240

Begin forwarded message:

> **From:** Laura Rigas <laura_rigas@ios.doi.gov>
> **Date:** August 16, 2017 at 1:02:34 PM CDT
> **To:** Todd Willens <todd_willens@ios.doi.gov>, Scott Hommel <scott_hommel@ios.doi.gov>, Downey Magallanes <downey_magallanes@ios.doi.gov>
> **Subject: Fwd: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues**

Laura Keehner Rigas
Communications Director
U.S. Department of the Interior
(202) 897-7022 cell
@Interior

Begin forwarded message:

> **From:** Gavin Shire <gavin_shire@fws.gov>
> **Date:** August 16, 2017 at 1:51:53 PM EDT
> **To:** Laura Rigas <laura_rigas@ios.doi.gov>, Russell Newell <russell_newell@ios.doi.gov>, Heather Swift <heather_swift@ios.doi.gov>, Paul Ross <paul_ross@ios.doi.gov>
> **Subject: Fwd: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues**

FYI.

G

Sent from my iPhone

Begin forwarded message:

From: "Jones, Lisa" <lisa_m_jones@fws.gov>
Date: August 16, 2017 at 1:32:02 PM EDT
To: Micah Chambers <micah_chambers@ios.doi.gov>
Cc: Barbara Wainman <barbara_wainman@fws.gov>, Gavin Shire <gavin_shire@fws.gov>, Martin Kodis <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>
Subject: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues

Hi Micah,

Our Southwest regional office was contacted yesterday by Senator Cruz's Deputy State Director regarding his interest in visiting Santa Ana National Wildlife Refuge. They're looking at this coming Tuesday, the 22nd, and are interested in a briefing from Refuge staff and Border Patrol staff, followed by a tour of the area where a portion of the border wall may be constructed. Cruz's staffer said they will not be inviting the media to attend.

Cruz's office is still working on his schedule, but we wanted to check in with you to see if you have any concerns before our folks move forward with planning.

If you'd like to talk with Cruz's Deputy State Director about the visit, her contact info is here:

Casandra L. Meade

Deputy State Director, South Texas Regional Director

Office of U.S. Senator Ted Cruz (R-TX)

O: 956-686-7339

C: 202-412-6946

Cheers,

Lisa

Lisa Hummon-Jones
Congressional and Legislative Affairs Specialist
U.S. Fish and Wildlife Service

703-358-2536 (o)
202-365-7255 (c)

From:	Greg Sheehan
To:	Todd Willens
Cc:	casey_hammond@ios.doi.gov
Subject:	Re: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues
Date:	Wednesday, August 16, 2017 12:26:53 PM

I'll get our guys on point and engaging with his staff.
Thanks
Greg

Greg Sheehan
Principal Deputy Director
US Fish and Wildlife Service
202-208-4545 office
202-676-7675 cell

On Aug 16, 2017, at 2:54 PM, Todd Willens <todd_willens@ios.doi.gov> wrote:

> FYI.
>
> Todd Willens
> Assistant Deputy Secretary
> Acting Assistant Secretary for Fish and Wildlife and Parks
> U.S. Department of the Interior
> 1849 C Street, NW - MIB Room 6116
> Washington, DC 20240
>
> Begin forwarded message:
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>> **To:** Todd Willens <todd_willens@ios.doi.gov>, Scott Hommel <scott_hommel@ios.doi.gov>, Downey Magallanes <downey_magallanes@ios.doi.gov>
>> **Subject: Fwd: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues**
>
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>> Communications Director
>> U.S. Department of the Interior
>> (202) 897-7022 cell
>> @Interior
>
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To: Laura Rigas <laura_rigas@ios.doi.gov>, Russell Newell <russell_newell@ios.doi.gov>, Heather Swift <heather_swift@ios.doi.gov>, Paul Ross <paul_ross@ios.doi.gov>
Subject: Fwd: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues

FYI.

G

Sent from my iPhone

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If you'd like to talk with Cruz's Deputy State Director about the visit, her contact info is here:

Casandra L. Meade

Deputy State Director, South Texas Regional Director

Office of U.S. Senator Ted Cruz (R-TX)

O: 956-686-7339

C: 202-412-6946

Cheers,

Lisa

Lisa Hummon-Jones
Congressional and Legislative Affairs Specialist
U.S. Fish and Wildlife Service
703-358-2536 (o)
202-365-7255 (c)

From: Greg Sheehan
To: benjamin_tuggle@fws.gov
Subject: Fwd: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues
Date: Wednesday, August 16, 2017 1:46:55 PM

Greg Sheehan
Principal Deputy Director
US Fish and Wildlife Service
202-208-4545 office
202-676-7675 cell

Begin forwarded message:

> **From:** Todd Willens <todd_willens@ios.doi.gov>
> **Date:** August 16, 2017 at 2:54:35 PM EDT
> **To:** greg_j_sheehan@fws.gov, casey_hammond@ios.doi.gov
> **Subject: Fwd: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues**
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> FYI.
>
> Todd Willens
> Assistant Deputy Secretary
> Acting Assistant Secretary for Fish and Wildlife and Parks
> U.S. Department of the Interior
> 1849 C Street, NW - MIB Room 6116
> Washington, DC 20240
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> > **Subject: Fwd: Senator Cruz interested in visiting Santa Ana National Wildlife Refuge next Tues**
> >
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> > Communications Director
> > U.S. Department of the Interior
> > (202) 897-7022 cell
> > @Interior

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FYI.

G

Sent from my iPhone

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C: 202-412-6946

Cheers,

Lisa

Lisa Hummon-Jones
Congressional and Legislative Affairs Specialist
U.S. Fish and Wildlife Service
703-358-2536 (o)
202-365-7255 (c)

From:	Gale, Michael
To:	Roslyn Sellars; Thomas Irwin
Cc:	Charisa Morris
Subject:	Greg"s Schedule - Thursday, October 26
Date:	Friday, October 20, 2017 10:41:01 AM

Roslyn and Thomas,

Greg mentioned that he's concerned a bit about his schedule on Thursday, October 26. I think we need to do the following for that day:

- Reschedule Meeting with Matt Beaton, Massachusetts Energy & Environment Secretary to meet at 12:00p.m. We need to reschedule this because Greg has a meeting with the Secretary at 1:00p.m.
- Add "Veterans and Sportsmen" event at 1:00p.m. in the South Penthouse until 2:30p.m. This event is with the Secretary and Greg will have a brief speaking role.
- Delete afternoon "Priority Items" session
- Reschedule the follow up meeting with Sylvia Burns to some other date and time.
- Region 2 has requested more information (like an agenda) on the Border Barrier Briefing at 3:30p.m. We also need a briefing paper prepared for this meeting. Do you want to send out that request or should I?

Thanks!

Michael

--

Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

From:	Sellars, Roslyn
To:	Gale, Michael
Cc:	Thomas Irwin; Charisa Morris
Subject:	Re: Greg"s Schedule - Thursday, October 26
Date:	Friday, October 20, 2017 11:30:53 AM

Michael

I will make the schedule changes in your email below. I sent you a separate email on the border barrier briefing.

Roslyn

Roslyn Sellars
Executive Assistant| Office of the Director | U.S. Fish and Wildlife Service
1849 C Street NW | Room 3356 | Washington, DC| (202) 208-4545|roslyn_sellars@fws.gov
Please copy Thomas Irwin (thomas_irwin@fws.gov) on future emails related to scheduling.

On Fri, Oct 20, 2017 at 1:40 PM, Gale, Michael <michael_gale@fws.gov> wrote:

> Roslyn and Thomas,
>
> Greg mentioned that he's concerned a bit about his schedule on Thursday, October 26. I think we need to do the following for that day:
>
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> Thanks!
>
> Michael
>
> --
>
> Michael Gale
>
> Deputy Chief of Staff (Acting), Director's Office
> U.S. Fish and Wildlife Service
>
> 202.208.4923 (office)
> 571.982.2158 (cell)

From:	Gale, Michael
To:	Lueders, Amy; Nicholopoulos, Joy; Cynthia Martinez; Gary Frazer; Gina Shultz; Paul Souza; Shaun Sanchez
Cc:	Thomas Irwin; Roslyn Sellars; Xiomara Labiosa; Charisa Morris
Subject:	Re: Border barrier call next week
Date:	Friday, October 20, 2017 1:14:11 PM

+ Other meeting participants and staff

We are checking with FWP to see if there is an agenda for this meeting or more details on expectations. It's likely that the context is merely that's it's a high profile issue that Jason, who is new to the Department, would like to know more about.

I'm assuming that Refuges (Cynthia Martinez) would serve as the lead for this briefing and would work with the Regions and Programs involved (R2, R8, Refuges, ES) to coordinate briefing prep. We can circle back on Monday if there needs to be any adjustment to that approach.

We will need a briefing paper to provide to FWP, preferably by 12:00p.m. Wednesday, October 25.

For Roslyn and Thomas - please add brent_range@ios.doi.gov to the meeting invite for Thursday, October 26 at 3:30p.m. "Border Barrier Briefing."

cheers,

Michael

On Fri, Oct 20, 2017 at 1:26 PM, Lueders, Amy <amy_lueders@fws.gov> wrote:

> Michael-
> Hope you are having a great Friday. Wanted to check in with you regarding next week's (10/26 at 1:30 mtn) call on Border Barrier with DAS Larrabee. Do you have an agenda? I want to make sure we are prepared from Region 2 if we are expected to make a presentation. Also, I would recommend we invite Brent Range, Inter-agency Borderland Coordinator for the Department to participate in the call. Let me know what you think
> Thanks
> Amy

--

Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

From: Michael Gale
To: Irwin, Thomas
Cc: Sellars, Roslyn; xiomara_labiosa@fws.gov; Charisa Morris
Subject: Re: Border barrier call next week
Date: Monday, October 23, 2017 3:17:28 PM

+ Xiomara and Charisa

Thanks. As a heads up, Cynthia Martinez may be reengineering these meetings by bringing in Brent for a more focused discussion with Greg and then just having Cynthia and Greg (maybe Gary and Amy calling in) brief Jason. Xiomara is tracking this.

Michael

--

Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

On Oct 23, 2017, at 7:56 AM, Irwin, Thomas <thomas_irwin@fws.gov> wrote:

> Michael,
>
> Brent has been added and sent a calendar invite.
>
> Thomas
>
> thomas_irwin@fws.gov - (202) 208-4545
> Office of the Director - 1849 C Street NW - Room 3356 - Washington, DC 20240
> ><(((°>
>
> On Fri, Oct 20, 2017 at 4:13 PM, Gale, Michael <michael_gale@fws.gov> wrote:
>
> > + Other meeting participants and staff
> >
> > We are checking with FWP to see if there is an agenda for this meeting or more details on expectations. It's likely that the context is merely that's it's a high profile issue that Jason, who is new to the Department, would like to know more about.
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> > I'm assuming that Refuges (Cynthia Martinez) would serve as the lead for this briefing and would work with the Regions and Programs involved (R2, R8, Refuges, ES) to coordinate briefing prep. We can circle back on Monday if there needs to be any adjustment to that approach.

We will need a briefing paper to provide to FWP, preferably by 12:00p.m. Wednesday, October 25.

For Roslyn and Thomas - please add brent_range@ios.doi.gov to the meeting invite for Thursday, October 26 at 3:30p.m. "Border Barrier Briefing."

cheers,

Michael

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Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

From:	Martinez, Cynthia
To:	Gale, Michael
Cc:	Lueders, Amy; Nicholopoulos, Joy; Gary Frazer; Gina Shultz; Paul Souza; Shaun Sanchez; Thomas Irwin; Roslyn Sellars; Xiomara Labiosa; Charisa Morris
Subject:	Re: Border barrier call next week
Date:	Tuesday, October 24, 2017 12:24:33 PM

All,

In looking into this briefing, including a discussion with Brent Range, since the briefing is scheduled for only 30 minutes, we are going to start at a very high level and then follow up as Acting AS Larrabee requests. Through that lens, we do not require participation from the Regions at this time. However, we are requesting Briefing Papers on Border Wall Coordination with U.S. Department of Homeland Security/Customs and Border Protection by Wednesday, October 25th at 10am Eastern. These should be high level BPs regarding coordination with Homeland Security and CBP.

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ES, let me know if you would like to discuss.

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Please let me know if you would like to discuss.

Thanks
Cynthia

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--

Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

From:	Martinez, Cynthia
To:	Sellars, Roslyn; Thomas Irwin
Cc:	Charisa Morris; Michael Gale
Subject:	Fwd: Border barrier call next week
Date:	Tuesday, October 24, 2017 12:28:22 PM

Per my email below, please adjust the invite to remove Brent Range, Amy Lueders, and Paul Souza.

Thanks,
Cynthia
---------- Forwarded message ----------
From: **Martinez, Cynthia** <cynthia_martinez@fws.gov>
Date: Tue, Oct 24, 2017 at 3:24 PM
Subject: Re: Border barrier call next week
To: "Gale, Michael" <michael_gale@fws.gov>
Cc: "Lueders, Amy" <amy_lueders@fws.gov>, "Nicholopoulos, Joy" <joy_nicholopoulos@fws.gov>, Gary Frazer <gary_frazer@fws.gov>, Gina Shultz <gina_shultz@fws.gov>, Paul Souza <paul_souza@fws.gov>, Shaun Sanchez <shaun_sanchez@fws.gov>, Thomas Irwin <thomas_irwin@fws.gov>, Roslyn Sellars <roslyn_sellars@fws.gov>, Xiomara Labiosa <xiomara_labiosa@fws.gov>, Charisa Morris <charisa_morris@fws.gov>

All,

In looking into this briefing, including a discussion with Brent Range, since the briefing is scheduled for only 30 minutes, we are going to start at a very high level and then follow up as Acting AS Larrabee requests. Through that lens, we do not require participation from the Regions at this time. However, we are requesting Briefing Papers on Border Wall Coordination with U.S. Department of Homeland Security/Customs and Border Protection by Wednesday, October 25th at 10am Eastern. These should be high level BPs regarding coordination with Homeland Security and CBP.

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Please let me know if you would like to discuss.

Thanks

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> cheers,
>
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>> Thanks
>> Amy
>
> --
>
> Michael Gale
>
> Deputy Chief of Staff (Acting), Director's Office
> U.S. Fish and Wildlife Service
>
> 202.208.4923 (office)
> 571.982.2158 (cell)

From:	Irwin, Thomas
To:	Martinez, Cynthia
Cc:	Sellars, Roslyn; Charisa Morris; Michael Gale; Xiomara Labiosa
Subject:	Re: Border barrier call next week
Date:	Tuesday, October 24, 2017 1:03:17 PM

Cynthia,

The invite came from the office of A/S FWP. We are not able to modify the invite list. Cannot even view it. You might ask Tasha Robbins.

Thomas

thomas_irwin@fws.gov - (202) 208-4545
Office of the Director - 1849 C Street NW - Room 3356 - Washington, DC 20240

><(((°>

On Tue, Oct 24, 2017 at 3:28 PM, Martinez, Cynthia <cynthia_martinez@fws.gov> wrote:

> Per my email below, please adjust the invite to remove Brent Range, Amy Lueders, and Paul Souza.
>
> Thanks,
> Cynthia
> ---------- Forwarded message ----------
> From: **Martinez, Cynthia** <cynthia_martinez@fws.gov>
> Date: Tue, Oct 24, 2017 at 3:24 PM
> Subject: Re: Border barrier call next week
> To: "Gale, Michael" <michael_gale@fws.gov>
> Cc: "Lueders, Amy" <amy_lueders@fws.gov>, "Nicholopoulos, Joy" <joy_nicholopoulos@fws.gov>, Gary Frazer <gary_frazer@fws.gov>, Gina Shultz <gina_shultz@fws.gov>, Paul Souza <paul_souza@fws.gov>, Shaun Sanchez <shaun_sanchez@fws.gov>, Thomas Irwin <thomas_irwin@fws.gov>, Roslyn Sellars <roslyn_sellars@fws.gov>, Xiomara Labiosa <xiomara_labiosa@fws.gov>, Charisa Morris <charisa_morris@fws.gov>
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Thanks
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> cheers,
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--

Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

From: Sellars, Roslyn
To: Irwin, Thomas
Cc: Martinez, Cynthia; Charisa Morris; Michael Gale; Xiomara Labiosa
Subject: Re: Border barrier call next week
Date: Tuesday, October 24, 2017 1:47:00 PM

Sorry about that. I have asked Tasha to remove. Brent, Amy and Paul.

Roslyn

On Tue, Oct 24, 2017 at 4:02 PM, Irwin, Thomas <thomas_irwin@fws.gov> wrote:

> Cynthia,
>
> The invite came from the office of A/S FWP. We are not able to modify the invite list. Cannot even view it. You might ask Tasha Robbins.
>
> Thomas
>
> thomas_irwin@fws.gov - (202) 208-4545
> Office of the Director - 1849 C Street NW - Room 3356 - Washington, DC 20240
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Amy

--

Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

From: Cynthia Martinez
To: Sellars, Roslyn
Cc: Irwin, Thomas; Charisa Morris; Michael Gale; Xiomara Labiosa
Subject: Re: Border barrier call next week
Date: Tuesday, October 24, 2017 2:07:43 PM

Thank you Ros.

Cynthia

On Oct 24, 2017, at 4:46 PM, Sellars, Roslyn <roslyn_sellars@fws.gov> wrote:

> Sorry about that. I have asked Tasha to remove. Brent, Amy and Paul.
>
> Roslyn
>
> On Tue, Oct 24, 2017 at 4:02 PM, Irwin, Thomas <thomas_irwin@fws.gov> wrote:
>
> > Cynthia,
> >
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> Amy

--

Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

From:	Sellars, Roslyn
To:	Morris, Charisa; Michael Gale; Amy Lueders; Cynthia T Martinez; Gary D. Frazer
Cc:	Thomas Irwin
Subject:	Briefing paper needed for 10/26 Border Barrier meeting with Jason Larrabee
Date:	Wednesday, October 25, 2017 10:18:56 AM

Briefing paper needed for 10/26 Border Barrier meeting with Jason Larrabee,

Roslyn Sellars
Executive Assistant| Office of the Director | U.S. Fish and Wildlife Service
1849 C Street NW | Room 3356 | Washington, DC| (202) 208-4545|roslyn_sellars@fws.gov
Please copy Thomas Irwin (thomas_irwin@fws.gov) on future emails related to scheduling.

---------- Forwarded message ----------
From: **Robbins, Tasha** <tasha_l_robbins@ios.doi.gov>
Date: Wed, Oct 25, 2017 at 1:14 PM
Subject: Border Barrier
To: Roslyn Sellars <roslyn_sellars@fws.gov>, Thomas Irwin <thomas_irwin@fws.gov>

Just a reminder briefing paper is needed.

thanks,

--
Tasha L. Robbins
Executive Assistant
Office of the Assistant Secretary
for Fish and Wildlife and Parks
1849 C Street, NW, Room 3160
202-208-4416

Tasha_l_Robbins@ios.doi.gov

From:	Michael Gale
To:	Greg Sheehan
Cc:	Jim Kurth; stephen_guertin@fws.gov; Charisa Morris; gary_frazer@fws.gov; parks_gilbert@fws.gov; Zack Gambill
Subject:	FYI: Mexican wolf recovery plan: NOI
Date:	Wednesday, November 29, 2017 2:02:45 PM
Attachments:	ATT00001.htm Sixty.Day.Notice.DRAFT.Mex.Wolf.Rec.Plan.Nov.28.2017.pdf

---

FYI from our ES Litigation staff.

--

Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

Begin forwarded message:

---------- Forwarded message ----------
From: **Matthew Bishop** <bishop@westernlaw.org>
Date: Wed, Nov 29, 2017 at 4:21 PM
Subject: FW: Mexican wolf recovery plan: NOI
To: "Gilbert, Parks" <parks_gilbert@fws.gov>
Cc: bishop@westernlaw.org

Please forward the attached notice to Director Sheehan (his e-mail address is not publicly available). Thank you, Matt

Matthew Bishop

Western Environmental Law Center

103 Reeder's Alley

Helena, Montana 59601

(406) 324-8011 (tel.)

bishop@westernlaw.org

www.westernlaw.org

From: Matthew Bishop [mailto:bishop@westernlaw.org]
Sent: Wednesday, November 29, 2017 1:52 PM
To: exsec@ios.doi.gov; RDLueders@fws.gov; greg_sheehan@fws.gov
Cc: bishop@westernlaw.org
Subject: Mexican wolf recovery plan: NOI
Importance: High

Please see the attached sixty-day notice of intent to sue regarding the USFWS's Mexican wolf recovery plan (first revision). Matt

Matthew Bishop

Western Environmental Law Center

103 Reeder's Alley

Helena, Montana 59601

(406) 324-8011 (tel.)

bishop@westernlaw.org

www.westernlaw.org

Northwest
1216 Lincoln Street
Eugene, Oregon 97401
(541) 485-2471

Rocky Mountains
103 Reeder's Alley
Helena, Montana 59601
(406) 443-3501

Southwest
208 Paseo del Pueblo Sur #602
Taos, New Mexico 87571
(575) 751-0351

Defending the West www.westernlaw.org

Western Environmental Law Center

November 29, 2017

SENT VIA E-MAIL AND HAND DELIVERY

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Re: Sixty-day notice of intent to sue for violating the Endangered Species Act when issuing a final recovery plan for the Mexican wolf (*Canis lupus baileyi*).

Dear Sec. Zinke, Acting Dir. Sheehan, and Reg. Dir. Lueders:

The Western Environmental Law Center ("WELC") hereby provides this sixty-day notice of intent to sue for violations of Section 4 of the Endangered Species Act ("ESA"), 16 U.S.C. §1533, when issuing a final recovery plan for the Mexican wolf (*Canis lupus baileyi*).

This notice is provided by WELC on behalf of WildEarth Guardians ("Guardians") and Western Watersheds Project ("WWP"). Guardians and WWP have a significant, concrete interest in ensuring the long-term survival and recovery of Mexican wolves in the contiguous United States and ensuring the U.S. Fish and Wildlife Service ("the Service") utilizes the best available science and complies with the ESA when preparing a recovery plan for the Mexican wolf.

The ESA is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." *TVA v. Hill*, 437 U.S. 153, 179 (1978). The ESA was enacted to forestall the extinction of species and allow a species to recover to the point where it may be de-listed. *Gifford Pinchot Task Force v. USFWS*, 378 F.3d 1059, 1070 (9th Cir. 2004); *see also* 16 U.S.C. § 1532(3) (defining "conservation" as all methods that can be employed to "the point at which measures provided pursuant to [the ESA] are no longer necessary"). Survival and conservation (recovery) of listed species are the "two different (though complimentary) goals of the ESA." *Id*. Integral to achieving the ESA's goals is the preparation and implementation of science-based recovery plans.

Section 4(f) of the ESA directs the Service to "develop and implement [recovery] plans . . . for the conservation and survival of endangered species and threatened species . . . unless [the Service] finds that such a plan will not promote the conservation of the species." 16 U.S.C. § 1533(f)(1). In preparing recovery plans, the Service is to give priority to those listed species that "are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity." *Id*. at § 1533 (f)(1)(A).

The ESA mandates that all recovery plans include, to the maximum extent practicable: (a) a description of the site-specific management actions necessary to achieve the recovery plan's conservation and survival goals; (b) objective, measurable criteria which, when met, would result in a determination that the species be removed from listing; and (c) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and the intermediate steps towards that goal. 16 U.S.C. §§ 1533(f)(1)(B)(i) - (iii).

The Service considers recovery plans to be an essential tool for conservation. The Service's own recovery planning guidance (version 3.1), *see* https://www.fws.gov/endangered/esa-library/pdf/NMFS-FWS_Recovery_Planning_Guidance.pdf (hereinafter "recovery guidance"), for example, explain that recovery plans are extremely important because they are road

maps to recovery, i.e., they spell out where the Service needs to go and how best to get there. Recovery plans ensure sound scientific and logistical decision-making throughout the recovery process. Specifically, recovery plans delineate those aspects of the species' biology, life history, and threats that are pertinent to its endangerment and recovery, outline necessary strategies and actions, and identify goals and criteria by which to measure progress. Recovery plans also serve a number of additional functions, including but not limited to, guiding the Service's compliance with Section 7 consultations (including the Service's obligation under Section 7(a)(1) to carry out programs for the conservation of the species and obligation to consult on federal projects and avoid jeopardy under Section 7(a)(2)), serving as a tool for outreach, stakeholder engagement, recovery monitoring, and federal/state funding.

On November 28, 2017, the Service, including the Regional Director for the Service's Southwest Region, signed, approved, and issued a final Mexican Wolf Recovery Plan (First Revision) (hereinafter "final recovery plan"). Public notice and release of the final recovery plan occurred on November 29, 2017.

With this letter, the Service is hereby put on notice that the final recovery plan for Mexican wolves violates the ESA and is arbitrary and capricious for the following nine reasons.

First**,** the Service's final recovery plan fails to include the necessary site-specific management actions and objective, measurable criteria for delisting as required by the ESA.

Pursuant to the ESA, recovery plans must provide for the conservation of listed species and include, to the maximum extent practicable, site-specific management actions necessary to conserve the species and objective, measurable criteria which, when met, would result in delisting. 16 U.S.C. §§ 1533(f)(1)(A), (B). The Service concedes that this is a mandatory, statutory requirement – a "sideboard" on recovery planning – that cannot be ignored. *See* Recovery Guidance at Section 1.2 (describing elements from the ESA that must be included in a recovery plan); *id.* at Section 5.1.8.3 (developing objective and measurable criteria is a statutory requirement in the ESA for recovery plans)

Here, the Service's final recovery plan violates Section 4(f) of the ESA by: (a) failing to include site-specific management actions necessary to conserve Mexican wolves (as revealed by the best available science – see below); and (b) failing to include objective, measureable criteria that, when met, would warrant delisting. Nor has the Service demonstrated that providing such management actions and criteria

would be impracticable. Also missing from the final recovery plan are adequate performance standards or benchmarks necessary to ensure success.

Notably, the downlisting and delisting criteria provided in the final recovery plan is neither "objective" or adequately measureable (using the Service's methods). And, even if one assumes the criteria provided is objective and measureable (it is not), if the criteria is met, the best available science reveals it would not result in a determination that Mexican wolves be removed from the ESA, as required by the statute (see below).

Second, and related to one above, the Service's final recovery plan conflicts with the best available science. Pursuant to the ESA, the Service's implementing regulations, and the Service's own recovery guidance, all decisions regarding the downlisting, delisting, and recovery of a listed species must be based on the best available science. *See* 50 C.F.R. § 424.11.

Here, the Service's recovery findings for the Mexican wolf in the final recovery plan, including but not limited to, the Service's proposed site-specific management actions, downlisting and delisting criteria, and methods used to evaluate risk, conduct a population viability analysis ("PVA"), measure recovery, and ensure compliance with the plan conflict with the best available science.

For example, the best available science – including Carroll (2006), Wayne and Hedricks (2010), Carroll (2014), as well as the Service's 2012 draft recovery plan and 2010 Mexican wolf conservation assessment – are all in agreement that conserving Mexican wolves requires the establishment of at least three subpopulations of Mexican wolves connected to one another by dispersal, with each population simultaneously having approximately 250 animals for a minimum of eight years (two generations). Using a sophisticated landscape analysis, Carroll (2006), Wayne and Hedrick (2010), and Carroll (2014) recommend these three Mexican wolf populations include: (1) the current population in the Blue Range Recovery Area; (2) a second population near the north rim of the Grand Canyon in Arizona (north of Interstate 40); and (3) a third population in north-central New Mexico's and southern Colorado's San Juan and Sangre de Cristo Mountains. The Service's final recovery plan does not even come close to meeting these conservation recommendations.

The Service's final recovery plan also fails to utilize the best available science by: (a) relying on a flawed biological report (June, 2017) and supporting technical analysis; (b) relying on a flawed PVA that, among other flaws, was constructed to produce a desired outcome (two populations at a specific size), includes

problematic parameters (that impact the outcome, e.g., percentage of females pairing), fails to account for inbreeding depression (documented in the population), includes a "management target" or population cap chosen by the Service, incorporates incomplete and uncertain data, includes inaccurate assumptions about mortality rates, and downplays the effects of inbreeding depression; (c) relying on a flawed habitat suitability analysis ("HSA") and model that, among other things, excludes suitable habitat in the United States, fails to account for changes to habitat from climate change, and assumes – in the absence of any meaningful data, information on available prey density, and analysis – that Mexico possesses sufficient habitat to support restoration efforts; (d) relying on a flawed and more geopolitically based study on the Mexican wolf's historic range (i.e., Hefflefinger et al., (2017)) while ignoring the science-based peer-reviewed studies by Carroll, Fredrickson, the peer-reviewers, and Hendricks et al., (2017), which squarely rebut the Hefflefinger paper; (e) failing to properly analyze and address the questions of probability and certainty (how likely will extinction be?), how long it will take, and what degree of risk is acceptable *even if* the final plan's criteria are met; (f) relying on flawed population abundance, geographic distribution, and genetic criteria determinations, including a flawed definition of "surviving to breeding age" that requires no evidence of breeding in the wild and flawed data and science on the number of "effective releases" needed to ensure adequate genetic representation in the two wild populations; (g) ignoring the impacts of building a border wall that will effectively prevent any connectivity between the United States and Mexican populations and assuming – in the absence of any science or data – that Mexico provides high quality habitat for wolves, including sufficient public lands and ungulate populations; (h) failing to recognize that under the ESA's best available science standard, relatively minor flaws in scientific data or the absence of "precise mechanisms" and/or "definitive conclusions" do not render that information unreliable; and (i) failing to incorporate the valid, scientific based concerns raised by many of the peer reviewers and leading experts, including but not limited to Mike Phillips, Dr. Carlos Carroll, David Parsons, Dr. Richard Fredrickson, and the American Society of Mammalogists and the Society for Conservation Biology. In the absence of this analysis and information, including proper models and application of the best available science, the Service simply cannot put forth a valid road map to recovery, as required by the ESA.

Third, the Service's final recovery plan fails to properly define "conservation" under the ESA. To "conserve" means to use any and all methods necessary to bring a listed species to the point at which the measures provided by the ESA are no longer required. 16 U.S.C. § 1532 (3). Use of the term conservation therefore includes a recovery component and the need to get the subspecies to the point to ensure its long-term survival and recovery (de-listing) in the wild. *Gifford Pinchot Task Force v.*

USFWS, 378 F.3d 1059, 1069 (9th Cir. 2004). A species requires more area – more habitat and more populations – for recovery than just survival. *Id*. In the final recovery plan, however, the Service fails to take the needs Mexican wolf recovery into account, focusing solely on populations and "occupied" areas deemed important to the subspecies survival, i.e., the populations and areas necessary to ensure the species "persists" in the wild. This is a violation of the ESA.

Relatedly, the Service's final recovery plan also fails to properly define what "recovery" means for the Mexican wolf subspecies. Under the ESA, the Service can only delist Mexican wolves if the best available science reveals Mexican wolves are fully "recovered." 50 C.F.R. 424.11(d)(2). Mexican wolves can only be deemed "recovered" under the ESA if they are no longer in need of ESA protections because they no longer qualify as a "threatened" or "endangered" species, as defined by the ESA. *See* 16 U.S.C. §§1532(6),(20). As such, if the Mexican wolf subspecies remains: (a) in danger of extinction throughout all or a significant portion of its range (endangered); or (b) likely to become endangered in the foreseeable future throughout all or a significant portion of its range (threatened), it is technically not "recovered" under the ESA and could not be delisted. The Service's final recovery plan, however, never undertakes this analysis (including a significant portion of its range analysis) and allows downlisting from endangered to threatened and delisting well before recovery – as defined and understood by the ESA - occurs. This violates the ESA and is arbitrary and capricious.

The Service's final plan, for example, allows the Agency to declare victory, declare Mexican wolves "recovered," and delist the subspecies even if the subspecies remains threatened or endangered in the foreseeable future throughout all or a significant portion of its range. Only two isolated populations –a single subpopulation in the contiguous United States of approximately 320 wolves and a Mexican subpopulation of 200 –is required for delisting pursuant to the final plan. This is arbitrary and conflicts with the ESA's mandate to conserve/recover the Mexican wolf subspecies "throughout all or a significant portion of its range" and the Service's own definition of recovery. If Mexican wolf numbers in Mexico increase to 200 but the subspecies remains limited to a single isolated population in the contiguous United States, then Mexican wolves are not "recovered" under the ESA. There is not a single published-peer reviewed paper that would suggest otherwise.

Fourth, the Service's final recovery plan violates the ESA's conservation mandate by failing to provide for the conservation of Mexican wolves in areas of suitable but currently unoccupied habitat in the contiguous United States, including areas north of Interstate 40 in Arizona and New Mexico. Again, the final plan focuses solely on a single population in the contiguous United States (the experimental

population) where the subspecies currently resides and is restricted (Mexican wolves that disperse from this restricted area are captured and returned pursuant to the Service's Section 10(j) rule and related Section 10(a)(1)(A) permit). Other areas – including those identified in the scientific literature (Carroll (2006), Wayne and Hedrick (2010), and Carroll (2014)) – are never analyzed and evaluated for recovery purposes. Indeed, the scope of recovery plan is too narrow – focused on experimental population managed by Section 10(j), not the recovery of the subspecies throughout all or a significant portion of its range in the contiguous United States. This is arbitrary and conflicts with the ESA's conservation mandate.

Fifth, the Service's final plan fails to adequately analyze and address the probability that the Mexican wolf subspecies will become extinct (or endangered) in the foreseeable future based even if the adopted criteria in the draft plan is met. What is the probability that a single isolated population of 320 Mexican wolves in the contiguous United States will become extinct in the foreseeable future? As discussed above, the population viability analysis ("PVA") relied on by the Service conflicts with the best available science. The best available science suggests that an isolated population of wolves with the genetic composition of the current population shows a "relatively high extinction rate, long term decline in population size in those populations that did not go extinct, as well as decline in mean heterozygosity and other metrics of genetic viability." Carroll *et al.,* (Dec. 19, 2014 letter to the Service)(on record with the Service at J015414). The Service is also using a disturbingly high threshold for acceptable extinction risk that conflicts with the Service's own policy, the ESA, and the Service's previous determinations with respect to acceptable risk with respect to Mexican wolves and other listed species.

Sixth, the Service is arbitrarily abdicating is federal, recovery responsibilities for Mexican wolves under the ESA by handing over too much authority and control to states and relying too heavily on "conservation" efforts in Mexico. This includes, but is not limited to: (a) surrendering too much authority to determine the timing, location and circumstances of any releases of captive born wolves into the wild to the states of New Mexico and Arizona (two states which have and continue to demonstrate a long track record of opposing Mexican wolf conservation in the southwest); and (b) arbitrarily relying on the largely voluntary and highly speculative actions taken by Mexico to conserve the species. The Service's decision to rely on efforts in Mexico is particularly egregious considering the veritable lack of necessary data, public lands, suitable prey (ungulate) populations, enforceable capacity, and binding accountability to the subspecies' recovery in Mexico.

As noted by Mike Phillips (E.D. of the Turner Endangered Species Fund), the biological requirements for Mexican wolves are well understood, as are the socio-

political requirements for population persistence and eventually recovery. Those requirements are "large tracts (millions of acres) of federal public lands, robust populations of widely distributed prey, relative scarcity of livestock (cattle and sheep), and properly constructed and enforced wildlife protection laws (e.g., the ESA)." Notably, none of those essential requirements are found in Mexico. Further, the Service has absolutely no authority over Mexican wolf recovery actions in Mexico and there is no statutory or legal mandate to even recover the subspecies. As noted above, the Service has also failed to account for the building of a proposed border wall which will inhibit natural disbursement and connectivity among wolf populations in the region and on either side of the wall.

Seventh, the Service's final recovery plan fails to account for and consider the implications of projected climate change on Mexican wolf recovery efforts. As noted by Dr. Carlos Carroll (August 28, 2017 comments on the draft recovery plan), although "Mexican wolves, like other wolf subspecies, are relatively generalist in their habitat preferences, increased aridity due to climate change (Notaro et al. 2012), especially in the southern portion of the range, might be expected to decrease forage and prey abundance. This implies that recovery plans should consider the role of areas to the north of Interstate 40, within the zone of historic genetic integration between Mexican wolves and northern wolves, in increasing resilience of recovery efforts to climate change.

Eighth, the Service's final recovery plan and related findings are unsupported by reliable and meaningful data. Pursuant to the ESA and APA, the Service's findings – including findings regarding the downlisting or delisting of a species – must be supported by reliable and meaningful data and evidence and there must be a rational connection between the facts found in the record and the ultimate choice made. *See Defenders of Wildlife v. Babbitt*, 958 F. Supp. 670 (D.D.C. 1997). Here, the Service's decision fails to utilize the best available science (as outlined above) and provide biological support and data for its conclusion that the recovery plan includes the necessary actions and criteria for recovery and eventual downlisting or delisting of the species. While the Service can "draw conclusions based on less than conclusive scientific evidence, it cannot base its conclusions on no evidence." *National Assoc. of Home Builders v Norton*, 340 F.3d 835, 847 (9th Cir. 2003).

Finally, and related to the above, the Service must provide (but has failed to provide) a valid, reasonable, and rational explanation for why this final recovery plan for Mexican wolves differs significantly from the Service's 2010 Mexican wolf Conservation Assessment (which was specifically designed to acquire the best available science for recovery planning) and from the Service's previous, 2012 draft recovery plan for Mexican wolves.

As explained by the Ninth Circuit, "[u]nexplained inconsistency between agency actions is a 'reason for holding an interpretation to be arbitrary and capricious." *Organized Village of Kake v. US Dept. of Agriculture*, 795 F. 3d 956, 966 (9th Cir. 2015) (citation omitted). Agencies are entitled to change their policies, but must provide "good reasons" for the new policy and if it rests on "factual findings that contradict those which underlay its prior policy," the Agency "must include 'a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Id.* A policy change violates the law if "the agency ignores or countermands its earlier factual findings without [providing a] reasoned explanation for doing so . . ." *Id.* (citation omitted). This is precisely what the Service is failing to do here.

The Service's 2012 draft recovery plan included specific criteria regarding population size and number and metapopulation size, population trend, population connectivity (including releases from captive to wild population), amelioration of human-caused losses, post de-listing monitoring, and regulatory mechanisms. The 2017 draft and final recovery plan, however, either changes or abandons this criteria without any explanation as to why it chose to do so and without providing any supporting data or science. This is arbitrary.

The 2012 draft recovery plan, for example, discussed and incorporated the best available science on the conservation/recovery needs of the Mexican wolf, including the Carroll and Wayne and Hedrick papers cited above. The 2012 draft recovery plan notes that delisting could not occur unless the Mexican wolf subspecies obtained an adequate population size in the wild that was well connected. An adequate population would need to include – at a minimum – a metapopulation of at least 750 individuals containing a minimum of 3 primary core populations in the wild, that have persisted for 2 successive generations (8 successive years) with a census population of at least 250 individuals each. This "adequate" population would also need to be connected with adequate dispersal, demonstrate a stable population trend, and be carefully monitored, post-delisting.

The Service's final plan's recovery criteria falls well below this threshold and also conflicts with the Service's 2010 Mexican wolf Conservation Assessment. Yet, the Service has provided no reasoned explanation or rationale for the radical change in its recovery criteria or departure from the 2010 Mexican wolf Conservation Assessment and 2012 draft recovery plan. This is arbitrary.

Wherefore, this sixty day notice letter serves to put the Service on notice of its liability for violating the ESA and inform the Agency of our intent to file a citizen suit under the ESA seeking the appropriate relief.

This notice is provided pursuant to, and in accordance with, Section 11 (g)(2) of the ESA, 16 U.S.C. § 1540(g)(2).

Sincerely,

/s/ Matthew Bishop
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From:	Timothy Preso
To:	"exsec@ios.doi.gov"; "greg_j_sheehan@fws.gov"
Cc:	"sherry_barrett@fws.gov"
Subject:	Notice of Intent to Sue re Mexican Wolf Recovery Plan
Date:	Wednesday, November 29, 2017 2:37:20 PM
Attachments:	Final 60-Day Notice Letter.pdf

Dear Secretary Zinke and Acting Director Sheehan – Attached please find a 60-day notice of intent to sue regarding the November 29, 2017 Mexican Wolf Recovery Plan submitted on behalf of the Center for Biological Diversity, Defenders of Wildlife, the Endangered Wolf Center, David R. Parsons, and the Wolf Conservation Center. Please contact me with questions or to discuss this matter.

-- Tim Preso

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EARTHJUSTICE

November 29, 2017

BY ELECTRONIC AND FIRST-CLASS MAIL

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Re: Sixty-Day Notice of Intent to Sue for Violations of Endangered Species Act in Mexican Wolf Recovery Plan

Dear Secretary Zinke and Director Sheehan:

On behalf of the Center for Biological Diversity, Defenders of Wildlife, the Endangered Wolf Center, David R. Parsons, and the Wolf Conservation Center, and in accordance with the citizen suit provision of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g), we hereby provide notice that the U.S. Fish and Wildlife Service ("FWS") is in violation of the ESA with regard to the November 29, 2017 final Mexican Wolf Recovery Plan.

Mexican gray wolves—the "lobo" of Southwestern lore—once numbered in the thousands throughout the southwestern United States and Mexico. But this critically endangered species almost vanished from the face of the earth in the mid-20th century as a result of human persecution. The entire population of Mexican wolves alive today descends from just seven individuals that were captured and placed into a captive breeding program before the species was exterminated from the wild.

In the late 1990s, FWS reintroduced a small, captive-bred population of Mexican wolves into eastern Arizona and western New Mexico. Today, this tiny population of 113 individuals remains on the brink of extinction due to the lack of an effective blueprint for recovery as well as local and state opposition to recovery efforts.

In an effort to turn that tide, the parties to this letter, represented by Earthjustice, recently brought a successful lawsuit forcing FWS to prepare a long-delayed recovery plan for the

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Mexican gray wolf. Under section 4(f) of the Endangered Species Act ("ESA"), the Service must "develop and implement" a plan for Mexican wolf recovery that will provide "for the conservation and survival" of the species. 16 U.S.C. § 1533(f)(1). The term "conservation" means recovery of the species. See id. § 1532(3). The Service must incorporate into the plan a description of "site-specific management actions" that are necessary "to achieve the plan's goal for the conservation and survival of the species," as well as "objective, measurable criteria which, when met," would result in species recovery. Id. § 1533(f)(1)(B)(i), (ii). In designing the "objective, measureable criteria," FWS "must address each of the five statutory delisting factors" in 16 U.S.C. § 1533(a), and "measure whether the threats [to the species] have been ameliorated." Fund for Animals v. Babbitt, 903 F. Supp. 96, 111 (D.D.C. 1995), amended, 967 F. Supp. 6 (D.D.C. 1997); see also Defs. of Wildlife v. Babbitt, 130 F. Supp. 2d 121, 133–34 (D.D.C. 2001). The FWS's findings in the recovery plans, including population monitoring in the plans, must be "based upon the best scientific evidence available" and FWS must provide "rational reason[s]" for its decisions. Fund for Animals, 903 F. Supp. at 114.

FWS's final Mexican Wolf Recovery Plan violates these recovery planning requirements. The plan contains shortcomings that will hinder—if not prevent—Mexican wolf recovery and threatens to lead to the extinction of this iconic species. Specifically, FWS's actions in issuing the plan violate the ESA in the following respects:

- The plan restricts its identification of recovery areas to the Mexican wolf's historic range but then arbitrarily and unlawfully defines that range without regard to the best available scientific evidence establishing a larger historic range for the species. See Letter from Kristin Carden to Public Comments Processing, at 2-5 (Aug. 29, 2017) ("Carden Letter") (attached as Exhibit 1); Letter from Carlos Carroll to Public Comments Processing, at 24-27 (Aug. 28, 2017) ("Carroll Letter") (attached as Exhibit 2).

- The plan's restrictive approach to identifying recovery areas arbitrarily and unlawfully disregards FWS's own precedent in establishing Mexican wolf recovery areas as well as the best available scientific evidence identifying suitable Mexican wolf recovery habitat north of Interstate 40 and demonstrating that such habitats are essential for the species' recovery. See Carden Letter at 6-10.

- The plan fails to provide for species conservation and survival by arbitrarily and unlawfully precluding establishment of an effective metapopulation, which the best available scientific information has demonstrated to be essential for Mexican wolf recovery. See Carden Letter at 10-13.

- The plan's strategy for Mexican wolf recovery relies extensively on the anticipated success of wolf reintroduction and recovery efforts in Mexico but arbitrarily and unlawfully disregards numerous factors that undermine such reliance, including high levels of illegal mortality, limited public land ownership, inadequate information on habitat suitability, and an ineffective legal framework to facilitate recovery. See Carden Letter at 13-18.

- The plan's strategy for Mexican wolf recovery arbitrarily and unlawfully relies extensively on habitat suitability modeling results that were based on unreliable data about native prey populations in Mexico, ignored the critical factors of livestock abundance and distribution and extensive private land ownership, and irrationally treated climatic data and historical wolf records. See Carden Letter at 19-23; Carroll Letter at 9-13, 27.

- The plan's strategy for Mexican wolf recovery arbitrarily and unlawfully relies on population viability modeling that arbitrarily and unlawfully incorporated a predetermined population cap and even predicted a declining population in certain circumstances. Reliance on the modeling results also was arbitrary and unlawful because they were based on unfounded assumptions about factors including Mexican wolf mortality rates, yearling survival, pup mortality, proportion of females in the breeding pool, and inbreeding depression and did not account for the impacts of supplemental and/or diversionary feeding. See Carden Letter at 23-28; Carroll Letter at 2-9, 16-17, 27-28; Letter from Richard Fredrickson to Public Comments Processing (Aug. 29, 2017) (attached as Exhibit 3).

- The plan fails to provide for species conservation and survival by arbitrarily and unlawfully adopting an unjustifiably high 10% extinction risk over 100 years as an acceptable probability of persistence for Mexican wolf recovery. See Carden Letter at 28; Carroll Letter at 13-15.

- The plan arbitrarily and unlawfully fails to adopt objective and measurable criteria for downlisting the Mexican wolf from endangered to threatened status that are linked to an appropriate population viability study or quantitative analysis to assure a low probability of the species again becoming endangered. See Carroll Letter at 15-16.

- The plan arbitrarily and unlawfully fails to adopt objective and measurable criteria for recovery from genetic threats that identify an acceptable genetic status for the wild population at the time of delisting. See Carden Letter at 38-39; Carroll Letter at 17-18.

- The plan fails to provide for species conservation and survival by vesting the states of New Mexico and Arizona with control over the timing, location, and circumstances of releases of captive wolves into the wild population despite a long history of state efforts to oppose and delay such releases. See Carden Letter at 29-32; Carroll Letter at 18.

- The plan fails to provide for species conservation and survival by arbitrarily and unlawfully allowing for continued genetic degeneration of the remaining Mexican wolf population, including by accepting the current genetically deteriorated status of the wild population as its baseline and allowing for even more genetic deterioration. Further, the plan relies on unpublished scientific analysis to downplay the threat posed by genetic inbreeding while arbitrarily and unlawfully disregarding the role that extensive supplemental feeding has played in insulating the wild population from inbreeding impacts. See Carden Letter at 32-38; Carroll Letter at 18-21.

- The plan arbitrarily and unlawfully fails to establish any objective, measurable criteria or site-specific management actions to address the well-documented threat of excessive human-caused mortality, including illegal mortality, of the Mexican wolf population. See Carden Letter at 39-40; Carroll Letter at 21-23. Further, the plan arbitrarily and unlawfully adopts a criterion for adequacy of regulatory mechanisms to protect Mexican wolves that is inadequate, vague, and subjective. See Carden Letter at 40.

- The plan arbitrarily and unlawfully fails to establish any objective, measurable criteria to establish natural dispersal or a minimum measured rate of connectivity between Mexican wolf populations. See Carden Letter at 42-43; Carroll Letter at 21, 23.

- The plan arbitrarily and unlawfully relies on supplemental feeding of the wild Mexican wolf population to achieve recovery without considering the best available scientific evidence on this issue, including the behavioral and genetic effects of reliance on such feeding. See Carden Letter at 41-42. Further, the plan's acceptance of continued reliance on supplemental feeding is inconsistent with the ESA, which requires restoration of self-sustaining populations. See Carden Letter at 42; Carroll Letter at 23-24.

- The plan arbitrarily and unlawfully fails to describe the site-specific management actions that are necessary to achieve conservation and survival of the Mexican wolf and instead relegates such determinations to an implementation strategy that is not subject to the ESA's procedural and substantive safeguards for species recovery plans.

For the reasons stated, FWS violated the ESA in issuing the final Mexican Wolf Recovery Plan. If FWS does not withdraw its final Mexican Wolf Recovery Plan to remedy these violations within 60 days of the receipt of this letter, the parties to this notice letter will institute a legal action to challenge the plan in federal district court.

Sincerely yours,

Timothy J. Preso
Elizabeth Forsyth

Exhibit 1

EARTHJUSTICE

August 29, 2017

Public Comments Processing
Attn: FWS-R2-ES-2017-0036
U.S. Fish and Wildlife Service
MS: BPHC, 5275 Leesburg Pike
Falls Church, VA 22041-3803

Submitted Electronically

Dear U.S. Fish and Wildlife Service:

Please accept these comments on the Draft Recovery Plan for the Mexican gray wolf (Canis lupus baileyi). On June 30, 2017, the U.S. Fish and Wildlife Service ("FWS" or "Service") announced the availability of the Draft Recovery Plan for public comment. See U.S. Fish and Wildlife Serv., Endangered and Threatened Wildlife and Plants; Mexican Wolf Draft Recovery Plan, First Revision, 82 Fed. Reg. 29,918 (June 30, 2017) (Notice of Availability of Draft Recovery Plan); Southwest Region (Region 2), U.S. Fish & Wildlife Serv., Draft Mexican Wolf Recovery Plan, First Revision (2017) [hereinafter Draft Recovery Plan]. In addition to the plan, the Service released a Draft Biological Report and several associated appendices that provided the scientific foundation for the Draft Recovery Plan. See Southwest Region (Region 2), U.S. Fish & Wildlife Serv., Draft Biological Report for the Mexican Wolf (Canis lupus baileyi) 8 (2017) [hereinafter Draft Biological Report] ("This Biological Report informs the U.S. Fish and Wildlife Service's … revision of the 1982 Mexican Wolf Recovery Plan."); id. ("Together, the biological report and its appendices provide a succinct accounting of the best available science to inform our understanding of the current and future viability of the Mexican wolf, and therefore serve as a foundation for our strategy to recover the Mexican wolf."). We submit these comments on the Draft Recovery Plan on behalf of the Center for Biological Diversity, David Parsons, Defenders of Wildlife, the Endangered Wolf Center, and the Wolf Conservation Center. Non-governmental source materials cited in this letter are provided as Exhibits in the attached pdf.

Mexican gray wolves—the "lobo" of Southwestern lore—once numbered in the thousands throughout the southwestern United States and Mexico. Draft Biological Report at 15. But this critically endangered species almost vanished from the face of the earth in the mid-20th century as a result of human persecution. The entire population of Mexican wolves alive today descends from just seven individuals that were captured and placed into a captive breeding program before the species was exterminated from the wild.

In the late 1990s, the U.S. Fish and Wildlife Service (FWS) reintroduced a small, captive-bred population of Mexican wolves into eastern Arizona and western New Mexico. Today, this tiny population of 113 individuals remains on the brink of extinction due to the lack of an effective blueprint for recovery as well as state opposition to recovery efforts. See Draft Biological Report at 10 (population estimate of 113 wolves); Larisa E. Harding et al., Genetic Management and Setting Recovery Goals for Mexican Wolves (Canis lupus baileyi) in the Wild,

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203 Biological Conservation 151, 151 (2016) ("the Mexican wolf recovery program has struggled to establish and update a species recovery and management plan that has the support of both state and federal agencies involved").

In an effort to turn that tide, conservationists, represented by Earthjustice, recently brought a successful lawsuit forcing FWS to prepare a long-delayed recovery plan for the Mexican gray wolf. Under section 4(f) of the Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq., the Service must "develop and implement" a plan for Mexican wolf recovery that will provide "for the conservation and survival" of the species. 16 U.S.C. § 1533(f)(1). The term "conservation" means recovery of the species. See id. § 1532(3). The Service must incorporate into the plan a description of "site-specific management actions" that are "necessary to achieve the plan's goal for the conservation and survival of the species," as well as "objective, measurable criteria which, when met," would result in species recovery. Id. § 1533(f)(1)(B)(i), (ii).

Unfortunately, the agency's Draft Recovery Plan contains shortcomings that will hinder—if not prevent—Mexican wolf recovery and, if finalized, would violate these ESA requirements. Contrary to FWS's assertions, the Draft Recovery Plan will not "ameliorate … the threats of human-caused mortality, extinction risk associated with small population size, and loss of gene diversity." Draft Recovery Plan at 9; id. at 20 (same). It will not lead to "Mexican wolf populations [that are] stable or increasing in abundance, well-distributed geographically within their range, and genetically diverse." Id. at 9; id. at 20 (same). As currently drafted, the Draft Mexican gray wolf Recovery Plan will likely lead to the extinction of this iconic species. To comply with the Endangered Species Act, FWS must address the issues raised in this letter and strengthen the Recovery Plan so that it provides a science-based blueprint for true recovery of the Mexican gray wolf.

I. Mexican Gray Wolf Populations & Geography

One of the primary shortcomings of the Draft Recovery Plan is that it calls for too few wolves across too restricted a geography. Specifically, the Draft Recovery Plan calls for the establishment of two disjunct Mexican wolf populations in the species' "historical" range: one population in the current U.S. recovery area in New Mexico and Arizona (the Mexican Wolf Experimental Population Area (MWEPA)), and one population in Mexico (in the northern Sierra Madre Occidental (SMOCC-N)). See Draft Recovery Plan at 9, 11, 21, 26-27 (call for two populations); id. at 20 ("historical" range); id. at 29 (discussing disjunct populations: FWS "do[es] not predict significant immigration or emigration between the Mexican wolf populations"). This amounts to too few populations across too restricted a geographic area to ensure recovery of the species, and also ignores the need for connectivity between populations. FWS tacitly acknowledges this shortcoming, stating that its call for two populations merely "could" be sufficient to recover the Mexican wolf. Id. at 21.

a. Historic Range

The Draft Recovery Plan inappropriately restricted its analysis of potential recovery areas for the Mexican gray wolf to the species "historical range." Id. at 20. There are a number of problems with FWS's "historical range" approach. The first is that the agency improperly delineated the Mexican gray wolf's historical range. The species' historical range extended beyond the area defined by FWS (i.e., southern Arizona, southern New Mexico, Mexico), potentially northeast into Nebraska and westward into California. See Draft Biological Report at 18-19. This is confirmed by modern genetic analysis. See discussion Part I.a.i, infra. Further, regardless of the alleged boundaries of the species' historic range, Mexican gray wolves bred with other wolf subspecies in a "zone of intergradation." See Draft Biological Report at 18, 19. This intergradation zone should be recognized as part of historical Mexican wolf range insofar as Mexican gray wolves roamed there. While FWS agrees that the zone of intergradation existed, it argues that it should not be considered as a reintroduction area because it is not part of the species "core" historic range. However, even if we accept that notion (which we do not), FWS's past actions demonstrate a willingness to recover wolves outside the purported "core" range. Specifically, in determining where to reintroduce wolves in 1998, the Service opted to utilize a range map developed by Parsons (1996),[1] which included a 200-mile extension beyond the Service's defined core range. Draft Biological Report at 18. Finally, notions of "historic" wolf habitat have limited relevance today, given changing on-the-ground conditions due to human development and climate change. See discussion Part I.a.iii, infra. Rather than arbitrarily restrict its recovery efforts to a narrowly defined "historical range," FWS must look for large tracts of land that are likely to provide high-quality habitat for the lobo into the future (e.g., the Grand Canyon and Southern Rockies). Each of these issues related to historic range is discussed in more detail below and throughout this letter.

i. Historic Range: Best Available Science

It is well-established and accepted that Mexican gray wolves historically inhabited Mexico and the southwestern United States, including portions of Arizona, New Mexico, and Texas. Draft Biological Report at 17; id. at 18 (Fig. 5). It appears that the subspecies also may have ranged into southern Utah and southern Colorado, and "the analysis of molecular markers has led some to suggest the historical range of the Mexican wolf may have extended as far north as Nebraska and northern Utah ([J.A. Leonard et al., Legacy Lost: Genetic Variability and Population Size of Extirpated U.S. Gray Wolves (Canis lupus), 14 Molecular Ecology 9 (2005)]), and as far west as southern California ([S.A. Hendricks et al., Polyphyletic Ancestry of Historic Gray Wolves Inhabiting U.S. Pacific States, 16 Conservation Genetics 759 (2015)], [S.A. Hendricks et al., Re-defining Historical Geographic Range in Species with Sparse Records: Implications for the Mexican Wolf Reintroduction Program, 194 Biological Conservation 48 (2016)])." Draft Biological Report at 18-19. See also S.A. Hendricks et al., Defense of an Expanded Historical Range for the Mexican Wolf: A Response to Heffelfinger et al. (in press). In the Draft Recovery Plan and associated documents, the agency disregards this research,

[1] The citation provided by FWS for this reference is D. Parsons, Case Study: the Mexican Wolf, pages 101-23 in E.A. Herrera & L.F. Huenneke (eds.), New Mexico's Natural Heritage: Biological Diversity in the Land of Enchantment (1996 N.M. J. Sci., Albuquerque, N.M.).

relying instead on an article by Heffelfinger et al. that downplays the power of state-of-the-art genetic analyses. Draft Biological Report at 19, referencing J.R. Heffelfinger et al., Clarifying Historical Range to Aid Recovery of the Mexican Wolf, J. Wildlife Mgmt. (2017).

In choosing to ignore sophisticated genetic analyses of Mexican gray wolf taxonomy and instead rely on the outdated morphological data cited by Heffelfinger et al., FWS disregarded the best available science. As one of the peer reviewers of the Draft Biological Report explains:

> The article by Heffelfinger et al. (2017) is based on morphology (mainly size) and represents outdated science. These morphological differences are strongly influenced by the environment (prey base, density, etc.) and were based on wolves killed when the population numbers were already greatly reduced. The molecular data from recent studies are much better indicators of differences between groups and are considered the best science currently available. The dismissal of modern molecular data and focus on outdated morphological data by Heffelfinger et al. (2017) suggests both a lack of objectivity and scientific sophistication. Although it would be good to increase the sample size, recent genomic studies where the number of polymorphisms is very large somewhat compensates for this. In fact, a complete genomic sequence of a single individual can give much more information about ancestry than morphological measurements from many individuals. The realized distribution of the present day population which indicates similar habitats that it could colonize, in combination with current molecular data, are much better indicators of the potential Mexican wolf distribution than the outdated morphological data used by Heffelfinger et al. (2017).

Peer Review #2, Draft Biological Report, at lines 107-20. See also Hendricks et al. (in press); Peer Review #2, Draft Biological Report, at lines 93-96 ("Further, molecular genetic data has demonstrated that genetic ancestry from Mexican wolves extended northernly (and westernly), suggesting that Mexican wolves are the most appropriate subspecies for these areas."); id. at lines 132-38 ("Heffelfinger et al. (2017) are discounting the best available science when they discredit the recent articles by Leonard et al. (2005) and Hendricks et al. (2015, 2016). In particular, the specimen examined by Hendricks et al. (2016) in San Bernadino County had a genetic variant at 4 diagnostic autosomal loci for which Mexican wolves are fixed and had the mtDNA haplotype found in other Mexican wolves. Whether this wolf was part of the resident CA population or a migrant from AZ, these data clearly show that Mexican wolf genetic ancestry has extended far beyond the small area near the border that Heffelfinger et al. (2017) suggest."); Peer Review #4, Draft Biological Report, at lines 148-50 (referring to "notable genetic uniqueness in the Mexican wolf lineage with respect to other [North American] wolves across multiple genetic markers (mtDNA, mitogenomes, microsatellites, and SNPs)"). In simpler terms, morphology may or may not be reflective of ancestry. Genomic data will always demonstrate ancestry. Ignoring genomic data and relying on outdated morphological records makes no sense from a scientific perspective. By underestimating historical range due to a mis-reliance on outdated techniques, FWS limits opportunities for Mexican gray wolf recovery.

ii. Zone of Intergradation

Another factor calling for a more nuanced view of historical Mexican gray wolf range than that adopted by FWS is the interbreeding that historically occurred among wolf subspecies in the western United States. Prior to the predator eradication programs that accompanied European colonization of the American West, wolves ranged from Mexico through Canada to Alaska, and there existed a gradation of morphological and genetic variation across space. "[S]trict geographic borders for genetic ancestry as proposed by" FWS in the Draft Recovery Plan did not exist, Peer Review #2, Draft Biological Report, at lines 85-88, and Mexican wolves interbred with other wolf subspecies in a wide "zone of intergradation," id. at lines 27-30 (clines of genetic ancestry and morphology); id. at 121-26 (same); Draft Biological Report at 18, 19 (zone of intergradation). See also Hendricks et al. (in press); Leonard et al. (2005); Frank Hailer & Jennifer A. Leonard, Hybridization Among Three Native North American Canis Species in a Region of Natural Sympatry, PLOS One (2008). This zone of intergradation encompassed lands north of Interstate 40, FWS's chosen bright line beyond which Mexican gray wolves are forbidden to roam. However, from a species recovery perspective, "[t]he most appropriate extant subspecies for … areas [in northern New Mexico, northern Arizona, southern Utah and southern Colorado] is the Mexican wolf because of its proximity to these areas (other putative wolf subspecies have been extirpated from any nearby areas)." Peer Review #2, Draft Biological Report, at lines 89-91. FWS should have considered these areas as habitat for Mexican gray wolf recovery in the agency's Draft Recovery Plan; excluding them from analysis was arbitrary and relied on faulty reasoning.

iii. Changing Climatic Conditions

Even if we were to accept FWS's definition of "historical range" (which we do not), FWS's failure to consider how climatic changes will affect Mexican gray wolf habitat allowed the agency to artificially restrict the geographic area considered for recovery. While asserting that climate change is not a threat to the lobo, FWS did "recognize that climatic conditions may change over the longer term and consider[ed] establishing populations with genetic representation in ecologically/geographically varied habitat to provide Mexican wolves with the potential to withstand these changes." Draft Recovery Plan at 31. See also Draft Biological Report at 43-44 ("anticipat[ing] that genetically diverse wild populations in both reintroduction areas will be better able to respond to not only the current range of habitat conditions, but also future changing conditions such as shifts in prey availability, drought, or other environmental fluctuations"). FWS's recognition that climate change will alter on-the-ground habitat conditions in Mexican gray wolf range counsels for consideration of a broad spectrum of habitats for recovery, including more northerly habitats. See Hendricks et al. (in press) ("Given the difficulty of establishing Mexican wolves in the U.S. and Mexico, which contrasts with the considerable success of Yellowstone-Idaho reintroduction ([R.K. Wayne & P.W. Hedrick, Genetics and Wolf Conservation in the American West: Lessons and Challenges, 107 Heredity 16 (2011)]), expanded historical range and suitable habitat is desperately needed, and as discussed above, is supported by ecological and genetic evidence. Further, climate change is likely to increase the proportion of suitable habitat northwards."). FWS irrationally allowed antiquated notions of "historical habitat" to override considerations of the ways in which climate change and associated changing habitat conditions might affect Mexican gray wolf recovery.

These considerations should have prompted FWS to consider Mexican gray wolf recovery in habitats north of the proposed recovery area, including habitats north of I-40.

iv. Wolf Recovery in "Non-historical" Habitat

1. "Core" Range and the MWEPA

In deciding to omit habitats north of I-40 as possible recovery areas for the Mexican gray wolf, FWS placed heavy reliance on Heffelfinger et al.'s assertion that, historically, Mexican wolves never ventured very far north of the U.S.-Mexico border. See Draft Biological Report at 19 ("The Service continues to recognize the concordance in the scientific literature depicting the Sierra Madre of Mexico and southern Arizona and New Mexico as Mexican wolf core historical range."). Recent genetic analysis throws the validity of that assumption into question, as discussed above. But even assuming that the Mexican gray wolf's "core" historical range was limited to the area delineated by Heffelfinger et al. (which it was not), FWS in the past decided that reintroducing Mexican gray wolves to areas north of the "core" range was, in fact, appropriate. Specifically, FWS adopted "a 200-mile northward extension into central New Mexico and east-central Arizona" when it reintroduced Mexican gray wolves into the Blue Range of the MWEPA in 1998. Draft Biological Report at 18. Id. at 19 ("the Service continues to accept a depiction of historical range as per Parsons (1996) that extends into central New Mexico and Arizona").

That decision was wise from a Mexican gray wolf recovery perspective, and FWS takes pains to highlight the fact that the reintroduced population in this northward extension area (i.e., in "non-core" historical habitat) recently grew to 113 wolves. Draft Recovery Plan at 15. See also Peer Review #2, Draft Biological Report, at lines 44-45 (noting that "[t]he reintroduced wolf population is inhabiting ponderosa pine–elk country outside of the historical range"). Much of the remainder of the MWEPA—including the purported "historical core range" to the south of the occupied areas—does not and is unlikely to provide suitable habitat for Mexican gray wolves today. See id. at lines 44-49.

FWS must recognize that "the realized contemporary range and habitat of the successful reintroduced population is much more significant than any historical range data accumulated when the Mexican wolf was being hunted to extirpation." Id. at lines 22-24. "[T]he realized range indicates what other habitat would be suitable for range expansion to the north if the wolves were allowed to move, or be reintroduced, there." Id. at lines 24-26. By failing to appreciate the importance of habitat types utilized by modern-day Mexican gray wolves and instead myopically focusing on alleged historical "core" range—a focus to which FWS has not always been wed—FWS hamstrings Mexican gray wolf recovery and threatens the future of the species.

2. Lands North of Interstate 40

FWS's confinement of Mexican gray wolf recovery to an ecologically arbitrary geography based on obsolete notions of historical range prevents the Service from most effectively staging releases and growing reintroduced Mexican gray wolf populations in the

United States. In an attempt to sidestep this issue, FWS in the Draft Recovery Plan focused instead on recovering a population of Mexican gray wolves in Mexico. While reintroduction of Mexican gray wolves in Mexico is a worthwhile goal, FWS cannot abdicate its responsibility to recover a species by assigning a major part of the recovery responsibility to a country where the physical and social conditions required for recovery likely do not exist, while simultaneously ignoring feasible domestic recovery opportunities. See Peer Review #1, Draft Biological Report, at lines 29-30 ("it seems inappropriate for the recovery plans for each subspecies to put on 'blinders' so strong that large portions of former wolf range are ignored"). FWS should have considered the viability of other areas in the United States—including areas north of Interstate 40 (I-40)—as possible reintroduction sites.

From an ecological standpoint, it appears that Mexican gray wolves would fare well in habitats north of I-40. For example, "the reintroduced Mexican wolf population now exists in a habitat similar (ponderosa pine forest) to that in these areas [north of I-40] and has prey similar (elk and/or deer) to these areas." Peer Review #2, Draft Biological Report, at lines 92-93. Multiple peer-reviewed studies have identified suitable habitat for Mexican gray wolves in areas north of I-40. See, e.g., Carlos Carroll et al., Developing Metapopulation Connectivity Criteria from Genetic and Habitat Data to Recovery the Endangered Mexican Wolf, 28 Conservation Biology 76 (2014); Carlos Carroll et al., Defining Recovery Goals and Strategies for Endangered Species: the Wolf as a Case Study, 56 BioScience 25 (2006); Carlos Carroll et al., Spatial Analysis of Restoration Potential and Population Viability of the Wolf (Canis lupus) in the Southwestern United States and Northern Mexico (July 12, 2004). So have previous iterations of FWS's Mexican gray wolf Recovery Team. See Mexican Wolf Recovery Team, Draft Recovery Plan Text (May 7, 2012) [hereinafter 2012 Draft Recovery Plan]; Mexican Wolf Recovery Team, Draft Mexican Wolf Recovery Plan: Appendix 1—Modeling and Analysis Procedures Used to Evaluate Recovery Criteria for the Mexican Wolf (Dec. 19, 2013); Mexican Wolf Recovery Team—Science and Planning Subgroup, Proposed Recovery Criteria for the Mexican Wolf: Briefing for the Director, U.S. Fish & Wildlife Serv. (Mar. 29, 2013) [hereinafter 2013 Director Briefing]; Mexican Wolf Recovery Team—Science and Planning Subgroup, Slideshow: Recovery Criteria for the Mexican Wolf (Mar. 29, 2013) [hereinafter 2013 Recovery Team Slideshow]; Richard Fredrickson, Assessing Potential Recovery Scenarios and Identifying Factors Affecting Success (Vortex Modeling Appendix) (Dec. 3, 2013). In fact, not only does the best available, peer-reviewed scientific research identify areas north of I-40 as suitable Mexican gray wolf habitat, that research posits that those habitats are crucial for the species' recovery. See, e.g., Carroll et al. (2014), at 77-78. FWS inexplicably failed to incorporate this best available science into its recovery analysis and thus inappropriately omitted consideration of areas north of I-40 as suitable recovery areas for the Mexican gray wolf.

The agency's explanation as to why it did not consider areas north of I-40 for recovery is unconvincing. In the Draft Biological Report, FWS stated that

> there are limited areas within the core historical range of the Mexican wolf with the ecological conditions and size necessary to support Mexican wolf populations: the MWEPA in the United States, and two locations in the Sierra Madre Occidental Mountains of Mexico. Previous studies (Carroll et al. 2004; Carroll et al. 2006) identified potential areas north of the MWEPA with suitable habitat for Mexican wolf

> reintroduction, but we are currently focused on historical range identified in Parsons (1996) in collaboration with ongoing recovery efforts in Mexico.

Draft Biological Report at 42. However, as previously described, FWS's delineation of historical range is scientifically unsupported and—even if one were to accept FWS's definition of "core historical range"—the agency's acceptance of Parsons (1996) already places the agency outside the agency's defined "core" range. If the agency has already once expanded the recovery range map outside "core" range, it cannot reasonably refuse to consider other areas outside of the "core" range simply because they are outside that core. Further, areas outside FWS's notions of historical "core" range increasingly will be required for Mexican gray wolf recovery as climate change, habitat destruction and modification, and other stressors limit the potential of historical habitats (including Mexico) to support this species. And, in any case, the agency offers no reason why the species' historical range, for purposes of recovery planning, does not include the areas identified by published genomic data and/or the acknowledged zone where the Mexican wolf historically intergraded with other subspecies.

Further, it appears that the decision to limit the recovery effort to two small populations south of I-40 is grounded not in science or squabbles over the definition of "core" range but in politics. Notes from the April 11-15, 2016, Mexican Wolf Recovery Planning Workshop state that, "[t]o alleviate concerns over training the model for more mesic habitat that would emphasize areas above I-40, the group agreed to cap the model at I-40 for geopolitical reasons." Draft Notes: Mexican Wolf Recovery Planning Workshop 4 (April 11-15, 2016) (emphasis added). See also id. (FWS's "policy stance is to first focus on assessing the feasibility of a recovery implementation strategy in historical range before looking in areas north of the general I-40 area") (emphasis added). FWS tried to couch this decision in a more tactful manner in the Draft Recovery Plan, stating that it "selected this geographical area for recovery implementation in consultation with our partners"—i.e., the states of Arizona, New Mexico, Utah, and Colorado. Draft Recovery Plan at 21. FWS's partners, however, have long been hostile to Mexican gray wolf recovery and have sought to limit its geographic scope. For example:

When there were only 50 Mexican gray wolves in the wild, Arizona Game and Fish Department Director Larry Voyles sent a letter to Arizona Senators John McCain and Jon Kyl and Representative Trent Franks asking that they "help us … to delist the gray wolf rangewide (i.e. including the Mexican wolf)." Letter from Larry D. Voyles, Director, Arizona Game & Fish Dept., to The Honorable John McCain, The Honorable Jon Kyl & The Honorable Trent Franks (Dec. 7, 2010).

In a letter to Secretary of the Interior Sally Jewell, the governors of Arizona, New Mexico, Utah and Colorado insisted that the majority of Mexican gray wolf recovery occur in Mexico. See Letter from the Doug Ducey, Governor of Arizona, John Hickenlooper, Governor of Colorado, Susana Martinez, Governor of New Mexico & Gary Herbert, Governor of Utah, to Sally Jewell, Secretary of the Interior & Dan Ashe, Director, U.S. Fish & Wildlife Serv. (Nov. 13, 2015) ("[R]ecovery of the Mexican wolf cannot and will not be achieved if the Service does not recognize that the majority of Mexican wolf recovery must occur in Mexico. … Mexico … must be home to the lion's share of on-the-ground Mexican wolf recovery."). See also Ariz. Game & Fish Comm'n, Meeting Minutes 5 (Apr. 10-11, 2015) (referring to postcard sent by

Arizona Secretary of State to Congress "urging USFWS to … focus future Mexican wolf introduction efforts on remote areas within the northern Sierra Madre Occidental mountain range [in Mexico and] halt additional introductions of Mexican wolves in Arizona").

In 2013, Director Voyles sent a letter to FWS Director Dan Ashe emphasizing that "Rowan Gould and Gary Frazer [of FWS] both acknowledged … that the final rule will direct the USFWS to capture and return any Mexican wolf that disperses outside the MWEPA," i.e., capture any wolves that disperse north of I-40. Letter from Larry Voyles, Director, Arizona Game & Fish Dept., to Dan Ashe, Director, U.S. Fish & Wildlife Service 2 (Aug. 1, 2013).

When draft recommendations from an earlier iteration of the Mexican gray wolf recovery team scientists displeased Arizona Game and Fish, in part because of recommendations to recover Mexican gray wolves north of I-40, a commissioner publicly leaked the plan—even though it was still confidential. See Public Employees for Environmental Responsibility, Complaint of Scientific and Scholarly Misconduct: Intentional Interference in Developing Science-based Recovery Criteria and Suitable Habitat in the Mexican Wolf Recovery Plan by the U.S. Fish and Wildlife Service and State "Partners" to Subvert the Application of Best Scientific Information Regarding Wolf Recovery 7 (June 7, 2012).

The Arizona Game and Fish Department also pressured (and ultimately convinced) FWS to cap the number of Mexican gray wolves in the United States at 325 individuals in the agency's revision to the 10(j) rule (the rule governing the reintroduced Mexican gray wolf population in the United States). See FEIS, Ch. 2, at 36 ("Including a population objective of 300-325 Mexican wolves and a phased approach to management of Mexican wolves in Arizona would address the State of Arizona's concerns regarding possible impacts from Mexican wolves on potentially vulnerable elk herds, especially those west of Highway 87."). Arizona had fought for an even lower threshold, seeking to cap the number of wild lobos at 200-300 animals. See U.S. Fish & Wildlife Serv., Draft Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi), Ch. 2, at 9-10 (July 16, 2014) [hereinafter DEIS] (discussing a proposal to cap Mexican gray wolf numbers at 100-150 in each of Arizona and New Mexico, for a total of 200-300 wolves).

In 2017, U.S. Senator Jeff Flake (R-Ariz.) introduced the so-called "Mexican Wolf Recovery Plan Act." S.368 (115th Cong.). This bill calls for FWS to develop a revised recovery plan for the Mexican gray wolf in partnership with a subset of interest groups including state wildlife authorities, livestock producers, ranchers, private landowners, recreation interests, and county governments. Id. § 3(b)(3). It demands that the recovery plan contain a population cap for Mexican wolves acceptable to these interest groups and a prohibition on wolf occupancy in lands north of I-40. Id. §§ 3(b)(4)(B)(i), (ii); id. § 3(b)(7)(B). It establishes a process for the states of Arizona and New Mexico to supplant FWS's authority to manage the Mexican gray wolf if certain conditions are met, and requires delisting of the species the day that the population cap is determined to have been met. Id. § 3(c); id. § 5(a). Finally, the bill states that the delisting decision will not be subject to judicial review. Id. § 5(b).

New Mexico has proven particularly hostile to Mexican gray wolf recovery in recent years. In June 2011, the New Mexico Game Commission voted to end state participation in the

Mexican gray wolf recovery program. N.M. State Game Comm'n, Meeting Minutes 13 (June 9, 2011). In November 2014, the Commission gave itself the power to deny permits for Mexican gray wolf holding facilities. N.M. State Game Comm'n, Meeting Minutes 51-70 (Nov. 13, 2014). In May 2015, the Commission exercised this power by denying a permit for Ted Turner's Ladder Ranch to hold Mexican gray wolves—something the ranch had been doing for 17 years. N.M. State Game Comm'n, Meeting Minutes 14-50 (May 7, 2015). The Ladder Ranch is a crucial holding facility for Mexican gray wolves destined for release into the wild; it is one of only three such centers in the United States. The FWS criticized the move, saying it "may hamstring recovery." Lauren Villagran, Game and Fish Denies Ted Turner Ranch New Wolf Permit, Albuquerque J. (May 8, 2015). In May 2016, the New Mexico Game and Fish Department went so far as to sue FWS to prevent all releases of Mexican gray wolves within the state's borders. See N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, Complaint, Case No. 2:16-cv-00462 (D.N.M. May 20, 2016); N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, Amended Complaint, Case No. 1:16-cv-00462-WJ-KBM (D.N.M. Aug. 26, 2016).

U.S. Senator Orrin Hatch (R-UT) threatened "dire" consequences if Mexican gray wolf recovery falls within his state's borders, see O. Hatch, Mexican Wolves Don't Belong in Utah's Dixie (Opinion), St. George News (Oct. 25, 2011), and the Utah Division of Wildlife Resources threatened legal action if the Mexican gray wolf recovery plan included habitats in southern Utah. See Utah Div. of Wildlife Res., Comments on Draft Mexican Wolf Revised Recovery Plan Sections I.g, III, and Appendix B (2013) ("Identification of areas outside the historic range of the sub-species as part of the recovery area is inappropriate and will be vigorously apposed [sic] (legally and politically) by the Utah Division of Wildlife Resources and the State of Utah.").

Even Colorado has come out swinging against lobo recovery. In January 2016, the state's Parks & Wildlife Commission passed a resolution "oppos[ing] the intentional release of any wolves into Colorado, [and] recommend[ing] that Mexican wolf recovery be confined to the subspecies' historic range …"). Colo. Parks & Wildlife Comm'n, Resolution 16-01 Regarding Introduction/Reintroduction of Wolves (Jan. 13, 2016).

The states' antipathy toward Mexican gray wolf recovery appears to have influenced the geography FWS was willing to consider for Mexican gray wolf recovery in the agency's Draft Recovery Plan. Unfortunately, FWS's capitulation to the states' demands to curtail habitat analysis, limit the geographic scope of recovery, and cap the MWEPA population reflect the triumph of politics over science and threaten Mexican gray wolf recovery. FWS's actions violate the agency's duties under the Endangered Species Act and the agency must address these issues in a revised recovery plan.

b. Metapopulation Dynamics

FWS's refusal to consider a broad landscape across which Mexican gray wolves could be recovered in the United States threatens the species because it precludes the establishment of an effective metapopulation. As noted above, the Draft Recovery Plan calls for the establishment of two disjunct Mexican gray wolf populations: one in the MWEPA and one in the SMOCC-N. Draft Recovery Plan at 9-11, 20, 21, 26-27. Acknowledging the need for an additional

population beyond the MWEPA is a good first step, but FWS's recommendations in the Draft Recovery Plan do not go far enough to ensure Mexican gray wolf recovery.

The viability of the existing wild population of Mexican gray wolves in the MWEPA "is uncertain unless additional populations can be created and linked by dispersal." Carroll et al. (2014), at 84. Such distinct, spatially separated populations of the same species that are connected by dispersal are referred to as "metapopulations." Experts have long counseled and FWS has acknowledged that the long-term conservation of the Mexican gray wolf will likely "'depend on establishment of a metapopulation or several semi-disjunct but viable populations spanning a significant portion of [the species'] historic range." U.S. Fish & Wildlife Serv., Final Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of Mexican Wolf (Canis lupus baileyi), App. G, at 28 (Nov. 2014) [hereinafter FEIS], citing Carroll et al. (2006). As FWS explains, "[f]or a species that has been extirpated from so much of its historic range, explicit effort must be made to recreate redundancy" (where "redundancy refers to the existence of redundant, or multiple, populations spread throughout a species' range"). Southwest Region (Region 2), U.S. Fish and Wildlife Serv., Mexican Wolf Conservation Assessment 12, 13, 68, 72 (2010) [hereinafter 2010 Conservation Assessment].

Generally speaking, well-connected metapopulations are better able to withstand less favorable demographic rates (e.g., birth rate, fertility rate, life expectancy) and catastrophic environmental events (e.g., wildfire, disease outbreak) than are isolated populations. This is because (1) connectivity facilitates gene flow as individuals move among populations, which reduces the severity and effects of inbreeding, and (2) the existence of multiple populations helps to ensure that the species is not wiped out if a catastrophic event decimates one of the populations. A well-connected metapopulation is especially important for the recovery of the Mexican gray wolf, which right now exists as one extremely small, isolated, and genetically threatened population in the United States and an even smaller, more isolated, and more genetically threatened population in Mexico. See generally Carroll et al. (2014); 2012 Draft Recovery Plan; Draft Recovery Plan at 18 (listing small population size as a primary threat and stressor to the Mexican gray wolf).

The Draft Recovery Plan offered FWS the opportunity to develop a recovery framework that would secure the future for the Mexican gray wolf by prescribing a metapopulation approach to recovery. Unfortunately, the Draft Plan itself—while suggesting a second population in Mexico—does not lay the groundwork for an effective metapopulation. First, two unconnected populations does not an effective metapopulation make. Contrary to FWS's assertion that "redundancy can be satisfied by the maintenance of two resilient, representative populations in the MWEPA and northern Sierra Madre Occidental," Draft Biological Report at 42-43, the MWEPA population and northern Sierra Madre Occidental population (assuming the latter can be successfully established) will never be resilient or representative under the guidelines of the Draft Recovery Plan. Mexican wolves need to recover across a broader spectrum of ecosystems to ensure representation, and to be resilient must be connected such that the populations can help rescue one another should a catastrophic event heavily impact one population. See generally Carlos Carroll et al., Geography and Recovery Under the U.S. Endangered Species Act, 24 Conservation Biology 395 (2010).

Two populations alone will not ensure the future of the Mexican gray wolf. This general principle was recognized by previous iterations of the Mexican gray wolf recovery team as well as other wolf recovery teams, all of which recommended a minimum of three interconnected populations. See, e.g., 2012 Draft Recovery Plan (entire); U.S. Fish & Wildlife Serv. & Northern Rocky Mountain Wolf Recovery Team, Northern Rocky Mountain Wolf Recovery Plan iv (Aug. 3, 1987) [hereinafter NRM Recovery Plan] ("Establishing and maintaining wolf populations in three separate areas is believed necessary for recovery"); Peer Review #2, Draft Biological Report, at lines 9-10, 297-98 (mentioning such recommendations). The 2012 Draft Recovery Plan for the Mexican gray wolf laid out three options for a metapopulation criterion for recovery, each of which required at least three wild populations and a minimum total of 750 wild Mexican gray wolves. See 2012 Draft Recovery Plan at 113. See also 2013 Recovery Team Slideshow, at slide 5; 2013 Director Briefing (entire).

Population geneticist and conservation biologist Dr. Philip Hedrick explains the rationale for this recommendation:

> The last two [Mexican gray wolf] recovery teams, composed almost entirely (17 out of 18) of scientists with either wolf biology or conservation expertise, concluded that recovery would require three interconnected populations in the United States, each with a census number of 250 wolves. These criteria were based on establishing a metapopulation large enough to avoid short-term inbreeding depression and avoid extinction in the near future. The most recent recommendation was based on detailed simulations determining persistence of metapopulations of various sizes and other parameters (Carroll et al., 2014). Having three populations also provides a safety net if one or two populations experience a large disease outbreak[2] or other catastrophe, or extensive human killing of wolves, as has occurred in the present reintroduced population. Even such a metapopulation is not adequate to maintain genetic variation for future adaptation. Because genetic variation for future adaptation is fundamental, given environmental challenges, such as the new diseases and climate change, an effective metapopulation size of 500 (or larger) is necessary.

Phil Hedrick, Letter to the Editor, Genetics and Recovery Goals for Mexican Wolves (Response to Harding et al.), 206 Biological Conservation 210 (2016) (emphasis added). See also 2012 Draft Recovery Plan. Three or more interconnected populations of Mexican gray wolves in a metapopulation of sufficient size are needed to facilitate exchange of individuals that "could result in both demographic rescue and genetic rescue so that the overall viability of the introduced animals would be increased." Peer Review #2, Draft Biological Report, at lines 13-15. See also 2012 Draft Recovery Plan at 113-14 (providing recovery criterion for interconnected populations). FWS has not offered an adequate, rational, or scientifically

[2] Note that the Population Viability Analysis (PVA) does not take into account the fact that inbred populations may be more susceptible to disease than more genetically diverse populations. See Draft Biological Report at 34 ("Inbreeding depression may affect … disease resistance.").

supported justification for departing from this approach in favor of the Draft Recovery Plan's lesser recovery standard.

The lesser recovery standard advanced by FWS in its Draft Recovery Plan—which restricts recovery to two populations, one in the MWEPA and one in Mexico—omits any analysis of the most suitable Mexican gray wolf habitat in the United States: the area north of I-40. Wolf experts have identified in "the southwestern United States … 3 core areas with long-term capacity to support populations of several hundred wolves each. These 3 areas … are in eastern Arizona and western New Mexico (i.e., Blue Range, the location of the current wild population), northern Arizona and southern Utah (Grand Canyon), and northern New Mexico and southern Colorado (southern Rockies)." Carroll et al. (2014), at 78. The Science and Planning Subgroup of FWS's last Mexican gray wolf recovery team[3] reached a parallel finding. See 2012 Draft Recovery Plan at 59 ("The several habitat suitability assessments that have been conducted over the last 20 years indicate that only three major core areas of suitable habitat exist in the area encompassing the Mexican wolf's historical habitat and adjacent areas in Arizona, New Mexico, southern Colorado and southern Utah that are capable of supporting Mexican wolf populations of sufficient size to contribute to recovery. The three core areas of suitable habitat are 1) the Blue Range Wolf Recovery Area and adjacent public lands, 2) the Grand Canyon and adjacent public lands in northern Arizona and southern Utah …, and 3) Carson National Forest/San Juan National Forest and other connected areas of public lands and private lands with conservation management in northern New Mexico and southern Colorado"); see also id. at 62-65, 66, 68, 81. This area—millions of acres of high-quality federal public lands supporting robust populations of native prey—offers a landscape where Mexican gray wolves could persist and thrive. However, FWS refused to consider Mexican gray wolf recovery in these ecologically appropriate areas in the Draft Recovery Plan, arbitrarily limiting the scope of its analysis to lands south of I-40, including lands in Mexico that appear to be unsuitable.

c. Reliance on Mexico

Although FWS refused to consider additional, appropriate land for recovery in the United States, the agency did recognize that Mexican gray wolf recovery will require more wolves on the ground than the MWEPA can support. Recovery of the Mexican gray wolf under the Draft Recovery Plan thus heavily depends on successful reintroduction efforts in Mexico. See Draft Recovery Plan at 9-11, 26-27. While we wholeheartedly support Mexico's efforts to restore the lobo, and while we believe that restoring populations in that country could help achieve the geographic distribution associated with a recovered population, we do not believe that one or two isolated populations in Mexico will contribute to the demographic or genetic recovery of the species. While reintroduction efforts in Mexico are still in the early stages, see id. at 16, illegal mortality of Mexican gray wolves has been quite high, casting grave doubt on the ability of that

[3] The Science and Planning Subgroup included nine members, all but one of which were wolf biologists and conservation ecologists. In contrast, the recovery criteria put forth in the current Plan were developed by a group whose members largely lacked formal training in wolf biology. It is worth noting that FWS never formally disbanded the Science and Planning Subgroup of the last Recovery Team. The agency should presumably, then, at least discuss the Subgroup's analyses in the Draft Recovery Plan.

country to support recovery of the species. Draft Biological Report at 32 (describing illegal mortality in Mexico). Even Arizona Game and Fish Director Larry Voyles, who has argued against an expanded Mexican gray wolf population in the United States, has called the recovery of the Mexican gray wolf "improbable … in Mexico." Letter from Larry Voyles, Director, Arizona Game & Fish Dept., to Dan Ashe, Director, U.S. Fish & Wildlife Service 2 (Aug. 1, 2013).

i. A Questionable Start

The current population of Mexican gray wolves occupying FWS's preferred recovery site in Mexico, the northern Sierra Madre Occidental Mountains, "can be characterized as an extremely small, establishing population." Draft Biological Report at 32. Reintroduction of Mexican gray wolves in Mexico began in October 2011, when five wolves (three females and two males) were released into a private ranch in the northern Sierra Madre Occidental. Martinez-Meyer et al. at 4. Over the next two months, four of those released wolves were killed and the fifth dispersed 400 km to the south. Id. Several additional releases conducted since 2011 have met with limited success; while natural reproduction has been documented, many packs have splintered and left their release sites. Id.

Illegal mortality poses a significant danger to wolves south of the border:

> [F]rom 2012 to 2016, 41 Mexican wolves have been released into the state of Chihuahua, 18 of which died within a year after release. Out of 14 adults released from 2011 to 2014, 11 died or were believed dead, and 1 was removed for veterinary care. Of these 11 Mexican wolves that died or were believed dead, 6 were due to illegal killings (4 from poisoning and 2 were shot), 1 wolf was presumably killed by a mountain lion, 3 causes of mortality are unknown (presumed illegal killings because collars were found, but not the carcasses), and 1 disappeared (neither collar nor carcass has been found).

Draft Biological Report at 32 (internal citations omitted). As of April 2017, approximately 30 wolves inhabited the Sierra Madre Occidental. Id. at 11, 33 (28 wolves as of April 2017); Martinez-Meyer et al. at 4 (31 wolves as of April 2017); id. at 68 (number of wild wolves in Mexico is "uncertain").

Further illustrating the extremely tenuous nature of the Mexican reintroduction program, human intervention to ensure persistence of Mexican gray wolves in Mexico, including supplemental feeding, has been "quite high," Martinez-Meyer et al. at 68. Such human intervention—which it appears will need to continue for the foreseeable future—is expensive, yet funding supporting wolf recovery in Mexico has been unreliable. See Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (November 2-4, 2016) ("survey funding to explore a second release area in Mexico has not been provided and therefore surveys will not occur this year. … PROCER [is likely] to face large budget cuts in 2017 (as much as 50%), which means that it is unlikely that reintroductions will be pursued in a second release area."); Peer Review #3, Draft Biological Report, at line 43 ("Most of the Protected Areas [in Mexico] don't have an approved Budget to operate."). The ability of Mexico to shoulder a substantial portion of

Mexican gray wolf recovery is thus questionable. Several limiting factors are discussed in more detail below, including the anthropogenic threats of illegal mortality and land ownership patterns, the limited availability of suitable habitat, and an unclear legal framework for Mexican gray wolf protection.

ii. Suitability of Mexico for Recovery: Anthropogenic Threats

1. Illegal Mortality

The level of Mexican gray wolf mortality that has occurred in Mexico is unsustainable. See Peer Review #2, Draft Biological Report, at lines 178-79; discussion Part I.c.i, supra. As noted above, illegal shooting and poisoning have taken a toll on wolves released to date; this killing and landowner antipathy toward the species have frustrated recovery efforts. See Draft Notes: Mexican Wolf Recovery Planning Workshop 1 (August 22-24, 2016) (noting that "land owner complaints about the presence of wolves are common [in Mexico]."); Peer Review #3, Draft Biological Report, at lines 38-40 ("Ranch owners are no easy people to obtain permission to work in their properties and never listen about the wolf role in the ecosystems, because they consider the wolf as a cattle's predator."); id. at 87-89 ("Some special considerations are the attitude of cattlemen against wolves, they consider wolves bad for cattle business because are predators, and the common use of poison for predator's control."); Draft Notes: Mexican Wolf Recovery Planning Workshop 5 (November 2-4, 2016) (noting that Mexican gray wolf mortality rates in Mexico are higher than in the U.S.). Unless and until Mexico develops an adequate plan to address such mortality (including law enforcement), Mexican gray wolf recovery in that country will be limited. FWS failed to outline in its Draft Recovery Plan how, exactly, illegal mortality will be addressed in Mexico; it is thus irrational and arbitrary for the agency to declare that recovery efforts south of the border will meaningfully contribute to the species' recovery.

2. Land Ownership

Contributing to the problem of illegal wolf mortality are land ownership patterns in Mexico. Most lands targeted for Mexican gray wolf recovery are private or communal lands whose owners/users are unlikely to tolerate wolves on their properties.

Protected federal lands like we know in the United States do not exist in Mexico. See Draft Biological Report at 21 ("Land tenureship in Mexico differs in that the federal government does not hold large tracts of land; rather, private lands and communal landholdings, such as ejidos, comprise the largest forms of land tenure in Mexico"); id. at 37 ("land tenure in areas of suitable habitat in each country are significantly different.") (internal citations omitted). As FWS explains,

> In Mexico, there are three primary types of land: federal, private, and communal. Large tracts of federally owned lands managed solely for conservation do not exist in Mexico. Ejidos are a type of communal property distributed among individuals but owned by the community that may have conservation objectives but are typically managed for multiple uses including extraction of natural resources such as timber or mining. Natural Protected Areas are managed by the

> federal government in Mexico for the protection, restoration, and sustainable use of the natural resources, but many have native or rural communities living within their boundaries, and are a mix of private, federal, and communal land. Most Natural Protected Areas do not have comprehensive management plans, and extractive uses are allowed. Because the Mexican landscape is dominated by privately and communally owned lands, landowner approval is necessary before Mexican wolves can be released onto private land. As in the United States, landowner support for the reintroduction of Mexican wolves ranges from supportive to antagonistic. Federal agencies in Mexico continue to work with landowners to seek support for the reintroduction of Mexican wolves and have obtained signed agreements from several cooperative landowners who have allowed for the reintroductions to date.

Id. at 37 (internal citations omitted). See also Peer Review #3, Draft Biological Report, at lines 41-43 ("Protected Areas in Mexico are not managed and work as they are in the US. The land is private or communal and government can't do anything that the owner would not like to do. Most of the Protected Areas don't have an approved Budget to operate."); id. lines 59-61 ("Some specific stressors could be different in Mexico than in USA because land tenure, wilderness activities, law enforcement, security and ranching patterns.").

Compounding these challenges, communal properties in Mexico often fall victim to the tragedy of the commons, the lands degraded and resources overused. Id. line 1 (regarding line 1182) ("Most of the communal properties show a general overuse of their natural resources in their land, overgrazing, soil erosion, over use of trees and wood for house fire, land opening for dry farming and water pollution around their houses. Most of these areas, don't have any type of management programs for livestock, range management, forestry, soil and water conservation. Because that in many cases the owners do not live in those towns, they show lack or little interest to keep their land and the ecosystem in good condition."). This limits the ability of these lands to support an adequate prey base and, in turn, wolves. FWS acknowledges that "land tenure and management, although potentially different between the two countries, will need to support the occupancy and management of Mexican wolves across the landscape." Draft Biological Report at 38. Given the complicated patterns of land tenure and management in Mexico, however, Mexican gray wolf recovery in that country remains a tenuous proposition. The suitability of those lands from an ecological perspective also remains an open question.

iii. Suitability of Mexico for Recovery: Suitable Habitat

In 2000, Mexico's Proyecto de Recuperacion drafted a recovery plan for the Mexican gray wolf that explained that while "Mexico supported reintroduction on both sides of the Mexico-United States border, … it would be difficult to find appropriate habitat for reintroduction in Mexico." Draft Recovery Plan at 13. FWS's Draft Recovery Plan likewise equivocates on the potential of Mexico to support recovery, stating that "[b]ased on recent habitat modeling, we expect that either of these areas [(northern and southern Sierra Madre Occidental)] may be able to support a population of Mexican wolves." Id. at 21 (emphasis added). Nonetheless, FWS heavily relies on reintroduction efforts in Mexico to support Mexican gray wolf recovery. See id. at 9-11, 26-27.

To support its reliance on recovery efforts in Mexico, FWS relies on the results of a habitat suitability model. However, the habitat suitability analysis that undergirds FWS's recovery plan uses poor quality data and thus fails to demonstrate Mexico's ability to contribute to Mexican gray wolf recovery. FWS and Recovery Team participants discussed this challenge throughout the recovery planning process. See, e.g., Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (April 11-15, 2016) ("Primary challenges include dealing with lack of information or poor quality information and data mismatch across the border."). One of the primary data shortcomings, discussed in more detail under the heading Models, Part II.a, infra, concerns prey biomass. Wolf recovery in any ecosystem depends largely on the existence of an adequate prey base. See Draft Biological Report at 21 (listing "high native ungulate density" as one of "the most important habitat attributes needed for wolves to persist and succeed in pack formation"); id. at 38 ("Successful Mexican wolf recovery will require that Mexican wolf populations occupy large areas of ecologically suitable habitat. Prey availability will need to be adequate to support populations …."). Yet Mexico does not have long-term, accurate data on wolf prey availability in the country. See Draft Notes: Mexican Wolf Recovery Planning Workshop 5 (August 22-24, 2016) ("Ungulate information is the weakest component of the [habitat] assessment but is the most important habitat feature for wolves.").

Ungulate data collected in Unidades de Manejo para la Conservación de la Vida Silvestre (UMAs) are uncertain due to varied data collection techniques, and are only readily available for a short time period. See Draft Notes: Mexican Wolf Recovery Planning Workshop 14 (April 11-15, 2016) ("Group acknowledged issue with UMA data availability as it relates to timely completion of habitat assessment—only two years of data are available electronically, the rest is on paper and would be prohibitively time consuming to utilize."). In addition, some of these data are reported by landowners who operate game farms on their properties. See Martinez-Meyer et al. at 32 (noting that "UMAs primary source of income come from hunting tags"). These landowners have an incentive to inflate deer numbers to attract hunters (and thus income) to their property. See Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (April 11-15, 2016) (noting the connection between landowner inflation of estimated deer numbers and hunting permits issued); Peer Review #3, Draft Biological Report, at lines 80-82 (agreeing that "deer counts in Mexico have a big 'bias' because the economic value of the deer species (white tail and mule deer)"); Martinez-Meyer et al. at 32 (discarding certain mule deer data from Mexico because reported values "were up to 10 times greater than the average values in Arizona and New Mexico"). Further, landowners are unlikely to tolerate wolves on game farms insofar as this predatory species could potentially decrease profits. See Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (April 11-15, 2016) ("Group recognized that the presence of a predator could decrease the value of a UMA that is permitted for deer hunting and questioned what could be expected to happen with wolf presence on UMAs in terms of the likelihood of illegal killing of Mexican wolves."). Ungulate density on areas outside of these game farms, where wolves potentially might be more welcome, "is likely to be much less and might be at a level that is unsustainable for wolves." Peer Review #2, Draft Biological Report, at lines 324-25. Whether the landscape can support Mexican gray wolf recovery from an ecological perspective, thus, remains uncertain. The legal landscape for recovery in Mexico is also unclear.

iv. Suitability of Mexico for Recovery: the Legal Landscape

The Draft Recovery Plan fails to describe the legal landscape for lobo protection in Mexico—specifically whether that country's legal framework is sufficient to promote Mexican gray wolf recovery. The Draft Biological Report states that "[t]he Mexican wolf is protected … by federal regulation as a subspecies in Mexico," Draft Biological Report at 14, but it fails to explain exactly what this means or how effective the cited regulation may be in facilitating wolf recovery. The Recovery Team called for a comparison of U.S. and Mexico law so that it could better understand what Mexico requires in terms of the species' protection and recovery. See Draft Notes: Mexican Wolf Recovery Planning Workshop 10 (April 11-15, 2016) ("Mexico needs to define what their goal is for Mexican wolf recovery—is it a certain population number or distribution, or returning an ecological function to the landscape? The Service discussed recovery under the ESA—including the requirement to set objective and measurable criteria that alleviate threats. Group agreed that it would be helpful to have a comparison of US and Mexico endangered species laws.").

If such a comparison was completed, the results were not discussed in either the Draft Recovery Plan or Draft Biological Report. As a result, the public cannot understand or comment on the sufficiency of this legal framework to foster or promote Mexican gray wolf recovery in Mexico. It would be instructive to know how well Mexico's species protection law aligns with the Endangered Species Act, and whether that country's legal framework includes a mandatory duty for federal officials and agencies to advance recovery and enforcement provisions. If recovery in Mexico is discretionary rather than mandatory, there is no basis for FWS to abdicate the Service's statutory mandate to advance recovery to the Mexican government.

FWS's recovery plan for the Mexican gray wolf needs to explain, in detail, the extant legal structure for imperiled wildlife in Mexico and how that structure provides for restoration work that can reasonably be expected to contribute to recovery under the U.S. Endangered Species Act. See Draft Notes: Mexican Wolf Recovery Planning Workshop 10 (November 2-4, 2016) (referring to the Kemp's Ridley sea turtle recovery plan signed by both the U.S. and Mexico, and noting that while "it mentioned Mexico's regulations [it] didn't necessarily comply with Mexico's regulations").

Given the substantial challenges facing Mexico's Mexican gray wolf recovery program just described—anthropogenic threats including illegal mortality and land ownership patterns, the questionable existence of suitable habitat, and an unclear legal framework for the species' protection—FWS's heavy reliance on Mexican gray wolf reintroduction efforts in Mexico to support downlisting[4] and delisting is unjustified. The country's reintroduction efforts, while laudable, have yet to demonstrate a significant probability of success. Unless and until that changes, it is arbitrary and unlawful for FWS to rely on Mexico to shoulder a substantial portion of Mexican gray wolf recovery.

[4] FWS has proposed downlisting based solely on the status of the SMOCC-N population—a population whose security, as just described, is far from certain. See Draft Recovery Plan at 9-10, 26.

II. Models

To achieve recovery, Mexican gray wolves will need to occupy suitable habitat in sufficient numbers to persist into the foreseeable future with reasonable certainty. In an effort to assess suitable habitat and population viability, FWS relies on two modeling exercises: a habitat suitability model, referenced above, and a population viability analysis (Vortex) model. See Draft Recovery Plan at 14. The habitat suitability analysis purportedly "assesses the current conditions of the landscape in portions of Arizona, New Mexico, and Mexico based on habitat features required to sustain Mexican wolf populations." Draft Biological Report at 8. The Vortex model seeks to "assess … the conditions needed for Mexican wolf populations to maintain long-term viability." Id. Significant limitations with both models, including lack of quality data and optimistic parameters, limit the practical usefulness of the models' output. FWS's reliance on these models to support Mexican wolf recovery in its Draft Recovery Plan is thus unfounded and inappropriate, and is likely to lead to the species' extinction. FWS must address the concerns raised below in revised modeling exercises before relying on model output as the basis for Mexican gray wolf recovery.

a. Habitat Suitability Analysis

i. No Empirical Evidence of Suitability

Mexican gray wolf recovery will succeed only if the species is afforded access to substantial areas of suitable habitat. See Draft Recovery Plan at 18 (listing adequate habitat availability/suitability as a stressor for Mexican gray wolves). FWS thus initiated a habitat suitability analysis to determine where suitable habitat for the lobo exists,[5] and thus where recovery efforts should focus. However, a lack of high-quality data on key attributes of Mexican gray wolf recovery, including prey availability and livestock presence, limits the utility of the analysis results. As one peer-reviewer succinctly stated, "the number of assumptions, potential biases, lack of data, and reliance on information from other populations makes it difficult to place a great deal of faith in these model results." Peer Review #5, Draft Biological Report, at lines 174-76. In short, the habitat suitability analysis provides no empirical evidence of habitat suitability.

Two of "the most important habitat attributes needed for wolves to persist and succeed in pack formation [are] high native ungulate density, and low livestock density." Draft Recovery Plan at 21. Yet reliable data on these attributes are lacking. The authors of the habitat suitability report emphasize that their analysis is "only the first of a series of steps that should be considered to select specific sites for further releases." Martinez-Meyer et al. at 56-57 (emphasis added). More specifically, "the scope of this study is to identify those areas in which suitable habitat conditions prevail and thus fieldwork should be initiated to evaluate environmental parameters like prey and cattle density, habitat condition, and social aspects such as land tenure, attitude

[5] This analysis arbitrarily was limited to lands south of I-40. See Draft Notes: Mexican Wolf Recovery Planning Workshop 4 (April 11-15, 2016) (emphasis added) ("To alleviate concerns over training the model for more mesic habitat that would emphasize areas above I-40, the group agreed to cap the model at I-40 for geopolitical reasons.").

towards the presence of wolves, and safety conditions for field teams, among others." Id. at 57. See also id. at 65 ("an urgent next step is to carry out a coordinated effort to gather updated, systematic field data that fulfills the needs for robust rangewide ungulate density estimations"); id. at 69 ("information on ungulate density in Mexico is still poor. It is necessary to carry out systematic, extensive field surveys to produce reliable density estimates and rangewide models to be incorporated in the habitat suitability analysis."); Draft Notes: Mexican Wolf Recovery Planning Workshop 5 (August 22-24, 2016) (Martinez explaining that "the habitat assessment should be viewed as preliminary information that can be used to stimulate field work to verify results, gather additional information (particularly on ungulates), and consider social tolerance").

FWS ignores these caveats, however; the agency takes the preliminary results of the habitat suitability analysis at face value and rests the fate of the recovery program—the fate of the lobo—upon them. This is unjustifiable. The habitat suitability analysis is insufficient as the basis for the Draft Recovery Plan because:

1) Reliable data about native prey populations in Mexico do not exist;
2) The habitat model nearly completely ignores the issue of livestock abundance and distribution; and
3) The habitat model almost completely disregards the issue of land ownership.

See Martinez-Meyer et al. at 19 (explaining that the habitat model incorporates only the following variables: an abiotic niche model; land cover and vegetation types; ungulate biomass; human population density; and road density).

Regarding prey populations: Martinez-Meyer et al. state, in the preface to their habitat suitability analysis, that "[d]ata available for the ungulate biomass index [(UBI)] was not robust." Id. at iii. They explain that their "estimates of prey density and UBI come with significant uncertainty, mainly for the Mexican portion of the distribution of the wolf. In Mexico the only wild ungulate that is a primary prey for the Mexican wolf is the Coues white-tailed deer …." id. at 65 (emphasis added). See also id. at 31 (same); id. at 69 ("information on ungulate density in Mexico is … poor"); id. at 18-19 ("One of the main limitations of habitat analysis for the Mexican wolf in the past has been the asymmetry of environmental and anthropogenic variables between the US and Mexico, thus concordant information of critical habitat variables for the two countries is necessary. Natural factors, including vegetation and prey density, and anthropogenic factors, such as human population density, infrastructure (e.g., roads, settlements), land tenure and protection are key factors to consider relative to wolf population establishment. In the US, high-quality or high-resolution information exists for all of these factors. Mexico information is quite reliable for some factors (e.g., land cover or population density), but is low-quality or lacking for many regions within the distribution of the Mexican wolf for other factors (e.g., prey density)" (internal citations omitted); Draft Notes: Mexican Wolf Recovery Planning Workshop 5 (August 22-24, 2016) (discussing concern with quality, reliability, and comparability of ungulate information).

The unreliability of ungulate data in Mexico is problematic because it is well known that, in areas where human-caused mortality is low, variability in wolf population size is largely a function of prey biomass. See Martinez-Meyer et al. at 30-31 ("Demography of wolves, as many

other carnivores, strongly depends on the availability of their prey. For instance, density of primary prey species has been identified as an important factor promoting wolf survival, recruitment and habitat use. … For these reasons, prey densities have been used as a key predictor of wolf population and for habitat analysis.") (internal citations omitted); Peer Review #2, Draft Biological Report, at lines 384-85 ("ungulate density probably will be the major factor determining viability of the Mexican population (if human-caused mortality is controlled)"). According to Martinez-Meyer et al., unreliable ungulate data is a key weakness in their analysis, and inclusion of ungulate biomass information "may mislead the habitat models." Martinez-Meyer et al. at 39. See also id. at 57 (stating that "we are concerned about the reliability of th[e] map" generated using UBI information). Given the importance of prey availability to wolf persistence, and given that prey data from Mexico are poor or lacking, FWS may not rely on the habitat suitability analysis to delineate "suitable habitat" for wolves in that country.

Regarding livestock and land ownership: the failure of the habitat suitability analysis to include layers for these two variables is a fatal flaw given that human-caused mortality due to real and perceived conflicts with livestock—especially on private land—has been and continues to be the primary anthropogenic threat to the Mexican gray wolf. See id. at iii (environmental variables used the model included "climatic-topographic suitability, land cover use based on frequency of occurrences, ungulate biomass, road density, and human density" and reintroduction sites need to consider "reliable field data of … cattle density [and] land tenure"); id. at 19 (listing variables used in the habitat model). Even without an explicit land ownership layer, Martinez-Meyer et al. conclude that "[m]ost of high-suitable areas for wolves [in Mexico] are under private lands." Id. at 69. That FWS would base its Draft Recovery Plan on a habitat model that ignores the most common cause of human-caused mortality (i.e., real and perceived conflicts with livestock), on private lands whose owners are under no obligation to recover the Mexican gray wolf, cannot be justified.

FWS acknowledges both the importance of these attributes and the limitations of the habitat analysis, stating that "[s]uccessful Mexican wolf recovery will require that Mexican wolf populations occupy large areas of ecologically suitable habitat. Prey availability will need to be adequate to support populations, and land tenure and management … will need to support the occupancy and management of Mexican wolves across the landscape." Draft Biological Report at 38. Further,

> ground-truthing is needed to verify the results of [Martinez-Meyer et al.]'s niche modeling exercise to ensure the areas identified as suitable habitat adequately contain the biological characteristics necessary to support Mexican wolves. Specifically, verifying the availability of ungulate biomass in Mexico is of particular importance, as wolf density is positively correlated to the amount of ungulate biomass available and the vulnerability of ungulates to predation. (Fuller et al. 2003). [I]n Mexico, ungulate monitoring methodologies are more variable and data is not readily available in the area of interest, making predictions about ungulate biomass as a characteristic of habitat suitability considerably less certain. (Martinez-Meyer et al. 2017). We recognize that ungulate availability is lower in the Sierra Madre Occidental sites compared with

> the MWEPA, in large part due to the absence of elk in Mexico, as well as lower deer densities.

Id. at 36-37. To remedy this situation, FWS declares that "[a]s Mexico continues efforts to establish a population of Mexican wolves in the Sierra Madre Occidental, information about ungulate (or other prey) abundance and density will be informative to more fully understand the area's ability to support wolves." Id. at 37. But this places the cart before the horse. Information on key attributes such as prey density, livestock abundance, and land tenure need to undergird recovery planning; Mexican gray wolves should not be dropped on the landscape with a hope and a prayer that conditions essential for recovery exist, and critical data collected after the fact. See Martinez-Meyer et al. at iii ("specific sites for reintroductions in Mexico and estimators of the potential number of wolves need to consider reliable field data of prey density, cattle density, land tenure, natural protected areas, safety to the field team, and acceptability of wolves by local people."). More fundamentally, FWS may not rest a critical component of its Draft Recovery Plan for Mexican wolves on recovery in the Sierra Madre Occidental when the key information needed to demonstrate the viability of recovery in that area is missing.

In short, FWS utilizes an unsupportable habitat analysis to place the future of the Mexican gray wolf on a foreign landscape overwhelmingly characterized by private land that supports abundant livestock and unknown native prey populations across which wildlife protection laws appear to be infrequently enforced. FWS relies on a habitat model that presents no empirical evidence of suitability and mostly avoids the only real threat wolves have ever faced (i.e., mortality due to conflicts with livestock) to conclude that recovery in Mexico is feasible. In so doing, the agency ignores peer-reviewed science demonstrating that suitable habitat for Mexican gray wolves in Mexico is insufficient to support recovery. See Carroll et al. (2014), at 77-78; Hendricks et al. (2016), at 53 ("[M]ost of the historic range in Mexico is currently unsuitable due to human activity … and the probability of anthropogenic wolf mortality is high."). In refusing to consider the best scientific information available regarding Mexican gray wolf habitat (or lack thereof), FWS threatens to impede and even prevent the species' recovery.

FWS's reliance on a niche-centric habitat model that concluded—despite the shortcomings just identified—that sufficient potential exists to drive a substantial fraction of future Mexican gray wolf population restoration work south of the border is arbitrary and contrary to law. Had FWS not opted to rest the future of the recovery program on Mexico, the agency would have been forced to at least consider additional domestic recovery areas (i.e., areas north of I-40 in the Grand Canyon and Southern Rockies).

ii. Mismatch in Wolf Occurrence & Climate Data

The lack of empirical evidence undergirding FWS's PVA renders the model insufficient as a basis for Mexican gray wolf recovery. Further limiting the model's utility is its treatment of climate, insofar as there is a mismatch between wolf records and climate data. Specifically, the habitat suitability model appears to have mapped historical, pre-extirpation occurrence records for the Mexican gray wolf on top of a layer of current climate conditions. See Enrique Martinez-Meyer et al., Mexican Wolf Habitat Suitability Analysis in Historical Range in the Southwestern

US and Mexico 8-9, 10-12 (April 2017) (utilizing historical wolf records collected from 1848-1980, and climate data from the WorldClim database); Peer Review #2, Draft Biological Report, at lines 354-57 (noting potential mismatch); Peer Review #5, Draft Biological Report, at lines 194-97 (same). In addition, the historical Mexican gray wolf occurrence records used are likely biased toward marginal wolf habitat because, by the time those records were collected, the lobo had already been extirpated from much of the highest quality habitat. See Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (April 11-15, 2016) ("these data points [for Mexican gray wolves] may be biased toward areas that are poor habitat for wolves").

Even if we were to accept the results of Martinez-Meyer et al.'s climatic analysis (which we do not), their results are somewhat at odds with current, on-the-ground realities for the Mexican wolf recovery program. Specifically, Martinez-Meyer et al. found that "[t]he MWEPA generally resulted [in] climatically-lower suitability," Martinez-Meyer et al. at 17, an odd finding given that the reintroduced population in the MWEPA is growing. Were reintroduction sites to be based on climatic analysis alone, the site FWS identifies in its Draft Recovery Plan as most promising for the future of the Mexican gray wolf in the United States would have been rejected. But see id. at iii, 47-48 (MWEPA becomes high quality habitat when other variables are added to the base layer). In sum, the habitat suitability analysis underlying FWS's Draft Recovery Plan relies on incomplete wolf location data and a mismatch between that data and climate data that renders it of limited value.

b. Population Viability Analysis (Vortex)

i. General Concerns

In addition to the habitat suitability analysis just described, FWS's Draft Recovery Plan for the Mexican gray wolf also relies upon a population viability analysis (PVA), specifically a PVA conducted using "Vortex" modeling software, to support key recovery criteria. See generally Philip S. Miller, Population Viability Analysis for the Mexican Wolf (Canis lupus baileyi): Integrating Wild and Captive Populations in a Metapopulation Risk Assessment Model for Recovery Planning (2017) [hereinafter PVA]. Generally speaking, a PVA seeks to "estimat[e] the probability that a population, or collection of populations, will persist for some particular time in a particular environment." Leah Gerber & Manuela Gonzalez-Suarez, Population Viability Analysis: Origins and Contributions, 3 Nature Education Knowledge 15 (2010). The utility and reliability of a PVA are a function of the quality of data used as model inputs (or, if data are lacking, the reasonableness of expert opinions or assumptions). Used appropriately, a PVA is a science-based, exploratory tool that can provide guidance in the development of effective recovery strategies.

Unfortunately, FWS appears to have turned the concept of population viability modeling on its head by structuring the Vortex model with a predetermined population cap—what appears

to be a "minimum viable population"[6]—in mind. See Draft Recovery Plan at 28 (capping MWEPA population at 320-380 wolves). In other words, rather than using the model to identify the number of wolves necessary for long-term viability, and using that threshold (with a buffer) to develop recovery goals, the model scenarios "were structured such that populations were not allowed to increase over 380 Mexican wolves in the MWEPA and 200 wolves in the northern Sierra Madre Occidental." Id. See also PVA at 9 ("Because the population-specific management targets … are less than the estimates for carrying capacity, the simulated populations will not increase in abundance beyond the targets and approach [carrying capacity]."); id. ("In contrast to the ecological carrying capacity parameter described above, a critical feature of the current demographic model is the specification of a management target abundance."); Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (November 2-4, 2016) ("we are interested in running scenarios in which we investigate the extinction risk of a recovery target that is something less than ecological carrying capacity.").

These population caps align with limits pushed for by the states, and adopted by FWS, in the agency's recently revised 10(j) rule for the Mexican gray wolf. See U.S. Fish & Wildlife Serv., Endangered and Threatened Wildlife and Plants; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, 80 Fed. Reg. 2512, 2516-17 (Jan. 16, 2005) (population objective of 300-325 Mexican gray wolves in the MWEPA); PVA at 10 ("The upper bound for MWEPA is based on previous analyses within the scope of this project, and is partly informed by existing management regulations for the Mexican wolf population in the United States."). According to the Service, these population caps were designed to avoid population growth "to levels that would cause socioeconomic concerns." Draft Recovery Plan at 28. See also PVA at 9 ("This target represents the wolf population abundance deemed both biologically viable (according to identified recovery criteria) and socially acceptable in light of the expected ongoing issues around livestock depredation and other forms of wolf-human conflict."). But see Draft Notes: Mexican Wolf Recovery Planning Workshop 4 (November 2-4, 2016) (acknowledging that "the recovery target should be based on the biological/conservation needs of the wolf, not social tolerance"). While reliance on socioeconomic concerns is an inappropriate basis for determining whether a species is recovered, see 16 U.S.C. § 1533(b)(1)(A), FWS also fails to provide empirical evidence or citations from the peer-reviewed, scientific literature that capping the population at this specific level (i.e., between 320-380) will substantially increase social tolerance.

Not only are FWS's population caps unsupported from a social tolerance perspective, some the Vortex scenarios tested with these population caps in mind resulted in populations that were declining about 40 years out. See, e.g., PVA at 19, 26. Nonetheless, the Service seeks to delist the Mexican gray wolf within 25 to 35 years (i.e., before the declines begin). This accords with FWS's problematic statement that, should the Draft Recovery Plan criteria for delisting be met, Mexican wolves "would be unlikely to need immediate relisting after reaching recovered

[6] The concept of "minimum viable population" has generally been rejected as a recovery target in conservation biology because it does not provide sufficient capacity for populations confronting unforeseen challenges. Rather than providing a single "minimum viable population" size, PVA should instead focus on providing more general information on the relationship between extinction risk and such factors as abundance, distribution, and genetic diversity.

levels." Draft Recovery Plan at 28 (emphasis added). FWS cannot rationally deem a species recovered when it is headed for decline only 5 to 15 years after a proposed delisting. The agency's PVA wrongly endorses population size and other parameters that imply that a slow deterministic decline in the wild populations is acceptable as long as eventual extinction is pushed beyond an arbitrary end date.

FWS also fails to explain its call for population targets in the United States and Mexico that are relatively similar, when the U.S. carrying capacity (according to the Vortex model) is 1000—three times higher than carrying capacities in Mexico (300 for SMOCC-N and 350 for a site in the southern Sierra Madre Occidental). PVA at 9. The Recovery Team had discussed the fact that it was important to "insure that each habitat area is supporting an equal burden, relative to the total number of wolves that could be supported at [carrying capacity]." Draft Notes: Mexican Wolf Recovery Planning Workshop 4 (November 2-4, 2016). However, the United States management target is 32-38% of estimated carrying capacity, while the Mexico management targets are from 43-83% of carrying capacity. This is particularly peculiar given the myriad challenges to recovery in Mexico (e.g., unknown prey density, unknown livestock abundance, land tenure issues) described above. It does not appear to be an "equitable" planning approach, id. at 10, nor one that is likely to lead to Mexican gray wolf recovery.

ii. Concerns with Model Inputs

In addition to the overarching concerns just described, we also have concerns about some of the inputs and assumptions that were used in the Vortex models. Specifically:

- The PVA uses estimated mortality rates for the MWEPA based on the time period between 2009 and 2015: 0.28 for pups, 0.33 for yearlings, and 0.19 for adults. PVA at 8.
    - Adult mortality rate has been identified as the most important parameter affecting population extinction. See Carroll et al. (2014), at 79 (Table 1); id. at 82. The adult mortality estimate for the Mexican gray wolf population (0.19) appears low, and significantly below what has been observed in some years of the recovery effort. See PVA at 8 (acknowledging this and "develop[ing] a set of scenarios featuring alternative estimates of mean annual adult mortality rates in addition to the aforementioned baseline value: 21.9%, 24.9%, 27.9%, and 30.9%"). Given that "the MWEPA wolf population in the United States can grow in abundance to designated management target levels [only] as long as annual adult mortality rates are below 25%," PVA at 40, and given that mortality rates for Mexican gray wolves have exceeded 25% in the past, FWS must explain how it intends to reduce and maintain effective mortality rates (defined to include removals) below this threshold. Further, FWS should develop an objective, measurable recovery criteria that would ensure mortality rates do not exceed the designated threshold. See discussion Part VI.b, infra.
    - Yearling survival: FWS does not explain why yearling survival is higher in Mexican gray wolves (0.67) than in northern gray wolves (0.55). See Peer Review #2, Draft Biological Report, at lines 144-45. If, as appears to be the case, this is due to supplemental/diversionary feeding, see discussion Part IX.a, infra, FWS should explain why it is appropriate to use these optimistic estimates, particularly given the

agency's assertion that it will ratchet down supplemental/diversionary feeding over time. PVA at 10, 18.

  - Pup mortality: In the Draft Biological Report, FWS provides a mortality estimate of 0.50 for pups (inclusive of den-bound mortality). Draft Biological Report at 20. In the PVA, a pup mortality rate of 0.282 is used. PVA at 8. This lower rate apparently does not include den-bound mortality. See id. ("The mortality estimate [for pups] consists of two phases: an early phase from first observation of pups after emergence from the den … to the time of collaring …, and a second phase from the time of collaring to the next breeding season."). Appendix D to the PVA specifies an even lower value—0.17—for pup mortality during the first six months of life. PVA, App. D, at 60. FWS needs to better explain how values for pup mortality were derived and deemed appropriate for use, and why den-bound pup mortality is irrelevant to the population analysis (when presumably some pups that die before emergence might do so because of inbreeding effects).
  - The estimated mortality rates used were based on the time period from 2009-2015. PVA at 8. This time period was associated with higher survival (particularly pup survival) and fewer removals as it coincides with the increased use of supplemental/diversionary feeding. See PVA at 8 ("Data from the most recent phase of Mexican wolf population management in MWEPA (2009-2015), corresponding to a period of relatively robust population growth due to high pup survival rates and few individual removals after conflict with local human populations, were used to develop baseline age-specific mortality estimates."). FWS no where explains why it is appropriate to use these optimistic estimates, particularly given the agency's assertion that it will ratchet down supplemental/diversionary feeding—likely the primary factor underlying the high pup survival and robust growth—over time. PVA at 10, 18.

- FWS must justify its assumption that wolves released into the MWEPA, or released or translocated into the Sierra Madre Occidental, will become "effective" migrants simply because they survived. See Draft Recovery Plan at 9-11, 26-27; PVA at 42.
- FWS's assumption that 78% of adult females in any given year breed with a male does not accord with our understanding of Mexican wolf population dynamics. While wolf populations might have a high rate of females breeding in certain circumstances, such as when wolves are at low absolute densities or low densities relative to prey populations, this rate would be expected to decline as density increased. The PVA model assumes a fixed rate, however, failing to account for changes expected as the Mexican gray wolf population increases. See generally PVA. Further, the 78% value itself was questioned as potentially too high by Recovery Team participants. See, e.g., PVA, App. A, at 47 (78%); Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (November 2-4, 2016) (sidebar comment by John Oakleaf) ("I thought there was some agreement that great lakes was 60% producing pups and ours was about 60% that actually had pups because of the probability of detection of live pups.").
- It is unclear whether the model accounts for the anticipated change in mortality rates due to the reduction in proportion of wolves vaccinated over time. See Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (November 2-4, 2016).
- FWS appears to accept that survival probabilities are equal for males and females without explaining whether this is the case and, if not, why this was not factored into the model. See PVA at 8; Peer Review #5, Draft Biological Report, at line 127.

iii. Concerns with Model Outputs

In addition to the model input issues just described, FWS needs to address the following issues regarding model output. All models used in the PVA analysis "are based on the status of the wild and captive population as of 31 December 2015" and all "simulations were initialized as of 1 January 2016." PVA at 5, 14. Given that we are now nearly 20 months out from that initialization date, and given associated changes in status of both the wild and captive populations since that time, FWS must explain whether it is reasonable for the agency to continue to rely on the results of the PVA in an effort to "achieve 90% gene diversity of the captive population in the wild within approximately 20 years." Draft Recovery Plan at 30.

For example, the release/translocation schedules relied upon in the PVA provide that, for the EIS_20_20 scenario, there will be two releases of pairs with pups from the Species Survival Plan (SSP, i.e., the captive breeding program) to the MWEPA, two releases of pairs with pups from the SSP to SMOCC-N, and two transfers of pairs with pups from the MWEPA to SMOCC-N in 2017. See PVA at 16 (Table 2). FWS should explain whether these releases and transfers occurred or are anticipated to occur, and if not, whether the model results are still valid. Further, FWS should explain why transfers from MWEPA to Mexico would be acceptable at this point, given that "if wolves are removed from MWEPA in the near future" "demographic and genetic processes can work together to destabilize the population and inhibit its continued growth." PVA at 40.

This raises a more general point. While the model outputs rely on assumptions that wolf pairs with pups will be transferred from the MWEPA to recovery sites in Mexico, it appears that translocations of wolves from the MWEPA to Mexico come at a substantial cost to the U.S. population. FWS must explain why this is acceptable given the tenuous status of the MWEPA population and the challenges facing Mexican gray wolf recovery in Mexico. See PVA at 39 ("assuming an intermediate mean annual adult mortality rate of 24.9% … the increased risk to the MWEPA population as a consequence of transferring animals to Mexico is evident"); id. Figure 18 (depicting risk in graphic form); id. at 40 ("More intensive transfer schemes such as the 'EIS_40_40' strategy put increased genetic strain on the source MWEPA population"); Philip S. Miller, Addendum: Population Viability Analysis for the Mexican Wolf (Canis lupus baileyi): Integrating Wild and Captive Populations in a Metapopulation Risk Assessment Model for Recovery Planning, at Conclusions lines 5-8 (May 22, 2017) [hereinafter Miller Addendum] ("the demographic and genetic characteristics of the MWEPA population of Mexican wolves can be improved through … a reduced reliance on using MWEPA wolves for translocations to Mexico"). See also Peer Review #2, Draft Biological Report, at lines 524-26 (discussing cost to the MWEPA population of translocations).

In sum, the PVA upon which FWS relies for its Mexican gray wolf recovery strategy is based on inaccurate and overly optimistic parameters. The analysis itself is suspect because it was developed with a predetermined outcome in mind. Even if the analysis itself was valid (which it is not), the fact that the 2017 releases and transfers upon which the model output relies do not appear to have occurred limit the model's ability to predict future population status. And even if those transfers had occurred, FWS failed to justify its willingness to jeopardize the future of the MWEPA population by removing wolves for transfer to Mexico. Overall, the PVA results

do not provide any confidence that FWS's proposed recovery criteria are sufficient to ensure the Mexican gray wolf's recovery.

iv. Probability of Persistence

Further casting doubt that FWS's recovery criteria are sufficient to ensure the Mexican gray wolf's persistence is the agency's acceptance of a high extinction risk for the species. At their current sizes, the MWEPA and Sierra Madre Occidental populations face a high risk of extinction (45% and 99% respectively) over the next 100 years. Draft Biological Report at 39. FWS states that this risk is too high, but explains that "[n]either the ESA nor the Service equate a specific extinction risk with the definitions of 'endangered' or 'threatened.'" Id. Instead, "this is a species specific determination that should be explored during the development of conservation measures and recovery plans for listed species." Id.

FWS asserts in its Draft Recovery Plan that a Mexican gray wolf population "that has approximately a 90% probability of persistence [(i.e., a 10% chance of extinction)] over 100 years [would] contribute to achieving recovery criteria." Draft Recovery Plan at 23. The agency deems such a population "resilient," id. at 27, and "highly demographically stable." Draft Biological Report at 41. The 90% threshold finally adopted by FWS appears to be the highest extinction risk discussed during Recovery Planning meetings. See Draft Notes: Mexican Wolf Recovery Planning Workshop 6 (November 2-4, 2016) ("The group discussed possible appropriate extinction risks to inform development of recovery criteria. Participants expressed support for different levels, ranging from 90% likelihood of persistence (10% extinction risk) over 100 years to 0% extinction risk over 100 years."). The agency states that it chose this risk level "to strike a balance between achieving a reasonable level of viability while also considering the needs of local communities and the economic impact of wolves on some local businesses." Draft Biological Report at 41-42.

The agency has not rationally justified its determination that a 10% extinction risk over 100 years is acceptable. This risk level is unusually high, and places a species in the "vulnerable" category by the IUCN Red List. IUCN Red List Categories & Criteria (version 3.1). FWS's reliance on D.F. Doak et al., Recommendations for Improving Recovery Criteria Under the U.S. Endangered Species Act, 65 BioScience 189 (2015), in support of this figure is misplaced; the authors in that paper avoided providing a one-size-fits-all risk prescription. See Peer Review #5, Draft Biological Report, at lines 101-103 (noting the misreliance on Doak et al.). FWS must reconsider the appropriate extinction risk threshold for the Mexican gray wolf and better justify the level it chooses. A frank discussion of the normative factors that influence the agency's decision should be included so the public can assess and comment on the extent to which the agency prioritizes species recovery against other factors (e.g., "economic impact of wolves on some local businesses," Draft Biological Report at 42).

III. Population Caps

Even if the 90% persistence threshold was appropriate (which it is not), the odds of the SMOCC-N population achieving the 90% persistence goal are slim to none. According to the Draft Biological Report, "[i]n the northern Sierra Madre Occidental, a population of less than

200 wolves is unable to reach the 90% benchmark except at the lowest tested mortality rate (approximately 19%), which is well below the population's current average adult mortality rate and expected to be unlikely to be achieved during the early years of the reintroduction." Draft Biological Report at 42. Even larger SMOCC-N populations (at or above 200-250 animals) require mortality rates of no more than 25%—something that is far from guaranteed given the high levels of illegal mortality to date. Id.

The U.S. population fares little better given limits on its growth. A MWEPA population of 300 is only able to achieve the 90% threshold with mortality rates below 25%. Draft Biological Report at 42. Mortality rates exceeding this threshold are common in the MWEPA and FWS fails to discuss how it intends to reduce mortality for this population. Given this, FWS's decision to cap the MWEPA population at low levels (320-380) and to allow the mortality rate to exceed 25% "to maintain the population" within this range are wholly unjustified. Draft Recovery Plan at 28, 29. The population cap was set to appease "local communities [and alleviate] other management concerns such as unacceptable impacts to wild ungulates from Mexican wolves." Id. at 28. See also Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (November 2-4, 2016) (discussing concerns about whether recovery numbers are "socially tolerable"). As described elsewhere in this letter, the population cap also accords with the cap memorialized in FWS's revised 10(j) rule for the Mexican gray wolf. See 80 Fed. Reg. at 2516-17.

Wolf experts have sounded a continuing refrain emphasizing the importance of increasing the absolute number and distribution of Mexican gray wolves in the wild. See discussion Part I.b, supra. Rather than allowing for sufficient growth of the wild Mexican gray wolf populations, FWS instead imposes population caps on both the MWEPA and SMOCC-N populations. These caps place the Mexican gray wolf at a high risk for extinction, something that by its very nature is inconsistent with long-term recovery of the species, let alone its basic survival.

IV. Releases

Rather than capping the wild Mexican gray wolf populations at low levels, FWS should have focused its recovery efforts on growing wild populations of the species. This growth should occur in conjunction with a robust program of releases of wolves from the SSP to the wild. FWS's PVA does rely on a schedule of releases of captive wolves to the wild to bolster the genetic health of the reintroduced populations. See generally PVA. This is a critical aspect of Mexican gray wolf recovery; carefully planned releases of captive wolves into the MWEPA and other reintroduction sites are needed to infuse the wild populations with adequate genetic diversity. See Draft Recovery Plan at 30.

FWS acknowledges the importance of "establish[ing] a schedule of releases as stated in the recovery criteria" to the genetic vitality of the species. Id. See also Miller Addendum, at Conclusions lines 5-8 (noting that "the demographic and genetic characteristics of the MWEPA population of Mexican wolves can be improved through a more intensive effort focusing on initial release of wolves from the SSP population"); Draft Biological Report at 33 ("Initial releases are conducted into the MWEPA mostly for genetic management or other specific

management purposes, and we expect this pattern to continue."); id. at 35 ("We are able to positively influence the genetic condition of the MWEPA and northern Sierra Madre Occidental population through the release of genetically advantageous Mexican wolves to the wild from captivity, cross-fostering genetically-valuable pups,[7] translocating wolves between wild populations, or potentially by removing Mexican wolves whose genes are over-represented.").

Yet releases to date have been insufficient. In addition to not releasing enough wolves, FWS acknowledges that "many released wolves die within the first year of release." Draft Recovery Plan at 23. The agency states that "[m]anagement to improve the survival of released wolves" is needed; however, the Draft Recovery Plan does not outline in detail what steps the agency will take to increase survival rates. Id. at 24. Instead of focusing on implementing a robust release program and increasing survival rates of released wolves, FWS instead declares that it is handing over to "the states of New Mexico and Arizona, and the Mexican government" the power to "determine the timing, location and circumstances of releases of wolves into the wild within their respective states, and Mexico, from the captive population, with the Service providing collaborative logistical support and facilitation of those recovery actions." Id. at 23. This is extremely problematic when the states of Arizona and New Mexico have been actively hostile to Mexican wolf releases—with New Mexico even filing a lawsuit to prevent such releases. See discussion Part I.a.iv.2, supra. To wit:

In 2011, the Arizona Game and Fish Commission voted to oppose all Mexican gray wolf releases until FWS completed a new recovery plan, new 10(j) Rule, and new management plan for the species. Ariz. Game & Fish Comm'n, Meeting Minutes 22-23 (Dec. 2-3, 2011). In 2015, the Commission again voted unanimously to oppose all releases of adult wolves from captivity. Ariz. Game & Fish Comm'n, Meeting Minutes 11 (Aug. 7-8, 2015). In 2016, five Arizona Game and Fish employees published an article on Mexican gray wolf management arguing against the release of captive wolves into the MWEPA. See Harding et al. at 154 ("While this strategy has the potential to increase genetic diversity in the wild population, we believe that this benefit is outweighed by more immediate, non-genetic challenges."). When the Arizona Game and Fish Department led the wolf reintroduction program according to their principles (2003-

[7] FWS appears to place great faith in the cross-fostering technique to promote Mexican gray wolf recovery. However, this technique is still largely experimental and the potential for it to contribute meaningfully to wolf recovery—from both population growth and genetic perspectives—requires further analysis. See Draft Biological Report at 35 ("We have been striving to decrease mean kinship and increase the retention of gene diversity in the MWEPA through the release of wolves from the captive breeding program [including by cross-fostering]. … The success of cross-fostering efforts is measured by pups surviving and breeding …. To date, we are aware of one instance in which a cross-fostered pup has survived and bred. We will continue to monitor the success of cross-fostering efforts.") (emphasis added); Peer Review #2, Draft Biological Report, at lines 242-43 (calling for an analysis of the potential genetic impact of cross-fostering).

2009) as part of the Adaptive Management Oversight Committee,[8] the wild population plummeted from 55 to 42 individuals. U.S. Fish & Wildlife Serv., Mexican Wolf Recovery Area Statistics (1998-2015). When FWS resumed control of the recovery program in 2009, the population began a steady increase. See id.

New Mexico has even more strongly opposed Mexican gray wolf releases. In 2015, New Mexico began requiring FWS to obtain a state permit to release wolves in the state. This requirement was in response to a January 2015 rule allowing the release of wolves from captivity into New Mexico (the previous rule allowed releases only into Arizona), something scientists advised was necessary for recovery. See 80 Fed. Reg. at 2523 (describing Zone 1, including parts of New Mexico, as an area where initial releases can occur). When FWS attempted to release wolves into New Mexico, the state asked FWS to get a permit—which it then denied. See N.M. State Game Comm'n, Meeting Minutes 15-16 (Aug. 27, 2015).

In spring 2016, FWS asserted its authority under the federal ESA (which trumps state law) and released two pups into New Mexico. Rebecca Moss, Gray Wolf Pups Released into N.M. Wild, Santa Fe New Mexican (Apr. 29, 2016). The New Mexico Department of Game and Fish then sued FWS to compel removal of the released pups and stop all future wolf releases. See N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, Complaint, Case No. 2:16-cv-00462 (D.N.M. May 20, 2016); N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, Amended Complaint, Case No. 1:16-cv-00462-WJ-KBM (D.N.M. Aug. 26, 2016). New Mexico was granted a preliminary injunction against releases by the district court; that injunction was overturned by the Tenth Circuit. N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, 854 F.3d 1236, 1240 (10th Cir. 2017). The case now returns to district court. In the meantime, FWS placed two cross-fostered wolves into a New Mexico den in May 2017. See Susan Montoya Bryan, Feds Release Endangered Wolf Pups in New Mexico, U.S. News & World Report (May 5, 2017). New Mexico insisted, however, that FWS remove two resident wolf pups to ensure no net increase in wolves on the ground as a result of the release. See id.

Although the ESA encourages FWS to cooperate with states in implementing the ESA, it does not permit FWS to take such cooperation so far as to adopt measures that frustrate the statute's fundamental mandates for species survival and recovery. More fundamentally, FWS's recovery plan must set forth management actions that are "necessary to achieve the plan's goal" of species recovery. 16 U.S.C. § 1533(f)(1)(B)(i). FWS's delegation of authority over all future releases to the states and Mexico violates legal requirements, including this specific statutory direction. In this regard, the releases at issue are requisites to Mexican wolf recovery. As FWS itself states in the Draft Recovery Plan, "the timing of releases is a critical factor … and … it will be important for us to establish a schedule of releases as stated in the recovery criteria." Draft Recovery Plan at 30. Even if FWS establishes such a schedule, however, it then intends to turn control of those releases over to the states. The states have no mandatory duty to recover the species of their own accord, and no need to adhere to a release schedule laid out by FWS.

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[8] The Adaptive Management Oversight Committee also included the New Mexico Game and Fish Department, U.S.D.A. Wildlife Services, U.S. Forest Service, the White Mountain Apache Tribe and FWS. See Mexican Wolf Blue Range Reintroduction Project Adaptive Management Oversight Committee.

Accordingly, FWS's proposed delegation of release authority to the states is unlawful and will frustrate Mexican wolf recovery.

V. Genetic Threats

The release program just described is essential to foster genetic health in Mexican gray wolf populations. FWS has described genetic issues (including inbreeding, loss of heterozygosity and gene diversity, and loss of adaptive potential) as a primary threat and stressor to the Mexican gray wolf. See Draft Recovery Plan at 18. The genetic challenges to Mexican gray wolf recovery largely stem from the small number of individuals that remained in existence when conservation efforts for this subspecies began, but FWS has compounded the resulting genetic problems by failing to take actions that are necessary to capitalize on the subspecies' remaining genetic diversity. The actions outlined in the Draft Recovery Plan fail to adequately address the genetic challenges facing the species and, instead, ignore the best available science and downplay immediate genetic concerns.

a. Captive Population

FWS acknowledges myriad genetic challenges facing the Mexican gray wolf, including that the extremely small founding population (used to establish the captive breeding program) had limited genetic diversity from the outset. According to the Draft Biological Report,

> [t]he Mexican wolf captive population is an intensively managed but genetically depauparate [sic] population. The small number of founders of the captive population and the resultant low gene diversity available with which to build a captive population have been a concern since the beginning of the project and remain a concern today.

Draft Biological Report at 33 (internal citations omitted). See also Draft Recovery Plan at 14; DEIS, Ch. 1, at 20-21 (MWEPA population is "considered small, genetically impoverished, and significantly below estimates of viability appearing in the scientific literature") (internal citations omitted). As FWS explained in the past, "[t]he small number of founders upon which the existing Mexican wolf population was established has resulted in pronounced genetic challenges, including inbreeding (mating of related individuals), loss of heterozygosity (a decrease in the proportion of individuals in a population that have two different alleles for a specific gene), and a loss of adaptive potential (the ability of populations to maintain their viability when confronted with environmental variations)." Id., Ch. 1, at 4. These challenges are compounded because the genetic relationships among and between the founders are unknown.

Unfortunately, while captive breeding facilities have more recently managed the Mexican gray wolf program to preserve as much genetic diversity as possible, much of the genetic potential of the founding stock has been lost. The loss of genetic potential is the result of the small number of founder wolves, the fact that "[t]he Mexican wolf captive breeding effort … was not managed to retain genetic variation until several years into the effort," and the failure of the reintroduction program to facilitate the rapid expansion of a genetically diverse wild Mexican gray wolf population. Id., Ch. 1, at 19. Today, "the estimated number of remaining founder

genome equivalents is only 2.1." Hedrick. In other words, despite the fact that the founding stock for the current population consisted of seven individual wolves, the current Mexican gray wolf population today retains the genetic material of only approximately two individual founders. The Mexican wolf population thus "descends from one of the smallest effective founder numbers of any reintroduced endangered species, which portends severe genetic problems." Id.

Exacerbating this situation, the Draft Recovery Plan allows for continued genetic erosion of the captive population. See Draft Recovery Plan at 15 ("It is expected that even with optimal management, the gene diversity in the captive population will continue to decline over time."). Captive breeding program protocols aim to retain at least 90% of the founding individuals' genetic diversity. See id. The Mexican wolf captive breeding program has already dropped below this—it has retained only 83% of the founders' genetic diversity. Id.; Draft Biological Report at 33. The Draft Recovery Plan states that, "[i]n its current condition, the population would be expected to retain 75% gene diversity over 60 years and 70.22% in 100 years." Draft Recovery Plan at 15. This shifting baseline is dangerous and threatens the future genetic integrity and persistence of the Mexican wolf.

FWS refers to several ways of mitigating loss of genetic diversity, including "increasing the annual population growth rate, increasing the representation of under-represented founders, and by using the genome bank." Draft Biological Report at 33. However, the agency does not describe in detail how it intends to accomplish these goals nor does it outline how, exactly, the genome bank (cryopreserved sperm and eggs, id.) could be used to enhance genetic health of wild Mexican gray wolf populations.

The captive population suffers from a host of additional problems that FWS fails to sufficiently address in the Draft Recovery Plan. For example, the program is challenged by insufficient holding space and demographic instability of the captive population. Draft Biological Report at 33. Further, the cutback in releases has led to some of the captive breeding program facilities reaching full carrying capacity. Id. at 34. As a result, the program has had to cut back on reproduction which makes maximizing retained genetic potential more challenging. See id.

In addition, the future of the captive breeding program after recovery is, according to Recovery Team participants, "uncertain." Draft Notes: Mexican Wolf Recovery Planning Workshop 7 (November 2-4, 2016). FWS appears to dismiss this concern, stating that it "do[es] not expect regular releases from the captive population to be necessary after Mexican wolves have been recovered because gene diversity from captivity will have been incorporated into the wild populations and wild populations will be sufficiently abundant such that releases from captivity for population augmentation will not be necessary." Draft Recovery Plan at 24. This is misguided because "recovery," as defined in FWS's Draft Recovery Plan, is only meant to prevent "immediate" relisting. If the Mexican gray wolf population is delisted and the captive breeding program terminated, any wild population declines could—without a captive population backup—lead to the lobo's extinction.

b. Wild Populations

The wild population of Mexican gray wolves in the United States is in even worse genetic shape than the captive population. See Draft Biological Report at 34. According to FWS,

> The genetic status of Mexican wolves in the wild is as much or more of a concern as that of the captive population, namely due to inappropriately high mean kinship (or, relatedness of individuals to one another) in the MWEPA, as well as ongoing loss of gene diversity and concerns over the potential for inbreeding depression to have negative demographic impacts on either the MWEPA or Mexico populations in the future.

Id. See also Draft Recovery Plan at 15 ("Although population growth has been relatively steady in recent years, we consider wolves in the MWEPA to be too closely related to one another (referred to as high mean kinship) to ensure the population will be robust over time. This high relatedness of wolves to one another and ongoing loss of gene diversity increases concerns over the potential for inbreeding depression to have negative impacts on future population growth in the MWEPA."). In 2016,

> Mexican wolves in the MWEPA population were on average as related to one another as siblings (Siminski and Spevak 2016). High relatedness is concerning because of the risk of inbreeding depression (the reduction in fitness associated with inbreeding). Inbreeding depression may affect traits that reduce population viability, such as reproduction ([R.J. Fredrickson et al., Genetic Rescue and Inbreeding Depression in Mexican Wolves, 274 Proc. Royal Soc'y B 2365 (2007)]), survival ([F.W. Allendorf & N. Ryman, The Role of Genetics in Population Viability Analysis, pp.50-85 in S.R. Beissinger & D.R. McCullough (eds.), Population Viability Analysis (2002, Univ. of Chicago Press, Chicago, Ill.)]), or disease resistance ([P.W. Hedrick et al., Canine Parvovirus Enteritis, Canine Distemper, and Major Histocompatabiliyt Complex Genetic Variation in Mexican Wolves, 39 J. Wildlife Diseases 909 (2003)]).

Draft Biological Report at 34. See also id. at 33 (describing problems associated with loss of genetic variability, including "compromised reproductive function or physical and physiological abnormality"). The extremely high level of relatedness of Mexican gray wolves in the MWEPA population suggests "that there are only two effective founders remaining … and … that more genetic problems are likely in the near future and that the potential for adaptive genetic change is quite low." Peer Review #2, Draft Biological Report, at lines 205-14; Draft Biological Report at 34 (MWEPA wolves "as related to one another as siblings"). But even given this continuing, rapid genetic depletion, FWS accepts the current status of the wild population as its baseline and allows for even more erosion. See Draft Biological Report at 43 (stating goal of "[e]nsuring wild populations represent approximately 90% of gene diversity retained by the captive population"); but see PVA at 42 (noting that "it is difficult to retain relatively high levels (e.g., at least 90%) of population-level gene diversity in MWEPA relative to the SSP, even if the risk of

the MWEPA population declining to extinction is very low," suggesting that the release schedule laid out by the FEIS is insufficient to bolster the MWEPA's genetic integrity).

FWS does acknowledge that "[h]igher levels of genetic variation within the experimental population are critically important to minimize the risk of inbreeding and support individual fitness and ecological and evolutionary processes." DEIS, Ch. 1, at 19. Yet FWS refuses to accept that inbreeding depression is not merely a theoretical problem for future wolves, but instead is having detrimental effects on Mexican gray wolves today.

Past studies have demonstrated the ongoing effects of inbreeding on the MWEPA population, including reduced litter size. See Fredrickson et al. (2007). See also U.S. Fish & Wildlife Serv., Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (Canis lupus) from the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (Canis lupus baileyi) by Listing It as Endangered, 78 Fed. Reg. 35,664, 35,706 (June 13, 2013) (referring to "evidence of strong inbreeding depressing in the reintroduced [Mexican gray wolf] population," including reduced litter size); id. (noting that the current "level of inbreeding depression may substantially reduce the viability of the population" and "limit the ability of future Mexican wolf populations to adapt to environmental challenges").

While admitting that "inbreeding depression in the MWEPA is impacting the probability of a breeding pair producing a litter," Draft Recovery Plan at 15, FWS leans heavily on the results of an unpublished analysis concluding that inbreeding is currently not having an impact on wild Mexican gray wolf litter size or population growth. See Draft Biological Report at 34-35 (referring to Matthew Clement & Mason Cline, Appendix C: Analysis of Inbreeding Effects on Maximum Pup Count in Wild Mexican Wolves (Sept. 9, 2016)). FWS states: "Inbreeding depression is not currently operating at a level that is suppressing demographic performance in the MWEPA (in fact, the population has exhibited robust growth in recent years)." Id. at 40. But "[j]ust because there is population growth does not mean there is no inbreeding depression." Peer Review #2, Draft Biological Report, at lines 229-30. See also id. at 417-21 (discussing other components of fitness impacted by inbreeding). In fact, the MWEPA population's recent growth is a likely consequence of FWS's recent practice of feeding wild Mexican gray wolves. This practice, which has included a focus on denning wolves, has led to larger litter size. See Clement and Cline at 58 (lines 1834-35) (finding a positive relationship between litter size and supplemental/diversionary feeding). In other words, packs that were fed by FWS had litters larger than those packs that were not fed. This is unsurprising, and the impact of supplemental feeding is likely to have masked any effects of inbreeding. This does not mean that inbreeding depression is not occurring among wild Mexican gray wolves. As one of the peer reviewers explains,

> At first [it] appears that the only explanations for the statistically significant inbreeding depression from the earlier study of Fredrickson et al. (2007) to have disappeared is that it was a false positive or that purging has occurred, but neither of these explanations appear likely. Another possible explanation for no significant inbreeding depression effect from 2009 to 2014 is for the environment to have been improved enough due to diversionary feeding that litter size becomes similar for different inbreeding levels. It is well known that inbreeding depression

> is environmentally dependent with more inbreeding depression in more harsh environments. If diversionary feeding were eliminated, it is likely that the negative association of inbreeding and litter size, inbreeding depression for this trait, would again be observed.

Peer Review #2, Draft Biological Report, at lines 218-27. The Recovery Team even noted during a workshop that inbred packs seemed to benefit more from supplemental/diversionary feeding than did other packs. Draft Notes: Mexican Wolf Recovery Planning Workshop 2 (August 22-24, 2016) ("Group discussed results suggesting a significant positive relationship between inbreeding and the packs that were fed, i.e., inbred packs seem to benefit more from supplemental feeding (e.g., some hypothesized that inbred wolves are more affected by environmental stressors). Group discussed whether supplemental feeding could be clouding interpretation of the data."). Clement and Cline's Figure C-1 suggests the same, as the pup count for wolves not receiving supplemental feeding demonstrates a downward trend with inbreeding. See Clement & Cline at 58 (Fig. C-1). Overall, it does not appear that Clement and Cline took into account the possible interaction effects of supplemental feeding and inbreeding in their model, see generally Clement and Cline, and FWS failed to address the apparent prospect that supplemental/diversionary feeding was masking inbreeding effects. The agency thus irrationally concluded that inbreeding is not having a material effect on Mexican gray wolves.

FWS also failed to address the fact that, in addition to reduced litter size, inbreeding effects may manifest in a host of other ways including viability, mating success, and probability of reproduction. Peer Review #2, Draft Biological Report, at lines 33-34. "[T]hese are more difficult aspects of fitness to quantify," but FWS should have assessed them before concluding no inbreeding depression is occurring. Id. at lines 419-20. See also Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (August 22-24, 2016) ("Fredrickson reiterat[ing] that with 7 founders and 3 bottlenecks over time, there is general widespread concern that inbreeding depression may be affecting Mexican wolves."). FWS should also have discussed whether it has observed or looked for any other evidence of genetic abnormalities associated with inbreeding in the MWEPA population, such as "spinal abnormalities, undescended testicles, or other morphological problems." Peer Review #2, Draft Biological Report, at lines 238-39.

In addition, FWS should have more thoroughly discussed the full extent of recent scientific literature discussing inbreeding depression in small populations. These peer-reviewed articles suggest very high estimates of inbreeding depression in wild populations. "That the Mexican wolf population has a smaller number of founders and now founder genome equivalents than nearly all the populations examined in these articles … suggest[s] that inbreeding depression might be even larger than in those examples." Peer Review #2, Draft Biological Report, at lines 422-48, referencing Julian J. O'Grady et al., Realistic Levels of Inbreeding Depression Strongly Affect Extinction Risk in Wild Populations, 133 Biological Conservation 42 (2006), Philip W. Hedrick & Aurora Garcia-Dorado, Understanding Inbreeding Depression, Purging, and Genetic Rescue, 31 Trends in Ecology & Evolution 940 (2016). See also Hedrick ("analysis of several traits related to fitness has demonstrated significant inbreeding depression from segregating variation," for Mexican gray wolves, "both in the early years (Fredrickson et al. 2007) and recently (R. Fredrickson, in preparation)"); Carroll et al. (2014), at 79 (Table 1) (finding that inbreeding was the fourth most important parameter related to extinction in their

modeling of Mexican wolf populations). If so, FWS is underestimating inbreeding depression effects and the recovery criteria outlined in the agency's Draft Recovery Plan are insufficient to promote recovery of the lobo.

c. Alleviating Genetic Threats: a Robust Release Program

To reduce inbreeding depression and maximize genetic potential and prospects, FWS must commit to an active program of releasing genetically diverse wolves into the wild, capitalizing on the genetic potential now available in the captive population before it is further depleted. See Draft Recovery Plan at 30 ("The extent to which released Mexican wolves are able to influence the gene diversity of a wild population is a function of the number of released wolves in relation to the recipient population abundance (i.e., larger proportional releases result in greater genetic and demographic effect). Therefore, the timing of releases is a critical factor … and … it will be important for us to establish a schedule of releases as stated in the recovery criteria."). The agency has stated that it "is now focused on inserting gene diversity from the captive population into the wild population" through the release of genetically well-represented individuals. Draft Biological Report at 10; see also id. at 12. Such releases, if managed properly, would promote "[r]apid expansion of the population …[,] further promot[ing] maintenance of genetic diversity." 2010 Conservation Assessment at 60. Rapid expansion is critical because it will allow the released wolves to reproduce and express the full spectrum of remaining genetic potential—something they are unable to do in captivity due to constraints on the number of breeding facilities and holding space. See 2012 Draft Recovery Plan at 59-60 ("Expeditious recovery … is necessary to fulfill recovery objectives because any additional time that captive and wild Mexican wolf populations remain at their current low levels accentuates genetic threats and reduces recovery potential."); Draft Biological Report at 33 ("For both wild populations, it is desirable to establish adequate gene diversity while the population is small, and then allow the population to grow.").

Rather than focus on releases to help grow the population, however, FWS states that "[i]n the MWEPA, population growth will likely continue to be driven primarily by natural reproduction." Draft Recovery Plan at 23. See also id. at 15 ("In 2016, all Mexican wolves in the MWEPA were wild-born, with the exception of surviving cross-fostered pups from captivity …, demonstrating that population growth is driven by natural reproduction rather than release of wolves from captivity. Only 10 initial releases … were conducted between 2009 and 2016."). FWS fails to fully address the genetic implications of this approach. See generally id. at 23-24. Continuing to grow a genetically depauperate population without sufficient infusion of captive animals will exacerbate existing genetic challenges and hinder recovery. This has already posed a problem. See Draft Biological Report at 40 ("The recent growth of the MWEPA in its current genetic condition compounds the [genetic] situation, because it becomes harder to improve gene diversity as the population grows larger."); Draft Recovery Plan at 15 ("Although population growth has been relatively steady in recent years, we consider the wolves in the MWEPA to be too closely related to one another (referred to as high mean kinship) to ensure the population will be robust over time."); id. **(**"Presently, inbreeding depression in the MWEPA is impacting the probability of a breeding pair producing a litter"). In addition to minimizing the loss of genetic potential, it is critical to release more wolves into the wild in a timely fashion because "[i]f captive Mexican wolves are not reintroduced to the wild within a reasonable period of time,

genetic, physical, or behavioral changes resulting from prolonged captivity could diminish their prospects for recovery." U.S. Fish & Wildlife Serv., Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico, 63 Fed. Reg., 1752 1755 (Jan. 12, 1998). As FWS itself said in 2010, "[t]he longer … threats [to the Mexican gray wolf] persist, the greater the challenges for recovery, particularly as related to genetic fitness and long-term adaptive potential of the population." 2010 Conservation Assessment at 78.

However, even if FWS moved forward with the release schedule laid out in the Final Environmental Impact Statement for the Mexican gray wolf 10(j) rule, it may not be enough to ensure genetic diversity for the species—especially if mortality issues are not resolved. See PVA at 42 ("suggest[ing] that the current release schedule laid out in the Mexican Wolf EIS may be insufficient to adequately bolster the genetic integrity of the MWEPA."). This is problematic because

> [w]ithout an increase in the number of initial releases and without a better release success rate, the number of effective migrants [(i.e., migrants that actually breed and pass along their genes)] per generation needed to improve the genetic fitness of the Mexican wolf experimental population will not be achieved and the negative effects of inbreeding depression will continue—potentially … result[ing] in additional reduction in genetic variation, leading to decreased fitness and lower survival rates and ultimately causing an extinction vortex for the experimental population of Mexican wolves.

FEIS, Ch. 1, at 25. To address these concerns, FWS's revised recovery plan must include a more robust, informed release schedule, measures to reduce mortality of released wolves, and an objective and measurable genetic recovery criterion for Mexican gray wolves.

VI. Recovery Criteria

The ESA requires that recovery criteria be objective and measurable. 16 U.S.C. § 1533(f)(1)(B)(ii). Some of FWS's recovery criteria for the Mexican gray wolf fail to fulfill this requirement, and the agency also failed to include other recovery criteria necessary for the lobo's recovery in its draft plan. FWS must address the following three issues pertaining to recovery criteria in a revised recovery plan.

a. Genetic Recovery Criterion

FWS failed to provide an objective, measurable recovery criterion focusing on the genetic status of wild Mexican gray wolf populations. Recovery team meetings included much discussion over the inclusion of a such a criterion. For example,

- In April 2016, the "[g]roup discussed the lack of a genetic goal for the MWEPA. … Siminski explained that a genetic goal was established for the captive population by the Species Survival Plan; suggested that wild populations should strive to achieve a

reasonably close goal." Draft Notes: Mexican Wolf Recovery Planning Workshop 13 (April 11-15, 2016).

- In August 2016, "Melbihess and Barrett stated that the Service will determine an appropriate definition of viability for the Mexican wolf as the foundation of recovery criteria …; a measure of genetic loss could also be an appropriate aspect of viability." Draft Notes: Mexican Wolf Recovery Planning Workshop 6 (August 22-24, 2016).
- In November 2016, "Strong disagreement surfaced in the group over whether genetics are appropriate as a criterion—are genetics important over the time frame of recovery? Do we have measurable genetic threats at the current time? Those opposed to a genetics criterion asked how the Service would handle a situation in which we have set a threshold (criterion) for gene diversity (or any specific metric) but then we drop below it and can never achieve the criterion; would that stymie our ability to delist the Mexican wolf? … Others [argued] that picking a gene diversity target for recovery could make it impossible to achieve recovery." Draft Notes: Mexican Wolf Recovery Planning Workshop 6-7 (November 2-4, 2016).

All of the states involved with the Mexican gray wolf recovery effort argued against inclusion of a genetic recovery criterion. Id. at 9. They expressed concern "that delisting could be held up due to inability to meet a genetic criterion." Id. See also Harding et al. at 152 (arguing that "genetic recovery … must be strategically balanced against social pressures and concerns from local communities"). The states' concern appears to have outweighed concerns over recovery of the Mexican gray wolf, as the specific delisting criterion that considers genetic representation of the captive population in the wild does not specify a numerical threshold (i.e., 90%) but rather includes the following, somewhat ambiguous language: "Gene diversity available from the captive population has been incorporated into the MWEPA through scheduled releases of a sufficient number of wolves to result in 22 released Mexican wolves surviving to breeding age in the MWEPA [and 37 in the SMOCC-N]." Draft Recovery Plan at 10, 11.

This vague standard wrongly assumes that a certain number of releases is an appropriate surrogate for the genetic status of the population. FWS cannot be certain that the individuals released into the wild will have the same genetic makeup as those released in the modeling exercises, nor can it ensure that the released individuals will mate and produce offspring exactly as the model predicts. Modern genetic techniques are available and affordable, and should be used by FWS in combination with intensive fieldwork to monitor "effective" releases and evaluate the actual genetic status of wild Mexican gray wolf populations throughout the recovery process. This genetic status, then, should be reflected in an objective and measurable recovery criterion for the Mexican gray wolf.

b. Alleviating Threats of Illegal Mortality

As mentioned above, the genetic challenges confronting the Mexican gray wolf are exacerbated because of high levels of mortality of released individuals. FWS thus must also include an objective and measurable recovery criterion addressing the threat of mortality—specifically illegal mortality—which is a problem both south of the border, see discussion Part I.c.i, I.c.ii(1), supra, and in the United States.

FWS lists "excessive human-caused mortality" including "illegal shooting" as a threat and stressor to the Mexican gray wolf. Draft Recovery Plan at 18. Inbreeding depression may exacerbate this threat and make the lobo even more sensitive to human-caused mortality than other wolf populations (e.g., if genetically valuable wolves are killed). The Draft Recovery Plan lacks a recovery criterion addressing this threat or even an in-depth discussion of management techniques that will be used to alleviate this threat with the exception of supplemental/ diversionary feeding. See generally Peer Review #4, Draft Biological Report, at lines 192-202 (need for more discussion on human conflict avoidance techniques). As discussed more below, FWS asserts that it will phase down supplemental/diversionary feeding over time. See Part IX.a, infra. But without that key management technique, it appears likely that illegal mortalities will increase.

FWS must develop and present a robust, comprehensive plan to address the threat of illegal mortality—a plan that discusses options such as permanent voluntary retirement of grazing permits—in a way that secures the future of the Mexican gray wolf as a self-sustaining, recovered species. This mortality-reduction approach should be reflected in an objective, measurable recovery criterion.

c. Adequate Regulatory Mechanisms

Finally, FWS must remedy shortcomings with its recovery criterion focusing on the existence of adequate regulatory mechanisms to ensure the persistence of a recovered Mexican gray wolf population. Specifically, FWS provides the following criterion for delisting:

> Effective State and Tribal regulations are in place in the MWEPA and in those areas necessary for recovery to ensure that killing of Mexican wolves is prohibited or regulated such that viable populations of wolves can be maintained. In addition, Mexico has a proven track record protecting Mexican wolves. Based on these protections wolves are highly unlikely to need protection of the ESA again.

Draft Recovery Plan at 11, 27. This criterion is incomplete, subjective and cannot be measured. FWS fails to define mortality thresholds or other means of determining whether state and tribal regulations are sufficient to maintain viable Mexican wolf populations. Further, the agency fails to specify whether "viable" populations are equivalent to "recovered" populations—or if they need only meet some lower threshold of viability (which is nowhere defined). FWS does not require that adequate regulations be in place in Mexico. Finally, FWS does not define what it means by "proven track record." FWS must revise this recovery criterion and replace it with a criterion that is objective and measurable as defined by the ESA, and that will lead to the Mexican gray wolf's persistence in a post-delisting world.

VII. Defining Recovery

The Mexican gray wolf's ability to persist in a post-delisting world—if that world reflects the one envisioned in FWS's Draft Recovery Plan—appears unlikely. In addition, FWS's Draft Recovery Plan raises larger questions as to what "recovery" truly means under the ESA.

Specifically, FWS states that "recovered" Mexican gray wolf populations will receive supplemental feeding in perpetuity and also require human "assistance" to disperse between populations. FWS must discuss whether such intensive human management should really be necessary for a species that has truly recovered.

a. Supplemental/Diversionary Feeding

Mexican gray wolves on both sides of the border have received "supplemental" or "diversionary" feeding in recent years. "Supplemental" feeding involves providing road-killed native prey, carnivore logs, or domestic pigs (in Mexico) to allow released wolves to adapt to the wild or promote site fidelity in wild wolves. See Draft Biological Report at 25, 26; Draft Notes: Mexican Wolf Recovery Planning Workshop 1 (August 22-24, 2016). "Diversionary" feeding involves providing these same food sources to denning wolves in an effort to reduce potential livestock conflicts. Draft Biological Report at 26; Draft Notes: Mexican Wolf Recovery Planning Workshop 1 (August 22-24, 2016). According to FWS,

> [d]iversionary food caches have been used on increasing proportions of the [U.S.] population since 2009, providing about 10 pounds of meat per wolf every two to three days sometimes for several months when the likelihood of depredations are [sic] high (e.g., during denning season). In 2016, we provided diversionary feeding for approximately 70% of the breeding pairs during denning season.

Draft Biological Report at 32. In Mexico, officials provide wolves with "about 90 pounds of food … every eight days, all year." Draft Notes: Mexican Wolf Recovery Planning Workshop 6 (November 2-4, 2016). See also Martinez-Meyer et al. at 68 (noting that "the level of human intervention is quite high [in Mexico], supplementing at least two of the [three] packs"). This type of active management raises significant issues as to its effects and its appropriateness during and after recovery.

i. Behavioral Effects

FWS states that while it may continue to feed Mexican gray wolves in the future, it will do so at a lower level. The agency does not outline how it will go about this reduction in feeding. FWS should discuss whether there will be behavioral fallout from tapering the supplemental/diversionary feeding program, such as a reduced willingness of Mexican gray wolves to hunt, a tendency to seek out "easy" prey such as livestock or domestic pigs, or increased interaction with humans.

ii. Genetic Effects

Supplemental/diversionary feeding has, unsurprisingly, allowed female wolves to support larger litters: five pups, as opposed to three pups for non-fed females. PVA at 7. This is "likely due to improved summer survival of pups due to reduced pup mortality from malnutrition and reduced susceptibility or mortality as a result of disease." Draft Biological Report at 31. While increased pup survival has helped population growth, it has likely masked the effects of inbreeding (i.e., pups that are genetically less fit due to inbreeding nonetheless survive because

they are being fed)—which ultimately will be to the lobo's detriment. See Hedrick; discussion supra Part IV.b.

If supplemental feeding is masking inbreeding effects, this could lead over time to deleterious gene variants becoming "fixed" in the population (i.e., all individuals in the population would have certain detrimental genes). If that is the case, then inbreeding effects would be difficult to detect. As a peer reviewer explains: "[b]y not allowing inbreeding depression to occur now, there might … be an accumulation of detrimental variation, which could be expressed in much lower fitness when the more benign environment of feeding is stopped." Peer Review #2, Draft Biological Report, at lines 282-84. To avoid this result, FWS would have to continue supplemental feeding at high levels (more than the 15% referred to in the PVA report) indefinitely. PVA at 10, 18. That leads to the second question: the appropriateness of supplemental feeding in a "recovered" population.

iii. Appropriateness

That FWS finds it necessary to provide supplemental/diversionary food to 70% of breeding Mexican gray wolves twenty years into the recovery effort is surprising. Even more surprising is the agency's admission that it intends to feed Mexican gray wolves (albeit at a lower level) "indefinitely." Draft Biological Report at 38; PVA at 10, 18. The high level of feeding of Mexican gray wolves in Mexico, along with an uncertain and likely insufficient native prey base in that country, also suggest the need for long-term intervention.

This begs the question of whether a species that requires "indefinite" feeding at potentially high levels should lose federal protection under the ESA. The ESA is designed to recover species such that the protections of the Act are no longer necessary because threats have been ameliorated. If the Mexican gray wolf population is not self-sustaining and requires chronic human intervention and management, FWS must explain why it considers that species to be "recovered" under the Act.

b. Connectivity and Dispersal

FWS must also explain why it considers "recovered" a species that depends on assisted migration between populations to persist. FWS states that the Mexican gray wolf populations in the United States and Mexico are unlikely to display functional, natural connectivity. While "[t]he MWEPA and northern Sierra Madre Occidental reintroduction sites are approximately 280 miles … from each other …, a distance within the natural dispersal capabilities of the Mexican wolf," FWS does not expect "the level of dispersal … between any of the sites (particularly between the MWEPA and northern Sierra Madre Occidental) to provide for adequate gene flow between populations to alleviate genetic threats or ensure representation of the captive population's gene diversity in both populations." Draft Recovery Plan at 16, 24. See also id. at 29 (FWS "do[es] not predict significant immigration or emigration between the Mexican wolf populations."). While "[h]abitat quality between the northern and southern Sierra Madre Occidental sites has the potential to support a slightly higher degree of dispersal compared with the potential between the MWEPA and northern Sierra Madre site, … it is still predicted to be low." Id. at 24.

FWS plans to rely on "artificial, or assisted, connectivity" including translocations, releases, and cross-fostering, "for at least portions of the recovery process." Id. at 24; Draft Biological Report at 44. Should the present Administration build an impenetrable border wall, as it intends, natural connectivity between the two countries' Mexican gray wolf populations would be completely severed and assisted migration would be the only way to link them. FWS needs to discuss this eventuality and how the existence of two isolated, unconnected populations would affect the agency's notions of a recovered metapopulation as well as the viability of the U.S. population.

At a fundamental level, a truly recovered, self-sustaining species should not need artificial or assisted connectivity between populations in perpetuity. FWS has recognized this principle. The 2012 Draft Recovery Plan for the Mexican gray wolf, for example, provided a recovery criterion that specified the need for adequate population connectivity "via natural dispersal." 2012 Draft Recovery Plan at 113-14. In the context of Mexican gray wolf recovery, in response to the states' query about assisted migration "during and at the time of recovery[,] … [t]he Service restated its previous position that assisted migration could be appropriate during the recovery process but that [it] would aim for natural migration to be occurring at the time of delisting." Draft Notes: Mexican Wolf Recovery Planning Workshop 9-10 (November 2-4, 2016). The states "specifically requested the criterion could be worded as 'migration' without specifying how migration occurs." Id. at 10. However, this runs counter to the Department of the Interior Solicitor's stance that "the goal for recovery planning for an endangered species should be for natural dispersal." Draft Notes: Mexican Wolf Recovery Planning Workshop 8 (August 22-24, 2016).

FWS should explain whether assisted migration is expected post-recovery and how this squares with the Solicitor's Opinion and, more importantly, with the requirements of the ESA. If natural connectivity is the goal, FWS must explore the possibility of establishing additional Mexican gray wolf populations in the United States. See discussion Parts I.a.iv.2, I.b, supra.

VIII. Costs

Finally, FWS fails to explain how it expects the United States and Mexico to obtain the funding necessary to support the recovery efforts outlined in the Draft Recovery Plan. FWS projects that it will cost almost $240 million for an 8-year average of 320 wolves in the United States, and almost $25 million for an 8-year average of 170 wolves in Mexico.[9] See Draft

[9] Almost every line item in the budget assigned to Mexico (with the exception of management and monitoring of wolves in the SMOCC) is estimated to cost exactly $3,500,000. This suggests some uncertainty as to actual recovery costs in Mexico, which throws into question FWS's reliance on that country to promote recovery given budgetary constraints. See also Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (November 2-4, 2016) ("survey funding to explore a second release area in Mexico has not been provided and therefore surveys will not occur this year. … PROCER [is likely] to face large budget cuts in 2017 (as much as 50%), which means that it is unlikely that reintroductions will be pursued in a second release area."); Peer Review #3, Draft Biological Report, at line 43 ("Most of the Protected Areas [in Mexico] don't have an approved Budget to operate.").

Recovery Plan at 37-39 (Table 1). This is a staggering cost, especially as far more cost-effective options for recovery exist. For example, costs could be significantly reduced if the MWEPA shouldered a slightly smaller number of wolves and additional populations were established in even better sites in the U.S.—which exist in the Grand Canyon and Southern Rockies. These prey-rich areas, relatively lightly used by livestock, include millions of acres of secure public land across which wildlife conservation is a priority and wildlife protection laws are routinely and effectively enforced. These sites could easily support a robust wolf population within a relatively short period of time if managed properly, and the type of intensive management contemplated in the MWEPA and Mexico (e.g., supplemental/diversionary feeding) would not be needed. Yet FWS failed to even consider such a cost-effective option and, as a result, has proposed an immensely expensive, resource-intensive recovery effort that is unlikely to succeed. FWS should consider more feasible, cost-effective options in its Draft Recovery Plan.

Conclusion

For the reasons stated above, FWS's Draft Recovery Plan for the Mexican gray wolf is not adequately justified. The Draft Recovery Plan does not chart a path for Mexican gray wolf recovery and instead threatens to drive this critically endangered species further toward extinction. For these reasons, if the plan is finalized as drafted, it would violate the Endangered Species Act. FWS must address the issues identified in this letter and develop a robust, science-based blueprint for the lobo's recovery.

Sincerely,

Kristin Carden
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Lands, Wildlife and Oceans Program

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16 U.S.C. § 1533(f)(1).

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Exhibit 2

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August 28, 2017

Public Comments Processing

Attn: Docket No. FWS-R2-ES-2017-0036

U.S. Fish and Wildlife Service,

New Mexico Ecological Services Field Office,

2105 Osuna Road NE,

Albuquerque, NM 87113

Submitted via www.regulations.gov

Re: Comments on Mexican Wolf Draft Recovery Plan, First Revision (Docket #: FWS–R2–ES–2017–0036)

Dear Regional Director Tuggle,

I, Dr. Carlos Carroll, herein provide comments on the U.S. Fish and Wildlife Service's (FWS) Mexican Wolf Draft Recovery Plan, First Revision and associated documents and appendices (82 Fed. Reg. 22918-22920, June 30, 2017), which requests "comments on the recovery strategy, recovery criteria, recovery actions, and the cost estimates associated with implementing the recommended recovery actions." My qualifications to review the scientific basis for the recovery plan and associated documents stems from my more than two decades as a research scientist focused on population viability and habitat analysis for wolves and other large carnivores. I served as a member of the Science and Planning Subgroup of the Mexican Wolf Recovery Team convened in 2011, and as a technical advisor to the previous Mexican Wolf Recovery Team in 2005. In the course of this research, I have authored peer-reviewed papers on the science underpinning the recovery of the Mexican wolf (*Canis lupus baileyi*) (e.g., Carroll et al. 2014a, 2014b).

The purpose of recovery under the US Endangered Species Act (ESA) is to recover species to the point at which the protections of the Act are no longer necessary, because the species exists in wild, self-sustaining populations and no longer meets the definition of an

endangered or threatened species under the Act, i.e., is not at risk from the threats that led to its endangerment in the first instance.

Recovery criteria, a key part of every recovery plan, establish objective and measurable criteria, based solely on the best available scientific and commercial data, which effectively address all of the major threats to the species, as specified in a five-factor analysis which categorizes threat factors based on the language of the Act. The FWS uses the three criteria of resiliency, redundancy, and representation (the so-called 3 Rs; Shaffer and Stein 2000) as an aid to evaluate whether a species has achieved recovery.

Although my comments below focus on the science underpinning the draft plan, I frame the discussion in the context of the ESA's definition of recovery. I establish several areas where the draft plan, particularly the proposed recovery criteria, falls short of the requirements of the ESA, including by:

a) failure to accurately represent best available scientific information;

b) failure to establish criteria which objectively and comprehensively address key threats;

c) failure to establish criteria which, if achieved, would indicate that the species exists in wild, self-sustaining populations which as a whole achieve resiliency, redundancy, and representation, such that the Mexican wolf no longer meets the definition of a threatened or endangered species.

I. The draft plan and proposed recovery criteria do not accurately represent best available scientific information.

I review below two documents which underpin the draft plan's recovery criteria: the "Population Viability Analysis for the Mexican Wolf, June 13, 2017 version" ("PVA") and the "Mexican Wolf Habitat Suitability Analysis in Historical Range in Southwestern US and Mexico, April 2017 version" ("habitat analysis").

General comments on the Population Viability Analysis

Population viability analyses (PVA) are important tools in informing development of recovery criteria, especially for well-studied species such as wolves. PVA is a tool that helps planners systematically elicit and synthesize the best available biological information, such as

factors affecting the demographic and genetic status of threatened species, and the influence of these factors on population viability and endangerment.

It is important to remain aware of two limitations of PVA. Firstly, there are limitations in the biological data that informs parameterization of the model. This leads to the "garbage in, garbage out" problem, in which PVA results can be no more accurate than their input data. Secondly, planners must understand the limitations of the model itself. The primary strength of the Vortex PVA model used here is its ability to incorporate detailed information on the genetic composition and pedigree of existing individuals and project the genetic development of the population over time. However, Vortex only incorporates an extremely simplified representation of the spatial, behavioral, and other factors influencing the dynamics of real-world populations. Due to these limitations, Vortex results should be seen as information that can assist in devising effective recovery strategies, rather than as accurate predictions of the future status of the population. This has strong implications for the adequacy of the draft plan's proposed genetic criteria as detailed below.

In particular, the search for an exact number that represents a "minimum viable population" (MVP) is no longer seen as an informative framework for PVA. The goal is instead to use a comprehensive set of metrics from the PVA results to craft an effective strategy to address threats and grow a population beyond the stage where small-population factors such as genetic inbreeding are important. In contrast, the Mexican wolf PVA, rather than use PVA to identify what would be a minimum population size that might afford long-term viability, and then use that threshold (with some precautionary buffer) to set recovery goals to be reached and surpassed, seeks to identify a size that is marginally adequate, and then control numbers via offtake so that the populations cannot exceed these minimal levels. This approach turns the modern concept of PVA on its head, harkening back to the now outdated focus on a single MVP threshold.

Specific comments on parameter values used in the PVA

Mortality rates

In a previous study, Carroll et al. (2014a) found that the adult mortality rate was the most important parameter affecting extinction risk among simulated populations of Mexican

wolves. Carroll et al. (2014a) used a base adult mortality rate of 22.9%/year. The adult mortality rate used in the PVA scenario that underpins the draft plan's criteria (scenario "379_200_200_249_EISx220_20") is 24.9%/year. This rate is similar to that experienced by wolves prior to delisting in the Northern Rocky Mountains (Smith et al. 2010). However, Mexican wolves in the US have historically experienced higher mortality rates. The plan justifies use of the lower mortality rates by assuming that future human-caused mortality rates will be lower than those observed in the past for Mexican wolves. However, as discussed below, unlike in the earlier draft plan (USFWS 2012, MWRT-SPS 2013), no recovery criteria have been proposed that would ensure that mortality rates are as low or lower than the rate assumed in the PVA. Additionally, mortality rates in the PVA are affected by assumptions regarding the extent and number of years in which supplemental feeding of the wild population occurs. The PVA assumes that, unlike in other wolf recovery regions, significant levels of supplemental feeding will continue in perpetuity for the Mexican wolf. Due to expected future resource limitations on agencies conducting supplemental feeding, the PVA's assumptions regarding such feeding are likely unrealistic.

Proportion of females in the breeding pool

In wild wolf populations, the proportion of adult females that breed may have large effects on the growth rates and persistence of wolf populations. Wolf pack size, which is typically smaller in heavily exploited populations, influences what proportion of females can become dominant and achieve a high probability of breeding. Carroll et al. (2014a) found that the proportion of adult females in the breeding pool was the second most important parameter affecting extinction risk among simulated populations of Mexican wolves. Carroll et al. (2014a) used a parameter value of 0.50 (i.e., half of a population's adult females), whereas the current PVA used a value of 0.77.

The proportion of adult females breeding is often difficult to estimate in wild wolf populations. Available data, however, suggest that the proportion of adult females that breed may in large part be determined the density of wolves in a population as well as prey abundance. Fredrickson (unpublished) summarized the results from 9 published studies, and found a mean proportion of females breeding of 68.1% (SD 19.4%). Smith et al. (unpublished)

found a significant relationship between wolf population density and proportion of females breeding in the Yellowstone population.

When wolf populations are at low absolute densities, or at low densities relative to prey populations, a higher proportion of adult female wolves breed. When wolf populations are at high densities, or at high densities relative to prey populations, wolves may form larger packs in which fewer females breed each year, or females may become nutritionally stressed, reducing the proportion of females that breed (Boerteje and Stephenson 1992).

The Mexican wolf population in the two decades since reintroduction would be expected to have an anomalously high rate of females breeding due to the fact that 1) the population is still in an initial expansion phase from reintroduction, and 2) mortality rates have been high as is typical of a heavily exploited population. Both of these factors would tend to create small pack sizes and opportunities for almost all adult females to breed. Analysis of data from the Blue Range population in fact show a decline in the proportion of females breeding as that population has grown in size (Fredrickson, unpublished).

The current PVA justifies the use of a high parameter value (0.77) based on rates observed since reintroduction. However, this rate would be expected to decrease as population density increased, and if mortality rates were reduced. In fact, a reduced mortality rate is used in place of the observed rate based on the assumption that mortality will be lower in the future, but the observed proportion of females breeding (which resulted in part from historically high mortality rates) is used without adjustment. The assumptions of the current PVA concerning the two most important parameters are thus inconsistent.

Inbreeding depression

Genetic threats resulting from inbreeding effects on survival and fecundity have been documented in most small populations (Frankham et al. 2017). The Vortex model was developed in large part to allow more accurate assessment of such threats. Carroll et al. (2014a) found that the strength of inbreeding depression was the fourth most important parameter affecting extinction risk among simulated populations of Mexican wolves.

Inbreeding can affect fecundity either by increasing the odds of failure of a pair to produce any offspring or by reducing the litter size of those litters that are produced. Whereas

Carroll et al. (2014a) parameterized effects of inbreeding depression on both litter probability and litter size based on published sources (e.g., Fredrickson et al. 2007), the current PVA incorporates inbreeding effects on the probability of producing a litter, but not as an influence on litter size. This weaker inbreeding effect parameterization is based on a new analysis (Clement and Cline, 2016) that has not been published in the peer-reviewed literature, and is only incompletely described in the PVA report itself.

1) Although Clement and Cline (2016) present few details of their analysis, and do not state which if any alternative models they considered, it is clear from their plot C-1 that their model is misspecified. For both the supplementally-fed and non-fed groups, many more than half of the data points fall below the predicted relationships. Clearly, the red and green regression lines shown in the figure do not fit the data points well. There appears to be a clear downward trend with inbreeding in the observed data points for pup count of wolves not receiving supplemental feeding, implying that the data shows a negative inbreeding effect that is not captured in their model. This alone suggests that their reported results are erroneous.

Additionally, deriving good estimates of inbreeding depression, especially from a relatively small sample size, can be complicated by a number of factors:

2) The extensive supplemental feeding from 2009 to 2014 would be expected to mask inbreeding effects and allow pups that would otherwise be compromised by inbreeding to survive. As stated by the FWS's invited peer reviewers, it is well known that inbreeding depression is environmentally dependent, with greater inbreeding depression evident in more harsh environments. If diversionary feeding were eliminated, it is likely that any negative association of inbreeding and litter size would be more easily observed.

3) As pointed out by the FWS's invited peer reviewers, the Blue Range (MWEPA) population might already be fixed for a number of deleterious alleles. In this case, there would be no evidence of inbreeding depression because virtually all individuals, independent of inbreeding level, would have detrimental genotypes. Given that there are only two founder genome equivalents remaining in the population, it is likely that that this factor could contribute to the difficulty in estimating inbreeding effects in this population.

4) The genetic relationships and level of inbreeding in the 7 founders of the Mexican wolf population were unknown. Without molecular genetic assays of inbreeding (e.g., based on genome-wide homozygosity), any pedigree-based inbreeding estimates could be inaccurate. 5) In uncontrolled experiments such as this, a number of confounding factors (age of dams, prior breeding experience, provisioning, different levels of disturbance, etc.) can complicate analyses. Clement and Cline (2016) and Oakleaf and Dwire (2016) tried to account for some of these factors in their models, but it is not clear if they looked for interaction effects (as would occur if supplemental feeding obscured inbreeding effects). And even "best supported" models can do a poor job of identifying causal factors when many factors (including quadratic terms) that are not well balanced are included in the analysis. For example, older dams might tend to have lower inbreeding levels (because they were born earlier in the program), so factoring out a positive effect of dam age can also incidentally partially remove an inbreeding effect. The statistical model of Clement and Cline (2016) included inbreeding and supplemental feeding only as independent, additive effects, and not as interacting effects (which is what would be expected).

I agree with FWS invited peer reviewer 2 that the “results of Clement and Cline (2016) are quite surprising and unsupportable”, for the reasons detailed above. If as seems likely, the parameters used in the current PVA underestimate the effects of inbreeding depression, this implies that the PVA results are overoptimistic, and that the draft plan’s criteria are inadequate to address the genetic threats that arise due to small population size.

Probability of stochastic events such as disease

One of the primary strengths of Vortex and other PVA simulation models is the fact that they can incorporate effects of infrequent episodic threats such as disease outbreaks. Carroll et al. (2014a) parameterized episodic threats based on data from the Yellowstone wolf population which showed distemper outbreaks and “related population declines as often as every 2–5 years”, and affecting primarily fecundity rather than survival (Almberg et al. 2009, 2010). The Carroll et al. (2014a) PVA estimated that in a year with a disease outbreak, fecundity would be reduced by 80%, and survival of all age classes would be reduced by 5%. The current PVA assumes that disease outbreaks occur on average every 6.7 years, and that in

a year with a disease outbreak, pup survival would be reduced by 65%, and survival of all other age classes would be reduced by 5%. The current PVA's parameters are thus more optimistic than those used in Carroll et al. (2014a), and less consistent with what is known from other wolf populations with a longer data record regarding disease outbreak frequency.

Importantly, data from other inbred wolf populations such as that of Isle Royale suggests that inbreeding depression may make wolves more susceptible to disease and other stochastic threats. This interaction is not incorporated in the 2014 or 2017 PVAs and would tend to make their results somewhat overoptimistic.

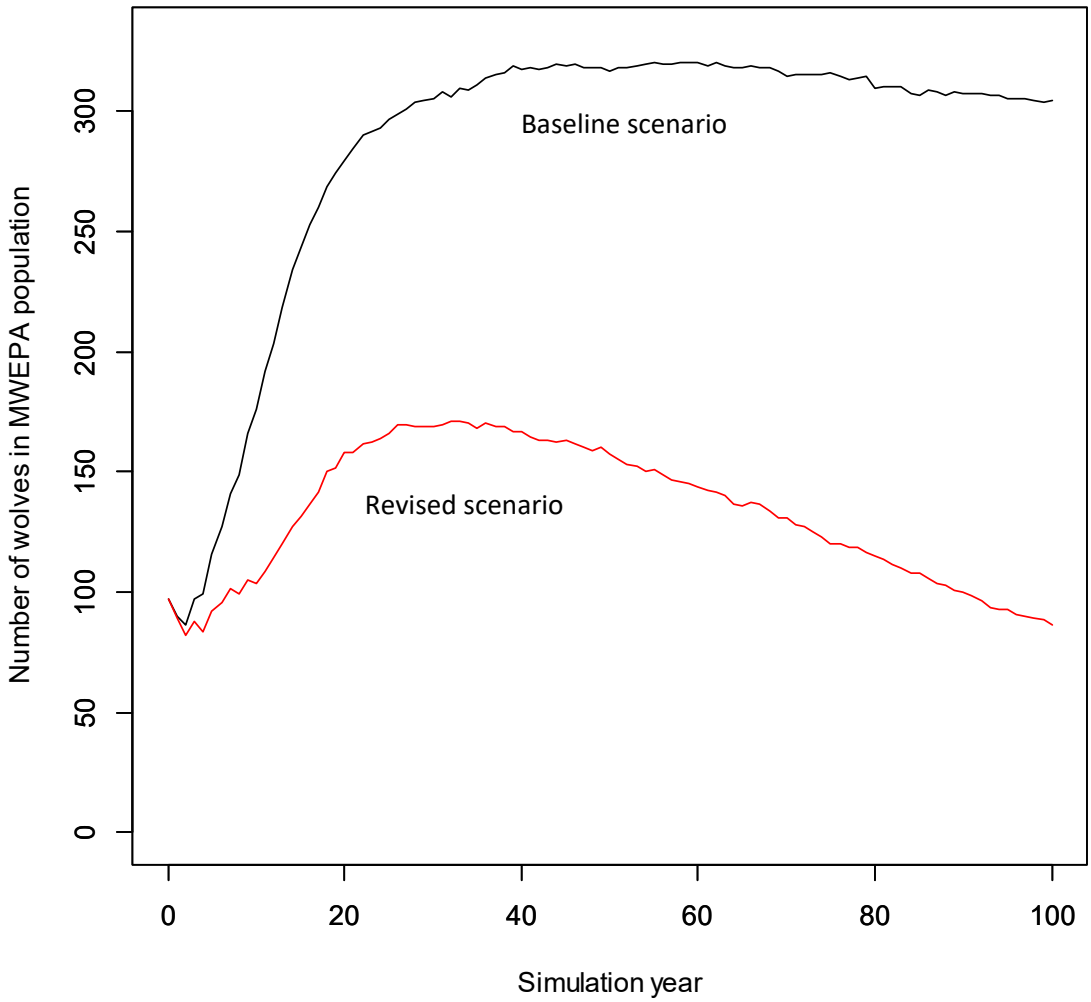
In summary, it appears that the draft plan's PVA opts for parameter values giving the most optimistic results as to persistence. Any one parameter choice would not be determinative but in sum, the suite of overoptimistic parameters is highly unlikely to accurately represent dynamics of wild Mexican wolf populations.

Results of simulation with revised parameters

I reran the Vortex simulations using the baseline scenario with two revisions. Firstly, the proportion of females in the breeding pool was revised downward from 77.6% to 69%, which is the mean value from 10 studies (the 9 studies reviewed by Fredrickson (unpublished) and the Blue Range population). Secondly, the frequency and intensity of disease outbreaks were changed from the values used in the current PVA to those used in the Carroll et al. (2014a) PVA, which were based on data from Yellowstone (Almberg et al. 2009, 2010). Importantly, although the baseline PVA likely underestimates the strength of inbreeding depression, this parameter was not altered because I did not have access to the data necessary to re-estimate the regression model developed by Clement and Cline (2016).

The effects on population persistence were nonetheless striking (Figure 1). Probability of extinction of the MWEPA population increased to 42%, and the MWEPA population showed a steady decline towards extinction (versus the gradual decline shown under the baseline scenario). The average MWEPA population size never reached the delisting threshold of 320 wolves. These results clearly demonstrate the fragility of the PVA's conclusions to the overoptimistic assumptions on which its parameter values are based.

Figure 1. Projected mean population numbers by year for the MWEPA population and metapopulation under a) the baseline scenario used to support proposed recovery criteria, and b) the baseline scenario with parameters for proportion of females breeding and disease outbreaks adjusted to better reflect available published data from multiple wolf populations.



Review of the Habitat Analysis

A rigorous analysis of the distribution of suitable habitat is a key aspect of recovery planning. Estimates of the carrying capacity of different regions is used as one input in the Vortex PVA. However, the primary value of habitat analysis for reintroduced species such as the Mexican wolf is to prioritize which regions are most likely to be able to support core populations of wolves before and after delisting due to expected low levels of human-caused mortality and adequate prey.

When considering the potential role of Mexico in recovery, we should clearly distinguish between the demographic and geographic components of recovery. That is, a wolf population in Mexico may be necessary to fulfill goals of geographically-extensive recovery. For this reason, previous recovery teams have all suggested including Mexico in recovery efforts. However, unless habitat areas in Mexico support secure populations with low levels of human-caused mortality, these populations will remain small and isolated and unlikely to contribute demographically to recovering the Mexican wolf metapopulation as a whole.

The habitat analysis associated with the draft plan ("Mexican Wolf Habitat Suitability Analysis in Historical Range in Southwestern US and Mexico, April 2017 version") estimates the extent and distribution of suitable habitat based primarily on climatic niche modeling. These models use correlation between climatic maps and the recorded locations of a species (e.g., historical locations of collection of wolves by museums) to make predictions as to what other areas have an environment (e.g., climate) similar to where wolves once occurred. While such models are useful when applied in the appropriate context, they have well-known limitations and should not be used in isolation to assess habitat availability for recovery, as they measure only one dimension of a complex habitat niche.

I discuss below how the accuracy and relevance of the habitat analysis results depends on several factors, summarized in the form of key questions which must be addressed before one can have confidence that the resulting information can support recovery planning:

<u>a) Do the occurrence locations used to build the model represent the pre-settlement distribution of the Mexican wolf?</u>

The relevance of climatic niche model results is dependent on the quality of the input distributional data. Historical species locations should be representative of the fundamental climatic niche of the species, rather than biased by uneven survey effort or past extirpation of the species from otherwise suitable habitat. Extirpation of wolves, including Mexican wolves, from large portions of their historic range occurred prior to the era when the locations used in the niche model were collected.

The conclusions of the habitat analysis regarding the extent of climatically suitable habitat contrast with those of previous niche models (e.g. Hendricks et al. 2016; see Figure 2).

This may be partially due to two contrasts between the distributional data used. Firstly, Hendricks et al. (2016) included 7 northerly sample points from areas with historical admixture between Rocky Mountain wolves and Mexican wolves. Secondly, the habitat analysis reviewed here includes many anecdotal reports of wolf occurrence from the southern portions of the range in Durango, Mexico, but does not include similar survey effort in other regions. The sensitivity of results to alternate input data sets suggests caution before excluding northerly areas from consideration as suitable habitat.

b) Are climatic factors expected to be the primary constraints on Mexican wolf distribution?

The relevance of niche model results depends on the assumption that the climatic or other variables used represent the primary factors limiting distribution of the species. This is unlikely to be true for a species such as the wolf which is a relative habitat generalist but highly limited by human-caused mortality. In the current habitat analysis, the influence of non-climatic habitat variables was evaluated only after areas had been excluded from consideration based on the climatic niche analysis.

c) Does the final suitability map (here a binary "consensus" map) accurately represent the aggregate model results?

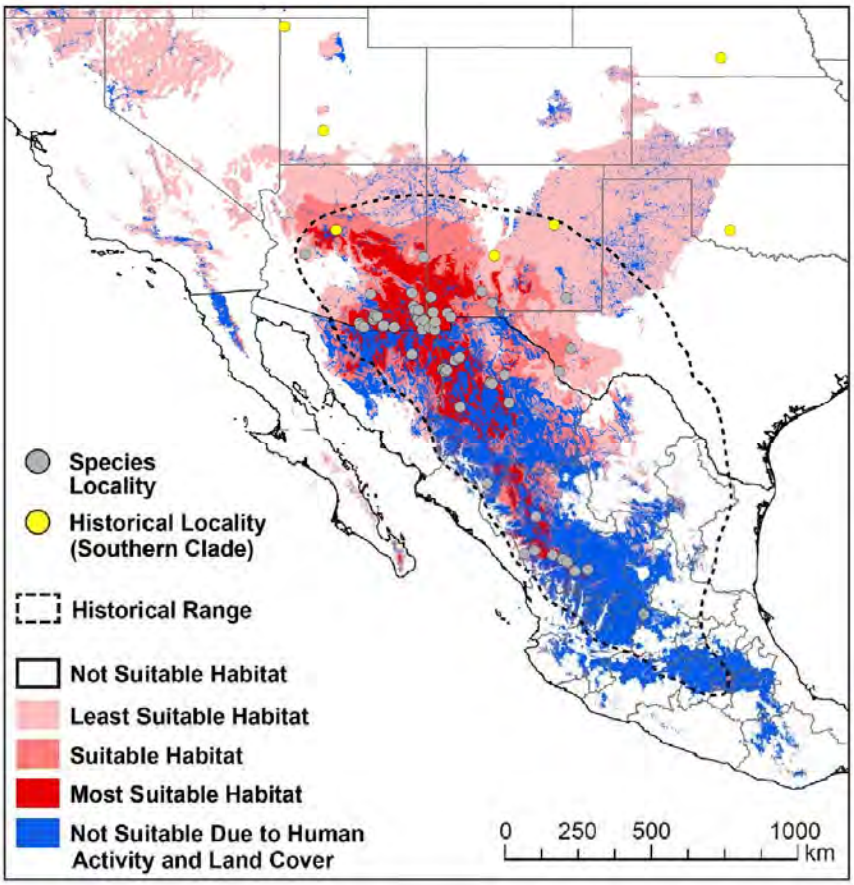
The final binary map of suitable vs. non-suitable habitat produced in the habitat analysis is quite conservative in its bias towards delimiting a less extensive region of suitability. The analysis excludes 4 of the 8 models tested due to their "overprediction" (i.e., identification of areas not within the limited set of occurrence data). Next, the analysis further limits the region of suitability to areas where 2 or more of those 4 models simultaneously identified habitat. In contrast, Hendricks et al. (2016) retained information on areas of lower climatic suitability (Figure 2), as such options may be important to planners if other factors such as human-caused mortality risk impact areas of higher predicted climatic suitability.

d) Do secondary variables used to screen areas within habitat niche accurately represent non-climatic limiting factors?

The habitat analysis reviewed here does not adequately consider several major limiting factors for wolf survival and persistence. The primary factor limiting wolf distribution is human-caused mortality (Fuller et al. 2003, Mladenoff et al. 2009). The past 20 years of experience from wolf recovery efforts in the US demonstrates that large blocks of public land

are key to at least the initial stages of wolf recovery. This is true even in states such as Wisconsin, where territories of recolonizing packs were initially anchored by the few blocks of federal and state forestlands. The habitat analysis provides no data demonstrating that sufficiently large habitat blocks, suitable to support a population of a wide-ranging carnivore such as the wolf, currently exist in Mexico. 35-40% of the US southwestern landscape is federal public land, but these conditions do not exist in Mexico, where >95% of the landscape is in small private landholdings. The FWS conducted an analysis in 2012 that concluded that potential recovery areas in Mexico were not only smaller, but also had far higher livestock density (making conflict with wolves more likely) and lower native prey biomass than areas in the southwestern US (Table 1). The experience with wolf recovery in Mexico to date has reinforced the sense that recovery of a widely-ranging carnivore in such a landscape of fragmented private holdings is challenging: wolves must be supplementally fed to discourage them from ranging beyond the site of reintroduction into the broader high-risk landscape.

Figure 2. Species distribution model of Mexican wolves developed by Hendricks et al. (2016).



The data that is used in the habitat analysis to assess factors related to survival (e.g. roads; INEGI 2000) in Mexico has well-known limitations. The data is much less comprehensive in representing unpaved roads than are US roads data sets, leading to an overestimate of suitable habitat in Mexico. Additionally, those prey surveys that are available for northern Mexico are primarily from game farms (UMAs) or lack sufficient sample size and cannot be easily generalized beyond the limited area in which surveys have been conducted, so cannot be used to provide a robust landscape-scale estimate of prey abundance or wolf carrying capacity. Previous Mexican wolf recovery teams have concluded that, due to alteration by human development and resource use of the historic habitat inhabited by Mexican wolves in Mexico, recovery of wolves in Mexico will be slow and will not contribute demographically to the larger metapopulation in the short and medium term.

Table 1. Comparison of potential Mexican wolf recovery areas in the United States and Mexico, in terms of percentage of public land, prey density, and cattle density. Excerpted from material prepared by the USFWS Mexican Wolf Recovery Team Science and Planning Subgroup in December 2012.

AREA	% PUBLIC LAND	PREY DENSITY (DEPU)	CATTLE DENSITY
Southern Rockies	64.4	7.6	3.4
Grand Canyon	54.9	4.1	1.4
Blue Range	66.1	5.6	1.6
West Texas	0.07	~3	2.7
Chihuhua/Sonora	<1	2.2	4.3
Durango/Zacatecas	<1	2.2	9.3
Coahuila	<1	0.60	4.3
Nuevo Leon	7.2	0.23	6.3

II. The draft plan does not establish criteria which objectively and comprehensively address key threats.

The ESA defines an endangered species as "at risk of extinction throughout all or a significant portion of its range" (16 U.S.C. §1532(3.6)), and a threatened species as "likely to become endangered in the foreseeable future" (16 U.S.C. §1532(20)). The ESA's legislative history indicates that Congress intended the Act to afford a high level of security to listed

species (Carroll et al. 2012). Because a population's extinction risk is never zero, establishing risk thresholds in listing and recovery actions involves a normative dimension (i.e., specifying what level of endangerment is acceptable) and a scientific dimension (i.e., determining whether a species meets that level of endangerment)(Vucetich et al. 2006).

Although the U.S. Congress mandated that agencies consider "solely" the best science in making listing decisions (16 U.S.C. §1533 (3b)(1A)(a1)), lawmakers addressed the normative nature of such decisions only qualitatively when they emphasized in the ESA the high degree of protection they intended to afford to biodiversity (Carroll et al. 2012). While the ESA does not explicitly define quantitative thresholds for acceptable risk, this does not mean that administrative agencies may apply such risk thresholds inconsistently. Clear and consistent implementation of statutes is necessary to maintain the continuity in conservation policy that is required to realize the goals of the ESA.

While data for many species are too limited for quantitative PVA-based extinction risk estimates, such estimates are possible for relatively well-studied taxa such as the Mexican wolf. Gilpin (1987), one of the few authors to consider the normative aspects of this issue, argued for considering risks of extinction for 200-year time frames simply because he believes humanity's immediate challenge is to eke through the next two centuries while losing as few species as possible. Shaffer (1981) adopted a 99% persistence probability for 1000 years as a viability criterion for grizzly bears.

However, Soule (1987) and Shaffer (1987) expressed concern that targeting a minimum viable population (MVP) level is inadequate for sound conservation, because most PVAs underestimate long-term uncertainty in stochastic events and MVPs provide minimal capacity for populations to withstand unforeseen circumstances. They argue that PVA results should be used instead to provide information on the general relation between risk and factors such as abundance, genetic diversity, and distribution (Shaffer et al. 2002). Recovery goals appropriately include a sufficient margin of safety to ensure that unanticipated future events do not cause species to fall below the threshold that would again make listing warranted.

The statutory language is consistent with this concern in that is does not require the agencies to define recovery for a given species as the absolute minimum population size and geographic distribution that equates to a specified persistence level. For species that are experiencing severe declines, the recovery goal is often to reverse the decline and restore the population to a previous status rather than some minimum size.

Consistent with best practice in recovery planning, point estimates of population viability from the Vortex model should be used as one source of information in a decision-support context. Consistent with Congress' intent to institutionalize caution in order to avoid uncertainty about a species' future status, recovery plans should identify criteria that provide a margin of safety because they resulted in conditions under which the species is unlikely to become threatened or endangered again in the foreseeable future: 1) a low predicted potential for extinction (e.g., <1% over 100 years), and 2) a high likelihood that populations would meet specified size criteria over the long term. Due to the role wolves play in their ecosystems (Estes et al. 2011), such precautionary criteria also increase the probability of conserving ecosystems and ecosystem function (16 U.S.C. §1531 (a)(5)(b)).

The proposed recovery criteria do not meet either of these standards, due to at least two factors. Firstly, the extinction risk threshold proposed in the draft plan (10% extinction risk over 100 years) is unusually high and inconsistent with generally accepted practice. A 10% extinction risk over 100 years is considered by the IUCN red list to place a species in the "vulnerable" category. Secondly, even using the overoptimistic baseline parameters, PVA results indicate that delisting of the MWEPA population at the proposed size (320) would result in a significant (40%) risk of the population falling below that threshold of 320 in the future and needing to be relisted. This is due to genetic and other risks to small populations, and occurs despite the fact that the proposed threshold at which removal of wolves to cap the population will begin (379) is higher than the delisting threshold of 320.

Downlisting criteria

Angliss et al. (2002) proposed that, to be consistent with the statute, criteria for downlisting from endangered to threatened status should be defined by reference to the criteria for endangered status rather than directly in terms of extinction risk. This approach

was subsequently incorporated into recovery plans for species such as the fin whale (*Balaenoptera physalus*), which will be removed from the list of threatened species when it "has less than a 10% probability of becoming endangered (has more than a 1% chance of extinction in 100 years) in 20 years" (NMFS 2010). This framework is relevant for the Mexican wolf, although an appropriate timeframe for the "foreseeable future" would be 100 years (as in the draft plan) rather than 20 years because genetic threats require decades to accumulate to deleterious levels. Unlike in the earlier effort (MWRT-SPS 2013), the downlisting criteria proposed in the 2017 draft plan are arbitrary rather than objective, because they are not linked to the PVA or other quantitative analysis. To be consistent with best practice, the draft plan should be revised to specify downlisting criteria which assure a low probability of the species again falling into the category of an "endangered" species (based in part on PVA results).

Population size and number criteria

The concept of redundancy acknowledges that demographic persistence is enhanced by creation of a metapopulation, in which multiple subpopulations are linked by dispersal. This is in part due to "spreading of risk", since episodic threats such as disease outbreaks may not affect all subpopulations simultaneously (DenBoer 1968). A comprehensive set of demographic recovery criteria should include criteria on the size of individual subpopulations, the number of subpopulations, and the degree of metapopulation connectivity. The status of two populations of the same size would differ if one was stable while the other was declining. Demographic recovery criteria should thus specify both the required state or status and trend over time in population size and demographic rates.

The draft plan predicts that at the time of recovery, Mexican wolf populations will be stable or increasing in abundance, well-distributed geographically within their range, and genetically diverse. However, this statement is at odds with the results of the PVA, suggesting that the draft plan is internally inconsistent and that the draft plan's proposed criteria are inadequate. These aspects of the PVA results are obscured in the draft plan's text but become evident once more detailed and comprehensive PVA metrics are evaluated.

The draft plan proposes recovery criteria related to population size which are purportedly supported by results of the baseline scenario ("379_200_200_249_EISx220_20"). I reran this scenario and explored the output in greater detail than is presented in the PVA report. Although the PVA simulations were run including all 3 populations, I focus primarily here on results for the US ("MWEPA") population, because a) this is the largest population and thus has the highest probability of persistence and retention of genetic diversity (i.e. resilience in the face of known threats), and b) the FWS's mandate for recovery is strongest for recovery efforts within the US.

The baseline scenario resulted in a MWEPA population that was, on average across simulations, in decline after 39 years, due to accumulating effects of genetic and other small population threats. Populations that are projected to be in decline cannot be considered "stable or increasing", and anticipated decline in a population, even if extinction itself is delayed, indicates that threats have not been adequately addressed and that population size criteria are too low. It should be noted that support for the adequacy of the population threshold is highly contingent on assumptions that adult mortality will be <= 24.9%/year, yet, unlike in the earlier draft plan (MWRT-SPS 2013), no recovery criterion in the 2017 draft plan addresses the threat of human-caused mortality.

Criteria addressing genetic threats

The criteria proposed in the draft plan do not objectively and adequately address known genetic threats to Mexican wolves. The plan proposes that threats to genetic diversity will have been addressed when a cumulative total of releases from the captive population has been reached. This is a metric that measures the history of recovery efforts but says nothing about the actual genetic status of the wild population at the time of delisting. The baseline PVA scenario suggests that a specified number of releases to the MWEPA (70, composed of 28 adults and 42 pups) results in a certain effect on genetic diversity of the wild population in the simulations. However, the PVA uses a highly simplified model of real-world wolf populations. It is certain that the individuals actually released into the wild will not be exactly the same genetically as those projected to be released in the simulations, and that subsequent matings and offspring production in the wild population will not match those that occur in the model

simulation. FWS recovery guidance correctly concludes that “PVA should not be viewed as a replacement for criteria based on threats, but as a supplement to them. The criteria describe the conditions under which it is anticipated the PVA would indicate long-term viability” (Interim Recovery Guidance 5.1:18).

Therefore, the plan should base the recovery criterion addressing genetic threats on a metric related to the actual genetic status of the wild population at the time of recovery, not a criterion that only records the history of recovery efforts (such as number of individuals released). The genetic status of the wild population can now be directly and economically assessed using modern genetic techniques. Additionally, criteria related to the status (rate) of metapopulation connectivity (see below) can help to address genetic threats.

Several southwestern states have in the past worked to oppose and delay releases from the captive into the wild population. The draft plan proposes to give these states effective control of the timing of releases (USFWS 2017, lines 683-688, “In order to achieve the genetic criteria for downlisting and delisting the Mexican wolf in this Plan, the states of New Mexico and Arizona, and the Mexican government, will determine the timing, location and circumstances of wolves into the wild within their respective states, and Mexico, from the captive population, with the Service providing collaborative logistical support and facility of those recovery actions.”) PVA results and hence adequacy of criteria are highly contingent on the forecast number of wolves actually being released at the year specified in the model (e.g., in the first decade of recovery efforts). If releases are delayed for any reason, the cumulative total of releases specified in the recovery criterion would have a different (and likely lower) effect in reducing loss of genetic diversity.

Additionally, the metrics chosen in the draft plan and PVA to assess genetic level provide inadequate information on whether genetic threats are actually being addressed. The recovery criteria in the draft plan seek to establish wild populations that will retain 90% of the genetic diversity retained by the captive population 100 years in the future. By focusing solely on relative rather than absolute genetic metrics, the draft plan ignores the current genetic context of the wild population. Genetic criteria typically consider and address the fact that captive populations started from small founder numbers can be poor representations of

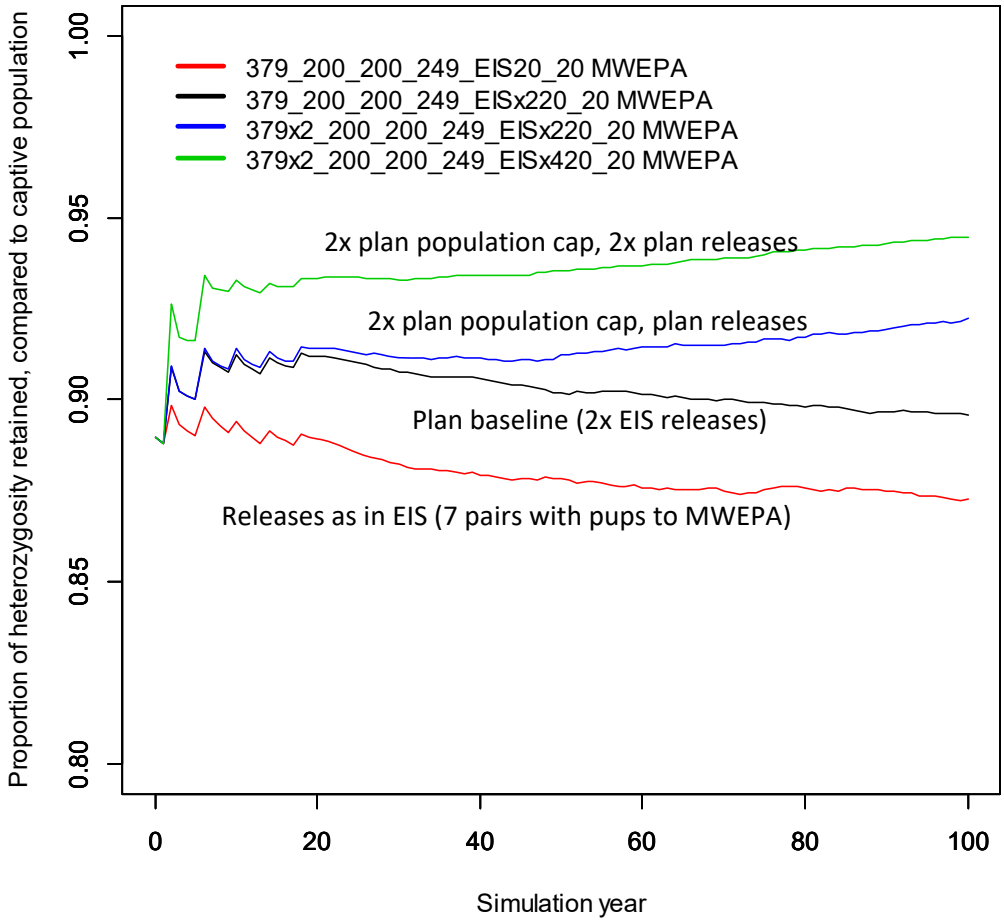
historical wild diversity, and even that starting diversity will decay over time. The genetic health of the population is assessed by comparing it to the initial (starting) wild population.

In the draft plan, that concept gets turned on its head. The draft plan merely accepts that the captive population is badly depleted genetically (and, thus, both a poor representation of what was once a Mexican wolf and also at risk of inbreeding damaging demography), and then uses that "shifting baseline" as the standard against which the wild populations will be measured. Thus, if the future wild population isn't too badly damaged genetically relative to the current, already depleted captive population, the draft plan assumes that the program meets genetic goals. The actual level of gene diversity that the draft plan is willing to accept as the long-term fate of the species – approximately 60% to 70% of the initial wild diversity – is extremely low. This translates to a population in which all the animals are more closely related to each other than full-siblings, i.e., genetic diversity that is no more than what you would get by sampling a single litter from the original wild population. The draft plan thus accepts a continued significant decline of genetic diversity that is likely to accentuate rather than address genetic threats.

The genetic diversity of the captive population is inherently limited by the low number of wolves (~300) than can practically be maintained by the existing zoo network. Due to these limitations, genetic diversity of the captive population will decline relatively rapidly over time unless a larger wild population can be established in the near future. It is also questionable whether the existing level of resources required to support 300 Mexican wolves in captivity can be maintained by the zoo network in perpetuity (as assumed in the PVA) given the needs of other threatened species.

To be consistent with the ESA's mandate for recovery, genetic goals should attempt to retain within the wild population a large and increasing proportion of the total overall current diversity present in both the wild and captive population. This is possible if a greater number of initial releases occur, and if the wild population is allowed to grow to a larger size than the captive population. I simulated retention of genetic diversity under scenarios that doubled the number of initial releases to the MWEPA (from 70 to 140 (28 pairs with pups)) and/or doubled the MWEPA population cap (from 379 to 758)(Figure 3).

Figure 3. Proportion of heterozygosity expected to be retained by the US wild population (MWEPA), expressed as a proportion of the heterozygosity retained by the captive population, under four Vortex scenarios with differing population caps (as proposed (379) and twice that proposed (379x2) in the draft plan) and number of wolves released from the captive to wild population (as proposed in the EIS (EIS), as proposed in the draft plan (EISx2), and twice that proposed in the draft plan (EISx4)).



The results suggest that it is possible for the wild population to retain an increasing proportion of the diversity of the wild population over time rather than a decreasing proportion, as would occur under the draft plan's proposed criteria. The number of initial releases from the captive to wild population determines the proportion of genetic diversity retained at ~ year 10 in the model. This metric is of course in itself highly important for addressing genetic threats.

To show an increasing trend in diversity retention after these initial releases, the wild population must be of significantly larger size than the proposed population cap, and thus larger (in both census size and genetically effective population size) than the captive population. Such an increasing trend is more consistent with the definition of recovery under the ESA, which requires effectively addressing identified threats to a species rather than only slightly ameliorating them, than is the draft plan's proposed criterion.

Connectivity criteria

Connectivity between populations in the PVA is assumed to be very low. However, it is well known that connectivity can increase the retention of genetic diversity within component populations (Carroll et al. 2014b). Thus, increased dispersal between wild populations would help to address the severe genetic threats evident in Mexican wolf populations. The 2013 draft recovery criteria addressed genetic threats by proposing a criterion related to the measured rate of connectivity among wild populations (expressed in terms of the number of genetically effective migrants per generation)(Table 2). Previous wolf recovery plans from the Northern Rocky Mountains and Great Lakes have also required recovery of interconnected populations. No such connectivity criteria are proposed in the 2017 draft plan.

Mortality or human-caused loss (HCL) criteria

Human-caused mortality is the primary threat to wolf population persistence both globally and for the Mexican wolf (Fuller et al. 2003, Carroll et al. 2014a). The Mexican wolf population has in the past experienced high rates of human-caused losses (defined to include human-caused mortalities from poaching and vehicle collisions as well as management removals). Genetic threats from small population size and consequent inbreeding affect demographic rates such as mortality and fecundity. The Mexican wolf population may be more sensitive to fluctuations in human-caused mortality rates than most other wolf populations, because fecundity and recruitment rate (the process that balances mortality rate) has been negatively affected by inbreeding depression. Carroll et al. (2014a) found that the adult mortality rate was the most important parameter affecting extinction risk among simulated populations of Mexican wolves.

Table 2. Types of recovery criteria in the 2013 and 2017 draft Mexican wolf recovery plans.

Type of criteria	2013 draft criteria	2017 draft criteria
1. **Population size and number and metapopulation size**	A metapopulation consisting of a minimum of 3 primary core populations in the wild, each with a census population size of at least 200 individuals, and a total metapopulation size of at least 750 individuals.	MWEPA (US) average population abundance is greater than or equal to 320, and Northern Sierra Madre Occidental (Mexico) average population abundance is greater than or equal to 170.
2. Population trend	Population trend in each of the 3 primary core populations has a high probability (80% confidence) of being stable or increasing over 8 years, based on a statistically reliable monitoring effort.	Stated population abundance is maintained or exceeded over 8 consecutive years.
3. **Population connectivity (including releases from captive to wild population)**	Immigration into each of the 3 primary core populations via natural dispersal at a rate of at least 1 genetically effective migrant every generation, averaged over a period of 8 successive years, as measured by a statistically reliable monitoring effort. A genetically effective migrant is defined as a wolf that breeds in a non-natal population and produces at least 1 pup that survives to at least December 31 of the year of its birth.	Gene diversity available from the captive population has been incorporated into the MWEPA through scheduled releases of a sufficient number of wolves to result in 22 released Mexican wolves surviving to breeding age in the MWEPA, and 37 released Mexican wolves surviving to breeding age in the northern Sierra Madre Occidental.
4. **Amelioration of human-caused losses (HCL)**	The estimated annual rate of human caused losses averaged over an 8-year period is less than 20% as measured by a statistically reliable monitoring effort. This is the greatest rate of anthropogenic mortality and removal that a Mexican wolf population could have and still be expected to have an approximately 75% or greater chance of being stable or increasing.	None.
5. **Post-delisting monitoring**	To monitor the continued stability of the recovered Mexican wolf, a post-delisting monitoring plan has been developed and is ready for implementation within the affected states as required in section 4(g)(1) of the ESA.	None.
6. **Regulatory mechanisms**	State management plans and adequate post-delisting regulatory protection and capacity confirmed. Components of an adequate plan will include assurances that: (1) the natural dispersal rate required for delisting is not precluded by HCL; and, (2) management targets for population size are sufficiently large relative to delisting criteria and HCL rates are sufficiently low to ensure that there is no greater than a 10% chance that the Mexican wolf will fall below the recovery criteria within a 10-year period.	Effective State and Tribal regulations are in place in the MWEPA in those areas necessary for recovery to ensure that killing of Mexican wolves is prohibited or regulated such that viable populations of wolves can be maintained. In addition, Mexico has a proven track record protecting Mexican wolves. Based on these protections, Mexican wolves are highly unlikely to need the protection of the ESA again.

Therefore, if future mortality rates are higher than assumed in the draft plan, populations will have a greater probability of decline and show higher extinction risk than projected in the draft plan. Therefore, the PVA results, and the adequacy of the proposed population size criteria based on those results, are highly dependent on this assumption of relatively low mortality (24.9%). Unlike the 2017 draft plan, the 2013 draft recovery criteria included a criterion addressing the threat posed by human-caused mortality, to ensure that this threat had been addressed, and that the assumptions behind other recovery criteria (such as population size) contingent on amelioration of this threat were indeed met at the time of delisting (Table 2).

III. The draft plan does not establish criteria which, if achieved, would indicate that the species exists in wild, self-sustaining populations which as a whole achieve resiliency, redundancy, and representation, such that the Mexican wolf no longer meets the definition of a threatened or endangered species.

Wolves are among the most widely distributed of large terrestrial vertebrates and have proved highly adaptable to a wide variety of habitats. Experience with wolf recovery in other regions suggest that it is eminently feasible to recover wolves to the point where they persist in a wild, self-sustaining population with minimal human management necessary beyond that typical of other large carnivores (e.g., removals in response to depredation or other conflicts with humans)(Carroll et al. 2014b). In contrast, the draft plan seems to propose that Mexican wolves will require an intensive "conservation-reliant" approach involving expensive management interventions over many decades, including after delisting. Such an approach is inconsistent with the intent of the ESA, and would be unnecessary if the plan contained a more adequate and science-based recovery strategy and criteria.

Firstly, the PVA underpinning the draft plan's criteria assumes that supplemental feeding of the wild population will continue in perpetuity. The PVA assumes that "feeding will begin to decline five years into the simulation, with the subsequent rate of decline from 70% feeding determined by the extent of growth toward that population's management target. Authorities assume that the long-term feeding rate will not drop to zero but will likely be maintained at approximately 15% to allow for management of occasional livestock

depredations." The PVA results and the adequacy of the draft plan's recovery criteria are contingent on this feeding occurring at the rate specified.

Wolves are among the most vagile of all terrestrial mammals and can disperse over 800 km (Forbes and Boyd 1997). However, the draft plan's recovery criteria and strategy make no effort to ensure genetically-effective natural dispersal between wolf populations, which is a key method of addressing genetic threats. This contrasts with the 2013 draft recovery criteria, which included a criterion related to natural dispersal (which can be ensured through management of habitat connectivity and mortality threats to dispersing wolves).

Thirdly, the draft plan proposes that the US wild population be capped (at between 320 and 380 wolves) via removals prior to and post-delisting. The draft plan states (lines 891-893) that "population growth significantly above 320 may erode social tolerance in local communities or cause other management concerns such as unacceptable impacts to wild ungulates from Mexican wolves (USFWS 2014)." However, no scientific basis is given to support the hypothesis that wolf populations above 320 would significantly decrease tolerance or ungulate abundance.

The relevance of Mexican wolf historical range in the light of available information on genetics of Mexican wolves

The draft plan justifies limiting recovery efforts to areas to the south of Interstate Highway 40 based on an outdated understanding of Mexican wolf historic range and how information on historic distribution appropriately informs recovery planning. The draft plan bases its description of historic range on a view that morphological analysis is superior to modern genomic analysis in determining similarities or differences between taxonomic groups. This view is based on a recent paper (Heffelfinger et al. 2017) that was effectively rebutted by a group of leading wolf geneticists (Hendricks et al. in press, see also Hedrick 2017). Similarities in morphology may or may not reflect similar ancestry, while differences in genomic data will always reflect different ancestry. Recent comprehensive genomic analyses of canids (Hendricks et al. 2016, vonHoldt et al. 2016) more accurately represents best available scientific information than do almost century old morphological studies.

The plan's text regarding historic wolf distribution, and genetic and population effects of interbreeding between Mexican and northern gray wolf subspecies, also reflect an outdated view that assumes that wolf subspecies were historically genetically disjunct. Genomic studies demonstrate that wolf range was largely continuous with genetic isolation by distance (sufficient to maintain the relative distinctness of subspecies such as the Mexican wolf) but with some intermixing via dispersal as is typical of subspecies in general and particularly in canids (vonHoldt et al. 2016).

Hybridization occurs between many species and particularly in canids, and is an important evolutionary process. We know from genomic analysis that intermixing between northern wolves and Mexican wolves occurred historically, and it would contribute to recovery if this genetic cline was reestablished as wolves moved south from the Northern Rocky Mountains and Mexican wolves moved north (Leonard et al. 2005). Past experience demonstrates that any hybrids produced between wolf subspecies would be protected under the ESA. For example, crosses between Texas cougars and Florida panthers are all considered Florida panthers for the purposes of the ESA, and are protected.

Genetic intermixing only constitutes deleterious swamping when it exceeds a certain level. Hedrick (1995) concluded that swamping would not occur in Florida panther if the level of Texas cougar ancestry was maintained below 20% to 30%. Carroll et al. (2014a) concluded that intermixing between southwestern and northern wolves would be relatively low compared to interchange within either the northern or southern metapopulation. The Mexican wolf genetic variants that were adaptive in southwestern ecosystems would remain or increase in the mixed population, while detrimental alleles would be selected against. The biological report is therefore misguided when it states (line 1172) that the FWS "would manage against such breeding events occurring in the MWEPA".

An exclusive focus on historical range is not mandated in the ESA or related FWS policies. There is no direct reference to historical range in the ESA, and only one ESA related policy makes reference to it: 50 CFR 17.81(a)] states "The Secretary may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species current range (but within its

probable historic range) …". But even here the FWS Director has discretion based on current conditions [50 CFR 17.81(a)]: "... an experimental population can be established outside a species historic range if the Director finds that the primary habitat of the species has been unsuitably or irreversibly altered or destroyed." Even if one rejects genomic analyses (e.g. Leonard et al. 2005, Hendricks et al 2016) indicating a more extensive historic range for Mexican wolves, available information indicates that the lack of sufficient suitable habitat with low mortality risk in Mexico requires defining a recovery region that includes sufficient suitable habitat from areas to the north of Interstate 40 where secure habitat areas are found in the Grand Canyon region and Southern Rockies, as shown in a figure (Figure 4) reproduced from earlier FWS analyses of Mexican wolf habitat).

Figure 4. Potential wolf habitat in Arizona and New Mexico, as shown in green in Figure ES-4 of USFWS (2014a).

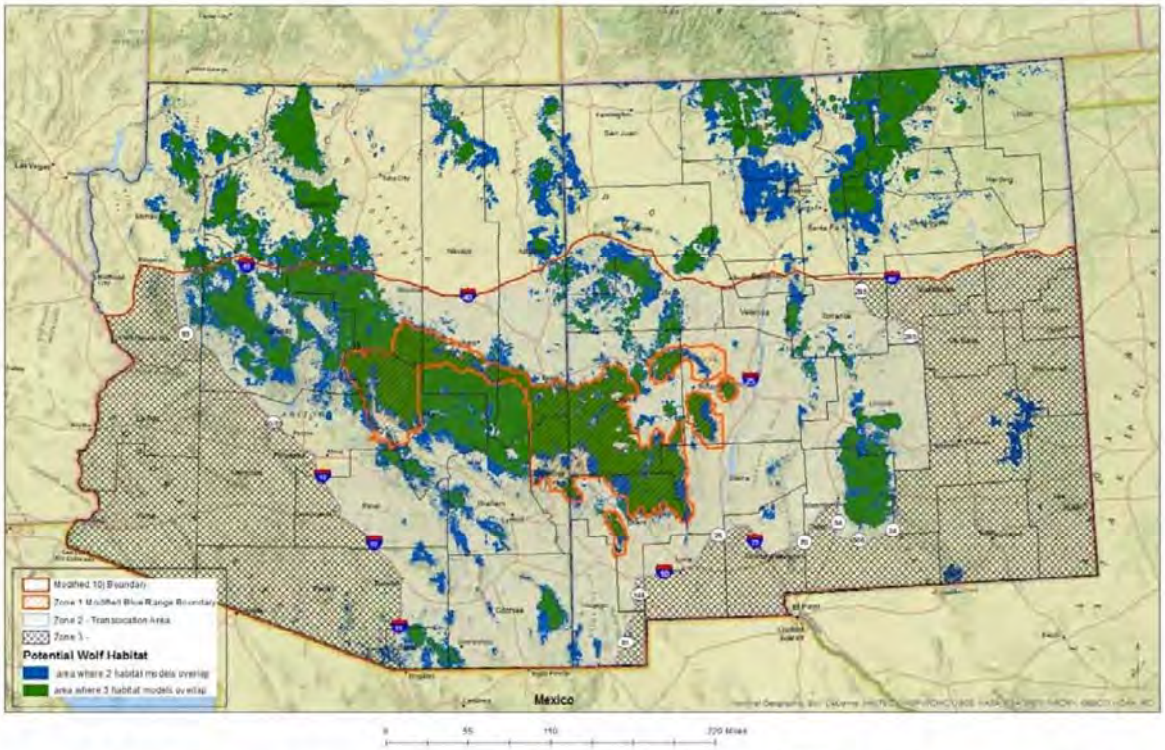


Figure ES-4. Alternative Three (BRWRA Expansion; MWEPA Expansion with Management Zones)

FWS has in the past supported endangered species recovery efforts in regions that were not considered recent historical range, including black-footed ferret conservation efforts near Janos, Mexico; California condor reintroductions in northern Arizona; and westslope cutthroat trout conservation efforts in southwestern Montana. There is even a previous example in terms of gray wolf recovery: according to some authors (e.g. Nowak 2003), the plains gray wolf (*Canis lupus nubilus*) occupied the northern Rocky Mountains historically rather than the northwestern gray wolf (*Canis lupus occidentalis*). However, *C. l. occidentalis* individuals from Alberta and British Columbia, Canada, were used for reintroductions because the animals were familiar with the habitats and prey (Fritts et al. 1997).

Threats due to climate change

In an increasingly dynamic and uncertain world, recovering taxa outside purported historical ranges following assessment of historical, contemporary, and future conditions will become increasingly common. This will likely be especially true for species that are defined by ecologically similar subspecies with historical distributions that included extensive zones of intergradation. Such an approach to recovery will allow such species to experience greater security than a more conservative approach based on an exclusive focus on subspecies' historical ranges (Frankham et al. 2017).

Recent court decisions for other species (e.g. Alaska Oil and Gas Association v P. Pritzker, et al., United States Court of Appeals for the Ninth Circuit. CV 00018-RRB 2016) have reinforced the conclusion that listing and recovery actions must consider the implications of projected climate change. Although Mexican wolves, like other wolf subspecies, are relatively generalist in their habitat preferences, increased aridity due to climate change (Notaro et al. 2012), especially in the southern portion of the range, might be expected to decrease forage and prey abundance. This implies that recovery plans should consider the role of areas to the north of Interstate 40, within the zone of historic genetic intergradation between Mexican wolves and northern wolves, in increasing resilience of recovery efforts to climate change.

Conclusion

Early wolf recovery plans (USFWS 1982, 1987) based their recovery criteria solely on expert judgement, thus precluding substantive and science-informed debate over their

adequacy. The FWS is to be commended for performing a quantitative PVA in association with development of the draft plan. This allows the scientific basis of proposed recovery criteria to rigorously evaluated by both invited peer reviewers and scientists such as myself who submit public comments. Some of the conclusions of the PVA analysis are clearly robust to the issues identified here. For example, the PVA demonstrates that in order for Mexican wolf populations to achieve recovery, a higher rate of releases from the captive to the wild population must occur than is envisioned in the recent EIS.

However, despite these strengths, I conclude based on the information presented above that the draft plan and its recovery criteria are based on a population viability analysis (PVA) which incorporates overly optimistic and inaccurate parameters which are unlikely to accurately represent dynamics of wild Mexican wolf populations. There is always some uncertainty regarding demographic parameter values for even well-studied species. However, it appears that the PVA authors have erred consistently in the direction of selecting the parameter value that provides the most optimistic outcome in terms of species viability. This results in a suite of parameter values which is strongly biased towards underpredicting extinction risk. The PVA's predictions regarding extinction risk (and hence the draft plan's criteria) are not robust or precautionary because they become invalid if even one or two of these overoptimistic parameter estimates is incorrect (Figure 1).

All previous Mexican wolf PVAs (Seal 1990, IUCN 1996, Carroll et al. 2014a) have included a sensitivity analysis to evaluate the robustness of conclusions to uncertain parameters. The fact that no sensitivity analysis is provided with the current PVA in itself makes the PVA conclusions of limited value in devising science-based recovery criteria. Even if one accepts the parameters used, the PVA results, if examined in detail, do not support the adequacy of the proposed criteria in ensuring recovery in the context of how the ESA defines the term. In combination, the use of overoptimistic parameters and a minimal set of criteria do not meet the ESA's mandate to comprehensively address threats and ensure population resilience.

The gray wolf, as well as its subspecies the Mexican wolf, have been listed under the ESA for several decades. The Eastern Timber Wolf recovery plan established a recovery criteria

of two populations, with one of 1,250-1,400 individuals, and a second population of >100 (USFWS 1992). The Northern Rocky Mountains Gray Wolf recovery plan established a recovery criteria of three populations of >100 each, interconnected by dispersal (USFWS 1987). The 1982 Mexican wolf recovery plan did not establish formal recovery criteria (USFWS 1982). The existing recovery plans for the Mexican wolf, Northern Rocky Mountains Gray Wolf, and Eastern Timber Wolf are relatively old, and significant changes in the best available science regarding wolf biology and genetics have occurred in the intervening decades. The new draft Mexican wolf recovery plan would ideally have been an opportunity to effectively incorporate the current best available scientific information.

Three attempts (initiated in approximately 1995, 2005, and 2011) have been initiated since 1982 to revise the Mexican wolf recovery plan. Both of the latter two efforts resulted in recommended population criteria involving three interconnected populations of >250 individuals each. The 2011-2013 process resulted in a draft recovery plan of similar length to the current draft plan (>250 pages including appendices), but the process was suspended after southwestern state governments objected to the proposed recovery criteria.

The current draft recovery plan results from a process initiated in 2015. This process differed from previous attempts in at least two aspects. Previously, while the larger recovery team included a diverse spectrum of stakeholders, a subgroup made up primarily of wolf biologists was charged with developing recovery criteria based solely on best available science. In the current process, criteria were devised by a group of which a majority of members lacked training in wolf biology. The group included state game biologists, FWS staff, several non-governmental wolf biologists, as well as non-biologists such as the Utah assistant attorney general. Secondly, final responsibility for drafting of criteria as well as writing of the plan rested with FWS staff rather than participating scientists or the recovery team as a whole. I raised these two issues at the time that the current planning process was initiated. When these issues were not resolved, I declined to accept an invitation to participate in the workshops because in my view the process did not guarantee that the resulting recovery criteria would be appropriately based on best available scientific information.

In the end, this process does in fact appear to have resulted in a draft plan whose criteria, rather than being based on best available science, were pre-determined as a policy decision in order to provide support for wolf population and distribution limits that had been negotiated between the FWS and state agencies as part of the 2014 revision to Mexican wolf management (USFWS 2014b). For example, notes from one of the workshops which resulted in the current draft plan record a decision to artificially limit habitat analysis to the south of Interstate 40 for "geopolitical reasons" (see page 4, Draft Notes Mexican Wolf Recovery Planning Workshop, April 11-15, 2016, Galleria Plaza Reforma, Mexico City, Mexico). Although I do not know at first hand the internal FWS process which resulted in development of the draft plan, I have concluded based on the information presented above that the process resulted in recovery criteria that do not represent best available science and thus do not meet the requirements of the ESA.

Thank you for your consideration of these comments.

Sincerely,

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PO Box 104,
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Exhibit 3

Richard Fredrickson

fredrickson.richard@gmail.com

August 29, 2017

Public Comments Processing

Attn: Docket No. FWS-R2-ES-2017-0036

U.S. Fish and Wildlife Service,

New Mexico Ecological Services Field Office,

2105 Osuna Road NE,

Albuquerque, NM 87113

Submitted via www.regulations.gov

Re: Comments on Mexican Wolf Draft Recovery Plan, First Revision (Docket #: FWS–R2–ES–2017–0036)

Dear Regional Director Tuggle:

I, Dr. Richard Fredrickson, here submit my comments on the U.S. Fish and Wildlife Service's (FWS) Mexican Wolf Draft Recovery Plan, First Revision and associated documents and appendices (82 Fed. Reg. 22918-22920, June 30 2017), which requests "comments on the recovery strategy, recovery criteria, recovery actions, and the cost estimate associated with implementing the recommended recovery actions." My comments presented here are based on 30 years of experience working with endangered species as a wildlife manager and researcher, including work on habitat issues, population viability, and conservation genetics. In addition, I have been involved with Mexican wolves since 2002, and I was a member of the most recent Mexican wolf Recovery Team. More recently, I was a participant in the process leading up to the production of the Draft Plan (Plan), attending four of the five recovery planning workshops. In addition, I have authored and co-author scientific papers on Mexican wolf inbreeding and genetic rescue, taxonomy, and management. My comments focus on the application of best available science the in the development of the Plan.

The Plan does not rely on the best available science.

The Plan is largely underpinned by a population viability analysis (PVA) using Vortex (Miller 2017), and an assessment of potential habitat in Mexico and in the states of Arizona and New Mexico. Here I focus on the PVA.

<u>The PVA is flawed</u>

Rather than exploring a range of conditions that might adequately address the threats to Mexican wolves and result in a robust metapopulation, the PVA instead appears to be constructed to affirm the desires of the four-corners states, in regards to location and sizes of potential Mexican wolf populations. In practice this is manifested in simulation scenarios that considered only two populations: one wolf population in Arizona and New Mexico with a target population size of 320 wolves and another population in the northern Sierra Madre Occidental of Mexico with a target population size of 170 wolves. Populations in other locations and of greater sizes were not seriously considered. This apparently constrained the PVA into a search to find a management scenario that might be adequate.

Parameterization of the PVA simulations was also problematic. The proportion of adult females pairing is known to be a parameter that has large effects on the outcomes of simulated wolf populations (Carroll et al. 2014). The value of this parameter was based on the mean between two estimates using data from the Arizona-New Mexico population. Although both ways of estimating this parameter may be biased, one was likely more biased than the other. As a result, the value for this parameter used in the simulations was likely biased high. A review of the literature on the proportion of adult females breeding among wolves strongly suggests this parameter is density dependent – when prey density is high or wolf density is low, the proportion of adult females paired is high. And when the opposite occurs, the proportion of adult females pairing is low (Fredrickson unpublished). In the simulations, however, only a single, constant value was considered. In part, this was likely due to the very high carrying capacity (K = 1000 wolves) set for the MWEPA which would render density dependent functions largely inconsequential, given that this population was constrained to 320 wolves. The MWEPA, however, is a large area with discontinuous habitat spread across two states. And the existing wolves are concentrated in a single portion of the area. It is likely that wolves respond based on the conditions in their "neighborhood" rather than mean conditions across a two state area. Thus density dependence could be operating. And this is suggested by the data from the MWEPA (Figure 1).

In addition, inbreeding depression documented in the SSP population for the probability of a female giving live birth was not incorporated into the simulation model (Fredrickson

unpublished). And it is unclear whether inbreeding depression in the wild populations was fully accounted for. The PVA also assumes that a substantial proportion of Mexican wolf pairs will be fed annually for the next 100 years. Data from the MWEPA indicate that fed pairs produce greater numbers of pups that emerge from the den. Assuming that intensive feeding will continue in both populations for the next 100 years is unrealistic and inflates the viability of the simulated populations. Finally, the sensitivity analysis considered variation only in adult mortality rates, the sizes of populations triggering harvest, and population augmentation strategies. While these are all important, the modeling appendix did not include a thorough sensitivity analysis.

Because few parameters were considered in the sensitivity analysis, I ran simulations to further examine the effects of alternate parameterizations on the probabilities of extinction, quasi-extinction, and population sizes. In particular, I considered a small reduction in the percentage of adult females pairing, small increases in the adult mortality rate, and the effect of ending diversionary feeding once populations reach their targeted census population sizes. For these simulations I reduced the percentage of adult females pairing from 77.6 % used in the PVA to 73.2% based on the analyses in Appendix A (Oakleaf "Estimation of mean pairing rate among wild Mexican wolves). In this appendix this parameter was estimated using data from the MWEPA using two methods: the "direct observation" and "indirect estimation." Oakleaf arrived at 77.6% by taking the mean of these two estimates. But because the direct observation method is likely more biased than the indirect estimation method, I used the mean between 77.6% and the indirect estimation method for the simulations below.

Modestly reducing the percentage of adult females pairing to 73.2 and ending diversionary feeding had large effects on census population sizes. Table 1 presents the % of iterations becoming extinct, attaining the numerical delisting criterion, and two levels of quasi-extinction for the MEWPA and SMOCC-N populations. In all scenarios considered, 87 – 99% of iterations met the numerical criterion for delisting (eight year moving average of 320 wolves for MWEPA; eight year average of 170 wolves for SMOCC-N). But the eight year moving average dropped below 300 wolves in 80% of the 1,000 iterations when diversionary feeding was stopped and adult mortality was increased to 25.4% (Table 1). When the percentage of adult females pairing was reduced to 73.2% and diversionary feeding was stopped, the eight year average for the MWEPA dropped below 213 wolves in 67% of iterations, and dropped below 113 wolves in SMOCC-N in 81% of iterations. Mean population abundance for the scenario in which diversionary feeding is ended and adult mortality is increased from 24.9% to 25.4% is shown in Figure 2. Mean population abundance for the scenario in which the % of adult females pairing is reduced to 73.2% and diversionary feeding is ended is shown in Figure 3. These simulations illustrate that relatively small changes in parameterization can have large negative

effects on outcomes. It also calls into question whether the recovery criteria proposed in the draft plan will be adequate to ensure a viable and resilient metapopulation of Mexican wolves.

The augmentation plan for MWEPA and SMOCC-N has management priorities backwards.

The management plan portrayed in Table 2 of the PVA, prioritizes releasing wolves from captivity to SMOCC-N and translocating wolves from MWEPA to SMOCC-N. It appears to be an aggressive attempt to grow the small SMOCC-N population to larger size quickly. This would minimize the loss of genetic variation from this population while it is at very small size. But this comes at the cost of slower genetic enrichment of the MWEPA population which is currently about four times larger than SMOCC-N and has a mean kinship of around 0.25. The priority should be to genetically rehabilitate the MWEPA population before it grows to substantially larger size, at which point large improvements in the genetic composition of the population may become nearly impossible. The combination of releases of wolves from the SSP into MWEPA and translocation of wolves from MWEPA to SMOCC-N provides what is probably a one-time opportunity. A simulation that translocated high mean kinship wolves from MWEPA to SMOCC-N significantly reduced the overall mean kinship of MWEPA (results not shown). Translocations of this type paired with releases from captivity will provide the best opportunity for genetically improving the population. Under the draft plan, MWEPA will need to be the primary reservoir for genetic variation.

Table 1. Rates (%) of extinction, meeting numerical criteria for delisting, and quasiextinction for the MWEPA and SMOCC-N populations. Delisting is based on attainment of an eight year average of at least 320 and 170 wolves for the MWEPA and SMOCC-N populations, respectively. Quasiextinction rates present the % of iterations in which the 8-year dropped below numerical thresholds beginning in year 51 of the simulation.

	MWEPA				SMOCC-N			
	Extinction	Delisted	N<300	N<=213	Extinction	Delisted	N<150	N<=113
Baseline	3	95	51	20	1	100	69	30
Adult mortality 25.4%	5	92	55	26	1	99	72	36
Harvest begins at *N* = 350	4	95	68	24	Na[1]	Na	Na	Na
73.2% Adult females pair	8	88	67	34	4	97	79	49
Feeding stops at *N* = 320 / 170	5	96	81	42	5	99	87	60
Feeding stops & 25.4% adult mortality	6	93	80	46	4	99	89	61
73.2% Adult females pair & Feeding stops	12	87	90	67	19	87	95	81

[1] Not applicable

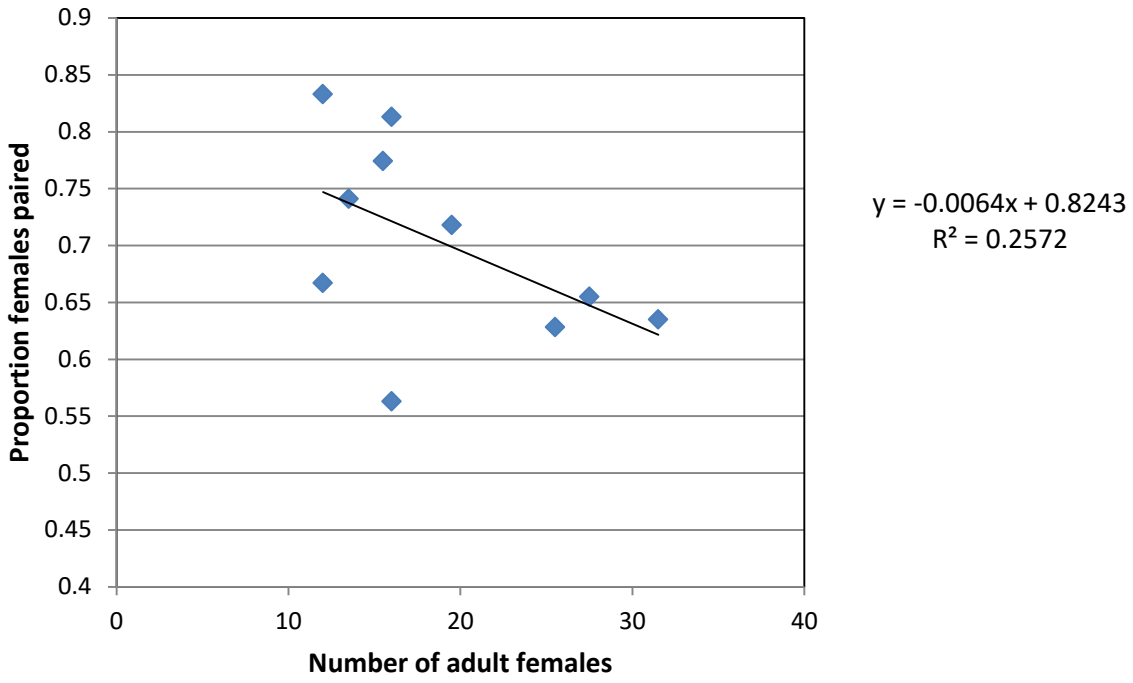

Figure 1. Proportion of adult females paired over ten years in the MWEPA (data from Appendix A).

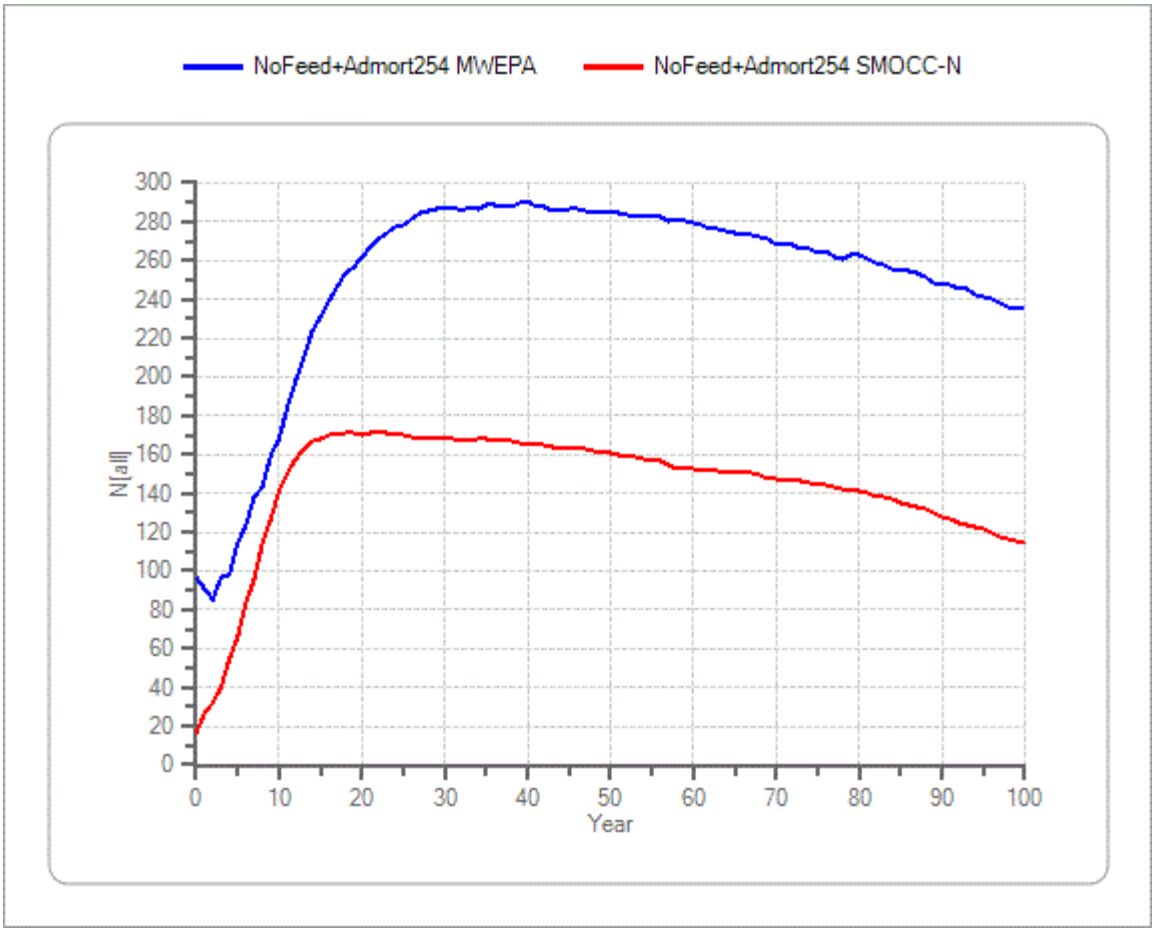

Figure 2. Mean numbers of wolves over time for the MWEPA and SMOCC-N populations when diversionary feeding is stopped once the populations reach their abundance targets (N= 320 for MWEPA, N=170 for SMOCC-N) and adult mortality is increased to 25.4%.

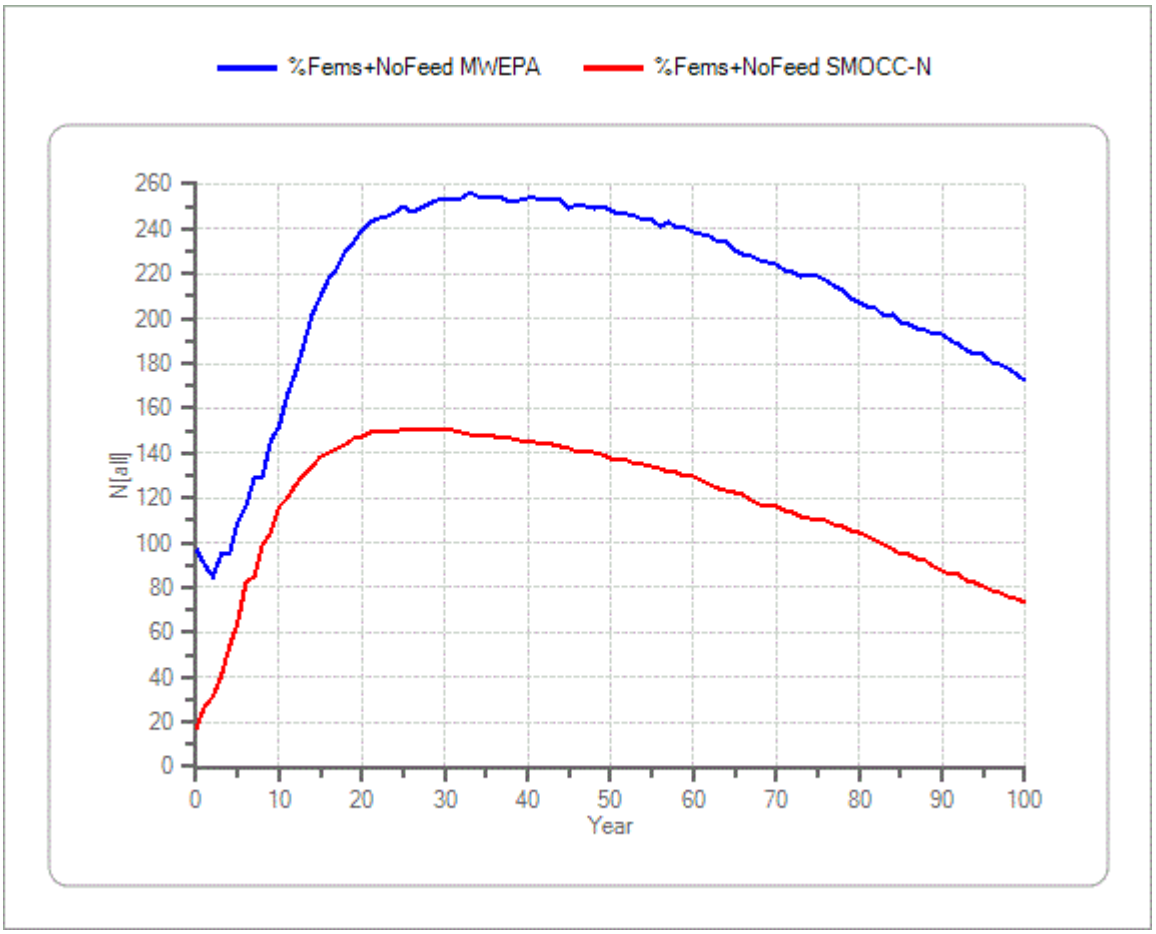

Figure 3. Mean numbers of wolves over time for the MWEPA and SMOCC-N populations when the proportion of adult females pairing is set to 0.732 and diversionary feeding is stopped once the populations reach population abundance targets (N= 320 for MWEPA, N=170 for SMOCC-N).

From:	Greg Sheehan
To:	Jason Larrabee; Todd Willens; zack_gambill@fws.gov
Subject:	Fwd: Notice of Intent to Sue re Mexican Wolf Recovery Plan
Date:	Wednesday, November 29, 2017 6:37:54 PM
Attachments:	ATT00001.htm Final 60-Day Notice Letter.pdf

FYI
Apparently they were not pleased with the final recovery plan.

Greg Sheehan
Principal Deputy Director
US Fish and Wildlife Service
202-208-4545 office
202-676-7675 cell

Begin forwarded message:

From: Timothy Preso <tpreso@earthjustice.org>
To: "exsec@ios.doi.gov" <exsec@ios.doi.gov>, "greg_j_sheehan@fws.gov" <greg_j_sheehan@fws.gov>
Cc: "sherry_barrett@fws.gov" <sherry_barrett@fws.gov>
Subject: Notice of Intent to Sue re Mexican Wolf Recovery Plan

Dear Secretary Zinke and Acting Director Sheehan – Attached please find a 60-day notice of intent to sue regarding the November 29, 2017 Mexican Wolf Recovery Plan submitted on behalf of the Center for Biological Diversity, Defenders of Wildlife, the Endangered Wolf Center, David R. Parsons, and the Wolf Conservation Center. Please contact me with questions or to discuss this matter.

-- Tim Preso

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Because the earth needs a good lawyer
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attachments.

EARTHJUSTICE

November 29, 2017

BY ELECTRONIC AND FIRST-CLASS MAIL

Ryan Zinke, Secretary
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Greg Sheehan, Acting Director
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Department of the Interior
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Greg_Sheehan@fws.gov

Re: Sixty-Day Notice of Intent to Sue for Violations of Endangered Species Act in Mexican Wolf Recovery Plan

Dear Secretary Zinke and Director Sheehan:

On behalf of the Center for Biological Diversity, Defenders of Wildlife, the Endangered Wolf Center, David R. Parsons, and the Wolf Conservation Center, and in accordance with the citizen suit provision of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g), we hereby provide notice that the U.S. Fish and Wildlife Service ("FWS") is in violation of the ESA with regard to the November 29, 2017 final Mexican Wolf Recovery Plan.

Mexican gray wolves—the "lobo" of Southwestern lore—once numbered in the thousands throughout the southwestern United States and Mexico. But this critically endangered species almost vanished from the face of the earth in the mid-20th century as a result of human persecution. The entire population of Mexican wolves alive today descends from just seven individuals that were captured and placed into a captive breeding program before the species was exterminated from the wild.

In the late 1990s, FWS reintroduced a small, captive-bred population of Mexican wolves into eastern Arizona and western New Mexico. Today, this tiny population of 113 individuals remains on the brink of extinction due to the lack of an effective blueprint for recovery as well as local and state opposition to recovery efforts.

In an effort to turn that tide, the parties to this letter, represented by Earthjustice, recently brought a successful lawsuit forcing FWS to prepare a long-delayed recovery plan for the

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Mexican gray wolf. Under section 4(f) of the Endangered Species Act ("ESA"), the Service must "develop and implement" a plan for Mexican wolf recovery that will provide "for the conservation and survival" of the species. 16 U.S.C. § 1533(f)(1). The term "conservation" means recovery of the species. See id. § 1532(3). The Service must incorporate into the plan a description of "site-specific management actions" that are necessary "to achieve the plan's goal for the conservation and survival of the species," as well as "objective, measurable criteria which, when met," would result in species recovery. Id. § 1533(f)(1)(B)(i), (ii). In designing the "objective, measureable criteria," FWS "must address each of the five statutory delisting factors" in 16 U.S.C. § 1533(a), and "measure whether the threats [to the species] have been ameliorated." Fund for Animals v. Babbitt, 903 F. Supp. 96, 111 (D.D.C. 1995), amended, 967 F. Supp. 6 (D.D.C. 1997); see also Defs. of Wildlife v. Babbitt, 130 F. Supp. 2d 121, 133–34 (D.D.C. 2001). The FWS's findings in the recovery plans, including population monitoring in the plans, must be "based upon the best scientific evidence available" and FWS must provide "rational reason[s]" for its decisions. Fund for Animals, 903 F. Supp. at 114.

FWS's final Mexican Wolf Recovery Plan violates these recovery planning requirements. The plan contains shortcomings that will hinder—if not prevent—Mexican wolf recovery and threatens to lead to the extinction of this iconic species. Specifically, FWS's actions in issuing the plan violate the ESA in the following respects:

- The plan restricts its identification of recovery areas to the Mexican wolf's historic range but then arbitrarily and unlawfully defines that range without regard to the best available scientific evidence establishing a larger historic range for the species. See Letter from Kristin Carden to Public Comments Processing, at 2-5 (Aug. 29, 2017) ("Carden Letter") (attached as Exhibit 1); Letter from Carlos Carroll to Public Comments Processing, at 24-27 (Aug. 28, 2017) ("Carroll Letter") (attached as Exhibit 2).

- The plan's restrictive approach to identifying recovery areas arbitrarily and unlawfully disregards FWS's own precedent in establishing Mexican wolf recovery areas as well as the best available scientific evidence identifying suitable Mexican wolf recovery habitat north of Interstate 40 and demonstrating that such habitats are essential for the species' recovery. See Carden Letter at 6-10.

- The plan fails to provide for species conservation and survival by arbitrarily and unlawfully precluding establishment of an effective metapopulation, which the best available scientific information has demonstrated to be essential for Mexican wolf recovery. See Carden Letter at 10-13.

- The plan's strategy for Mexican wolf recovery relies extensively on the anticipated success of wolf reintroduction and recovery efforts in Mexico but arbitrarily and unlawfully disregards numerous factors that undermine such reliance, including high levels of illegal mortality, limited public land ownership, inadequate information on habitat suitability, and an ineffective legal framework to facilitate recovery. See Carden Letter at 13-18.

- The plan's strategy for Mexican wolf recovery arbitrarily and unlawfully relies extensively on habitat suitability modeling results that were based on unreliable data about native prey populations in Mexico, ignored the critical factors of livestock abundance and distribution and extensive private land ownership, and irrationally treated climatic data and historical wolf records. See Carden Letter at 19-23; Carroll Letter at 9-13, 27.

- The plan's strategy for Mexican wolf recovery arbitrarily and unlawfully relies on population viability modeling that arbitrarily and unlawfully incorporated a predetermined population cap and even predicted a declining population in certain circumstances. Reliance on the modeling results also was arbitrary and unlawful because they were based on unfounded assumptions about factors including Mexican wolf mortality rates, yearling survival, pup mortality, proportion of females in the breeding pool, and inbreeding depression and did not account for the impacts of supplemental and/or diversionary feeding. See Carden Letter at 23-28; Carroll Letter at 2-9, 16-17, 27-28; Letter from Richard Fredrickson to Public Comments Processing (Aug. 29, 2017) (attached as Exhibit 3).

- The plan fails to provide for species conservation and survival by arbitrarily and unlawfully adopting an unjustifiably high 10% extinction risk over 100 years as an acceptable probability of persistence for Mexican wolf recovery. See Carden Letter at 28; Carroll Letter at 13-15.

- The plan arbitrarily and unlawfully fails to adopt objective and measurable criteria for downlisting the Mexican wolf from endangered to threatened status that are linked to an appropriate population viability study or quantitative analysis to assure a low probability of the species again becoming endangered. See Carroll Letter at 15-16.

- The plan arbitrarily and unlawfully fails to adopt objective and measurable criteria for recovery from genetic threats that identify an acceptable genetic status for the wild population at the time of delisting. See Carden Letter at 38-39; Carroll Letter at 17-18.

- The plan fails to provide for species conservation and survival by vesting the states of New Mexico and Arizona with control over the timing, location, and circumstances of releases of captive wolves into the wild population despite a long history of state efforts to oppose and delay such releases. See Carden Letter at 29-32; Carroll Letter at 18.

- The plan fails to provide for species conservation and survival by arbitrarily and unlawfully allowing for continued genetic degeneration of the remaining Mexican wolf population, including by accepting the current genetically deteriorated status of the wild population as its baseline and allowing for even more genetic deterioration. Further, the plan relies on unpublished scientific analysis to downplay the threat posed by genetic inbreeding while arbitrarily and unlawfully disregarding the role that extensive supplemental feeding has played in insulating the wild population from inbreeding impacts. See Carden Letter at 32-38; Carroll Letter at 18-21.

- The plan arbitrarily and unlawfully fails to establish any objective, measurable criteria or site-specific management actions to address the well-documented threat of excessive human-caused mortality, including illegal mortality, of the Mexican wolf population. See Carden Letter at 39-40; Carroll Letter at 21-23. Further, the plan arbitrarily and unlawfully adopts a criterion for adequacy of regulatory mechanisms to protect Mexican wolves that is inadequate, vague, and subjective. See Carden Letter at 40.

- The plan arbitrarily and unlawfully fails to establish any objective, measurable criteria to establish natural dispersal or a minimum measured rate of connectivity between Mexican wolf populations. See Carden Letter at 42-43; Carroll Letter at 21, 23.

- The plan arbitrarily and unlawfully relies on supplemental feeding of the wild Mexican wolf population to achieve recovery without considering the best available scientific evidence on this issue, including the behavioral and genetic effects of reliance on such feeding. See Carden Letter at 41-42. Further, the plan's acceptance of continued reliance on supplemental feeding is inconsistent with the ESA, which requires restoration of self-sustaining populations. See Carden Letter at 42; Carroll Letter at 23-24.

- The plan arbitrarily and unlawfully fails to describe the site-specific management actions that are necessary to achieve conservation and survival of the Mexican wolf and instead relegates such determinations to an implementation strategy that is not subject to the ESA's procedural and substantive safeguards for species recovery plans.

For the reasons stated, FWS violated the ESA in issuing the final Mexican Wolf Recovery Plan. If FWS does not withdraw its final Mexican Wolf Recovery Plan to remedy these violations within 60 days of the receipt of this letter, the parties to this notice letter will institute a legal action to challenge the plan in federal district court.

Sincerely yours,

Timothy J. Preso
Elizabeth Forsyth

Exhibit 1

EARTHJUSTICE

August 29, 2017

Public Comments Processing
Attn: FWS-R2-ES-2017-0036
U.S. Fish and Wildlife Service
MS: BPHC, 5275 Leesburg Pike
Falls Church, VA 22041-3803

Submitted Electronically

Dear U.S. Fish and Wildlife Service:

Please accept these comments on the Draft Recovery Plan for the Mexican gray wolf (Canis lupus baileyi). On June 30, 2017, the U.S. Fish and Wildlife Service ("FWS" or "Service") announced the availability of the Draft Recovery Plan for public comment. See U.S. Fish and Wildlife Serv., Endangered and Threatened Wildlife and Plants; Mexican Wolf Draft Recovery Plan, First Revision, 82 Fed. Reg. 29,918 (June 30, 2017) (Notice of Availability of Draft Recovery Plan); Southwest Region (Region 2), U.S. Fish & Wildlife Serv., Draft Mexican Wolf Recovery Plan, First Revision (2017) [hereinafter Draft Recovery Plan]. In addition to the plan, the Service released a Draft Biological Report and several associated appendices that provided the scientific foundation for the Draft Recovery Plan. See Southwest Region (Region 2), U.S. Fish & Wildlife Serv., Draft Biological Report for the Mexican Wolf (Canis lupus baileyi) 8 (2017) [hereinafter Draft Biological Report] ("This Biological Report informs the U.S. Fish and Wildlife Service's … revision of the 1982 Mexican Wolf Recovery Plan."); id. ("Together, the biological report and its appendices provide a succinct accounting of the best available science to inform our understanding of the current and future viability of the Mexican wolf, and therefore serve as a foundation for our strategy to recover the Mexican wolf."). We submit these comments on the Draft Recovery Plan on behalf of the Center for Biological Diversity, David Parsons, Defenders of Wildlife, the Endangered Wolf Center, and the Wolf Conservation Center. Non-governmental source materials cited in this letter are provided as Exhibits in the attached pdf.

Mexican gray wolves—the "lobo" of Southwestern lore—once numbered in the thousands throughout the southwestern United States and Mexico. Draft Biological Report at 15. But this critically endangered species almost vanished from the face of the earth in the mid-20th century as a result of human persecution. The entire population of Mexican wolves alive today descends from just seven individuals that were captured and placed into a captive breeding program before the species was exterminated from the wild.

In the late 1990s, the U.S. Fish and Wildlife Service (FWS) reintroduced a small, captive-bred population of Mexican wolves into eastern Arizona and western New Mexico. Today, this tiny population of 113 individuals remains on the brink of extinction due to the lack of an effective blueprint for recovery as well as state opposition to recovery efforts. See Draft Biological Report at 10 (population estimate of 113 wolves); Larisa E. Harding et al., Genetic Management and Setting Recovery Goals for Mexican Wolves (Canis lupus baileyi) in the Wild,

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203 Biological Conservation 151, 151 (2016) ("the Mexican wolf recovery program has struggled to establish and update a species recovery and management plan that has the support of both state and federal agencies involved").

In an effort to turn that tide, conservationists, represented by Earthjustice, recently brought a successful lawsuit forcing FWS to prepare a long-delayed recovery plan for the Mexican gray wolf. Under section 4(f) of the Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq., the Service must "develop and implement" a plan for Mexican wolf recovery that will provide "for the conservation and survival" of the species. 16 U.S.C. § 1533(f)(1). The term "conservation" means recovery of the species. See id. § 1532(3). The Service must incorporate into the plan a description of "site-specific management actions" that are "necessary to achieve the plan's goal for the conservation and survival of the species," as well as "objective, measurable criteria which, when met," would result in species recovery. Id. § 1533(f)(1)(B)(i), (ii).

Unfortunately, the agency's Draft Recovery Plan contains shortcomings that will hinder—if not prevent—Mexican wolf recovery and, if finalized, would violate these ESA requirements. Contrary to FWS's assertions, the Draft Recovery Plan will not "ameliorate … the threats of human-caused mortality, extinction risk associated with small population size, and loss of gene diversity." Draft Recovery Plan at 9; id. at 20 (same). It will not lead to "Mexican wolf populations [that are] stable or increasing in abundance, well-distributed geographically within their range, and genetically diverse." Id. at 9; id. at 20 (same). As currently drafted, the Draft Mexican gray wolf Recovery Plan will likely lead to the extinction of this iconic species. To comply with the Endangered Species Act, FWS must address the issues raised in this letter and strengthen the Recovery Plan so that it provides a science-based blueprint for true recovery of the Mexican gray wolf.

I. Mexican Gray Wolf Populations & Geography

One of the primary shortcomings of the Draft Recovery Plan is that it calls for too few wolves across too restricted a geography. Specifically, the Draft Recovery Plan calls for the establishment of two disjunct Mexican wolf populations in the species' "historical" range: one population in the current U.S. recovery area in New Mexico and Arizona (the Mexican Wolf Experimental Population Area (MWEPA)), and one population in Mexico (in the northern Sierra Madre Occidental (SMOCC-N)). See Draft Recovery Plan at 9, 11, 21, 26-27 (call for two populations); id. at 20 ("historical" range); id. at 29 (discussing disjunct populations: FWS "do[es] not predict significant immigration or emigration between the Mexican wolf populations"). This amounts to too few populations across too restricted a geographic area to ensure recovery of the species, and also ignores the need for connectivity between populations. FWS tacitly acknowledges this shortcoming, stating that its call for two populations merely "could" be sufficient to recover the Mexican wolf. Id. at 21.

a. Historic Range

The Draft Recovery Plan inappropriately restricted its analysis of potential recovery areas for the Mexican gray wolf to the species "historical range." Id. at 20. There are a number of problems with FWS's "historical range" approach. The first is that the agency improperly delineated the Mexican gray wolf's historical range. The species' historical range extended beyond the area defined by FWS (i.e., southern Arizona, southern New Mexico, Mexico), potentially northeast into Nebraska and westward into California. See Draft Biological Report at 18-19. This is confirmed by modern genetic analysis. See discussion Part I.a.i, infra. Further, regardless of the alleged boundaries of the species' historic range, Mexican gray wolves bred with other wolf subspecies in a "zone of intergradation." See Draft Biological Report at 18, 19. This intergradation zone should be recognized as part of historical Mexican wolf range insofar as Mexican gray wolves roamed there. While FWS agrees that the zone of intergradation existed, it argues that it should not be considered as a reintroduction area because it is not part of the species "core" historic range. However, even if we accept that notion (which we do not), FWS's past actions demonstrate a willingness to recover wolves outside the purported "core" range. Specifically, in determining where to reintroduce wolves in 1998, the Service opted to utilize a range map developed by Parsons (1996),[1] which included a 200-mile extension beyond the Service's defined core range. Draft Biological Report at 18. Finally, notions of "historic" wolf habitat have limited relevance today, given changing on-the-ground conditions due to human development and climate change. See discussion Part I.a.iii, infra. Rather than arbitrarily restrict its recovery efforts to a narrowly defined "historical range," FWS must look for large tracts of land that are likely to provide high-quality habitat for the lobo into the future (e.g., the Grand Canyon and Southern Rockies). Each of these issues related to historic range is discussed in more detail below and throughout this letter.

i. Historic Range: Best Available Science

It is well-established and accepted that Mexican gray wolves historically inhabited Mexico and the southwestern United States, including portions of Arizona, New Mexico, and Texas. Draft Biological Report at 17; id. at 18 (Fig. 5). It appears that the subspecies also may have ranged into southern Utah and southern Colorado, and "the analysis of molecular markers has led some to suggest the historical range of the Mexican wolf may have extended as far north as Nebraska and northern Utah ([J.A. Leonard et al., Legacy Lost: Genetic Variability and Population Size of Extirpated U.S. Gray Wolves (Canis lupus), 14 Molecular Ecology 9 (2005)]), and as far west as southern California ([S.A. Hendricks et al., Polyphyletic Ancestry of Historic Gray Wolves Inhabiting U.S. Pacific States, 16 Conservation Genetics 759 (2015)], [S.A. Hendricks et al., Re-defining Historical Geographic Range in Species with Sparse Records: Implications for the Mexican Wolf Reintroduction Program, 194 Biological Conservation 48 (2016)])." Draft Biological Report at 18-19. See also S.A. Hendricks et al., Defense of an Expanded Historical Range for the Mexican Wolf: A Response to Heffelfinger et al. (in press). In the Draft Recovery Plan and associated documents, the agency disregards this research,

[1] The citation provided by FWS for this reference is D. Parsons, Case Study: the Mexican Wolf, pages 101-23 in E.A. Herrera & L.F. Huenneke (eds.), New Mexico's Natural Heritage: Biological Diversity in the Land of Enchantment (1996 N.M. J. Sci., Albuquerque, N.M.).

relying instead on an article by Heffelfinger et al. that downplays the power of state-of-the-art genetic analyses. Draft Biological Report at 19, referencing J.R. Heffelfinger et al., Clarifying Historical Range to Aid Recovery of the Mexican Wolf, J. Wildlife Mgmt. (2017).

In choosing to ignore sophisticated genetic analyses of Mexican gray wolf taxonomy and instead rely on the outdated morphological data cited by Heffelfinger et al., FWS disregarded the best available science. As one of the peer reviewers of the Draft Biological Report explains:

> The article by Heffelfinger et al. (2017) is based on morphology (mainly size) and represents outdated science. These morphological differences are strongly influenced by the environment (prey base, density, etc.) and were based on wolves killed when the population numbers were already greatly reduced. The molecular data from recent studies are much better indicators of differences between groups and are considered the best science currently available. The dismissal of modern molecular data and focus on outdated morphological data by Heffelfinger et al. (2017) suggests both a lack of objectivity and scientific sophistication. Although it would be good to increase the sample size, recent genomic studies where the number of polymorphisms is very large somewhat compensates for this. In fact, a complete genomic sequence of a single individual can give much more information about ancestry than morphological measurements from many individuals. The realized distribution of the present day population which indicates similar habitats that it could colonize, in combination with current molecular data, are much better indicators of the potential Mexican wolf distribution than the outdated morphological data used by Heffelfinger et al. (2017).

Peer Review #2, Draft Biological Report, at lines 107-20. See also Hendricks et al. (in press); Peer Review #2, Draft Biological Report, at lines 93-96 ("Further, molecular genetic data has demonstrated that genetic ancestry from Mexican wolves extended northernly (and westernly), suggesting that Mexican wolves are the most appropriate subspecies for these areas."); id. at lines 132-38 ("Heffelfinger et al. (2017) are discounting the best available science when they discredit the recent articles by Leonard et al. (2005) and Hendricks et al. (2015, 2016). In particular, the specimen examined by Hendricks et al. (2016) in San Bernadino County had a genetic variant at 4 diagnostic autosomal loci for which Mexican wolves are fixed and had the mtDNA haplotype found in other Mexican wolves. Whether this wolf was part of the resident CA population or a migrant from AZ, these data clearly show that Mexican wolf genetic ancestry has extended far beyond the small area near the border that Heffelfinger et al. (2017) suggest."); Peer Review #4, Draft Biological Report, at lines 148-50 (referring to "notable genetic uniqueness in the Mexican wolf lineage with respect to other [North American] wolves across multiple genetic markers (mtDNA, mitogenomes, microsatellites, and SNPs)"). In simpler terms, morphology may or may not be reflective of ancestry. Genomic data will always demonstrate ancestry. Ignoring genomic data and relying on outdated morphological records makes no sense from a scientific perspective. By underestimating historical range due to a mis-reliance on outdated techniques, FWS limits opportunities for Mexican gray wolf recovery.

ii. Zone of Intergradation

Another factor calling for a more nuanced view of historical Mexican gray wolf range than that adopted by FWS is the interbreeding that historically occurred among wolf subspecies in the western United States. Prior to the predator eradication programs that accompanied European colonization of the American West, wolves ranged from Mexico through Canada to Alaska, and there existed a gradation of morphological and genetic variation across space. "[S]trict geographic borders for genetic ancestry as proposed by" FWS in the Draft Recovery Plan did not exist, Peer Review #2, Draft Biological Report, at lines 85-88, and Mexican wolves interbred with other wolf subspecies in a wide "zone of intergradation," id. at lines 27-30 (clines of genetic ancestry and morphology); id. at 121-26 (same); Draft Biological Report at 18, 19 (zone of intergradation). See also Hendricks et al. (in press); Leonard et al. (2005); Frank Hailer & Jennifer A. Leonard, Hybridization Among Three Native North American Canis Species in a Region of Natural Sympatry, PLOS One (2008). This zone of intergradation encompassed lands north of Interstate 40, FWS's chosen bright line beyond which Mexican gray wolves are forbidden to roam. However, from a species recovery perspective, "[t]he most appropriate extant subspecies for … areas [in northern New Mexico, northern Arizona, southern Utah and southern Colorado] is the Mexican wolf because of its proximity to these areas (other putative wolf subspecies have been extirpated from any nearby areas)." Peer Review #2, Draft Biological Report, at lines 89-91. FWS should have considered these areas as habitat for Mexican gray wolf recovery in the agency's Draft Recovery Plan; excluding them from analysis was arbitrary and relied on faulty reasoning.

iii. Changing Climatic Conditions

Even if we were to accept FWS's definition of "historical range" (which we do not), FWS's failure to consider how climatic changes will affect Mexican gray wolf habitat allowed the agency to artificially restrict the geographic area considered for recovery. While asserting that climate change is not a threat to the lobo, FWS did "recognize that climatic conditions may change over the longer term and consider[ed] establishing populations with genetic representation in ecologically/geographically varied habitat to provide Mexican wolves with the potential to withstand these changes." Draft Recovery Plan at 31. See also Draft Biological Report at 43-44 ("anticipat[ing] that genetically diverse wild populations in both reintroduction areas will be better able to respond to not only the current range of habitat conditions, but also future changing conditions such as shifts in prey availability, drought, or other environmental fluctuations"). FWS's recognition that climate change will alter on-the-ground habitat conditions in Mexican gray wolf range counsels for consideration of a broad spectrum of habitats for recovery, including more northerly habitats. See Hendricks et al. (in press) ("Given the difficulty of establishing Mexican wolves in the U.S. and Mexico, which contrasts with the considerable success of Yellowstone-Idaho reintroduction ([R.K. Wayne & P.W. Hedrick, Genetics and Wolf Conservation in the American West: Lessons and Challenges, 107 Heredity 16 (2011)]), expanded historical range and suitable habitat is desperately needed, and as discussed above, is supported by ecological and genetic evidence. Further, climate change is likely to increase the proportion of suitable habitat northwards."). FWS irrationally allowed antiquated notions of "historical habitat" to override considerations of the ways in which climate change and associated changing habitat conditions might affect Mexican gray wolf recovery.

These considerations should have prompted FWS to consider Mexican gray wolf recovery in habitats north of the proposed recovery area, including habitats north of I-40.

iv. Wolf Recovery in "Non-historical" Habitat

1. "Core" Range and the MWEPA

In deciding to omit habitats north of I-40 as possible recovery areas for the Mexican gray wolf, FWS placed heavy reliance on Heffelfinger et al.'s assertion that, historically, Mexican wolves never ventured very far north of the U.S.-Mexico border. See Draft Biological Report at 19 ("The Service continues to recognize the concordance in the scientific literature depicting the Sierra Madre of Mexico and southern Arizona and New Mexico as Mexican wolf core historical range."). Recent genetic analysis throws the validity of that assumption into question, as discussed above. But even assuming that the Mexican gray wolf's "core" historical range was limited to the area delineated by Heffelfinger et al. (which it was not), FWS in the past decided that reintroducing Mexican gray wolves to areas north of the "core" range was, in fact, appropriate. Specifically, FWS adopted "a 200-mile northward extension into central New Mexico and east-central Arizona" when it reintroduced Mexican gray wolves into the Blue Range of the MWEPA in 1998. Draft Biological Report at 18. Id. at 19 ("the Service continues to accept a depiction of historical range as per Parsons (1996) that extends into central New Mexico and Arizona").

That decision was wise from a Mexican gray wolf recovery perspective, and FWS takes pains to highlight the fact that the reintroduced population in this northward extension area (i.e., in "non-core" historical habitat) recently grew to 113 wolves. Draft Recovery Plan at 15. See also Peer Review #2, Draft Biological Report, at lines 44-45 (noting that "[t]he reintroduced wolf population is inhabiting ponderosa pine–elk country outside of the historical range"). Much of the remainder of the MWEPA—including the purported "historical core range" to the south of the occupied areas—does not and is unlikely to provide suitable habitat for Mexican gray wolves today. See id. at lines 44-49.

FWS must recognize that "the realized contemporary range and habitat of the successful reintroduced population is much more significant than any historical range data accumulated when the Mexican wolf was being hunted to extirpation." Id. at lines 22-24. "[T]he realized range indicates what other habitat would be suitable for range expansion to the north if the wolves were allowed to move, or be reintroduced, there." Id. at lines 24-26. By failing to appreciate the importance of habitat types utilized by modern-day Mexican gray wolves and instead myopically focusing on alleged historical "core" range—a focus to which FWS has not always been wed—FWS hamstrings Mexican gray wolf recovery and threatens the future of the species.

2. Lands North of Interstate 40

FWS's confinement of Mexican gray wolf recovery to an ecologically arbitrary geography based on obsolete notions of historical range prevents the Service from most effectively staging releases and growing reintroduced Mexican gray wolf populations in the

United States. In an attempt to sidestep this issue, FWS in the Draft Recovery Plan focused instead on recovering a population of Mexican gray wolves in Mexico. While reintroduction of Mexican gray wolves in Mexico is a worthwhile goal, FWS cannot abdicate its responsibility to recover a species by assigning a major part of the recovery responsibility to a country where the physical and social conditions required for recovery likely do not exist, while simultaneously ignoring feasible domestic recovery opportunities. See Peer Review #1, Draft Biological Report, at lines 29-30 ("it seems inappropriate for the recovery plans for each subspecies to put on 'blinders' so strong that large portions of former wolf range are ignored"). FWS should have considered the viability of other areas in the United States—including areas north of Interstate 40 (I-40)—as possible reintroduction sites.

From an ecological standpoint, it appears that Mexican gray wolves would fare well in habitats north of I-40. For example, "the reintroduced Mexican wolf population now exists in a habitat similar (ponderosa pine forest) to that in these areas [north of I-40] and has prey similar (elk and/or deer) to these areas." Peer Review #2, Draft Biological Report, at lines 92-93. Multiple peer-reviewed studies have identified suitable habitat for Mexican gray wolves in areas north of I-40. See, e.g., Carlos Carroll et al., Developing Metapopulation Connectivity Criteria from Genetic and Habitat Data to Recovery the Endangered Mexican Wolf, 28 Conservation Biology 76 (2014); Carlos Carroll et al., Defining Recovery Goals and Strategies for Endangered Species: the Wolf as a Case Study, 56 BioScience 25 (2006); Carlos Carroll et al., Spatial Analysis of Restoration Potential and Population Viability of the Wolf (Canis lupus) in the Southwestern United States and Northern Mexico (July 12, 2004). So have previous iterations of FWS's Mexican gray wolf Recovery Team. See Mexican Wolf Recovery Team, Draft Recovery Plan Text (May 7, 2012) [hereinafter 2012 Draft Recovery Plan]; Mexican Wolf Recovery Team, Draft Mexican Wolf Recovery Plan: Appendix 1—Modeling and Analysis Procedures Used to Evaluate Recovery Criteria for the Mexican Wolf (Dec. 19, 2013); Mexican Wolf Recovery Team—Science and Planning Subgroup, Proposed Recovery Criteria for the Mexican Wolf: Briefing for the Director, U.S. Fish & Wildlife Serv. (Mar. 29, 2013) [hereinafter 2013 Director Briefing]; Mexican Wolf Recovery Team—Science and Planning Subgroup, Slideshow: Recovery Criteria for the Mexican Wolf (Mar. 29, 2013) [hereinafter 2013 Recovery Team Slideshow]; Richard Fredrickson, Assessing Potential Recovery Scenarios and Identifying Factors Affecting Success (Vortex Modeling Appendix) (Dec. 3, 2013). In fact, not only does the best available, peer-reviewed scientific research identify areas north of I-40 as suitable Mexican gray wolf habitat, that research posits that those habitats are crucial for the species' recovery. See, e.g., Carroll et al. (2014), at 77-78. FWS inexplicably failed to incorporate this best available science into its recovery analysis and thus inappropriately omitted consideration of areas north of I-40 as suitable recovery areas for the Mexican gray wolf.

The agency's explanation as to why it did not consider areas north of I-40 for recovery is unconvincing. In the Draft Biological Report, FWS stated that

> there are limited areas within the core historical range of the Mexican wolf with the ecological conditions and size necessary to support Mexican wolf populations: the MWEPA in the United States, and two locations in the Sierra Madre Occidental Mountains of Mexico. Previous studies (Carroll et al. 2004; Carroll et al. 2006) identified potential areas north of the MWEPA with suitable habitat for Mexican wolf

> reintroduction, but we are currently focused on historical range identified in Parsons (1996) in collaboration with ongoing recovery efforts in Mexico.

Draft Biological Report at 42. However, as previously described, FWS's delineation of historical range is scientifically unsupported and—even if one were to accept FWS's definition of "core historical range"—the agency's acceptance of Parsons (1996) already places the agency outside the agency's defined "core" range. If the agency has already once expanded the recovery range map outside "core" range, it cannot reasonably refuse to consider other areas outside of the "core" range simply because they are outside that core. Further, areas outside FWS's notions of historical "core" range increasingly will be required for Mexican gray wolf recovery as climate change, habitat destruction and modification, and other stressors limit the potential of historical habitats (including Mexico) to support this species. And, in any case, the agency offers no reason why the species' historical range, for purposes of recovery planning, does not include the areas identified by published genomic data and/or the acknowledged zone where the Mexican wolf historically intergraded with other subspecies.

Further, it appears that the decision to limit the recovery effort to two small populations south of I-40 is grounded not in science or squabbles over the definition of "core" range but in politics. Notes from the April 11-15, 2016, Mexican Wolf Recovery Planning Workshop state that, "[t]o alleviate concerns over training the model for more mesic habitat that would emphasize areas above I-40, the group agreed to cap the model at I-40 for geopolitical reasons." Draft Notes: Mexican Wolf Recovery Planning Workshop 4 (April 11-15, 2016) (emphasis added). See also id. (FWS's "policy stance is to first focus on assessing the feasibility of a recovery implementation strategy in historical range before looking in areas north of the general I-40 area") (emphasis added). FWS tried to couch this decision in a more tactful manner in the Draft Recovery Plan, stating that it "selected this geographical area for recovery implementation in consultation with our partners"—i.e., the states of Arizona, New Mexico, Utah, and Colorado. Draft Recovery Plan at 21. FWS's partners, however, have long been hostile to Mexican gray wolf recovery and have sought to limit its geographic scope. For example:

When there were only 50 Mexican gray wolves in the wild, Arizona Game and Fish Department Director Larry Voyles sent a letter to Arizona Senators John McCain and Jon Kyl and Representative Trent Franks asking that they "help us … to delist the gray wolf rangewide (i.e. including the Mexican wolf)." Letter from Larry D. Voyles, Director, Arizona Game & Fish Dept., to The Honorable John McCain, The Honorable Jon Kyl & The Honorable Trent Franks (Dec. 7, 2010).

In a letter to Secretary of the Interior Sally Jewell, the governors of Arizona, New Mexico, Utah and Colorado insisted that the majority of Mexican gray wolf recovery occur in Mexico. See Letter from the Doug Ducey, Governor of Arizona, John Hickenlooper, Governor of Colorado, Susana Martinez, Governor of New Mexico & Gary Herbert, Governor of Utah, to Sally Jewell, Secretary of the Interior & Dan Ashe, Director, U.S. Fish & Wildlife Serv. (Nov. 13, 2015) ("[R]ecovery of the Mexican wolf cannot and will not be achieved if the Service does not recognize that the majority of Mexican wolf recovery must occur in Mexico. … Mexico … must be home to the lion's share of on-the-ground Mexican wolf recovery."). See also Ariz. Game & Fish Comm'n, Meeting Minutes 5 (Apr. 10-11, 2015) (referring to postcard sent by

Arizona Secretary of State to Congress "urging USFWS to … focus future Mexican wolf introduction efforts on remote areas within the northern Sierra Madre Occidental mountain range [in Mexico and] halt additional introductions of Mexican wolves in Arizona").

In 2013, Director Voyles sent a letter to FWS Director Dan Ashe emphasizing that "Rowan Gould and Gary Frazer [of FWS] both acknowledged … that the final rule will direct the USFWS to capture and return any Mexican wolf that disperses outside the MWEPA," i.e., capture any wolves that disperse north of I-40. Letter from Larry Voyles, Director, Arizona Game & Fish Dept., to Dan Ashe, Director, U.S. Fish & Wildlife Service 2 (Aug. 1, 2013).

When draft recommendations from an earlier iteration of the Mexican gray wolf recovery team scientists displeased Arizona Game and Fish, in part because of recommendations to recover Mexican gray wolves north of I-40, a commissioner publicly leaked the plan—even though it was still confidential. See Public Employees for Environmental Responsibility, Complaint of Scientific and Scholarly Misconduct: Intentional Interference in Developing Science-based Recovery Criteria and Suitable Habitat in the Mexican Wolf Recovery Plan by the U.S. Fish and Wildlife Service and State "Partners" to Subvert the Application of Best Scientific Information Regarding Wolf Recovery 7 (June 7, 2012).

The Arizona Game and Fish Department also pressured (and ultimately convinced) FWS to cap the number of Mexican gray wolves in the United States at 325 individuals in the agency's revision to the 10(j) rule (the rule governing the reintroduced Mexican gray wolf population in the United States). See FEIS, Ch. 2, at 36 ("Including a population objective of 300-325 Mexican wolves and a phased approach to management of Mexican wolves in Arizona would address the State of Arizona's concerns regarding possible impacts from Mexican wolves on potentially vulnerable elk herds, especially those west of Highway 87."). Arizona had fought for an even lower threshold, seeking to cap the number of wild lobos at 200-300 animals. See U.S. Fish & Wildlife Serv., Draft Environmental Impact Statement for the Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi), Ch. 2, at 9-10 (July 16, 2014) [hereinafter DEIS] (discussing a proposal to cap Mexican gray wolf numbers at 100-150 in each of Arizona and New Mexico, for a total of 200-300 wolves).

In 2017, U.S. Senator Jeff Flake (R-Ariz.) introduced the so-called "Mexican Wolf Recovery Plan Act." S.368 (115th Cong.). This bill calls for FWS to develop a revised recovery plan for the Mexican gray wolf in partnership with a subset of interest groups including state wildlife authorities, livestock producers, ranchers, private landowners, recreation interests, and county governments. Id. § 3(b)(3). It demands that the recovery plan contain a population cap for Mexican wolves acceptable to these interest groups and a prohibition on wolf occupancy in lands north of I-40. Id. §§ 3(b)(4)(B)(i), (ii); id. § 3(b)(7)(B). It establishes a process for the states of Arizona and New Mexico to supplant FWS's authority to manage the Mexican gray wolf if certain conditions are met, and requires delisting of the species the day that the population cap is determined to have been met. Id. § 3(c); id. § 5(a). Finally, the bill states that the delisting decision will not be subject to judicial review. Id. § 5(b).

New Mexico has proven particularly hostile to Mexican gray wolf recovery in recent years. In June 2011, the New Mexico Game Commission voted to end state participation in the

Mexican gray wolf recovery program. N.M. State Game Comm'n, Meeting Minutes 13 (June 9, 2011). In November 2014, the Commission gave itself the power to deny permits for Mexican gray wolf holding facilities. N.M. State Game Comm'n, Meeting Minutes 51-70 (Nov. 13, 2014). In May 2015, the Commission exercised this power by denying a permit for Ted Turner's Ladder Ranch to hold Mexican gray wolves—something the ranch had been doing for 17 years. N.M. State Game Comm'n, Meeting Minutes 14-50 (May 7, 2015). The Ladder Ranch is a crucial holding facility for Mexican gray wolves destined for release into the wild; it is one of only three such centers in the United States. The FWS criticized the move, saying it "may hamstring recovery." Lauren Villagran, Game and Fish Denies Ted Turner Ranch New Wolf Permit, Albuquerque J. (May 8, 2015). In May 2016, the New Mexico Game and Fish Department went so far as to sue FWS to prevent all releases of Mexican gray wolves within the state's borders. See N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, Complaint, Case No. 2:16-cv-00462 (D.N.M. May 20, 2016); N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, Amended Complaint, Case No. 1:16-cv-00462-WJ-KBM (D.N.M. Aug. 26, 2016).

U.S. Senator Orrin Hatch (R-UT) threatened "dire" consequences if Mexican gray wolf recovery falls within his state's borders, see O. Hatch, Mexican Wolves Don't Belong in Utah's Dixie (Opinion), St. George News (Oct. 25, 2011), and the Utah Division of Wildlife Resources threatened legal action if the Mexican gray wolf recovery plan included habitats in southern Utah. See Utah Div. of Wildlife Res., Comments on Draft Mexican Wolf Revised Recovery Plan Sections I.g, III, and Appendix B (2013) ("Identification of areas outside the historic range of the sub-species as part of the recovery area is inappropriate and will be vigorously apposed [sic] (legally and politically) by the Utah Division of Wildlife Resources and the State of Utah.").

Even Colorado has come out swinging against lobo recovery. In January 2016, the state's Parks & Wildlife Commission passed a resolution "oppos[ing] the intentional release of any wolves into Colorado, [and] recommend[ing] that Mexican wolf recovery be confined to the subspecies' historic range …"). Colo. Parks & Wildlife Comm'n, Resolution 16-01 Regarding Introduction/Reintroduction of Wolves (Jan. 13, 2016).

The states' antipathy toward Mexican gray wolf recovery appears to have influenced the geography FWS was willing to consider for Mexican gray wolf recovery in the agency's Draft Recovery Plan. Unfortunately, FWS's capitulation to the states' demands to curtail habitat analysis, limit the geographic scope of recovery, and cap the MWEPA population reflect the triumph of politics over science and threaten Mexican gray wolf recovery. FWS's actions violate the agency's duties under the Endangered Species Act and the agency must address these issues in a revised recovery plan.

b. Metapopulation Dynamics

FWS's refusal to consider a broad landscape across which Mexican gray wolves could be recovered in the United States threatens the species because it precludes the establishment of an effective metapopulation. As noted above, the Draft Recovery Plan calls for the establishment of two disjunct Mexican gray wolf populations: one in the MWEPA and one in the SMOCC-N. Draft Recovery Plan at 9-11, 20, 21, 26-27. Acknowledging the need for an additional

population beyond the MWEPA is a good first step, but FWS's recommendations in the Draft Recovery Plan do not go far enough to ensure Mexican gray wolf recovery.

The viability of the existing wild population of Mexican gray wolves in the MWEPA "is uncertain unless additional populations can be created and linked by dispersal." Carroll et al. (2014), at 84. Such distinct, spatially separated populations of the same species that are connected by dispersal are referred to as "metapopulations." Experts have long counseled and FWS has acknowledged that the long-term conservation of the Mexican gray wolf will likely "'depend on establishment of a metapopulation or several semi-disjunct but viable populations spanning a significant portion of [the species'] historic range." U.S. Fish & Wildlife Serv., Final Environmental Impact Statement for the Proposed Revision to the Regulations for the Nonessential Experimental Population of Mexican Wolf (Canis lupus baileyi), App. G, at 28 (Nov. 2014) [hereinafter FEIS], citing Carroll et al. (2006). As FWS explains, "[f]or a species that has been extirpated from so much of its historic range, explicit effort must be made to recreate redundancy" (where "redundancy refers to the existence of redundant, or multiple, populations spread throughout a species' range"). Southwest Region (Region 2), U.S. Fish and Wildlife Serv., Mexican Wolf Conservation Assessment 12, 13, 68, 72 (2010) [hereinafter 2010 Conservation Assessment].

Generally speaking, well-connected metapopulations are better able to withstand less favorable demographic rates (e.g., birth rate, fertility rate, life expectancy) and catastrophic environmental events (e.g., wildfire, disease outbreak) than are isolated populations. This is because (1) connectivity facilitates gene flow as individuals move among populations, which reduces the severity and effects of inbreeding, and (2) the existence of multiple populations helps to ensure that the species is not wiped out if a catastrophic event decimates one of the populations. A well-connected metapopulation is especially important for the recovery of the Mexican gray wolf, which right now exists as one extremely small, isolated, and genetically threatened population in the United States and an even smaller, more isolated, and more genetically threatened population in Mexico. See generally Carroll et al. (2014); 2012 Draft Recovery Plan; Draft Recovery Plan at 18 (listing small population size as a primary threat and stressor to the Mexican gray wolf).

The Draft Recovery Plan offered FWS the opportunity to develop a recovery framework that would secure the future for the Mexican gray wolf by prescribing a metapopulation approach to recovery. Unfortunately, the Draft Plan itself—while suggesting a second population in Mexico—does not lay the groundwork for an effective metapopulation. First, two unconnected populations does not an effective metapopulation make. Contrary to FWS's assertion that "redundancy can be satisfied by the maintenance of two resilient, representative populations in the MWEPA and northern Sierra Madre Occidental," Draft Biological Report at 42-43, the MWEPA population and northern Sierra Madre Occidental population (assuming the latter can be successfully established) will never be resilient or representative under the guidelines of the Draft Recovery Plan. Mexican wolves need to recover across a broader spectrum of ecosystems to ensure representation, and to be resilient must be connected such that the populations can help rescue one another should a catastrophic event heavily impact one population. See generally Carlos Carroll et al., Geography and Recovery Under the U.S. Endangered Species Act, 24 Conservation Biology 395 (2010).

Two populations alone will not ensure the future of the Mexican gray wolf. This general principle was recognized by previous iterations of the Mexican gray wolf recovery team as well as other wolf recovery teams, all of which recommended a minimum of three interconnected populations. See, e.g., 2012 Draft Recovery Plan (entire); U.S. Fish & Wildlife Serv. & Northern Rocky Mountain Wolf Recovery Team, Northern Rocky Mountain Wolf Recovery Plan iv (Aug. 3, 1987) [hereinafter NRM Recovery Plan] ("Establishing and maintaining wolf populations in three separate areas is believed necessary for recovery"); Peer Review #2, Draft Biological Report, at lines 9-10, 297-98 (mentioning such recommendations). The 2012 Draft Recovery Plan for the Mexican gray wolf laid out three options for a metapopulation criterion for recovery, each of which required at least three wild populations and a minimum total of 750 wild Mexican gray wolves. See 2012 Draft Recovery Plan at 113. See also 2013 Recovery Team Slideshow, at slide 5; 2013 Director Briefing (entire).

Population geneticist and conservation biologist Dr. Philip Hedrick explains the rationale for this recommendation:

> The last two [Mexican gray wolf] recovery teams, composed almost entirely (17 out of 18) of scientists with either wolf biology or conservation expertise, concluded that recovery would require three interconnected populations in the United States, each with a census number of 250 wolves. These criteria were based on establishing a metapopulation large enough to avoid short-term inbreeding depression and avoid extinction in the near future. The most recent recommendation was based on detailed simulations determining persistence of metapopulations of various sizes and other parameters (Carroll et al., 2014). Having three populations also provides a safety net if one or two populations experience a large disease outbreak[2] or other catastrophe, or extensive human killing of wolves, as has occurred in the present reintroduced population. Even such a metapopulation is not adequate to maintain genetic variation for future adaptation. Because genetic variation for future adaptation is fundamental, given environmental challenges, such as the new diseases and climate change, an effective metapopulation size of 500 (or larger) is necessary.

Phil Hedrick, Letter to the Editor, Genetics and Recovery Goals for Mexican Wolves (Response to Harding et al.), 206 Biological Conservation 210 (2016) (emphasis added). See also 2012 Draft Recovery Plan. Three or more interconnected populations of Mexican gray wolves in a metapopulation of sufficient size are needed to facilitate exchange of individuals that "could result in both demographic rescue and genetic rescue so that the overall viability of the introduced animals would be increased." Peer Review #2, Draft Biological Report, at lines 13-15. See also 2012 Draft Recovery Plan at 113-14 (providing recovery criterion for interconnected populations). FWS has not offered an adequate, rational, or scientifically

[2] Note that the Population Viability Analysis (PVA) does not take into account the fact that inbred populations may be more susceptible to disease than more genetically diverse populations. See Draft Biological Report at 34 ("Inbreeding depression may affect … disease resistance.").

supported justification for departing from this approach in favor of the Draft Recovery Plan's lesser recovery standard.

The lesser recovery standard advanced by FWS in its Draft Recovery Plan—which restricts recovery to two populations, one in the MWEPA and one in Mexico—omits any analysis of the most suitable Mexican gray wolf habitat in the United States: the area north of I-40. Wolf experts have identified in "the southwestern United States … 3 core areas with long-term capacity to support populations of several hundred wolves each. These 3 areas … are in eastern Arizona and western New Mexico (i.e., Blue Range, the location of the current wild population), northern Arizona and southern Utah (Grand Canyon), and northern New Mexico and southern Colorado (southern Rockies)." Carroll et al. (2014), at 78. The Science and Planning Subgroup of FWS's last Mexican gray wolf recovery team[3] reached a parallel finding. See 2012 Draft Recovery Plan at 59 ("The several habitat suitability assessments that have been conducted over the last 20 years indicate that only three major core areas of suitable habitat exist in the area encompassing the Mexican wolf's historical habitat and adjacent areas in Arizona, New Mexico, southern Colorado and southern Utah that are capable of supporting Mexican wolf populations of sufficient size to contribute to recovery. The three core areas of suitable habitat are 1) the Blue Range Wolf Recovery Area and adjacent public lands, 2) the Grand Canyon and adjacent public lands in northern Arizona and southern Utah …, and 3) Carson National Forest/San Juan National Forest and other connected areas of public lands and private lands with conservation management in northern New Mexico and southern Colorado"); see also id. at 62-65, 66, 68, 81. This area—millions of acres of high-quality federal public lands supporting robust populations of native prey—offers a landscape where Mexican gray wolves could persist and thrive. However, FWS refused to consider Mexican gray wolf recovery in these ecologically appropriate areas in the Draft Recovery Plan, arbitrarily limiting the scope of its analysis to lands south of I-40, including lands in Mexico that appear to be unsuitable.

c. Reliance on Mexico

Although FWS refused to consider additional, appropriate land for recovery in the United States, the agency did recognize that Mexican gray wolf recovery will require more wolves on the ground than the MWEPA can support. Recovery of the Mexican gray wolf under the Draft Recovery Plan thus heavily depends on successful reintroduction efforts in Mexico. See Draft Recovery Plan at 9-11, 26-27. While we wholeheartedly support Mexico's efforts to restore the lobo, and while we believe that restoring populations in that country could help achieve the geographic distribution associated with a recovered population, we do not believe that one or two isolated populations in Mexico will contribute to the demographic or genetic recovery of the species. While reintroduction efforts in Mexico are still in the early stages, see id. at 16, illegal mortality of Mexican gray wolves has been quite high, casting grave doubt on the ability of that

[3] The Science and Planning Subgroup included nine members, all but one of which were wolf biologists and conservation ecologists. In contrast, the recovery criteria put forth in the current Plan were developed by a group whose members largely lacked formal training in wolf biology. It is worth noting that FWS never formally disbanded the Science and Planning Subgroup of the last Recovery Team. The agency should presumably, then, at least discuss the Subgroup's analyses in the Draft Recovery Plan.

country to support recovery of the species. Draft Biological Report at 32 (describing illegal mortality in Mexico). Even Arizona Game and Fish Director Larry Voyles, who has argued against an expanded Mexican gray wolf population in the United States, has called the recovery of the Mexican gray wolf "improbable … in Mexico." Letter from Larry Voyles, Director, Arizona Game & Fish Dept., to Dan Ashe, Director, U.S. Fish & Wildlife Service 2 (Aug. 1, 2013).

i. A Questionable Start

The current population of Mexican gray wolves occupying FWS's preferred recovery site in Mexico, the northern Sierra Madre Occidental Mountains, "can be characterized as an extremely small, establishing population." Draft Biological Report at 32. Reintroduction of Mexican gray wolves in Mexico began in October 2011, when five wolves (three females and two males) were released into a private ranch in the northern Sierra Madre Occidental. Martinez-Meyer et al. at 4. Over the next two months, four of those released wolves were killed and the fifth dispersed 400 km to the south. Id. Several additional releases conducted since 2011 have met with limited success; while natural reproduction has been documented, many packs have splintered and left their release sites. Id.

Illegal mortality poses a significant danger to wolves south of the border:

> [F]rom 2012 to 2016, 41 Mexican wolves have been released into the state of Chihuahua, 18 of which died within a year after release. Out of 14 adults released from 2011 to 2014, 11 died or were believed dead, and 1 was removed for veterinary care. Of these 11 Mexican wolves that died or were believed dead, 6 were due to illegal killings (4 from poisoning and 2 were shot), 1 wolf was presumably killed by a mountain lion, 3 causes of mortality are unknown (presumed illegal killings because collars were found, but not the carcasses), and 1 disappeared (neither collar nor carcass has been found).

Draft Biological Report at 32 (internal citations omitted). As of April 2017, approximately 30 wolves inhabited the Sierra Madre Occidental. Id. at 11, 33 (28 wolves as of April 2017); Martinez-Meyer et al. at 4 (31 wolves as of April 2017); id. at 68 (number of wild wolves in Mexico is "uncertain").

Further illustrating the extremely tenuous nature of the Mexican reintroduction program, human intervention to ensure persistence of Mexican gray wolves in Mexico, including supplemental feeding, has been "quite high," Martinez-Meyer et al. at 68. Such human intervention—which it appears will need to continue for the foreseeable future—is expensive, yet funding supporting wolf recovery in Mexico has been unreliable. See Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (November 2-4, 2016) ("survey funding to explore a second release area in Mexico has not been provided and therefore surveys will not occur this year. … PROCER [is likely] to face large budget cuts in 2017 (as much as 50%), which means that it is unlikely that reintroductions will be pursued in a second release area."); Peer Review #3, Draft Biological Report, at line 43 ("Most of the Protected Areas [in Mexico] don't have an approved Budget to operate."). The ability of Mexico to shoulder a substantial portion of

Mexican gray wolf recovery is thus questionable. Several limiting factors are discussed in more detail below, including the anthropogenic threats of illegal mortality and land ownership patterns, the limited availability of suitable habitat, and an unclear legal framework for Mexican gray wolf protection.

ii. Suitability of Mexico for Recovery: Anthropogenic Threats

1. Illegal Mortality

The level of Mexican gray wolf mortality that has occurred in Mexico is unsustainable. See Peer Review #2, Draft Biological Report, at lines 178-79; discussion Part I.c.i, supra. As noted above, illegal shooting and poisoning have taken a toll on wolves released to date; this killing and landowner antipathy toward the species have frustrated recovery efforts. See Draft Notes: Mexican Wolf Recovery Planning Workshop 1 (August 22-24, 2016) (noting that "land owner complaints about the presence of wolves are common [in Mexico]."); Peer Review #3, Draft Biological Report, at lines 38-40 ("Ranch owners are no easy people to obtain permission to work in their properties and never listen about the wolf role in the ecosystems, because they consider the wolf as a cattle's predator."); id. at 87-89 ("Some special considerations are the attitude of cattlemen against wolves, they consider wolves bad for cattle business because are predators, and the common use of poison for predator's control."); Draft Notes: Mexican Wolf Recovery Planning Workshop 5 (November 2-4, 2016) (noting that Mexican gray wolf mortality rates in Mexico are higher than in the U.S.). Unless and until Mexico develops an adequate plan to address such mortality (including law enforcement), Mexican gray wolf recovery in that country will be limited. FWS failed to outline in its Draft Recovery Plan how, exactly, illegal mortality will be addressed in Mexico; it is thus irrational and arbitrary for the agency to declare that recovery efforts south of the border will meaningfully contribute to the species' recovery.

2. Land Ownership

Contributing to the problem of illegal wolf mortality are land ownership patterns in Mexico. Most lands targeted for Mexican gray wolf recovery are private or communal lands whose owners/users are unlikely to tolerate wolves on their properties.

Protected federal lands like we know in the United States do not exist in Mexico. See Draft Biological Report at 21 ("Land tenureship in Mexico differs in that the federal government does not hold large tracts of land; rather, private lands and communal landholdings, such as ejidos, comprise the largest forms of land tenure in Mexico"); id. at 37 ("land tenure in areas of suitable habitat in each country are significantly different.") (internal citations omitted). As FWS explains,

> In Mexico, there are three primary types of land: federal, private, and communal. Large tracts of federally owned lands managed solely for conservation do not exist in Mexico. Ejidos are a type of communal property distributed among individuals but owned by the community that may have conservation objectives but are typically managed for multiple uses including extraction of natural resources such as timber or mining. Natural Protected Areas are managed by the

> federal government in Mexico for the protection, restoration, and sustainable use of the natural resources, but many have native or rural communities living within their boundaries, and are a mix of private, federal, and communal land. Most Natural Protected Areas do not have comprehensive management plans, and extractive uses are allowed. Because the Mexican landscape is dominated by privately and communally owned lands, landowner approval is necessary before Mexican wolves can be released onto private land. As in the United States, landowner support for the reintroduction of Mexican wolves ranges from supportive to antagonistic. Federal agencies in Mexico continue to work with landowners to seek support for the reintroduction of Mexican wolves and have obtained signed agreements from several cooperative landowners who have allowed for the reintroductions to date.

Id. at 37 (internal citations omitted). See also Peer Review #3, Draft Biological Report, at lines 41-43 ("Protected Areas in Mexico are not managed and work as they are in the US. The land is private or communal and government can't do anything that the owner would not like to do. Most of the Protected Areas don't have an approved Budget to operate."); id. lines 59-61 ("Some specific stressors could be different in Mexico than in USA because land tenure, wilderness activities, law enforcement, security and ranching patterns.").

Compounding these challenges, communal properties in Mexico often fall victim to the tragedy of the commons, the lands degraded and resources overused. Id. line 1 (regarding line 1182) ("Most of the communal properties show a general overuse of their natural resources in their land, overgrazing, soil erosion, over use of trees and wood for house fire, land opening for dry farming and water pollution around their houses. Most of these areas, don't have any type of management programs for livestock, range management, forestry, soil and water conservation. Because that in many cases the owners do not live in those towns, they show lack or little interest to keep their land and the ecosystem in good condition."). This limits the ability of these lands to support an adequate prey base and, in turn, wolves. FWS acknowledges that "land tenure and management, although potentially different between the two countries, will need to support the occupancy and management of Mexican wolves across the landscape." Draft Biological Report at 38. Given the complicated patterns of land tenure and management in Mexico, however, Mexican gray wolf recovery in that country remains a tenuous proposition. The suitability of those lands from an ecological perspective also remains an open question.

iii. Suitability of Mexico for Recovery: Suitable Habitat

In 2000, Mexico's Proyecto de Recuperacion drafted a recovery plan for the Mexican gray wolf that explained that while "Mexico supported reintroduction on both sides of the Mexico-United States border, … it would be difficult to find appropriate habitat for reintroduction in Mexico." Draft Recovery Plan at 13. FWS's Draft Recovery Plan likewise equivocates on the potential of Mexico to support recovery, stating that "[b]ased on recent habitat modeling, we expect that either of these areas [(northern and southern Sierra Madre Occidental)] may be able to support a population of Mexican wolves." Id. at 21 (emphasis added). Nonetheless, FWS heavily relies on reintroduction efforts in Mexico to support Mexican gray wolf recovery. See id. at 9-11, 26-27.

To support its reliance on recovery efforts in Mexico, FWS relies on the results of a habitat suitability model. However, the habitat suitability analysis that undergirds FWS's recovery plan uses poor quality data and thus fails to demonstrate Mexico's ability to contribute to Mexican gray wolf recovery. FWS and Recovery Team participants discussed this challenge throughout the recovery planning process. See, e.g., Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (April 11-15, 2016) ("Primary challenges include dealing with lack of information or poor quality information and data mismatch across the border."). One of the primary data shortcomings, discussed in more detail under the heading Models, Part II.a, infra, concerns prey biomass. Wolf recovery in any ecosystem depends largely on the existence of an adequate prey base. See Draft Biological Report at 21 (listing "high native ungulate density" as one of "the most important habitat attributes needed for wolves to persist and succeed in pack formation"); id. at 38 ("Successful Mexican wolf recovery will require that Mexican wolf populations occupy large areas of ecologically suitable habitat. Prey availability will need to be adequate to support populations …."). Yet Mexico does not have long-term, accurate data on wolf prey availability in the country. See Draft Notes: Mexican Wolf Recovery Planning Workshop 5 (August 22-24, 2016) ("Ungulate information is the weakest component of the [habitat] assessment but is the most important habitat feature for wolves.").

Ungulate data collected in Unidades de Manejo para la Conservación de la Vida Silvestre (UMAs) are uncertain due to varied data collection techniques, and are only readily available for a short time period. See Draft Notes: Mexican Wolf Recovery Planning Workshop 14 (April 11-15, 2016) ("Group acknowledged issue with UMA data availability as it relates to timely completion of habitat assessment—only two years of data are available electronically, the rest is on paper and would be prohibitively time consuming to utilize."). In addition, some of these data are reported by landowners who operate game farms on their properties. See Martinez-Meyer et al. at 32 (noting that "UMAs primary source of income come from hunting tags"). These landowners have an incentive to inflate deer numbers to attract hunters (and thus income) to their property. See Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (April 11-15, 2016) (noting the connection between landowner inflation of estimated deer numbers and hunting permits issued); Peer Review #3, Draft Biological Report, at lines 80-82 (agreeing that "deer counts in Mexico have a big 'bias' because the economic value of the deer species (white tail and mule deer)"); Martinez-Meyer et al. at 32 (discarding certain mule deer data from Mexico because reported values "were up to 10 times greater than the average values in Arizona and New Mexico"). Further, landowners are unlikely to tolerate wolves on game farms insofar as this predatory species could potentially decrease profits. See Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (April 11-15, 2016) ("Group recognized that the presence of a predator could decrease the value of a UMA that is permitted for deer hunting and questioned what could be expected to happen with wolf presence on UMAs in terms of the likelihood of illegal killing of Mexican wolves."). Ungulate density on areas outside of these game farms, where wolves potentially might be more welcome, "is likely to be much less and might be at a level that is unsustainable for wolves." Peer Review #2, Draft Biological Report, at lines 324-25. Whether the landscape can support Mexican gray wolf recovery from an ecological perspective, thus, remains uncertain. The legal landscape for recovery in Mexico is also unclear.

iv. Suitability of Mexico for Recovery: the Legal Landscape

The Draft Recovery Plan fails to describe the legal landscape for lobo protection in Mexico—specifically whether that country's legal framework is sufficient to promote Mexican gray wolf recovery. The Draft Biological Report states that "[t]he Mexican wolf is protected … by federal regulation as a subspecies in Mexico," Draft Biological Report at 14, but it fails to explain exactly what this means or how effective the cited regulation may be in facilitating wolf recovery. The Recovery Team called for a comparison of U.S. and Mexico law so that it could better understand what Mexico requires in terms of the species' protection and recovery. See Draft Notes: Mexican Wolf Recovery Planning Workshop 10 (April 11-15, 2016) ("Mexico needs to define what their goal is for Mexican wolf recovery—is it a certain population number or distribution, or returning an ecological function to the landscape? The Service discussed recovery under the ESA—including the requirement to set objective and measurable criteria that alleviate threats. Group agreed that it would be helpful to have a comparison of US and Mexico endangered species laws.").

If such a comparison was completed, the results were not discussed in either the Draft Recovery Plan or Draft Biological Report. As a result, the public cannot understand or comment on the sufficiency of this legal framework to foster or promote Mexican gray wolf recovery in Mexico. It would be instructive to know how well Mexico's species protection law aligns with the Endangered Species Act, and whether that country's legal framework includes a mandatory duty for federal officials and agencies to advance recovery and enforcement provisions. If recovery in Mexico is discretionary rather than mandatory, there is no basis for FWS to abdicate the Service's statutory mandate to advance recovery to the Mexican government.

FWS's recovery plan for the Mexican gray wolf needs to explain, in detail, the extant legal structure for imperiled wildlife in Mexico and how that structure provides for restoration work that can reasonably be expected to contribute to recovery under the U.S. Endangered Species Act. See Draft Notes: Mexican Wolf Recovery Planning Workshop 10 (November 2-4, 2016) (referring to the Kemp's Ridley sea turtle recovery plan signed by both the U.S. and Mexico, and noting that while "it mentioned Mexico's regulations [it] didn't necessarily comply with Mexico's regulations").

Given the substantial challenges facing Mexico's Mexican gray wolf recovery program just described—anthropogenic threats including illegal mortality and land ownership patterns, the questionable existence of suitable habitat, and an unclear legal framework for the species' protection—FWS's heavy reliance on Mexican gray wolf reintroduction efforts in Mexico to support downlisting[4] and delisting is unjustified. The country's reintroduction efforts, while laudable, have yet to demonstrate a significant probability of success. Unless and until that changes, it is arbitrary and unlawful for FWS to rely on Mexico to shoulder a substantial portion of Mexican gray wolf recovery.

[4] FWS has proposed downlisting based solely on the status of the SMOCC-N population—a population whose security, as just described, is far from certain. See Draft Recovery Plan at 9-10, 26.

II. Models

To achieve recovery, Mexican gray wolves will need to occupy suitable habitat in sufficient numbers to persist into the foreseeable future with reasonable certainty. In an effort to assess suitable habitat and population viability, FWS relies on two modeling exercises: a habitat suitability model, referenced above, and a population viability analysis (Vortex) model. See Draft Recovery Plan at 14. The habitat suitability analysis purportedly "assesses the current conditions of the landscape in portions of Arizona, New Mexico, and Mexico based on habitat features required to sustain Mexican wolf populations." Draft Biological Report at 8. The Vortex model seeks to "assess … the conditions needed for Mexican wolf populations to maintain long-term viability." Id. Significant limitations with both models, including lack of quality data and optimistic parameters, limit the practical usefulness of the models' output. FWS's reliance on these models to support Mexican wolf recovery in its Draft Recovery Plan is thus unfounded and inappropriate, and is likely to lead to the species' extinction. FWS must address the concerns raised below in revised modeling exercises before relying on model output as the basis for Mexican gray wolf recovery.

a. Habitat Suitability Analysis

i. No Empirical Evidence of Suitability

Mexican gray wolf recovery will succeed only if the species is afforded access to substantial areas of suitable habitat. See Draft Recovery Plan at 18 (listing adequate habitat availability/suitability as a stressor for Mexican gray wolves). FWS thus initiated a habitat suitability analysis to determine where suitable habitat for the lobo exists,[5] and thus where recovery efforts should focus. However, a lack of high-quality data on key attributes of Mexican gray wolf recovery, including prey availability and livestock presence, limits the utility of the analysis results. As one peer-reviewer succinctly stated, "the number of assumptions, potential biases, lack of data, and reliance on information from other populations makes it difficult to place a great deal of faith in these model results." Peer Review #5, Draft Biological Report, at lines 174-76. In short, the habitat suitability analysis provides no empirical evidence of habitat suitability.

Two of "the most important habitat attributes needed for wolves to persist and succeed in pack formation [are] high native ungulate density, and low livestock density." Draft Recovery Plan at 21. Yet reliable data on these attributes are lacking. The authors of the habitat suitability report emphasize that their analysis is "only the first of a series of steps that should be considered to select specific sites for further releases." Martinez-Meyer et al. at 56-57 (emphasis added). More specifically, "the scope of this study is to identify those areas in which suitable habitat conditions prevail and thus fieldwork should be initiated to evaluate environmental parameters like prey and cattle density, habitat condition, and social aspects such as land tenure, attitude

[5] This analysis arbitrarily was limited to lands south of I-40. See Draft Notes: Mexican Wolf Recovery Planning Workshop 4 (April 11-15, 2016) (emphasis added) ("To alleviate concerns over training the model for more mesic habitat that would emphasize areas above I-40, the group agreed to cap the model at I-40 for geopolitical reasons.").

towards the presence of wolves, and safety conditions for field teams, among others." Id. at 57. See also id. at 65 ("an urgent next step is to carry out a coordinated effort to gather updated, systematic field data that fulfills the needs for robust rangewide ungulate density estimations"); id. at 69 ("information on ungulate density in Mexico is still poor. It is necessary to carry out systematic, extensive field surveys to produce reliable density estimates and rangewide models to be incorporated in the habitat suitability analysis."); Draft Notes: Mexican Wolf Recovery Planning Workshop 5 (August 22-24, 2016) (Martinez explaining that "the habitat assessment should be viewed as preliminary information that can be used to stimulate field work to verify results, gather additional information (particularly on ungulates), and consider social tolerance").

FWS ignores these caveats, however; the agency takes the preliminary results of the habitat suitability analysis at face value and rests the fate of the recovery program—the fate of the lobo—upon them. This is unjustifiable. The habitat suitability analysis is insufficient as the basis for the Draft Recovery Plan because:

1) Reliable data about native prey populations in Mexico do not exist;
2) The habitat model nearly completely ignores the issue of livestock abundance and distribution; and
3) The habitat model almost completely disregards the issue of land ownership.

See Martinez-Meyer et al. at 19 (explaining that the habitat model incorporates only the following variables: an abiotic niche model; land cover and vegetation types; ungulate biomass; human population density; and road density).

Regarding prey populations: Martinez-Meyer et al. state, in the preface to their habitat suitability analysis, that "[d]ata available for the ungulate biomass index [(UBI)] was not robust." Id. at iii. They explain that their "estimates of prey density and UBI come with significant uncertainty, mainly for the Mexican portion of the distribution of the wolf. In Mexico the only wild ungulate that is a primary prey for the Mexican wolf is the Coues white-tailed deer …." id. at 65 (emphasis added). See also id. at 31 (same); id. at 69 ("information on ungulate density in Mexico is … poor"); id. at 18-19 ("One of the main limitations of habitat analysis for the Mexican wolf in the past has been the asymmetry of environmental and anthropogenic variables between the US and Mexico, thus concordant information of critical habitat variables for the two countries is necessary. Natural factors, including vegetation and prey density, and anthropogenic factors, such as human population density, infrastructure (e.g., roads, settlements), land tenure and protection are key factors to consider relative to wolf population establishment. In the US, high-quality or high-resolution information exists for all of these factors. Mexico information is quite reliable for some factors (e.g., land cover or population density), but is low-quality or lacking for many regions within the distribution of the Mexican wolf for other factors (e.g., prey density)" (internal citations omitted); Draft Notes: Mexican Wolf Recovery Planning Workshop 5 (August 22-24, 2016) (discussing concern with quality, reliability, and comparability of ungulate information).

The unreliability of ungulate data in Mexico is problematic because it is well known that, in areas where human-caused mortality is low, variability in wolf population size is largely a function of prey biomass. See Martinez-Meyer et al. at 30-31 ("Demography of wolves, as many

other carnivores, strongly depends on the availability of their prey. For instance, density of primary prey species has been identified as an important factor promoting wolf survival, recruitment and habitat use. … For these reasons, prey densities have been used as a key predictor of wolf population and for habitat analysis.") (internal citations omitted); Peer Review #2, Draft Biological Report, at lines 384-85 ("ungulate density probably will be the major factor determining viability of the Mexican population (if human-caused mortality is controlled)"). According to Martinez-Meyer et al., unreliable ungulate data is a key weakness in their analysis, and inclusion of ungulate biomass information "may mislead the habitat models." Martinez-Meyer et al. at 39. See also id. at 57 (stating that "we are concerned about the reliability of th[e] map" generated using UBI information). Given the importance of prey availability to wolf persistence, and given that prey data from Mexico are poor or lacking, FWS may not rely on the habitat suitability analysis to delineate "suitable habitat" for wolves in that country.

Regarding livestock and land ownership: the failure of the habitat suitability analysis to include layers for these two variables is a fatal flaw given that human-caused mortality due to real and perceived conflicts with livestock—especially on private land—has been and continues to be the primary anthropogenic threat to the Mexican gray wolf. See id. at iii (environmental variables used the model included "climatic-topographic suitability, land cover use based on frequency of occurrences, ungulate biomass, road density, and human density" and reintroduction sites need to consider "reliable field data of … cattle density [and] land tenure"); id. at 19 (listing variables used in the habitat model). Even without an explicit land ownership layer, Martinez-Meyer et al. conclude that "[m]ost of high-suitable areas for wolves [in Mexico] are under private lands." Id. at 69. That FWS would base its Draft Recovery Plan on a habitat model that ignores the most common cause of human-caused mortality (i.e., real and perceived conflicts with livestock), on private lands whose owners are under no obligation to recover the Mexican gray wolf, cannot be justified.

FWS acknowledges both the importance of these attributes and the limitations of the habitat analysis, stating that "[s]uccessful Mexican wolf recovery will require that Mexican wolf populations occupy large areas of ecologically suitable habitat. Prey availability will need to be adequate to support populations, and land tenure and management … will need to support the occupancy and management of Mexican wolves across the landscape." Draft Biological Report at 38. Further,

> ground-truthing is needed to verify the results of [Martinez-Meyer et al.]'s niche modeling exercise to ensure the areas identified as suitable habitat adequately contain the biological characteristics necessary to support Mexican wolves. Specifically, verifying the availability of ungulate biomass in Mexico is of particular importance, as wolf density is positively correlated to the amount of ungulate biomass available and the vulnerability of ungulates to predation. (Fuller et al. 2003). [I]n Mexico, ungulate monitoring methodologies are more variable and data is not readily available in the area of interest, making predictions about ungulate biomass as a characteristic of habitat suitability considerably less certain. (Martinez-Meyer et al. 2017). We recognize that ungulate availability is lower in the Sierra Madre Occidental sites compared with

> the MWEPA, in large part due to the absence of elk in Mexico, as well as lower deer densities.

Id. at 36-37. To remedy this situation, FWS declares that "[a]s Mexico continues efforts to establish a population of Mexican wolves in the Sierra Madre Occidental, information about ungulate (or other prey) abundance and density will be informative to more fully understand the area's ability to support wolves." Id. at 37. But this places the cart before the horse. Information on key attributes such as prey density, livestock abundance, and land tenure need to undergird recovery planning; Mexican gray wolves should not be dropped on the landscape with a hope and a prayer that conditions essential for recovery exist, and critical data collected after the fact. See Martinez-Meyer et al. at iii ("specific sites for reintroductions in Mexico and estimators of the potential number of wolves need to consider reliable field data of prey density, cattle density, land tenure, natural protected areas, safety to the field team, and acceptability of wolves by local people."). More fundamentally, FWS may not rest a critical component of its Draft Recovery Plan for Mexican wolves on recovery in the Sierra Madre Occidental when the key information needed to demonstrate the viability of recovery in that area is missing.

In short, FWS utilizes an unsupportable habitat analysis to place the future of the Mexican gray wolf on a foreign landscape overwhelmingly characterized by private land that supports abundant livestock and unknown native prey populations across which wildlife protection laws appear to be infrequently enforced. FWS relies on a habitat model that presents no empirical evidence of suitability and mostly avoids the only real threat wolves have ever faced (i.e., mortality due to conflicts with livestock) to conclude that recovery in Mexico is feasible. In so doing, the agency ignores peer-reviewed science demonstrating that suitable habitat for Mexican gray wolves in Mexico is insufficient to support recovery. See Carroll et al. (2014), at 77-78; Hendricks et al. (2016), at 53 ("[M]ost of the historic range in Mexico is currently unsuitable due to human activity … and the probability of anthropogenic wolf mortality is high."). In refusing to consider the best scientific information available regarding Mexican gray wolf habitat (or lack thereof), FWS threatens to impede and even prevent the species' recovery.

FWS's reliance on a niche-centric habitat model that concluded—despite the shortcomings just identified—that sufficient potential exists to drive a substantial fraction of future Mexican gray wolf population restoration work south of the border is arbitrary and contrary to law. Had FWS not opted to rest the future of the recovery program on Mexico, the agency would have been forced to at least consider additional domestic recovery areas (i.e., areas north of I-40 in the Grand Canyon and Southern Rockies).

ii. Mismatch in Wolf Occurrence & Climate Data

The lack of empirical evidence undergirding FWS's PVA renders the model insufficient as a basis for Mexican gray wolf recovery. Further limiting the model's utility is its treatment of climate, insofar as there is a mismatch between wolf records and climate data. Specifically, the habitat suitability model appears to have mapped historical, pre-extirpation occurrence records for the Mexican gray wolf on top of a layer of current climate conditions. See Enrique Martinez-Meyer et al., Mexican Wolf Habitat Suitability Analysis in Historical Range in the Southwestern

US and Mexico 8-9, 10-12 (April 2017) (utilizing historical wolf records collected from 1848-1980, and climate data from the WorldClim database); Peer Review #2, Draft Biological Report, at lines 354-57 (noting potential mismatch); Peer Review #5, Draft Biological Report, at lines 194-97 (same). In addition, the historical Mexican gray wolf occurrence records used are likely biased toward marginal wolf habitat because, by the time those records were collected, the lobo had already been extirpated from much of the highest quality habitat. See Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (April 11-15, 2016) ("these data points [for Mexican gray wolves] may be biased toward areas that are poor habitat for wolves").

Even if we were to accept the results of Martinez-Meyer et al.'s climatic analysis (which we do not), their results are somewhat at odds with current, on-the-ground realities for the Mexican wolf recovery program. Specifically, Martinez-Meyer et al. found that "[t]he MWEPA generally resulted [in] climatically-lower suitability," Martinez-Meyer et al. at 17, an odd finding given that the reintroduced population in the MWEPA is growing. Were reintroduction sites to be based on climatic analysis alone, the site FWS identifies in its Draft Recovery Plan as most promising for the future of the Mexican gray wolf in the United States would have been rejected. But see id. at iii, 47-48 (MWEPA becomes high quality habitat when other variables are added to the base layer). In sum, the habitat suitability analysis underlying FWS's Draft Recovery Plan relies on incomplete wolf location data and a mismatch between that data and climate data that renders it of limited value.

b. Population Viability Analysis (Vortex)

i. General Concerns

In addition to the habitat suitability analysis just described, FWS's Draft Recovery Plan for the Mexican gray wolf also relies upon a population viability analysis (PVA), specifically a PVA conducted using "Vortex" modeling software, to support key recovery criteria. See generally Philip S. Miller, Population Viability Analysis for the Mexican Wolf (Canis lupus baileyi): Integrating Wild and Captive Populations in a Metapopulation Risk Assessment Model for Recovery Planning (2017) [hereinafter PVA]. Generally speaking, a PVA seeks to "estimat[e] the probability that a population, or collection of populations, will persist for some particular time in a particular environment." Leah Gerber & Manuela Gonzalez-Suarez, Population Viability Analysis: Origins and Contributions, 3 Nature Education Knowledge 15 (2010). The utility and reliability of a PVA are a function of the quality of data used as model inputs (or, if data are lacking, the reasonableness of expert opinions or assumptions). Used appropriately, a PVA is a science-based, exploratory tool that can provide guidance in the development of effective recovery strategies.

Unfortunately, FWS appears to have turned the concept of population viability modeling on its head by structuring the Vortex model with a predetermined population cap—what appears

to be a "minimum viable population"[6]—in mind. See Draft Recovery Plan at 28 (capping MWEPA population at 320-380 wolves). In other words, rather than using the model to identify the number of wolves necessary for long-term viability, and using that threshold (with a buffer) to develop recovery goals, the model scenarios "were structured such that populations were not allowed to increase over 380 Mexican wolves in the MWEPA and 200 wolves in the northern Sierra Madre Occidental." Id. See also PVA at 9 ("Because the population-specific management targets … are less than the estimates for carrying capacity, the simulated populations will not increase in abundance beyond the targets and approach [carrying capacity]."); id. ("In contrast to the ecological carrying capacity parameter described above, a critical feature of the current demographic model is the specification of a management target abundance."); Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (November 2-4, 2016) ("we are interested in running scenarios in which we investigate the extinction risk of a recovery target that is something less than ecological carrying capacity.").

These population caps align with limits pushed for by the states, and adopted by FWS, in the agency's recently revised 10(j) rule for the Mexican gray wolf. See U.S. Fish & Wildlife Serv., Endangered and Threatened Wildlife and Plants; Revision to the Regulations for the Nonessential Experimental Population of the Mexican Wolf, 80 Fed. Reg. 2512, 2516-17 (Jan. 16, 2005) (population objective of 300-325 Mexican gray wolves in the MWEPA); PVA at 10 ("The upper bound for MWEPA is based on previous analyses within the scope of this project, and is partly informed by existing management regulations for the Mexican wolf population in the United States."). According to the Service, these population caps were designed to avoid population growth "to levels that would cause socioeconomic concerns." Draft Recovery Plan at 28. See also PVA at 9 ("This target represents the wolf population abundance deemed both biologically viable (according to identified recovery criteria) and socially acceptable in light of the expected ongoing issues around livestock depredation and other forms of wolf-human conflict."). But see Draft Notes: Mexican Wolf Recovery Planning Workshop 4 (November 2-4, 2016) (acknowledging that "the recovery target should be based on the biological/conservation needs of the wolf, not social tolerance"). While reliance on socioeconomic concerns is an inappropriate basis for determining whether a species is recovered, see 16 U.S.C. § 1533(b)(1)(A), FWS also fails to provide empirical evidence or citations from the peer-reviewed, scientific literature that capping the population at this specific level (i.e., between 320-380) will substantially increase social tolerance.

Not only are FWS's population caps unsupported from a social tolerance perspective, some the Vortex scenarios tested with these population caps in mind resulted in populations that were declining about 40 years out. See, e.g., PVA at 19, 26. Nonetheless, the Service seeks to delist the Mexican gray wolf within 25 to 35 years (i.e., before the declines begin). This accords with FWS's problematic statement that, should the Draft Recovery Plan criteria for delisting be met, Mexican wolves "would be unlikely to need immediate relisting after reaching recovered

[6] The concept of "minimum viable population" has generally been rejected as a recovery target in conservation biology because it does not provide sufficient capacity for populations confronting unforeseen challenges. Rather than providing a single "minimum viable population" size, PVA should instead focus on providing more general information on the relationship between extinction risk and such factors as abundance, distribution, and genetic diversity.

levels." Draft Recovery Plan at 28 (emphasis added). FWS cannot rationally deem a species recovered when it is headed for decline only 5 to 15 years after a proposed delisting. The agency's PVA wrongly endorses population size and other parameters that imply that a slow deterministic decline in the wild populations is acceptable as long as eventual extinction is pushed beyond an arbitrary end date.

FWS also fails to explain its call for population targets in the United States and Mexico that are relatively similar, when the U.S. carrying capacity (according to the Vortex model) is 1000—three times higher than carrying capacities in Mexico (300 for SMOCC-N and 350 for a site in the southern Sierra Madre Occidental). PVA at 9. The Recovery Team had discussed the fact that it was important to "insure that each habitat area is supporting an equal burden, relative to the total number of wolves that could be supported at [carrying capacity]." Draft Notes: Mexican Wolf Recovery Planning Workshop 4 (November 2-4, 2016). However, the United States management target is 32-38% of estimated carrying capacity, while the Mexico management targets are from 43-83% of carrying capacity. This is particularly peculiar given the myriad challenges to recovery in Mexico (e.g., unknown prey density, unknown livestock abundance, land tenure issues) described above. It does not appear to be an "equitable" planning approach, id. at 10, nor one that is likely to lead to Mexican gray wolf recovery.

ii. Concerns with Model Inputs

In addition to the overarching concerns just described, we also have concerns about some of the inputs and assumptions that were used in the Vortex models. Specifically:

- The PVA uses estimated mortality rates for the MWEPA based on the time period between 2009 and 2015: 0.28 for pups, 0.33 for yearlings, and 0.19 for adults. PVA at 8.
    - Adult mortality rate has been identified as the most important parameter affecting population extinction. See Carroll et al. (2014), at 79 (Table 1); id. at 82. The adult mortality estimate for the Mexican gray wolf population (0.19) appears low, and significantly below what has been observed in some years of the recovery effort. See PVA at 8 (acknowledging this and "develop[ing] a set of scenarios featuring alternative estimates of mean annual adult mortality rates in addition to the aforementioned baseline value: 21.9%, 24.9%, 27.9%, and 30.9%"). Given that "the MWEPA wolf population in the United States can grow in abundance to designated management target levels [only] as long as annual adult mortality rates are below 25%," PVA at 40, and given that mortality rates for Mexican gray wolves have exceeded 25% in the past, FWS must explain how it intends to reduce and maintain effective mortality rates (defined to include removals) below this threshold. Further, FWS should develop an objective, measurable recovery criteria that would ensure mortality rates do not exceed the designated threshold. See discussion Part VI.b, infra.
    - Yearling survival: FWS does not explain why yearling survival is higher in Mexican gray wolves (0.67) than in northern gray wolves (0.55). See Peer Review #2, Draft Biological Report, at lines 144-45. If, as appears to be the case, this is due to supplemental/diversionary feeding, see discussion Part IX.a, infra, FWS should explain why it is appropriate to use these optimistic estimates, particularly given the

agency's assertion that it will ratchet down supplemental/diversionary feeding over time. PVA at 10, 18.

  - Pup mortality: In the Draft Biological Report, FWS provides a mortality estimate of 0.50 for pups (inclusive of den-bound mortality). Draft Biological Report at 20. In the PVA, a pup mortality rate of 0.282 is used. PVA at 8. This lower rate apparently does not include den-bound mortality. See id. ("The mortality estimate [for pups] consists of two phases: an early phase from first observation of pups after emergence from the den … to the time of collaring …, and a second phase from the time of collaring to the next breeding season."). Appendix D to the PVA specifies an even lower value—0.17—for pup mortality during the first six months of life. PVA, App. D, at 60. FWS needs to better explain how values for pup mortality were derived and deemed appropriate for use, and why den-bound pup mortality is irrelevant to the population analysis (when presumably some pups that die before emergence might do so because of inbreeding effects).
  - The estimated mortality rates used were based on the time period from 2009-2015. PVA at 8. This time period was associated with higher survival (particularly pup survival) and fewer removals as it coincides with the increased use of supplemental/diversionary feeding. See PVA at 8 ("Data from the most recent phase of Mexican wolf population management in MWEPA (2009-2015), corresponding to a period of relatively robust population growth due to high pup survival rates and few individual removals after conflict with local human populations, were used to develop baseline age-specific mortality estimates."). FWS no where explains why it is appropriate to use these optimistic estimates, particularly given the agency's assertion that it will ratchet down supplemental/diversionary feeding—likely the primary factor underlying the high pup survival and robust growth—over time. PVA at 10, 18.

- FWS must justify its assumption that wolves released into the MWEPA, or released or translocated into the Sierra Madre Occidental, will become "effective" migrants simply because they survived. See Draft Recovery Plan at 9-11, 26-27; PVA at 42.
- FWS's assumption that 78% of adult females in any given year breed with a male does not accord with our understanding of Mexican wolf population dynamics. While wolf populations might have a high rate of females breeding in certain circumstances, such as when wolves are at low absolute densities or low densities relative to prey populations, this rate would be expected to decline as density increased. The PVA model assumes a fixed rate, however, failing to account for changes expected as the Mexican gray wolf population increases. See generally PVA. Further, the 78% value itself was questioned as potentially too high by Recovery Team participants. See, e.g., PVA, App. A, at 47 (78%); Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (November 2-4, 2016) (sidebar comment by John Oakleaf) ("I thought there was some agreement that great lakes was 60% producing pups and ours was about 60% that actually had pups because of the probability of detection of live pups.").
- It is unclear whether the model accounts for the anticipated change in mortality rates due to the reduction in proportion of wolves vaccinated over time. See Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (November 2-4, 2016).
- FWS appears to accept that survival probabilities are equal for males and females without explaining whether this is the case and, if not, why this was not factored into the model. See PVA at 8; Peer Review #5, Draft Biological Report, at line 127.

iii. Concerns with Model Outputs

In addition to the model input issues just described, FWS needs to address the following issues regarding model output. All models used in the PVA analysis "are based on the status of the wild and captive population as of 31 December 2015" and all "simulations were initialized as of 1 January 2016." PVA at 5, 14. Given that we are now nearly 20 months out from that initialization date, and given associated changes in status of both the wild and captive populations since that time, FWS must explain whether it is reasonable for the agency to continue to rely on the results of the PVA in an effort to "achieve 90% gene diversity of the captive population in the wild within approximately 20 years." Draft Recovery Plan at 30.

For example, the release/translocation schedules relied upon in the PVA provide that, for the EIS_20_20 scenario, there will be two releases of pairs with pups from the Species Survival Plan (SSP, i.e., the captive breeding program) to the MWEPA, two releases of pairs with pups from the SSP to SMOCC-N, and two transfers of pairs with pups from the MWEPA to SMOCC-N in 2017. See PVA at 16 (Table 2). FWS should explain whether these releases and transfers occurred or are anticipated to occur, and if not, whether the model results are still valid. Further, FWS should explain why transfers from MWEPA to Mexico would be acceptable at this point, given that "if wolves are removed from MWEPA in the near future" "demographic and genetic processes can work together to destabilize the population and inhibit its continued growth." PVA at 40.

This raises a more general point. While the model outputs rely on assumptions that wolf pairs with pups will be transferred from the MWEPA to recovery sites in Mexico, it appears that translocations of wolves from the MWEPA to Mexico come at a substantial cost to the U.S. population. FWS must explain why this is acceptable given the tenuous status of the MWEPA population and the challenges facing Mexican gray wolf recovery in Mexico. See PVA at 39 ("assuming an intermediate mean annual adult mortality rate of 24.9% … the increased risk to the MWEPA population as a consequence of transferring animals to Mexico is evident"); id. Figure 18 (depicting risk in graphic form); id. at 40 ("More intensive transfer schemes such as the 'EIS_40_40' strategy put increased genetic strain on the source MWEPA population"); Philip S. Miller, Addendum: Population Viability Analysis for the Mexican Wolf (Canis lupus baileyi): Integrating Wild and Captive Populations in a Metapopulation Risk Assessment Model for Recovery Planning, at Conclusions lines 5-8 (May 22, 2017) [hereinafter Miller Addendum] ("the demographic and genetic characteristics of the MWEPA population of Mexican wolves can be improved through … a reduced reliance on using MWEPA wolves for translocations to Mexico"). See also Peer Review #2, Draft Biological Report, at lines 524-26 (discussing cost to the MWEPA population of translocations).

In sum, the PVA upon which FWS relies for its Mexican gray wolf recovery strategy is based on inaccurate and overly optimistic parameters. The analysis itself is suspect because it was developed with a predetermined outcome in mind. Even if the analysis itself was valid (which it is not), the fact that the 2017 releases and transfers upon which the model output relies do not appear to have occurred limit the model's ability to predict future population status. And even if those transfers had occurred, FWS failed to justify its willingness to jeopardize the future of the MWEPA population by removing wolves for transfer to Mexico. Overall, the PVA results

do not provide any confidence that FWS's proposed recovery criteria are sufficient to ensure the Mexican gray wolf's recovery.

iv. Probability of Persistence

Further casting doubt that FWS's recovery criteria are sufficient to ensure the Mexican gray wolf's persistence is the agency's acceptance of a high extinction risk for the species. At their current sizes, the MWEPA and Sierra Madre Occidental populations face a high risk of extinction (45% and 99% respectively) over the next 100 years. Draft Biological Report at 39. FWS states that this risk is too high, but explains that "[n]either the ESA nor the Service equate a specific extinction risk with the definitions of 'endangered' or 'threatened.'" Id. Instead, "this is a species specific determination that should be explored during the development of conservation measures and recovery plans for listed species." Id.

FWS asserts in its Draft Recovery Plan that a Mexican gray wolf population "that has approximately a 90% probability of persistence [(i.e., a 10% chance of extinction)] over 100 years [would] contribute to achieving recovery criteria." Draft Recovery Plan at 23. The agency deems such a population "resilient," id. at 27, and "highly demographically stable." Draft Biological Report at 41. The 90% threshold finally adopted by FWS appears to be the highest extinction risk discussed during Recovery Planning meetings. See Draft Notes: Mexican Wolf Recovery Planning Workshop 6 (November 2-4, 2016) ("The group discussed possible appropriate extinction risks to inform development of recovery criteria. Participants expressed support for different levels, ranging from 90% likelihood of persistence (10% extinction risk) over 100 years to 0% extinction risk over 100 years."). The agency states that it chose this risk level "to strike a balance between achieving a reasonable level of viability while also considering the needs of local communities and the economic impact of wolves on some local businesses." Draft Biological Report at 41-42.

The agency has not rationally justified its determination that a 10% extinction risk over 100 years is acceptable. This risk level is unusually high, and places a species in the "vulnerable" category by the IUCN Red List. IUCN Red List Categories & Criteria (version 3.1). FWS's reliance on D.F. Doak et al., Recommendations for Improving Recovery Criteria Under the U.S. Endangered Species Act, 65 BioScience 189 (2015), in support of this figure is misplaced; the authors in that paper avoided providing a one-size-fits-all risk prescription. See Peer Review #5, Draft Biological Report, at lines 101-103 (noting the misreliance on Doak et al.). FWS must reconsider the appropriate extinction risk threshold for the Mexican gray wolf and better justify the level it chooses. A frank discussion of the normative factors that influence the agency's decision should be included so the public can assess and comment on the extent to which the agency prioritizes species recovery against other factors (e.g., "economic impact of wolves on some local businesses," Draft Biological Report at 42).

III. Population Caps

Even if the 90% persistence threshold was appropriate (which it is not), the odds of the SMOCC-N population achieving the 90% persistence goal are slim to none. According to the Draft Biological Report, "[i]n the northern Sierra Madre Occidental, a population of less than

200 wolves is unable to reach the 90% benchmark except at the lowest tested mortality rate (approximately 19%), which is well below the population's current average adult mortality rate and expected to be unlikely to be achieved during the early years of the reintroduction." Draft Biological Report at 42. Even larger SMOCC-N populations (at or above 200-250 animals) require mortality rates of no more than 25%—something that is far from guaranteed given the high levels of illegal mortality to date. Id.

The U.S. population fares little better given limits on its growth. A MWEPA population of 300 is only able to achieve the 90% threshold with mortality rates below 25%. Draft Biological Report at 42. Mortality rates exceeding this threshold are common in the MWEPA and FWS fails to discuss how it intends to reduce mortality for this population. Given this, FWS's decision to cap the MWEPA population at low levels (320-380) and to allow the mortality rate to exceed 25% "to maintain the population" within this range are wholly unjustified. Draft Recovery Plan at 28, 29. The population cap was set to appease "local communities [and alleviate] other management concerns such as unacceptable impacts to wild ungulates from Mexican wolves." Id. at 28. See also Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (November 2-4, 2016) (discussing concerns about whether recovery numbers are "socially tolerable"). As described elsewhere in this letter, the population cap also accords with the cap memorialized in FWS's revised 10(j) rule for the Mexican gray wolf. See 80 Fed. Reg. at 2516-17.

Wolf experts have sounded a continuing refrain emphasizing the importance of increasing the absolute number and distribution of Mexican gray wolves in the wild. See discussion Part I.b, supra. Rather than allowing for sufficient growth of the wild Mexican gray wolf populations, FWS instead imposes population caps on both the MWEPA and SMOCC-N populations. These caps place the Mexican gray wolf at a high risk for extinction, something that by its very nature is inconsistent with long-term recovery of the species, let alone its basic survival.

IV. Releases

Rather than capping the wild Mexican gray wolf populations at low levels, FWS should have focused its recovery efforts on growing wild populations of the species. This growth should occur in conjunction with a robust program of releases of wolves from the SSP to the wild. FWS's PVA does rely on a schedule of releases of captive wolves to the wild to bolster the genetic health of the reintroduced populations. See generally PVA. This is a critical aspect of Mexican gray wolf recovery; carefully planned releases of captive wolves into the MWEPA and other reintroduction sites are needed to infuse the wild populations with adequate genetic diversity. See Draft Recovery Plan at 30.

FWS acknowledges the importance of "establish[ing] a schedule of releases as stated in the recovery criteria" to the genetic vitality of the species. Id. See also Miller Addendum, at Conclusions lines 5-8 (noting that "the demographic and genetic characteristics of the MWEPA population of Mexican wolves can be improved through a more intensive effort focusing on initial release of wolves from the SSP population"); Draft Biological Report at 33 ("Initial releases are conducted into the MWEPA mostly for genetic management or other specific

management purposes, and we expect this pattern to continue."); id. at 35 ("We are able to positively influence the genetic condition of the MWEPA and northern Sierra Madre Occidental population through the release of genetically advantageous Mexican wolves to the wild from captivity, cross-fostering genetically-valuable pups,[7] translocating wolves between wild populations, or potentially by removing Mexican wolves whose genes are over-represented.").

Yet releases to date have been insufficient. In addition to not releasing enough wolves, FWS acknowledges that "many released wolves die within the first year of release." Draft Recovery Plan at 23. The agency states that "[m]anagement to improve the survival of released wolves" is needed; however, the Draft Recovery Plan does not outline in detail what steps the agency will take to increase survival rates. Id. at 24. Instead of focusing on implementing a robust release program and increasing survival rates of released wolves, FWS instead declares that it is handing over to "the states of New Mexico and Arizona, and the Mexican government" the power to "determine the timing, location and circumstances of releases of wolves into the wild within their respective states, and Mexico, from the captive population, with the Service providing collaborative logistical support and facilitation of those recovery actions." Id. at 23. This is extremely problematic when the states of Arizona and New Mexico have been actively hostile to Mexican wolf releases—with New Mexico even filing a lawsuit to prevent such releases. See discussion Part I.a.iv.2, supra. To wit:

In 2011, the Arizona Game and Fish Commission voted to oppose all Mexican gray wolf releases until FWS completed a new recovery plan, new 10(j) Rule, and new management plan for the species. Ariz. Game & Fish Comm'n, Meeting Minutes 22-23 (Dec. 2-3, 2011). In 2015, the Commission again voted unanimously to oppose all releases of adult wolves from captivity. Ariz. Game & Fish Comm'n, Meeting Minutes 11 (Aug. 7-8, 2015). In 2016, five Arizona Game and Fish employees published an article on Mexican gray wolf management arguing against the release of captive wolves into the MWEPA. See Harding et al. at 154 ("While this strategy has the potential to increase genetic diversity in the wild population, we believe that this benefit is outweighed by more immediate, non-genetic challenges."). When the Arizona Game and Fish Department led the wolf reintroduction program according to their principles (2003-

[7] FWS appears to place great faith in the cross-fostering technique to promote Mexican gray wolf recovery. However, this technique is still largely experimental and the potential for it to contribute meaningfully to wolf recovery—from both population growth and genetic perspectives—requires further analysis. See Draft Biological Report at 35 ("We have been striving to decrease mean kinship and increase the retention of gene diversity in the MWEPA through the release of wolves from the captive breeding program [including by cross-fostering]. … The success of cross-fostering efforts is measured by pups surviving and breeding …. To date, we are aware of one instance in which a cross-fostered pup has survived and bred. We will continue to monitor the success of cross-fostering efforts.") (emphasis added); Peer Review #2, Draft Biological Report, at lines 242-43 (calling for an analysis of the potential genetic impact of cross-fostering).

2009) as part of the Adaptive Management Oversight Committee,[8] the wild population plummeted from 55 to 42 individuals. U.S. Fish & Wildlife Serv., Mexican Wolf Recovery Area Statistics (1998-2015). When FWS resumed control of the recovery program in 2009, the population began a steady increase. See id.

New Mexico has even more strongly opposed Mexican gray wolf releases. In 2015, New Mexico began requiring FWS to obtain a state permit to release wolves in the state. This requirement was in response to a January 2015 rule allowing the release of wolves from captivity into New Mexico (the previous rule allowed releases only into Arizona), something scientists advised was necessary for recovery. See 80 Fed. Reg. at 2523 (describing Zone 1, including parts of New Mexico, as an area where initial releases can occur). When FWS attempted to release wolves into New Mexico, the state asked FWS to get a permit—which it then denied. See N.M. State Game Comm'n, Meeting Minutes 15-16 (Aug. 27, 2015).

In spring 2016, FWS asserted its authority under the federal ESA (which trumps state law) and released two pups into New Mexico. Rebecca Moss, Gray Wolf Pups Released into N.M. Wild, Santa Fe New Mexican (Apr. 29, 2016). The New Mexico Department of Game and Fish then sued FWS to compel removal of the released pups and stop all future wolf releases. See N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, Complaint, Case No. 2:16-cv-00462 (D.N.M. May 20, 2016); N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, Amended Complaint, Case No. 1:16-cv-00462-WJ-KBM (D.N.M. Aug. 26, 2016). New Mexico was granted a preliminary injunction against releases by the district court; that injunction was overturned by the Tenth Circuit. N.M. Dep't of Game & Fish v. U.S. Dep't of Interior, 854 F.3d 1236, 1240 (10th Cir. 2017). The case now returns to district court. In the meantime, FWS placed two cross-fostered wolves into a New Mexico den in May 2017. See Susan Montoya Bryan, Feds Release Endangered Wolf Pups in New Mexico, U.S. News & World Report (May 5, 2017). New Mexico insisted, however, that FWS remove two resident wolf pups to ensure no net increase in wolves on the ground as a result of the release. See id.

Although the ESA encourages FWS to cooperate with states in implementing the ESA, it does not permit FWS to take such cooperation so far as to adopt measures that frustrate the statute's fundamental mandates for species survival and recovery. More fundamentally, FWS's recovery plan must set forth management actions that are "necessary to achieve the plan's goal" of species recovery. 16 U.S.C. § 1533(f)(1)(B)(i). FWS's delegation of authority over all future releases to the states and Mexico violates legal requirements, including this specific statutory direction. In this regard, the releases at issue are requisites to Mexican wolf recovery. As FWS itself states in the Draft Recovery Plan, "the timing of releases is a critical factor … and … it will be important for us to establish a schedule of releases as stated in the recovery criteria." Draft Recovery Plan at 30. Even if FWS establishes such a schedule, however, it then intends to turn control of those releases over to the states. The states have no mandatory duty to recover the species of their own accord, and no need to adhere to a release schedule laid out by FWS.

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[8] The Adaptive Management Oversight Committee also included the New Mexico Game and Fish Department, U.S.D.A. Wildlife Services, U.S. Forest Service, the White Mountain Apache Tribe and FWS. See Mexican Wolf Blue Range Reintroduction Project Adaptive Management Oversight Committee.

Accordingly, FWS's proposed delegation of release authority to the states is unlawful and will frustrate Mexican wolf recovery.

V. Genetic Threats

The release program just described is essential to foster genetic health in Mexican gray wolf populations. FWS has described genetic issues (including inbreeding, loss of heterozygosity and gene diversity, and loss of adaptive potential) as a primary threat and stressor to the Mexican gray wolf. See Draft Recovery Plan at 18. The genetic challenges to Mexican gray wolf recovery largely stem from the small number of individuals that remained in existence when conservation efforts for this subspecies began, but FWS has compounded the resulting genetic problems by failing to take actions that are necessary to capitalize on the subspecies' remaining genetic diversity. The actions outlined in the Draft Recovery Plan fail to adequately address the genetic challenges facing the species and, instead, ignore the best available science and downplay immediate genetic concerns.

a. Captive Population

FWS acknowledges myriad genetic challenges facing the Mexican gray wolf, including that the extremely small founding population (used to establish the captive breeding program) had limited genetic diversity from the outset. According to the Draft Biological Report,

> [t]he Mexican wolf captive population is an intensively managed but genetically depauparate [sic] population. The small number of founders of the captive population and the resultant low gene diversity available with which to build a captive population have been a concern since the beginning of the project and remain a concern today.

Draft Biological Report at 33 (internal citations omitted). See also Draft Recovery Plan at 14; DEIS, Ch. 1, at 20-21 (MWEPA population is "considered small, genetically impoverished, and significantly below estimates of viability appearing in the scientific literature") (internal citations omitted). As FWS explained in the past, "[t]he small number of founders upon which the existing Mexican wolf population was established has resulted in pronounced genetic challenges, including inbreeding (mating of related individuals), loss of heterozygosity (a decrease in the proportion of individuals in a population that have two different alleles for a specific gene), and a loss of adaptive potential (the ability of populations to maintain their viability when confronted with environmental variations)." Id., Ch. 1, at 4. These challenges are compounded because the genetic relationships among and between the founders are unknown.

Unfortunately, while captive breeding facilities have more recently managed the Mexican gray wolf program to preserve as much genetic diversity as possible, much of the genetic potential of the founding stock has been lost. The loss of genetic potential is the result of the small number of founder wolves, the fact that "[t]he Mexican wolf captive breeding effort … was not managed to retain genetic variation until several years into the effort," and the failure of the reintroduction program to facilitate the rapid expansion of a genetically diverse wild Mexican gray wolf population. Id., Ch. 1, at 19. Today, "the estimated number of remaining founder

genome equivalents is only 2.1." Hedrick. In other words, despite the fact that the founding stock for the current population consisted of seven individual wolves, the current Mexican gray wolf population today retains the genetic material of only approximately two individual founders. The Mexican wolf population thus "descends from one of the smallest effective founder numbers of any reintroduced endangered species, which portends severe genetic problems." Id.

Exacerbating this situation, the Draft Recovery Plan allows for continued genetic erosion of the captive population. See Draft Recovery Plan at 15 ("It is expected that even with optimal management, the gene diversity in the captive population will continue to decline over time."). Captive breeding program protocols aim to retain at least 90% of the founding individuals' genetic diversity. See id. The Mexican wolf captive breeding program has already dropped below this—it has retained only 83% of the founders' genetic diversity. Id.; Draft Biological Report at 33. The Draft Recovery Plan states that, "[i]n its current condition, the population would be expected to retain 75% gene diversity over 60 years and 70.22% in 100 years." Draft Recovery Plan at 15. This shifting baseline is dangerous and threatens the future genetic integrity and persistence of the Mexican wolf.

FWS refers to several ways of mitigating loss of genetic diversity, including "increasing the annual population growth rate, increasing the representation of under-represented founders, and by using the genome bank." Draft Biological Report at 33. However, the agency does not describe in detail how it intends to accomplish these goals nor does it outline how, exactly, the genome bank (cryopreserved sperm and eggs, id.) could be used to enhance genetic health of wild Mexican gray wolf populations.

The captive population suffers from a host of additional problems that FWS fails to sufficiently address in the Draft Recovery Plan. For example, the program is challenged by insufficient holding space and demographic instability of the captive population. Draft Biological Report at 33. Further, the cutback in releases has led to some of the captive breeding program facilities reaching full carrying capacity. Id. at 34. As a result, the program has had to cut back on reproduction which makes maximizing retained genetic potential more challenging. See id.

In addition, the future of the captive breeding program after recovery is, according to Recovery Team participants, "uncertain." Draft Notes: Mexican Wolf Recovery Planning Workshop 7 (November 2-4, 2016). FWS appears to dismiss this concern, stating that it "do[es] not expect regular releases from the captive population to be necessary after Mexican wolves have been recovered because gene diversity from captivity will have been incorporated into the wild populations and wild populations will be sufficiently abundant such that releases from captivity for population augmentation will not be necessary." Draft Recovery Plan at 24. This is misguided because "recovery," as defined in FWS's Draft Recovery Plan, is only meant to prevent "immediate" relisting. If the Mexican gray wolf population is delisted and the captive breeding program terminated, any wild population declines could—without a captive population backup—lead to the lobo's extinction.

b. Wild Populations

The wild population of Mexican gray wolves in the United States is in even worse genetic shape than the captive population. See Draft Biological Report at 34. According to FWS,

> The genetic status of Mexican wolves in the wild is as much or more of a concern as that of the captive population, namely due to inappropriately high mean kinship (or, relatedness of individuals to one another) in the MWEPA, as well as ongoing loss of gene diversity and concerns over the potential for inbreeding depression to have negative demographic impacts on either the MWEPA or Mexico populations in the future.

Id. See also Draft Recovery Plan at 15 ("Although population growth has been relatively steady in recent years, we consider wolves in the MWEPA to be too closely related to one another (referred to as high mean kinship) to ensure the population will be robust over time. This high relatedness of wolves to one another and ongoing loss of gene diversity increases concerns over the potential for inbreeding depression to have negative impacts on future population growth in the MWEPA."). In 2016,

> Mexican wolves in the MWEPA population were on average as related to one another as siblings (Siminski and Spevak 2016). High relatedness is concerning because of the risk of inbreeding depression (the reduction in fitness associated with inbreeding). Inbreeding depression may affect traits that reduce population viability, such as reproduction ([R.J. Fredrickson et al., Genetic Rescue and Inbreeding Depression in Mexican Wolves, 274 Proc. Royal Soc'y B 2365 (2007)]), survival ([F.W. Allendorf & N. Ryman, The Role of Genetics in Population Viability Analysis, pp.50-85 in S.R. Beissinger & D.R. McCullough (eds.), Population Viability Analysis (2002, Univ. of Chicago Press, Chicago, Ill.)]), or disease resistance ([P.W. Hedrick et al., Canine Parvovirus Enteritis, Canine Distemper, and Major Histocompatabiliyt Complex Genetic Variation in Mexican Wolves, 39 J. Wildlife Diseases 909 (2003)]).

Draft Biological Report at 34. See also id. at 33 (describing problems associated with loss of genetic variability, including "compromised reproductive function or physical and physiological abnormality"). The extremely high level of relatedness of Mexican gray wolves in the MWEPA population suggests "that there are only two effective founders remaining … and … that more genetic problems are likely in the near future and that the potential for adaptive genetic change is quite low." Peer Review #2, Draft Biological Report, at lines 205-14; Draft Biological Report at 34 (MWEPA wolves "as related to one another as siblings"). But even given this continuing, rapid genetic depletion, FWS accepts the current status of the wild population as its baseline and allows for even more erosion. See Draft Biological Report at 43 (stating goal of "[e]nsuring wild populations represent approximately 90% of gene diversity retained by the captive population"); but see PVA at 42 (noting that "it is difficult to retain relatively high levels (e.g., at least 90%) of population-level gene diversity in MWEPA relative to the SSP, even if the risk of

the MWEPA population declining to extinction is very low," suggesting that the release schedule laid out by the FEIS is insufficient to bolster the MWEPA's genetic integrity).

FWS does acknowledge that "[h]igher levels of genetic variation within the experimental population are critically important to minimize the risk of inbreeding and support individual fitness and ecological and evolutionary processes." DEIS, Ch. 1, at 19. Yet FWS refuses to accept that inbreeding depression is not merely a theoretical problem for future wolves, but instead is having detrimental effects on Mexican gray wolves today.

Past studies have demonstrated the ongoing effects of inbreeding on the MWEPA population, including reduced litter size. See Fredrickson et al. (2007). See also U.S. Fish & Wildlife Serv., Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (Canis lupus) from the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (Canis lupus baileyi) by Listing It as Endangered, 78 Fed. Reg. 35,664, 35,706 (June 13, 2013) (referring to "evidence of strong inbreeding depressing in the reintroduced [Mexican gray wolf] population," including reduced litter size); id. (noting that the current "level of inbreeding depression may substantially reduce the viability of the population" and "limit the ability of future Mexican wolf populations to adapt to environmental challenges").

While admitting that "inbreeding depression in the MWEPA is impacting the probability of a breeding pair producing a litter," Draft Recovery Plan at 15, FWS leans heavily on the results of an unpublished analysis concluding that inbreeding is currently not having an impact on wild Mexican gray wolf litter size or population growth. See Draft Biological Report at 34-35 (referring to Matthew Clement & Mason Cline, Appendix C: Analysis of Inbreeding Effects on Maximum Pup Count in Wild Mexican Wolves (Sept. 9, 2016)). FWS states: "Inbreeding depression is not currently operating at a level that is suppressing demographic performance in the MWEPA (in fact, the population has exhibited robust growth in recent years)." Id. at 40. But "[j]ust because there is population growth does not mean there is no inbreeding depression." Peer Review #2, Draft Biological Report, at lines 229-30. See also id. at 417-21 (discussing other components of fitness impacted by inbreeding). In fact, the MWEPA population's recent growth is a likely consequence of FWS's recent practice of feeding wild Mexican gray wolves. This practice, which has included a focus on denning wolves, has led to larger litter size. See Clement and Cline at 58 (lines 1834-35) (finding a positive relationship between litter size and supplemental/diversionary feeding). In other words, packs that were fed by FWS had litters larger than those packs that were not fed. This is unsurprising, and the impact of supplemental feeding is likely to have masked any effects of inbreeding. This does not mean that inbreeding depression is not occurring among wild Mexican gray wolves. As one of the peer reviewers explains,

> At first [it] appears that the only explanations for the statistically significant inbreeding depression from the earlier study of Fredrickson et al. (2007) to have disappeared is that it was a false positive or that purging has occurred, but neither of these explanations appear likely. Another possible explanation for no significant inbreeding depression effect from 2009 to 2014 is for the environment to have been improved enough due to diversionary feeding that litter size becomes similar for different inbreeding levels. It is well known that inbreeding depression

> is environmentally dependent with more inbreeding depression in more harsh environments. If diversionary feeding were eliminated, it is likely that the negative association of inbreeding and litter size, inbreeding depression for this trait, would again be observed.

Peer Review #2, Draft Biological Report, at lines 218-27. The Recovery Team even noted during a workshop that inbred packs seemed to benefit more from supplemental/diversionary feeding than did other packs. Draft Notes: Mexican Wolf Recovery Planning Workshop 2 (August 22-24, 2016) ("Group discussed results suggesting a significant positive relationship between inbreeding and the packs that were fed, i.e., inbred packs seem to benefit more from supplemental feeding (e.g., some hypothesized that inbred wolves are more affected by environmental stressors). Group discussed whether supplemental feeding could be clouding interpretation of the data."). Clement and Cline's Figure C-1 suggests the same, as the pup count for wolves not receiving supplemental feeding demonstrates a downward trend with inbreeding. See Clement & Cline at 58 (Fig. C-1). Overall, it does not appear that Clement and Cline took into account the possible interaction effects of supplemental feeding and inbreeding in their model, see generally Clement and Cline, and FWS failed to address the apparent prospect that supplemental/diversionary feeding was masking inbreeding effects. The agency thus irrationally concluded that inbreeding is not having a material effect on Mexican gray wolves.

FWS also failed to address the fact that, in addition to reduced litter size, inbreeding effects may manifest in a host of other ways including viability, mating success, and probability of reproduction. Peer Review #2, Draft Biological Report, at lines 33-34. "[T]hese are more difficult aspects of fitness to quantify," but FWS should have assessed them before concluding no inbreeding depression is occurring. Id. at lines 419-20. See also Draft Notes: Mexican Wolf Recovery Planning Workshop 3 (August 22-24, 2016) ("Fredrickson reiterat[ing] that with 7 founders and 3 bottlenecks over time, there is general widespread concern that inbreeding depression may be affecting Mexican wolves."). FWS should also have discussed whether it has observed or looked for any other evidence of genetic abnormalities associated with inbreeding in the MWEPA population, such as "spinal abnormalities, undescended testicles, or other morphological problems." Peer Review #2, Draft Biological Report, at lines 238-39.

In addition, FWS should have more thoroughly discussed the full extent of recent scientific literature discussing inbreeding depression in small populations. These peer-reviewed articles suggest very high estimates of inbreeding depression in wild populations. "That the Mexican wolf population has a smaller number of founders and now founder genome equivalents than nearly all the populations examined in these articles … suggest[s] that inbreeding depression might be even larger than in those examples." Peer Review #2, Draft Biological Report, at lines 422-48, referencing Julian J. O'Grady et al., Realistic Levels of Inbreeding Depression Strongly Affect Extinction Risk in Wild Populations, 133 Biological Conservation 42 (2006), Philip W. Hedrick & Aurora Garcia-Dorado, Understanding Inbreeding Depression, Purging, and Genetic Rescue, 31 Trends in Ecology & Evolution 940 (2016). See also Hedrick ("analysis of several traits related to fitness has demonstrated significant inbreeding depression from segregating variation," for Mexican gray wolves, "both in the early years (Fredrickson et al. 2007) and recently (R. Fredrickson, in preparation)"); Carroll et al. (2014), at 79 (Table 1) (finding that inbreeding was the fourth most important parameter related to extinction in their

modeling of Mexican wolf populations). If so, FWS is underestimating inbreeding depression effects and the recovery criteria outlined in the agency's Draft Recovery Plan are insufficient to promote recovery of the lobo.

c. Alleviating Genetic Threats: a Robust Release Program

To reduce inbreeding depression and maximize genetic potential and prospects, FWS must commit to an active program of releasing genetically diverse wolves into the wild, capitalizing on the genetic potential now available in the captive population before it is further depleted. See Draft Recovery Plan at 30 ("The extent to which released Mexican wolves are able to influence the gene diversity of a wild population is a function of the number of released wolves in relation to the recipient population abundance (i.e., larger proportional releases result in greater genetic and demographic effect). Therefore, the timing of releases is a critical factor … and … it will be important for us to establish a schedule of releases as stated in the recovery criteria."). The agency has stated that it "is now focused on inserting gene diversity from the captive population into the wild population" through the release of genetically well-represented individuals. Draft Biological Report at 10; see also id. at 12. Such releases, if managed properly, would promote "[r]apid expansion of the population …[,] further promot[ing] maintenance of genetic diversity." 2010 Conservation Assessment at 60. Rapid expansion is critical because it will allow the released wolves to reproduce and express the full spectrum of remaining genetic potential—something they are unable to do in captivity due to constraints on the number of breeding facilities and holding space. See 2012 Draft Recovery Plan at 59-60 ("Expeditious recovery … is necessary to fulfill recovery objectives because any additional time that captive and wild Mexican wolf populations remain at their current low levels accentuates genetic threats and reduces recovery potential."); Draft Biological Report at 33 ("For both wild populations, it is desirable to establish adequate gene diversity while the population is small, and then allow the population to grow.").

Rather than focus on releases to help grow the population, however, FWS states that "[i]n the MWEPA, population growth will likely continue to be driven primarily by natural reproduction." Draft Recovery Plan at 23. See also id. at 15 ("In 2016, all Mexican wolves in the MWEPA were wild-born, with the exception of surviving cross-fostered pups from captivity …, demonstrating that population growth is driven by natural reproduction rather than release of wolves from captivity. Only 10 initial releases … were conducted between 2009 and 2016."). FWS fails to fully address the genetic implications of this approach. See generally id. at 23-24. Continuing to grow a genetically depauperate population without sufficient infusion of captive animals will exacerbate existing genetic challenges and hinder recovery. This has already posed a problem. See Draft Biological Report at 40 ("The recent growth of the MWEPA in its current genetic condition compounds the [genetic] situation, because it becomes harder to improve gene diversity as the population grows larger."); Draft Recovery Plan at 15 ("Although population growth has been relatively steady in recent years, we consider the wolves in the MWEPA to be too closely related to one another (referred to as high mean kinship) to ensure the population will be robust over time."); id. **(**"Presently, inbreeding depression in the MWEPA is impacting the probability of a breeding pair producing a litter"). In addition to minimizing the loss of genetic potential, it is critical to release more wolves into the wild in a timely fashion because "[i]f captive Mexican wolves are not reintroduced to the wild within a reasonable period of time,

genetic, physical, or behavioral changes resulting from prolonged captivity could diminish their prospects for recovery." U.S. Fish & Wildlife Serv., Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico, 63 Fed. Reg., 1752 1755 (Jan. 12, 1998). As FWS itself said in 2010, "[t]he longer … threats [to the Mexican gray wolf] persist, the greater the challenges for recovery, particularly as related to genetic fitness and long-term adaptive potential of the population." 2010 Conservation Assessment at 78.

However, even if FWS moved forward with the release schedule laid out in the Final Environmental Impact Statement for the Mexican gray wolf 10(j) rule, it may not be enough to ensure genetic diversity for the species—especially if mortality issues are not resolved. See PVA at 42 ("suggest[ing] that the current release schedule laid out in the Mexican Wolf EIS may be insufficient to adequately bolster the genetic integrity of the MWEPA."). This is problematic because

> [w]ithout an increase in the number of initial releases and without a better release success rate, the number of effective migrants [(i.e., migrants that actually breed and pass along their genes)] per generation needed to improve the genetic fitness of the Mexican wolf experimental population will not be achieved and the negative effects of inbreeding depression will continue—potentially … result[ing] in additional reduction in genetic variation, leading to decreased fitness and lower survival rates and ultimately causing an extinction vortex for the experimental population of Mexican wolves.

FEIS, Ch. 1, at 25. To address these concerns, FWS's revised recovery plan must include a more robust, informed release schedule, measures to reduce mortality of released wolves, and an objective and measurable genetic recovery criterion for Mexican gray wolves.

VI. Recovery Criteria

The ESA requires that recovery criteria be objective and measurable. 16 U.S.C. § 1533(f)(1)(B)(ii). Some of FWS's recovery criteria for the Mexican gray wolf fail to fulfill this requirement, and the agency also failed to include other recovery criteria necessary for the lobo's recovery in its draft plan. FWS must address the following three issues pertaining to recovery criteria in a revised recovery plan.

a. Genetic Recovery Criterion

FWS failed to provide an objective, measurable recovery criterion focusing on the genetic status of wild Mexican gray wolf populations. Recovery team meetings included much discussion over the inclusion of a such a criterion. For example,

- In April 2016, the "[g]roup discussed the lack of a genetic goal for the MWEPA. … Siminski explained that a genetic goal was established for the captive population by the Species Survival Plan; suggested that wild populations should strive to achieve a

reasonably close goal." Draft Notes: Mexican Wolf Recovery Planning Workshop 13 (April 11-15, 2016).

- In August 2016, "Melbihess and Barrett stated that the Service will determine an appropriate definition of viability for the Mexican wolf as the foundation of recovery criteria …; a measure of genetic loss could also be an appropriate aspect of viability." Draft Notes: Mexican Wolf Recovery Planning Workshop 6 (August 22-24, 2016).
- In November 2016, "Strong disagreement surfaced in the group over whether genetics are appropriate as a criterion—are genetics important over the time frame of recovery? Do we have measurable genetic threats at the current time? Those opposed to a genetics criterion asked how the Service would handle a situation in which we have set a threshold (criterion) for gene diversity (or any specific metric) but then we drop below it and can never achieve the criterion; would that stymie our ability to delist the Mexican wolf? … Others [argued] that picking a gene diversity target for recovery could make it impossible to achieve recovery." Draft Notes: Mexican Wolf Recovery Planning Workshop 6-7 (November 2-4, 2016).

All of the states involved with the Mexican gray wolf recovery effort argued against inclusion of a genetic recovery criterion. Id. at 9. They expressed concern "that delisting could be held up due to inability to meet a genetic criterion." Id. See also Harding et al. at 152 (arguing that "genetic recovery … must be strategically balanced against social pressures and concerns from local communities"). The states' concern appears to have outweighed concerns over recovery of the Mexican gray wolf, as the specific delisting criterion that considers genetic representation of the captive population in the wild does not specify a numerical threshold (i.e., 90%) but rather includes the following, somewhat ambiguous language: "Gene diversity available from the captive population has been incorporated into the MWEPA through scheduled releases of a sufficient number of wolves to result in 22 released Mexican wolves surviving to breeding age in the MWEPA [and 37 in the SMOCC-N]." Draft Recovery Plan at 10, 11.

This vague standard wrongly assumes that a certain number of releases is an appropriate surrogate for the genetic status of the population. FWS cannot be certain that the individuals released into the wild will have the same genetic makeup as those released in the modeling exercises, nor can it ensure that the released individuals will mate and produce offspring exactly as the model predicts. Modern genetic techniques are available and affordable, and should be used by FWS in combination with intensive fieldwork to monitor "effective" releases and evaluate the actual genetic status of wild Mexican gray wolf populations throughout the recovery process. This genetic status, then, should be reflected in an objective and measurable recovery criterion for the Mexican gray wolf.

b. Alleviating Threats of Illegal Mortality

As mentioned above, the genetic challenges confronting the Mexican gray wolf are exacerbated because of high levels of mortality of released individuals. FWS thus must also include an objective and measurable recovery criterion addressing the threat of mortality—specifically illegal mortality—which is a problem both south of the border, see discussion Part I.c.i, I.c.ii(1), supra, and in the United States.

FWS lists "excessive human-caused mortality" including "illegal shooting" as a threat and stressor to the Mexican gray wolf. Draft Recovery Plan at 18. Inbreeding depression may exacerbate this threat and make the lobo even more sensitive to human-caused mortality than other wolf populations (e.g., if genetically valuable wolves are killed). The Draft Recovery Plan lacks a recovery criterion addressing this threat or even an in-depth discussion of management techniques that will be used to alleviate this threat with the exception of supplemental/ diversionary feeding. See generally Peer Review #4, Draft Biological Report, at lines 192-202 (need for more discussion on human conflict avoidance techniques). As discussed more below, FWS asserts that it will phase down supplemental/diversionary feeding over time. See Part IX.a, infra. But without that key management technique, it appears likely that illegal mortalities will increase.

FWS must develop and present a robust, comprehensive plan to address the threat of illegal mortality—a plan that discusses options such as permanent voluntary retirement of grazing permits—in a way that secures the future of the Mexican gray wolf as a self-sustaining, recovered species. This mortality-reduction approach should be reflected in an objective, measurable recovery criterion.

c. Adequate Regulatory Mechanisms

Finally, FWS must remedy shortcomings with its recovery criterion focusing on the existence of adequate regulatory mechanisms to ensure the persistence of a recovered Mexican gray wolf population. Specifically, FWS provides the following criterion for delisting:

> Effective State and Tribal regulations are in place in the MWEPA and in those areas necessary for recovery to ensure that killing of Mexican wolves is prohibited or regulated such that viable populations of wolves can be maintained. In addition, Mexico has a proven track record protecting Mexican wolves. Based on these protections wolves are highly unlikely to need protection of the ESA again.

Draft Recovery Plan at 11, 27. This criterion is incomplete, subjective and cannot be measured. FWS fails to define mortality thresholds or other means of determining whether state and tribal regulations are sufficient to maintain viable Mexican wolf populations. Further, the agency fails to specify whether "viable" populations are equivalent to "recovered" populations—or if they need only meet some lower threshold of viability (which is nowhere defined). FWS does not require that adequate regulations be in place in Mexico. Finally, FWS does not define what it means by "proven track record." FWS must revise this recovery criterion and replace it with a criterion that is objective and measurable as defined by the ESA, and that will lead to the Mexican gray wolf's persistence in a post-delisting world.

VII. Defining Recovery

The Mexican gray wolf's ability to persist in a post-delisting world—if that world reflects the one envisioned in FWS's Draft Recovery Plan—appears unlikely. In addition, FWS's Draft Recovery Plan raises larger questions as to what "recovery" truly means under the ESA.

Specifically, FWS states that "recovered" Mexican gray wolf populations will receive supplemental feeding in perpetuity and also require human "assistance" to disperse between populations. FWS must discuss whether such intensive human management should really be necessary for a species that has truly recovered.

a. Supplemental/Diversionary Feeding

Mexican gray wolves on both sides of the border have received "supplemental" or "diversionary" feeding in recent years. "Supplemental" feeding involves providing road-killed native prey, carnivore logs, or domestic pigs (in Mexico) to allow released wolves to adapt to the wild or promote site fidelity in wild wolves. See Draft Biological Report at 25, 26; Draft Notes: Mexican Wolf Recovery Planning Workshop 1 (August 22-24, 2016). "Diversionary" feeding involves providing these same food sources to denning wolves in an effort to reduce potential livestock conflicts. Draft Biological Report at 26; Draft Notes: Mexican Wolf Recovery Planning Workshop 1 (August 22-24, 2016). According to FWS,

> [d]iversionary food caches have been used on increasing proportions of the [U.S.] population since 2009, providing about 10 pounds of meat per wolf every two to three days sometimes for several months when the likelihood of depredations are [sic] high (e.g., during denning season). In 2016, we provided diversionary feeding for approximately 70% of the breeding pairs during denning season.

Draft Biological Report at 32. In Mexico, officials provide wolves with "about 90 pounds of food … every eight days, all year." Draft Notes: Mexican Wolf Recovery Planning Workshop 6 (November 2-4, 2016). See also Martinez-Meyer et al. at 68 (noting that "the level of human intervention is quite high [in Mexico], supplementing at least two of the [three] packs"). This type of active management raises significant issues as to its effects and its appropriateness during and after recovery.

i. Behavioral Effects

FWS states that while it may continue to feed Mexican gray wolves in the future, it will do so at a lower level. The agency does not outline how it will go about this reduction in feeding. FWS should discuss whether there will be behavioral fallout from tapering the supplemental/diversionary feeding program, such as a reduced willingness of Mexican gray wolves to hunt, a tendency to seek out "easy" prey such as livestock or domestic pigs, or increased interaction with humans.

ii. Genetic Effects

Supplemental/diversionary feeding has, unsurprisingly, allowed female wolves to support larger litters: five pups, as opposed to three pups for non-fed females. PVA at 7. This is "likely due to improved summer survival of pups due to reduced pup mortality from malnutrition and reduced susceptibility or mortality as a result of disease." Draft Biological Report at 31. While increased pup survival has helped population growth, it has likely masked the effects of inbreeding (i.e., pups that are genetically less fit due to inbreeding nonetheless survive because

they are being fed)—which ultimately will be to the lobo's detriment. See Hedrick; discussion supra Part IV.b.

If supplemental feeding is masking inbreeding effects, this could lead over time to deleterious gene variants becoming "fixed" in the population (i.e., all individuals in the population would have certain detrimental genes). If that is the case, then inbreeding effects would be difficult to detect. As a peer reviewer explains: "[b]y not allowing inbreeding depression to occur now, there might … be an accumulation of detrimental variation, which could be expressed in much lower fitness when the more benign environment of feeding is stopped." Peer Review #2, Draft Biological Report, at lines 282-84. To avoid this result, FWS would have to continue supplemental feeding at high levels (more than the 15% referred to in the PVA report) indefinitely. PVA at 10, 18. That leads to the second question: the appropriateness of supplemental feeding in a "recovered" population.

iii. Appropriateness

That FWS finds it necessary to provide supplemental/diversionary food to 70% of breeding Mexican gray wolves twenty years into the recovery effort is surprising. Even more surprising is the agency's admission that it intends to feed Mexican gray wolves (albeit at a lower level) "indefinitely." Draft Biological Report at 38; PVA at 10, 18. The high level of feeding of Mexican gray wolves in Mexico, along with an uncertain and likely insufficient native prey base in that country, also suggest the need for long-term intervention.

This begs the question of whether a species that requires "indefinite" feeding at potentially high levels should lose federal protection under the ESA. The ESA is designed to recover species such that the protections of the Act are no longer necessary because threats have been ameliorated. If the Mexican gray wolf population is not self-sustaining and requires chronic human intervention and management, FWS must explain why it considers that species to be "recovered" under the Act.

b. Connectivity and Dispersal

FWS must also explain why it considers "recovered" a species that depends on assisted migration between populations to persist. FWS states that the Mexican gray wolf populations in the United States and Mexico are unlikely to display functional, natural connectivity. While "[t]he MWEPA and northern Sierra Madre Occidental reintroduction sites are approximately 280 miles … from each other …, a distance within the natural dispersal capabilities of the Mexican wolf," FWS does not expect "the level of dispersal … between any of the sites (particularly between the MWEPA and northern Sierra Madre Occidental) to provide for adequate gene flow between populations to alleviate genetic threats or ensure representation of the captive population's gene diversity in both populations." Draft Recovery Plan at 16, 24. See also id. at 29 (FWS "do[es] not predict significant immigration or emigration between the Mexican wolf populations."). While "[h]abitat quality between the northern and southern Sierra Madre Occidental sites has the potential to support a slightly higher degree of dispersal compared with the potential between the MWEPA and northern Sierra Madre site, … it is still predicted to be low." Id. at 24.

FWS plans to rely on "artificial, or assisted, connectivity" including translocations, releases, and cross-fostering, "for at least portions of the recovery process." Id. at 24; Draft Biological Report at 44. Should the present Administration build an impenetrable border wall, as it intends, natural connectivity between the two countries' Mexican gray wolf populations would be completely severed and assisted migration would be the only way to link them. FWS needs to discuss this eventuality and how the existence of two isolated, unconnected populations would affect the agency's notions of a recovered metapopulation as well as the viability of the U.S. population.

At a fundamental level, a truly recovered, self-sustaining species should not need artificial or assisted connectivity between populations in perpetuity. FWS has recognized this principle. The 2012 Draft Recovery Plan for the Mexican gray wolf, for example, provided a recovery criterion that specified the need for adequate population connectivity "via natural dispersal." 2012 Draft Recovery Plan at 113-14. In the context of Mexican gray wolf recovery, in response to the states' query about assisted migration "during and at the time of recovery[,] … [t]he Service restated its previous position that assisted migration could be appropriate during the recovery process but that [it] would aim for natural migration to be occurring at the time of delisting." Draft Notes: Mexican Wolf Recovery Planning Workshop 9-10 (November 2-4, 2016). The states "specifically requested the criterion could be worded as 'migration' without specifying how migration occurs." Id. at 10. However, this runs counter to the Department of the Interior Solicitor's stance that "the goal for recovery planning for an endangered species should be for natural dispersal." Draft Notes: Mexican Wolf Recovery Planning Workshop 8 (August 22-24, 2016).

FWS should explain whether assisted migration is expected post-recovery and how this squares with the Solicitor's Opinion and, more importantly, with the requirements of the ESA. If natural connectivity is the goal, FWS must explore the possibility of establishing additional Mexican gray wolf populations in the United States. See discussion Parts I.a.iv.2, I.b, supra.

VIII. Costs

Finally, FWS fails to explain how it expects the United States and Mexico to obtain the funding necessary to support the recovery efforts outlined in the Draft Recovery Plan. FWS projects that it will cost almost $240 million for an 8-year average of 320 wolves in the United States, and almost $25 million for an 8-year average of 170 wolves in Mexico.[9] See Draft

[9] Almost every line item in the budget assigned to Mexico (with the exception of management and monitoring of wolves in the SMOCC) is estimated to cost exactly $3,500,000. This suggests some uncertainty as to actual recovery costs in Mexico, which throws into question FWS's reliance on that country to promote recovery given budgetary constraints. See also Draft Notes: Mexican Wolf Recovery Planning Workshop 9 (November 2-4, 2016) ("survey funding to explore a second release area in Mexico has not been provided and therefore surveys will not occur this year. … PROCER [is likely] to face large budget cuts in 2017 (as much as 50%), which means that it is unlikely that reintroductions will be pursued in a second release area."); Peer Review #3, Draft Biological Report, at line 43 ("Most of the Protected Areas [in Mexico] don't have an approved Budget to operate.").

Recovery Plan at 37-39 (Table 1). This is a staggering cost, especially as far more cost-effective options for recovery exist. For example, costs could be significantly reduced if the MWEPA shouldered a slightly smaller number of wolves and additional populations were established in even better sites in the U.S.—which exist in the Grand Canyon and Southern Rockies. These prey-rich areas, relatively lightly used by livestock, include millions of acres of secure public land across which wildlife conservation is a priority and wildlife protection laws are routinely and effectively enforced. These sites could easily support a robust wolf population within a relatively short period of time if managed properly, and the type of intensive management contemplated in the MWEPA and Mexico (e.g., supplemental/diversionary feeding) would not be needed. Yet FWS failed to even consider such a cost-effective option and, as a result, has proposed an immensely expensive, resource-intensive recovery effort that is unlikely to succeed. FWS should consider more feasible, cost-effective options in its Draft Recovery Plan.

Conclusion

For the reasons stated above, FWS's Draft Recovery Plan for the Mexican gray wolf is not adequately justified. The Draft Recovery Plan does not chart a path for Mexican gray wolf recovery and instead threatens to drive this critically endangered species further toward extinction. For these reasons, if the plan is finalized as drafted, it would violate the Endangered Species Act. FWS must address the issues identified in this letter and develop a robust, science-based blueprint for the lobo's recovery.

Sincerely,

Kristin Carden
Staff Scientist
Lands, Wildlife and Oceans Program

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Exhibit 2

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August 28, 2017

Public Comments Processing

Attn: Docket No. FWS-R2-ES-2017-0036

U.S. Fish and Wildlife Service,

New Mexico Ecological Services Field Office,

2105 Osuna Road NE,

Albuquerque, NM 87113

Submitted via www.regulations.gov

Re: Comments on Mexican Wolf Draft Recovery Plan, First Revision (Docket #: FWS–R2–ES–2017–0036)

Dear Regional Director Tuggle,

I, Dr. Carlos Carroll, herein provide comments on the U.S. Fish and Wildlife Service's (FWS) Mexican Wolf Draft Recovery Plan, First Revision and associated documents and appendices (82 Fed. Reg. 22918-22920, June 30, 2017), which requests "comments on the recovery strategy, recovery criteria, recovery actions, and the cost estimates associated with implementing the recommended recovery actions." My qualifications to review the scientific basis for the recovery plan and associated documents stems from my more than two decades as a research scientist focused on population viability and habitat analysis for wolves and other large carnivores. I served as a member of the Science and Planning Subgroup of the Mexican Wolf Recovery Team convened in 2011, and as a technical advisor to the previous Mexican Wolf Recovery Team in 2005. In the course of this research, I have authored peer-reviewed papers on the science underpinning the recovery of the Mexican wolf (*Canis lupus baileyi*) (e.g., Carroll et al. 2014a, 2014b).

The purpose of recovery under the US Endangered Species Act (ESA) is to recover species to the point at which the protections of the Act are no longer necessary, because the species exists in wild, self-sustaining populations and no longer meets the definition of an

endangered or threatened species under the Act, i.e., is not at risk from the threats that led to its endangerment in the first instance.

Recovery criteria, a key part of every recovery plan, establish objective and measurable criteria, based solely on the best available scientific and commercial data, which effectively address all of the major threats to the species, as specified in a five-factor analysis which categorizes threat factors based on the language of the Act. The FWS uses the three criteria of resiliency, redundancy, and representation (the so-called 3 Rs; Shaffer and Stein 2000) as an aid to evaluate whether a species has achieved recovery.

Although my comments below focus on the science underpinning the draft plan, I frame the discussion in the context of the ESA's definition of recovery. I establish several areas where the draft plan, particularly the proposed recovery criteria, falls short of the requirements of the ESA, including by:

a) failure to accurately represent best available scientific information;

b) failure to establish criteria which objectively and comprehensively address key threats;

c) failure to establish criteria which, if achieved, would indicate that the species exists in wild, self-sustaining populations which as a whole achieve resiliency, redundancy, and representation, such that the Mexican wolf no longer meets the definition of a threatened or endangered species.

I. The draft plan and proposed recovery criteria do not accurately represent best available scientific information.

I review below two documents which underpin the draft plan's recovery criteria: the "Population Viability Analysis for the Mexican Wolf, June 13, 2017 version" ("PVA") and the "Mexican Wolf Habitat Suitability Analysis in Historical Range in Southwestern US and Mexico, April 2017 version" ("habitat analysis").

General comments on the Population Viability Analysis

Population viability analyses (PVA) are important tools in informing development of recovery criteria, especially for well-studied species such as wolves. PVA is a tool that helps planners systematically elicit and synthesize the best available biological information, such as

factors affecting the demographic and genetic status of threatened species, and the influence of these factors on population viability and endangerment.

It is important to remain aware of two limitations of PVA. Firstly, there are limitations in the biological data that informs parameterization of the model. This leads to the "garbage in, garbage out" problem, in which PVA results can be no more accurate than their input data. Secondly, planners must understand the limitations of the model itself. The primary strength of the Vortex PVA model used here is its ability to incorporate detailed information on the genetic composition and pedigree of existing individuals and project the genetic development of the population over time. However, Vortex only incorporates an extremely simplified representation of the spatial, behavioral, and other factors influencing the dynamics of real-world populations. Due to these limitations, Vortex results should be seen as information that can assist in devising effective recovery strategies, rather than as accurate predictions of the future status of the population. This has strong implications for the adequacy of the draft plan's proposed genetic criteria as detailed below.

In particular, the search for an exact number that represents a "minimum viable population" (MVP) is no longer seen as an informative framework for PVA. The goal is instead to use a comprehensive set of metrics from the PVA results to craft an effective strategy to address threats and grow a population beyond the stage where small-population factors such as genetic inbreeding are important. In contrast, the Mexican wolf PVA, rather than use PVA to identify what would be a minimum population size that might afford long-term viability, and then use that threshold (with some precautionary buffer) to set recovery goals to be reached and surpassed, seeks to identify a size that is marginally adequate, and then control numbers via offtake so that the populations cannot exceed these minimal levels. This approach turns the modern concept of PVA on its head, harkening back to the now outdated focus on a single MVP threshold.

Specific comments on parameter values used in the PVA

Mortality rates

In a previous study, Carroll et al. (2014a) found that the adult mortality rate was the most important parameter affecting extinction risk among simulated populations of Mexican

wolves. Carroll et al. (2014a) used a base adult mortality rate of 22.9%/year. The adult mortality rate used in the PVA scenario that underpins the draft plan's criteria (scenario "379_200_200_249_EISx220_20") is 24.9%/year. This rate is similar to that experienced by wolves prior to delisting in the Northern Rocky Mountains (Smith et al. 2010). However, Mexican wolves in the US have historically experienced higher mortality rates. The plan justifies use of the lower mortality rates by assuming that future human-caused mortality rates will be lower than those observed in the past for Mexican wolves. However, as discussed below, unlike in the earlier draft plan (USFWS 2012, MWRT-SPS 2013), no recovery criteria have been proposed that would ensure that mortality rates are as low or lower than the rate assumed in the PVA. Additionally, mortality rates in the PVA are affected by assumptions regarding the extent and number of years in which supplemental feeding of the wild population occurs. The PVA assumes that, unlike in other wolf recovery regions, significant levels of supplemental feeding will continue in perpetuity for the Mexican wolf. Due to expected future resource limitations on agencies conducting supplemental feeding, the PVA's assumptions regarding such feeding are likely unrealistic.

Proportion of females in the breeding pool

In wild wolf populations, the proportion of adult females that breed may have large effects on the growth rates and persistence of wolf populations. Wolf pack size, which is typically smaller in heavily exploited populations, influences what proportion of females can become dominant and achieve a high probability of breeding. Carroll et al. (2014a) found that the proportion of adult females in the breeding pool was the second most important parameter affecting extinction risk among simulated populations of Mexican wolves. Carroll et al. (2014a) used a parameter value of 0.50 (i.e., half of a population's adult females), whereas the current PVA used a value of 0.77.

The proportion of adult females breeding is often difficult to estimate in wild wolf populations. Available data, however, suggest that the proportion of adult females that breed may in large part be determined the density of wolves in a population as well as prey abundance. Fredrickson (unpublished) summarized the results from 9 published studies, and found a mean proportion of females breeding of 68.1% (SD 19.4%). Smith et al. (unpublished)

found a significant relationship between wolf population density and proportion of females breeding in the Yellowstone population.

When wolf populations are at low absolute densities, or at low densities relative to prey populations, a higher proportion of adult female wolves breed. When wolf populations are at high densities, or at high densities relative to prey populations, wolves may form larger packs in which fewer females breed each year, or females may become nutritionally stressed, reducing the proportion of females that breed (Boerteje and Stephenson 1992).

The Mexican wolf population in the two decades since reintroduction would be expected to have an anomalously high rate of females breeding due to the fact that 1) the population is still in an initial expansion phase from reintroduction, and 2) mortality rates have been high as is typical of a heavily exploited population. Both of these factors would tend to create small pack sizes and opportunities for almost all adult females to breed. Analysis of data from the Blue Range population in fact show a decline in the proportion of females breeding as that population has grown in size (Fredrickson, unpublished).

The current PVA justifies the use of a high parameter value (0.77) based on rates observed since reintroduction. However, this rate would be expected to decrease as population density increased, and if mortality rates were reduced. In fact, a reduced mortality rate is used in place of the observed rate based on the assumption that mortality will be lower in the future, but the observed proportion of females breeding (which resulted in part from historically high mortality rates) is used without adjustment. The assumptions of the current PVA concerning the two most important parameters are thus inconsistent.

Inbreeding depression

Genetic threats resulting from inbreeding effects on survival and fecundity have been documented in most small populations (Frankham et al. 2017). The Vortex model was developed in large part to allow more accurate assessment of such threats. Carroll et al. (2014a) found that the strength of inbreeding depression was the fourth most important parameter affecting extinction risk among simulated populations of Mexican wolves.

Inbreeding can affect fecundity either by increasing the odds of failure of a pair to produce any offspring or by reducing the litter size of those litters that are produced. Whereas

Carroll et al. (2014a) parameterized effects of inbreeding depression on both litter probability and litter size based on published sources (e.g., Fredrickson et al. 2007), the current PVA incorporates inbreeding effects on the probability of producing a litter, but not as an influence on litter size. This weaker inbreeding effect parameterization is based on a new analysis (Clement and Cline, 2016) that has not been published in the peer-reviewed literature, and is only incompletely described in the PVA report itself.

1) Although Clement and Cline (2016) present few details of their analysis, and do not state which if any alternative models they considered, it is clear from their plot C-1 that their model is misspecified. For both the supplementally-fed and non-fed groups, many more than half of the data points fall below the predicted relationships. Clearly, the red and green regression lines shown in the figure do not fit the data points well. There appears to be a clear downward trend with inbreeding in the observed data points for pup count of wolves not receiving supplemental feeding, implying that the data shows a negative inbreeding effect that is not captured in their model. This alone suggests that their reported results are erroneous.

Additionally, deriving good estimates of inbreeding depression, especially from a relatively small sample size, can be complicated by a number of factors:

2) The extensive supplemental feeding from 2009 to 2014 would be expected to mask inbreeding effects and allow pups that would otherwise be compromised by inbreeding to survive. As stated by the FWS's invited peer reviewers, it is well known that inbreeding depression is environmentally dependent, with greater inbreeding depression evident in more harsh environments. If diversionary feeding were eliminated, it is likely that any negative association of inbreeding and litter size would be more easily observed.

3) As pointed out by the FWS's invited peer reviewers, the Blue Range (MWEPA) population might already be fixed for a number of deleterious alleles. In this case, there would be no evidence of inbreeding depression because virtually all individuals, independent of inbreeding level, would have detrimental genotypes. Given that there are only two founder genome equivalents remaining in the population, it is likely that that this factor could contribute to the difficulty in estimating inbreeding effects in this population.

4) The genetic relationships and level of inbreeding in the 7 founders of the Mexican wolf population were unknown. Without molecular genetic assays of inbreeding (e.g., based on genome-wide homozygosity), any pedigree-based inbreeding estimates could be inaccurate. 5) In uncontrolled experiments such as this, a number of confounding factors (age of dams, prior breeding experience, provisioning, different levels of disturbance, etc.) can complicate analyses. Clement and Cline (2016) and Oakleaf and Dwire (2016) tried to account for some of these factors in their models, but it is not clear if they looked for interaction effects (as would occur if supplemental feeding obscured inbreeding effects). And even "best supported" models can do a poor job of identifying causal factors when many factors (including quadratic terms) that are not well balanced are included in the analysis. For example, older dams might tend to have lower inbreeding levels (because they were born earlier in the program), so factoring out a positive effect of dam age can also incidentally partially remove an inbreeding effect. The statistical model of Clement and Cline (2016) included inbreeding and supplemental feeding only as independent, additive effects, and not as interacting effects (which is what would be expected).

I agree with FWS invited peer reviewer 2 that the “results of Clement and Cline (2016) are quite surprising and unsupportable”, for the reasons detailed above. If as seems likely, the parameters used in the current PVA underestimate the effects of inbreeding depression, this implies that the PVA results are overoptimistic, and that the draft plan’s criteria are inadequate to address the genetic threats that arise due to small population size.

Probability of stochastic events such as disease

One of the primary strengths of Vortex and other PVA simulation models is the fact that they can incorporate effects of infrequent episodic threats such as disease outbreaks. Carroll et al. (2014a) parameterized episodic threats based on data from the Yellowstone wolf population which showed distemper outbreaks and “related population declines as often as every 2–5 years”, and affecting primarily fecundity rather than survival (Almberg et al. 2009, 2010). The Carroll et al. (2014a) PVA estimated that in a year with a disease outbreak, fecundity would be reduced by 80%, and survival of all age classes would be reduced by 5%. The current PVA assumes that disease outbreaks occur on average every 6.7 years, and that in

a year with a disease outbreak, pup survival would be reduced by 65%, and survival of all other age classes would be reduced by 5%. The current PVA's parameters are thus more optimistic than those used in Carroll et al. (2014a), and less consistent with what is known from other wolf populations with a longer data record regarding disease outbreak frequency.

Importantly, data from other inbred wolf populations such as that of Isle Royale suggests that inbreeding depression may make wolves more susceptible to disease and other stochastic threats. This interaction is not incorporated in the 2014 or 2017 PVAs and would tend to make their results somewhat overoptimistic.

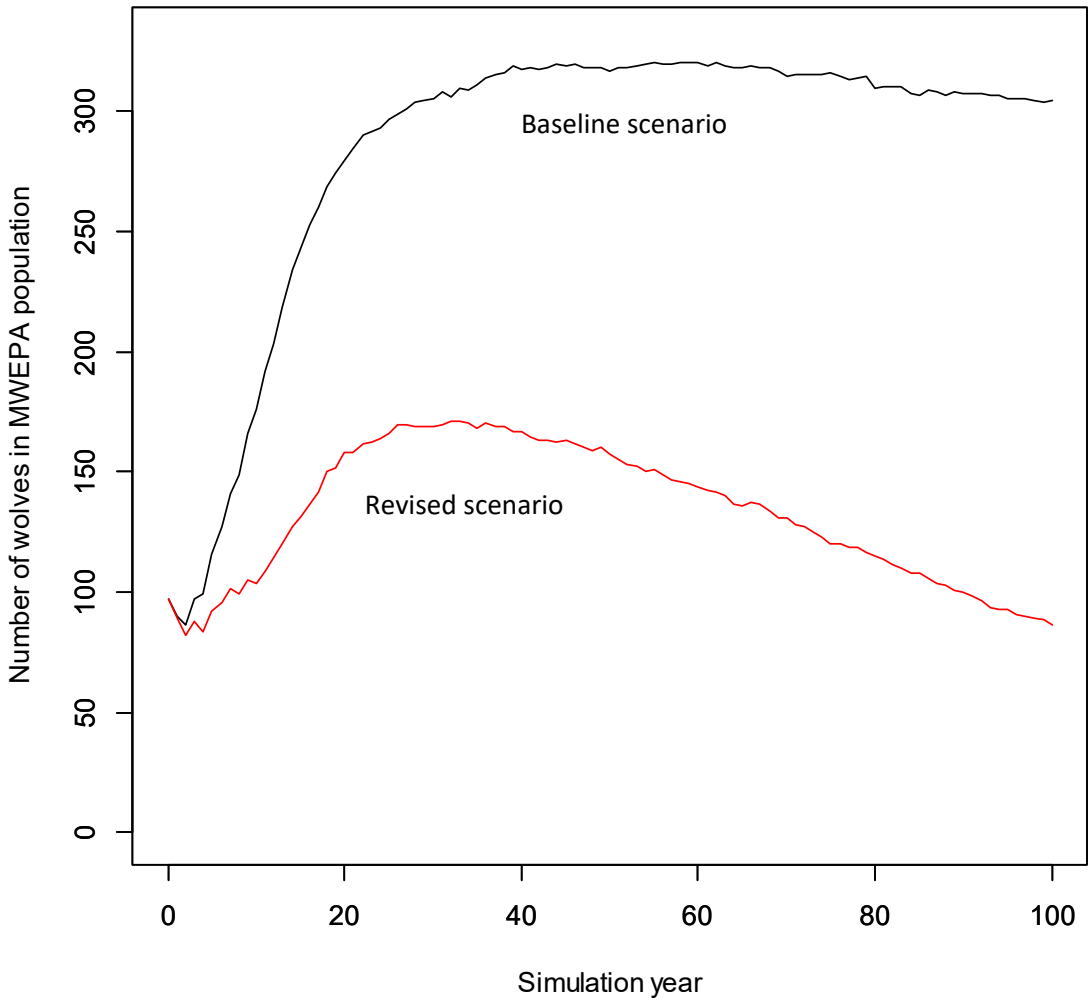
In summary, it appears that the draft plan's PVA opts for parameter values giving the most optimistic results as to persistence. Any one parameter choice would not be determinative but in sum, the suite of overoptimistic parameters is highly unlikely to accurately represent dynamics of wild Mexican wolf populations.

Results of simulation with revised parameters

I reran the Vortex simulations using the baseline scenario with two revisions. Firstly, the proportion of females in the breeding pool was revised downward from 77.6% to 69%, which is the mean value from 10 studies (the 9 studies reviewed by Fredrickson (unpublished) and the Blue Range population). Secondly, the frequency and intensity of disease outbreaks were changed from the values used in the current PVA to those used in the Carroll et al. (2014a) PVA, which were based on data from Yellowstone (Almberg et al. 2009, 2010). Importantly, although the baseline PVA likely underestimates the strength of inbreeding depression, this parameter was not altered because I did not have access to the data necessary to re-estimate the regression model developed by Clement and Cline (2016).

The effects on population persistence were nonetheless striking (Figure 1). Probability of extinction of the MWEPA population increased to 42%, and the MWEPA population showed a steady decline towards extinction (versus the gradual decline shown under the baseline scenario). The average MWEPA population size never reached the delisting threshold of 320 wolves. These results clearly demonstrate the fragility of the PVA's conclusions to the overoptimistic assumptions on which its parameter values are based.

Figure 1. Projected mean population numbers by year for the MWEPA population and metapopulation under a) the baseline scenario used to support proposed recovery criteria, and b) the baseline scenario with parameters for proportion of females breeding and disease outbreaks adjusted to better reflect available published data from multiple wolf populations.



Review of the Habitat Analysis

A rigorous analysis of the distribution of suitable habitat is a key aspect of recovery planning. Estimates of the carrying capacity of different regions is used as one input in the Vortex PVA. However, the primary value of habitat analysis for reintroduced species such as the Mexican wolf is to prioritize which regions are most likely to be able to support core populations of wolves before and after delisting due to expected low levels of human-caused mortality and adequate prey.

When considering the potential role of Mexico in recovery, we should clearly distinguish between the demographic and geographic components of recovery. That is, a wolf population in Mexico may be necessary to fulfill goals of geographically-extensive recovery. For this reason, previous recovery teams have all suggested including Mexico in recovery efforts. However, unless habitat areas in Mexico support secure populations with low levels of human-caused mortality, these populations will remain small and isolated and unlikely to contribute demographically to recovering the Mexican wolf metapopulation as a whole.

The habitat analysis associated with the draft plan ("Mexican Wolf Habitat Suitability Analysis in Historical Range in Southwestern US and Mexico, April 2017 version") estimates the extent and distribution of suitable habitat based primarily on climatic niche modeling. These models use correlation between climatic maps and the recorded locations of a species (e.g., historical locations of collection of wolves by museums) to make predictions as to what other areas have an environment (e.g., climate) similar to where wolves once occurred. While such models are useful when applied in the appropriate context, they have well-known limitations and should not be used in isolation to assess habitat availability for recovery, as they measure only one dimension of a complex habitat niche.

I discuss below how the accuracy and relevance of the habitat analysis results depends on several factors, summarized in the form of key questions which must be addressed before one can have confidence that the resulting information can support recovery planning:

<u>a) Do the occurrence locations used to build the model represent the pre-settlement distribution of the Mexican wolf?</u>

The relevance of climatic niche model results is dependent on the quality of the input distributional data. Historical species locations should be representative of the fundamental climatic niche of the species, rather than biased by uneven survey effort or past extirpation of the species from otherwise suitable habitat. Extirpation of wolves, including Mexican wolves, from large portions of their historic range occurred prior to the era when the locations used in the niche model were collected.

The conclusions of the habitat analysis regarding the extent of climatically suitable habitat contrast with those of previous niche models (e.g. Hendricks et al. 2016; see Figure 2).

This may be partially due to two contrasts between the distributional data used. Firstly, Hendricks et al. (2016) included 7 northerly sample points from areas with historical admixture between Rocky Mountain wolves and Mexican wolves. Secondly, the habitat analysis reviewed here includes many anecdotal reports of wolf occurrence from the southern portions of the range in Durango, Mexico, but does not include similar survey effort in other regions. The sensitivity of results to alternate input data sets suggests caution before excluding northerly areas from consideration as suitable habitat.

b) Are climatic factors expected to be the primary constraints on Mexican wolf distribution?

The relevance of niche model results depends on the assumption that the climatic or other variables used represent the primary factors limiting distribution of the species. This is unlikely to be true for a species such as the wolf which is a relative habitat generalist but highly limited by human-caused mortality. In the current habitat analysis, the influence of non-climatic habitat variables was evaluated only after areas had been excluded from consideration based on the climatic niche analysis.

c) Does the final suitability map (here a binary "consensus" map) accurately represent the aggregate model results?

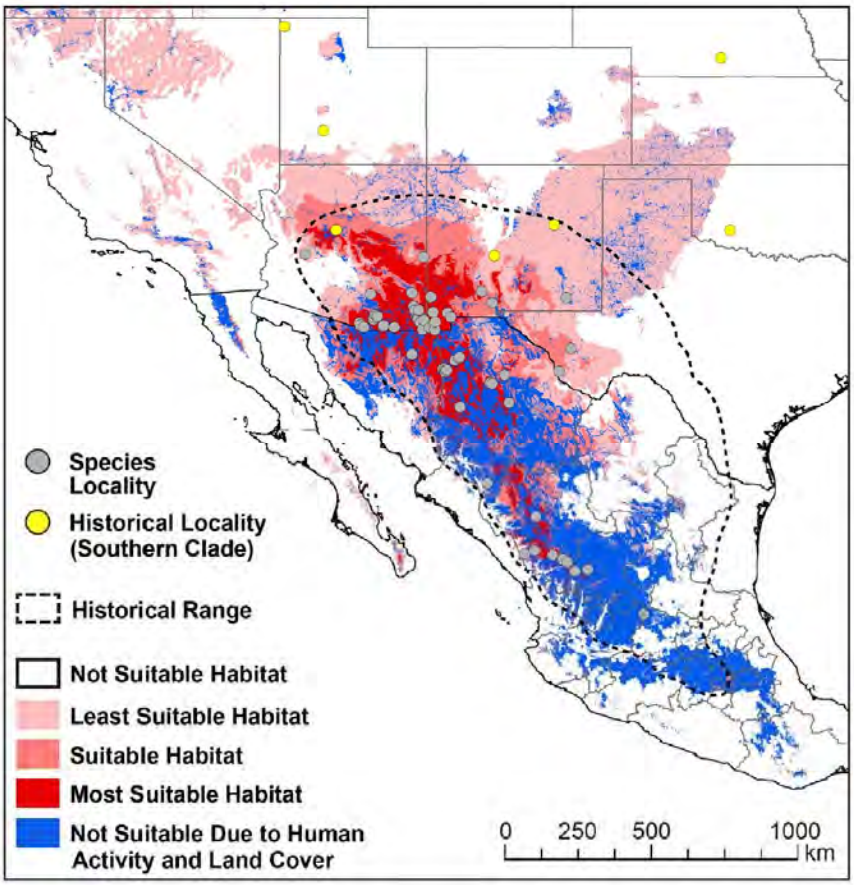
The final binary map of suitable vs. non-suitable habitat produced in the habitat analysis is quite conservative in its bias towards delimiting a less extensive region of suitability. The analysis excludes 4 of the 8 models tested due to their "overprediction" (i.e., identification of areas not within the limited set of occurrence data). Next, the analysis further limits the region of suitability to areas where 2 or more of those 4 models simultaneously identified habitat. In contrast, Hendricks et al. (2016) retained information on areas of lower climatic suitability (Figure 2), as such options may be important to planners if other factors such as human-caused mortality risk impact areas of higher predicted climatic suitability.

d) Do secondary variables used to screen areas within habitat niche accurately represent non-climatic limiting factors?

The habitat analysis reviewed here does not adequately consider several major limiting factors for wolf survival and persistence. The primary factor limiting wolf distribution is human-caused mortality (Fuller et al. 2003, Mladenoff et al. 2009). The past 20 years of experience from wolf recovery efforts in the US demonstrates that large blocks of public land

are key to at least the initial stages of wolf recovery. This is true even in states such as Wisconsin, where territories of recolonizing packs were initially anchored by the few blocks of federal and state forestlands. The habitat analysis provides no data demonstrating that sufficiently large habitat blocks, suitable to support a population of a wide-ranging carnivore such as the wolf, currently exist in Mexico. 35-40% of the US southwestern landscape is federal public land, but these conditions do not exist in Mexico, where >95% of the landscape is in small private landholdings. The FWS conducted an analysis in 2012 that concluded that potential recovery areas in Mexico were not only smaller, but also had far higher livestock density (making conflict with wolves more likely) and lower native prey biomass than areas in the southwestern US (Table 1). The experience with wolf recovery in Mexico to date has reinforced the sense that recovery of a widely-ranging carnivore in such a landscape of fragmented private holdings is challenging: wolves must be supplementally fed to discourage them from ranging beyond the site of reintroduction into the broader high-risk landscape.

Figure 2. Species distribution model of Mexican wolves developed by Hendricks et al. (2016).



The data that is used in the habitat analysis to assess factors related to survival (e.g. roads; INEGI 2000) in Mexico has well-known limitations. The data is much less comprehensive in representing unpaved roads than are US roads data sets, leading to an overestimate of suitable habitat in Mexico. Additionally, those prey surveys that are available for northern Mexico are primarily from game farms (UMAs) or lack sufficient sample size and cannot be easily generalized beyond the limited area in which surveys have been conducted, so cannot be used to provide a robust landscape-scale estimate of prey abundance or wolf carrying capacity. Previous Mexican wolf recovery teams have concluded that, due to alteration by human development and resource use of the historic habitat inhabited by Mexican wolves in Mexico, recovery of wolves in Mexico will be slow and will not contribute demographically to the larger metapopulation in the short and medium term.

Table 1. Comparison of potential Mexican wolf recovery areas in the United States and Mexico, in terms of percentage of public land, prey density, and cattle density. Excerpted from material prepared by the USFWS Mexican Wolf Recovery Team Science and Planning Subgroup in December 2012.

AREA	% PUBLIC LAND	PREY DENSITY (DEPU)	CATTLE DENSITY
Southern Rockies	64.4	7.6	3.4
Grand Canyon	54.9	4.1	1.4
Blue Range	66.1	5.6	1.6
West Texas	0.07	~3	2.7
Chihuhua/Sonora	<1	2.2	4.3
Durango/Zacatecas	<1	2.2	9.3
Coahuila	<1	0.60	4.3
Nuevo Leon	7.2	0.23	6.3

II. The draft plan does not establish criteria which objectively and comprehensively address key threats.

The ESA defines an endangered species as "at risk of extinction throughout all or a significant portion of its range" (16 U.S.C. §1532(3.6)), and a threatened species as "likely to become endangered in the foreseeable future" (16 U.S.C. §1532(20)). The ESA's legislative history indicates that Congress intended the Act to afford a high level of security to listed

species (Carroll et al. 2012). Because a population's extinction risk is never zero, establishing risk thresholds in listing and recovery actions involves a normative dimension (i.e., specifying what level of endangerment is acceptable) and a scientific dimension (i.e., determining whether a species meets that level of endangerment)(Vucetich et al. 2006).

Although the U.S. Congress mandated that agencies consider "solely" the best science in making listing decisions (16 U.S.C. §1533 (3b)(1A)(a1)), lawmakers addressed the normative nature of such decisions only qualitatively when they emphasized in the ESA the high degree of protection they intended to afford to biodiversity (Carroll et al. 2012). While the ESA does not explicitly define quantitative thresholds for acceptable risk, this does not mean that administrative agencies may apply such risk thresholds inconsistently. Clear and consistent implementation of statutes is necessary to maintain the continuity in conservation policy that is required to realize the goals of the ESA.

While data for many species are too limited for quantitative PVA-based extinction risk estimates, such estimates are possible for relatively well-studied taxa such as the Mexican wolf. Gilpin (1987), one of the few authors to consider the normative aspects of this issue, argued for considering risks of extinction for 200-year time frames simply because he believes humanity's immediate challenge is to eke through the next two centuries while losing as few species as possible. Shaffer (1981) adopted a 99% persistence probability for 1000 years as a viability criterion for grizzly bears.

However, Soule (1987) and Shaffer (1987) expressed concern that targeting a minimum viable population (MVP) level is inadequate for sound conservation, because most PVAs underestimate long-term uncertainty in stochastic events and MVPs provide minimal capacity for populations to withstand unforeseen circumstances. They argue that PVA results should be used instead to provide information on the general relation between risk and factors such as abundance, genetic diversity, and distribution (Shaffer et al. 2002). Recovery goals appropriately include a sufficient margin of safety to ensure that unanticipated future events do not cause species to fall below the threshold that would again make listing warranted.

The statutory language is consistent with this concern in that is does not require the agencies to define recovery for a given species as the absolute minimum population size and geographic distribution that equates to a specified persistence level. For species that are experiencing severe declines, the recovery goal is often to reverse the decline and restore the population to a previous status rather than some minimum size.

Consistent with best practice in recovery planning, point estimates of population viability from the Vortex model should be used as one source of information in a decision-support context. Consistent with Congress' intent to institutionalize caution in order to avoid uncertainty about a species' future status, recovery plans should identify criteria that provide a margin of safety because they resulted in conditions under which the species is unlikely to become threatened or endangered again in the foreseeable future: 1) a low predicted potential for extinction (e.g., <1% over 100 years), and 2) a high likelihood that populations would meet specified size criteria over the long term. Due to the role wolves play in their ecosystems (Estes et al. 2011), such precautionary criteria also increase the probability of conserving ecosystems and ecosystem function (16 U.S.C. §1531 (a)(5)(b)).

The proposed recovery criteria do not meet either of these standards, due to at least two factors. Firstly, the extinction risk threshold proposed in the draft plan (10% extinction risk over 100 years) is unusually high and inconsistent with generally accepted practice. A 10% extinction risk over 100 years is considered by the IUCN red list to place a species in the "vulnerable" category. Secondly, even using the overoptimistic baseline parameters, PVA results indicate that delisting of the MWEPA population at the proposed size (320) would result in a significant (40%) risk of the population falling below that threshold of 320 in the future and needing to be relisted. This is due to genetic and other risks to small populations, and occurs despite the fact that the proposed threshold at which removal of wolves to cap the population will begin (379) is higher than the delisting threshold of 320.

Downlisting criteria

Angliss et al. (2002) proposed that, to be consistent with the statute, criteria for downlisting from endangered to threatened status should be defined by reference to the criteria for endangered status rather than directly in terms of extinction risk. This approach

was subsequently incorporated into recovery plans for species such as the fin whale (*Balaenoptera physalus*), which will be removed from the list of threatened species when it "has less than a 10% probability of becoming endangered (has more than a 1% chance of extinction in 100 years) in 20 years" (NMFS 2010). This framework is relevant for the Mexican wolf, although an appropriate timeframe for the "foreseeable future" would be 100 years (as in the draft plan) rather than 20 years because genetic threats require decades to accumulate to deleterious levels. Unlike in the earlier effort (MWRT-SPS 2013), the downlisting criteria proposed in the 2017 draft plan are arbitrary rather than objective, because they are not linked to the PVA or other quantitative analysis. To be consistent with best practice, the draft plan should be revised to specify downlisting criteria which assure a low probability of the species again falling into the category of an "endangered" species (based in part on PVA results).

Population size and number criteria

The concept of redundancy acknowledges that demographic persistence is enhanced by creation of a metapopulation, in which multiple subpopulations are linked by dispersal. This is in part due to "spreading of risk", since episodic threats such as disease outbreaks may not affect all subpopulations simultaneously (DenBoer 1968). A comprehensive set of demographic recovery criteria should include criteria on the size of individual subpopulations, the number of subpopulations, and the degree of metapopulation connectivity. The status of two populations of the same size would differ if one was stable while the other was declining. Demographic recovery criteria should thus specify both the required state or status and trend over time in population size and demographic rates.

The draft plan predicts that at the time of recovery, Mexican wolf populations will be stable or increasing in abundance, well-distributed geographically within their range, and genetically diverse. However, this statement is at odds with the results of the PVA, suggesting that the draft plan is internally inconsistent and that the draft plan's proposed criteria are inadequate. These aspects of the PVA results are obscured in the draft plan's text but become evident once more detailed and comprehensive PVA metrics are evaluated.

The draft plan proposes recovery criteria related to population size which are purportedly supported by results of the baseline scenario ("379_200_200_249_EISx220_20"). I reran this scenario and explored the output in greater detail than is presented in the PVA report. Although the PVA simulations were run including all 3 populations, I focus primarily here on results for the US ("MWEPA") population, because a) this is the largest population and thus has the highest probability of persistence and retention of genetic diversity (i.e. resilience in the face of known threats), and b) the FWS's mandate for recovery is strongest for recovery efforts within the US.

The baseline scenario resulted in a MWEPA population that was, on average across simulations, in decline after 39 years, due to accumulating effects of genetic and other small population threats. Populations that are projected to be in decline cannot be considered "stable or increasing", and anticipated decline in a population, even if extinction itself is delayed, indicates that threats have not been adequately addressed and that population size criteria are too low. It should be noted that support for the adequacy of the population threshold is highly contingent on assumptions that adult mortality will be <= 24.9%/year, yet, unlike in the earlier draft plan (MWRT-SPS 2013), no recovery criterion in the 2017 draft plan addresses the threat of human-caused mortality.

Criteria addressing genetic threats

The criteria proposed in the draft plan do not objectively and adequately address known genetic threats to Mexican wolves. The plan proposes that threats to genetic diversity will have been addressed when a cumulative total of releases from the captive population has been reached. This is a metric that measures the history of recovery efforts but says nothing about the actual genetic status of the wild population at the time of delisting. The baseline PVA scenario suggests that a specified number of releases to the MWEPA (70, composed of 28 adults and 42 pups) results in a certain effect on genetic diversity of the wild population in the simulations. However, the PVA uses a highly simplified model of real-world wolf populations. It is certain that the individuals actually released into the wild will not be exactly the same genetically as those projected to be released in the simulations, and that subsequent matings and offspring production in the wild population will not match those that occur in the model

simulation. FWS recovery guidance correctly concludes that “PVA should not be viewed as a replacement for criteria based on threats, but as a supplement to them. The criteria describe the conditions under which it is anticipated the PVA would indicate long-term viability” (Interim Recovery Guidance 5.1:18).

Therefore, the plan should base the recovery criterion addressing genetic threats on a metric related to the actual genetic status of the wild population at the time of recovery, not a criterion that only records the history of recovery efforts (such as number of individuals released). The genetic status of the wild population can now be directly and economically assessed using modern genetic techniques. Additionally, criteria related to the status (rate) of metapopulation connectivity (see below) can help to address genetic threats.

Several southwestern states have in the past worked to oppose and delay releases from the captive into the wild population. The draft plan proposes to give these states effective control of the timing of releases (USFWS 2017, lines 683-688, “In order to achieve the genetic criteria for downlisting and delisting the Mexican wolf in this Plan, the states of New Mexico and Arizona, and the Mexican government, will determine the timing, location and circumstances of wolves into the wild within their respective states, and Mexico, from the captive population, with the Service providing collaborative logistical support and facility of those recovery actions.”) PVA results and hence adequacy of criteria are highly contingent on the forecast number of wolves actually being released at the year specified in the model (e.g., in the first decade of recovery efforts). If releases are delayed for any reason, the cumulative total of releases specified in the recovery criterion would have a different (and likely lower) effect in reducing loss of genetic diversity.

Additionally, the metrics chosen in the draft plan and PVA to assess genetic level provide inadequate information on whether genetic threats are actually being addressed. The recovery criteria in the draft plan seek to establish wild populations that will retain 90% of the genetic diversity retained by the captive population 100 years in the future. By focusing solely on relative rather than absolute genetic metrics, the draft plan ignores the current genetic context of the wild population. Genetic criteria typically consider and address the fact that captive populations started from small founder numbers can be poor representations of

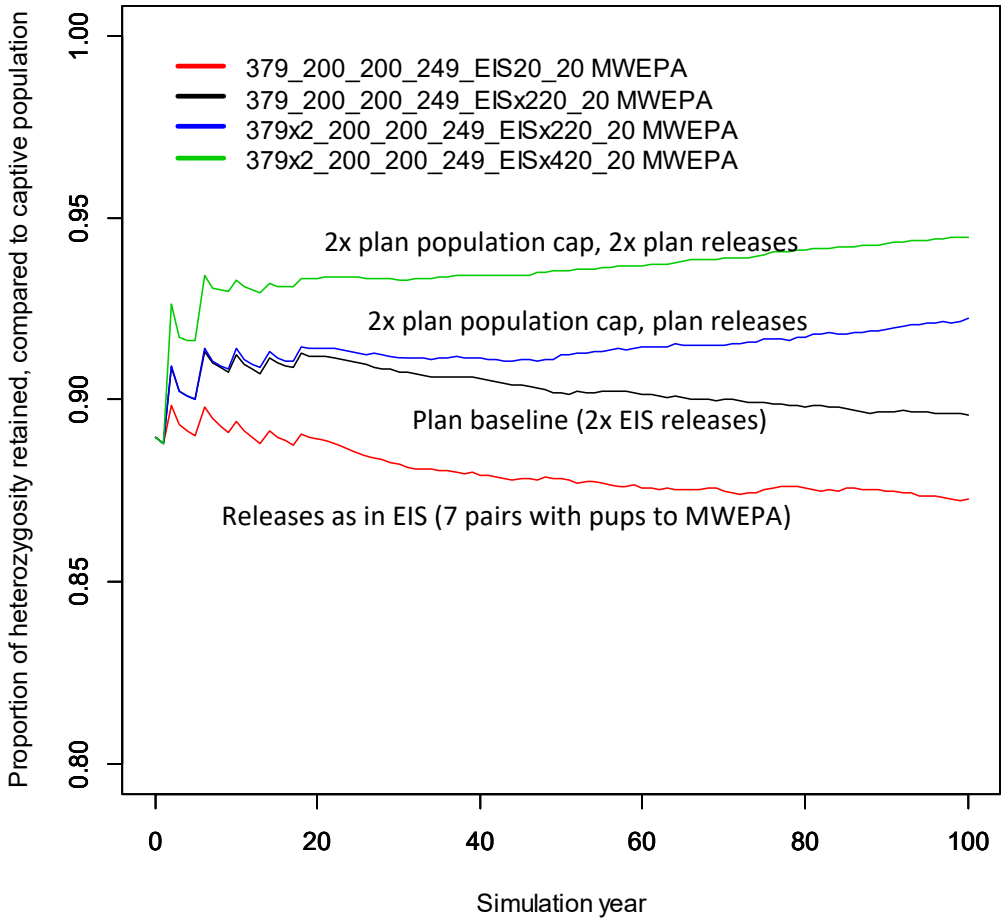
historical wild diversity, and even that starting diversity will decay over time. The genetic health of the population is assessed by comparing it to the initial (starting) wild population.

In the draft plan, that concept gets turned on its head. The draft plan merely accepts that the captive population is badly depleted genetically (and, thus, both a poor representation of what was once a Mexican wolf and also at risk of inbreeding damaging demography), and then uses that "shifting baseline" as the standard against which the wild populations will be measured. Thus, if the future wild population isn't too badly damaged genetically relative to the current, already depleted captive population, the draft plan assumes that the program meets genetic goals. The actual level of gene diversity that the draft plan is willing to accept as the long-term fate of the species – approximately 60% to 70% of the initial wild diversity – is extremely low. This translates to a population in which all the animals are more closely related to each other than full-siblings, i.e., genetic diversity that is no more than what you would get by sampling a single litter from the original wild population. The draft plan thus accepts a continued significant decline of genetic diversity that is likely to accentuate rather than address genetic threats.

The genetic diversity of the captive population is inherently limited by the low number of wolves (~300) than can practically be maintained by the existing zoo network. Due to these limitations, genetic diversity of the captive population will decline relatively rapidly over time unless a larger wild population can be established in the near future. It is also questionable whether the existing level of resources required to support 300 Mexican wolves in captivity can be maintained by the zoo network in perpetuity (as assumed in the PVA) given the needs of other threatened species.

To be consistent with the ESA's mandate for recovery, genetic goals should attempt to retain within the wild population a large and increasing proportion of the total overall current diversity present in both the wild and captive population. This is possible if a greater number of initial releases occur, and if the wild population is allowed to grow to a larger size than the captive population. I simulated retention of genetic diversity under scenarios that doubled the number of initial releases to the MWEPA (from 70 to 140 (28 pairs with pups)) and/or doubled the MWEPA population cap (from 379 to 758)(Figure 3).

Figure 3. Proportion of heterozygosity expected to be retained by the US wild population (MWEPA), expressed as a proportion of the heterozygosity retained by the captive population, under four Vortex scenarios with differing population caps (as proposed (379) and twice that proposed (379x2) in the draft plan) and number of wolves released from the captive to wild population (as proposed in the EIS (EIS), as proposed in the draft plan (EISx2), and twice that proposed in the draft plan (EISx4)).



The results suggest that it is possible for the wild population to retain an increasing proportion of the diversity of the wild population over time rather than a decreasing proportion, as would occur under the draft plan's proposed criteria. The number of initial releases from the captive to wild population determines the proportion of genetic diversity retained at ~ year 10 in the model. This metric is of course in itself highly important for addressing genetic threats.

To show an increasing trend in diversity retention after these initial releases, the wild population must be of significantly larger size than the proposed population cap, and thus larger (in both census size and genetically effective population size) than the captive population. Such an increasing trend is more consistent with the definition of recovery under the ESA, which requires effectively addressing identified threats to a species rather than only slightly ameliorating them, than is the draft plan's proposed criterion.

Connectivity criteria

Connectivity between populations in the PVA is assumed to be very low. However, it is well known that connectivity can increase the retention of genetic diversity within component populations (Carroll et al. 2014b). Thus, increased dispersal between wild populations would help to address the severe genetic threats evident in Mexican wolf populations. The 2013 draft recovery criteria addressed genetic threats by proposing a criterion related to the measured rate of connectivity among wild populations (expressed in terms of the number of genetically effective migrants per generation)(Table 2). Previous wolf recovery plans from the Northern Rocky Mountains and Great Lakes have also required recovery of interconnected populations. No such connectivity criteria are proposed in the 2017 draft plan.

Mortality or human-caused loss (HCL) criteria

Human-caused mortality is the primary threat to wolf population persistence both globally and for the Mexican wolf (Fuller et al. 2003, Carroll et al. 2014a). The Mexican wolf population has in the past experienced high rates of human-caused losses (defined to include human-caused mortalities from poaching and vehicle collisions as well as management removals). Genetic threats from small population size and consequent inbreeding affect demographic rates such as mortality and fecundity. The Mexican wolf population may be more sensitive to fluctuations in human-caused mortality rates than most other wolf populations, because fecundity and recruitment rate (the process that balances mortality rate) has been negatively affected by inbreeding depression. Carroll et al. (2014a) found that the adult mortality rate was the most important parameter affecting extinction risk among simulated populations of Mexican wolves.

Table 2. Types of recovery criteria in the 2013 and 2017 draft Mexican wolf recovery plans.

Type of criteria	2013 draft criteria	2017 draft criteria
1. **Population size and number and metapopulation size**	A metapopulation consisting of a minimum of 3 primary core populations in the wild, each with a census population size of at least 200 individuals, and a total metapopulation size of at least 750 individuals.	MWEPA (US) average population abundance is greater than or equal to 320, and Northern Sierra Madre Occidental (Mexico) average population abundance is greater than or equal to 170.
2. Population trend	Population trend in each of the 3 primary core populations has a high probability (80% confidence) of being stable or increasing over 8 years, based on a statistically reliable monitoring effort.	Stated population abundance is maintained or exceeded over 8 consecutive years.
3. **Population connectivity (including releases from captive to wild population)**	Immigration into each of the 3 primary core populations via natural dispersal at a rate of at least 1 genetically effective migrant every generation, averaged over a period of 8 successive years, as measured by a statistically reliable monitoring effort. A genetically effective migrant is defined as a wolf that breeds in a non-natal population and produces at least 1 pup that survives to at least December 31 of the year of its birth.	Gene diversity available from the captive population has been incorporated into the MWEPA through scheduled releases of a sufficient number of wolves to result in 22 released Mexican wolves surviving to breeding age in the MWEPA, and 37 released Mexican wolves surviving to breeding age in the northern Sierra Madre Occidental.
4. **Amelioration of human-caused losses (HCL)**	The estimated annual rate of human caused losses averaged over an 8-year period is less than 20% as measured by a statistically reliable monitoring effort. This is the greatest rate of anthropogenic mortality and removal that a Mexican wolf population could have and still be expected to have an approximately 75% or greater chance of being stable or increasing.	None.
5. **Post-delisting monitoring**	To monitor the continued stability of the recovered Mexican wolf, a post-delisting monitoring plan has been developed and is ready for implementation within the affected states as required in section 4(g)(1) of the ESA.	None.
6. **Regulatory mechanisms**	State management plans and adequate post-delisting regulatory protection and capacity confirmed. Components of an adequate plan will include assurances that: (1) the natural dispersal rate required for delisting is not precluded by HCL; and, (2) management targets for population size are sufficiently large relative to delisting criteria and HCL rates are sufficiently low to ensure that there is no greater than a 10% chance that the Mexican wolf will fall below the recovery criteria within a 10-year period.	Effective State and Tribal regulations are in place in the MWEPA in those areas necessary for recovery to ensure that killing of Mexican wolves is prohibited or regulated such that viable populations of wolves can be maintained. In addition, Mexico has a proven track record protecting Mexican wolves. Based on these protections, Mexican wolves are highly unlikely to need the protection of the ESA again.

Therefore, if future mortality rates are higher than assumed in the draft plan, populations will have a greater probability of decline and show higher extinction risk than projected in the draft plan. Therefore, the PVA results, and the adequacy of the proposed population size criteria based on those results, are highly dependent on this assumption of relatively low mortality (24.9%). Unlike the 2017 draft plan, the 2013 draft recovery criteria included a criterion addressing the threat posed by human-caused mortality, to ensure that this threat had been addressed, and that the assumptions behind other recovery criteria (such as population size) contingent on amelioration of this threat were indeed met at the time of delisting (Table 2).

III. The draft plan does not establish criteria which, if achieved, would indicate that the species exists in wild, self-sustaining populations which as a whole achieve resiliency, redundancy, and representation, such that the Mexican wolf no longer meets the definition of a threatened or endangered species.

Wolves are among the most widely distributed of large terrestrial vertebrates and have proved highly adaptable to a wide variety of habitats. Experience with wolf recovery in other regions suggest that it is eminently feasible to recover wolves to the point where they persist in a wild, self-sustaining population with minimal human management necessary beyond that typical of other large carnivores (e.g., removals in response to depredation or other conflicts with humans)(Carroll et al. 2014b). In contrast, the draft plan seems to propose that Mexican wolves will require an intensive "conservation-reliant" approach involving expensive management interventions over many decades, including after delisting. Such an approach is inconsistent with the intent of the ESA, and would be unnecessary if the plan contained a more adequate and science-based recovery strategy and criteria.

Firstly, the PVA underpinning the draft plan's criteria assumes that supplemental feeding of the wild population will continue in perpetuity. The PVA assumes that "feeding will begin to decline five years into the simulation, with the subsequent rate of decline from 70% feeding determined by the extent of growth toward that population's management target. Authorities assume that the long-term feeding rate will not drop to zero but will likely be maintained at approximately 15% to allow for management of occasional livestock

depredations." The PVA results and the adequacy of the draft plan's recovery criteria are contingent on this feeding occurring at the rate specified.

Wolves are among the most vagile of all terrestrial mammals and can disperse over 800 km (Forbes and Boyd 1997). However, the draft plan's recovery criteria and strategy make no effort to ensure genetically-effective natural dispersal between wolf populations, which is a key method of addressing genetic threats. This contrasts with the 2013 draft recovery criteria, which included a criterion related to natural dispersal (which can be ensured through management of habitat connectivity and mortality threats to dispersing wolves).

Thirdly, the draft plan proposes that the US wild population be capped (at between 320 and 380 wolves) via removals prior to and post-delisting. The draft plan states (lines 891-893) that "population growth significantly above 320 may erode social tolerance in local communities or cause other management concerns such as unacceptable impacts to wild ungulates from Mexican wolves (USFWS 2014)." However, no scientific basis is given to support the hypothesis that wolf populations above 320 would significantly decrease tolerance or ungulate abundance.

The relevance of Mexican wolf historical range in the light of available information on genetics of Mexican wolves

The draft plan justifies limiting recovery efforts to areas to the south of Interstate Highway 40 based on an outdated understanding of Mexican wolf historic range and how information on historic distribution appropriately informs recovery planning. The draft plan bases its description of historic range on a view that morphological analysis is superior to modern genomic analysis in determining similarities or differences between taxonomic groups. This view is based on a recent paper (Heffelfinger et al. 2017) that was effectively rebutted by a group of leading wolf geneticists (Hendricks et al. in press, see also Hedrick 2017). Similarities in morphology may or may not reflect similar ancestry, while differences in genomic data will always reflect different ancestry. Recent comprehensive genomic analyses of canids (Hendricks et al. 2016, vonHoldt et al. 2016) more accurately represents best available scientific information than do almost century old morphological studies.

The plan's text regarding historic wolf distribution, and genetic and population effects of interbreeding between Mexican and northern gray wolf subspecies, also reflect an outdated view that assumes that wolf subspecies were historically genetically disjunct. Genomic studies demonstrate that wolf range was largely continuous with genetic isolation by distance (sufficient to maintain the relative distinctness of subspecies such as the Mexican wolf) but with some intermixing via dispersal as is typical of subspecies in general and particularly in canids (vonHoldt et al. 2016).

Hybridization occurs between many species and particularly in canids, and is an important evolutionary process. We know from genomic analysis that intermixing between northern wolves and Mexican wolves occurred historically, and it would contribute to recovery if this genetic cline was reestablished as wolves moved south from the Northern Rocky Mountains and Mexican wolves moved north (Leonard et al. 2005). Past experience demonstrates that any hybrids produced between wolf subspecies would be protected under the ESA. For example, crosses between Texas cougars and Florida panthers are all considered Florida panthers for the purposes of the ESA, and are protected.

Genetic intermixing only constitutes deleterious swamping when it exceeds a certain level. Hedrick (1995) concluded that swamping would not occur in Florida panther if the level of Texas cougar ancestry was maintained below 20% to 30%. Carroll et al. (2014a) concluded that intermixing between southwestern and northern wolves would be relatively low compared to interchange within either the northern or southern metapopulation. The Mexican wolf genetic variants that were adaptive in southwestern ecosystems would remain or increase in the mixed population, while detrimental alleles would be selected against. The biological report is therefore misguided when it states (line 1172) that the FWS "would manage against such breeding events occurring in the MWEPA".

An exclusive focus on historical range is not mandated in the ESA or related FWS policies. There is no direct reference to historical range in the ESA, and only one ESA related policy makes reference to it: 50 CFR 17.81(a)] states "The Secretary may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species current range (but within its

probable historic range) …". But even here the FWS Director has discretion based on current conditions [50 CFR 17.81(a)]: "... an experimental population can be established outside a species historic range if the Director finds that the primary habitat of the species has been unsuitably or irreversibly altered or destroyed." Even if one rejects genomic analyses (e.g. Leonard et al. 2005, Hendricks et al 2016) indicating a more extensive historic range for Mexican wolves, available information indicates that the lack of sufficient suitable habitat with low mortality risk in Mexico requires defining a recovery region that includes sufficient suitable habitat from areas to the north of Interstate 40 where secure habitat areas are found in the Grand Canyon region and Southern Rockies, as shown in a figure (Figure 4) reproduced from earlier FWS analyses of Mexican wolf habitat).

Figure 4. Potential wolf habitat in Arizona and New Mexico, as shown in green in Figure ES-4 of USFWS (2014a).

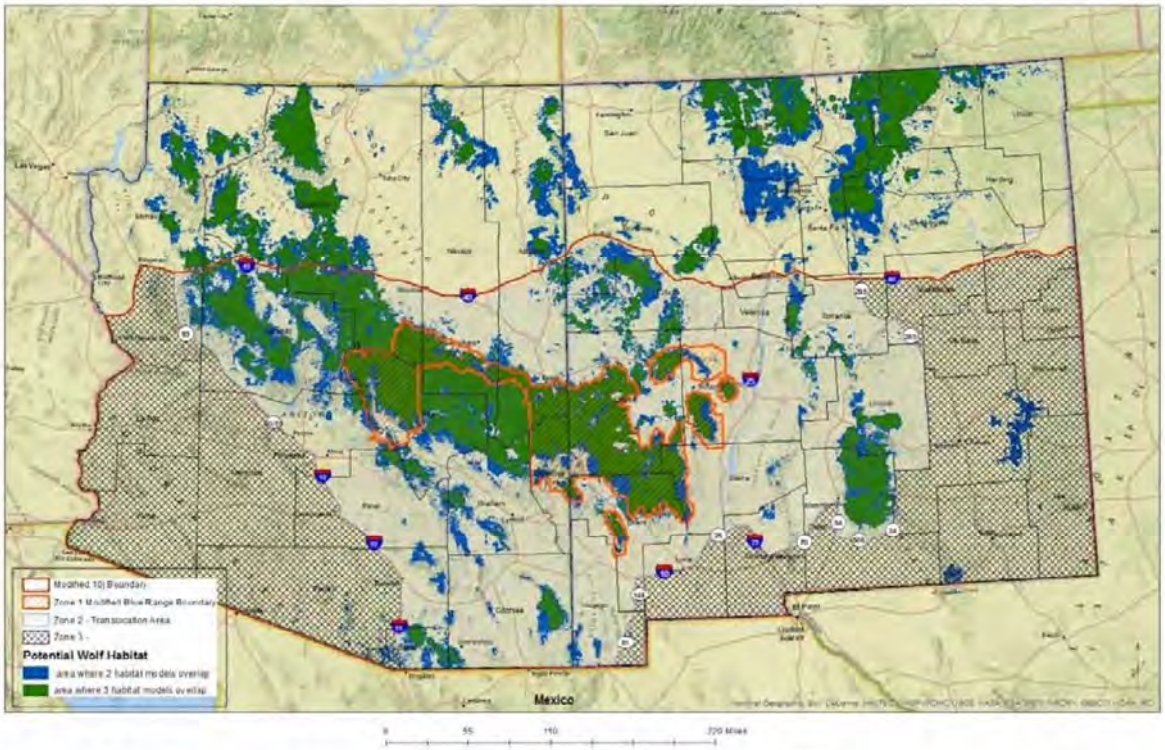


Figure ES-4. Alternative Three (BRWRA Expansion; MWEPA Expansion with Management Zones)

FWS has in the past supported endangered species recovery efforts in regions that were not considered recent historical range, including black-footed ferret conservation efforts near Janos, Mexico; California condor reintroductions in northern Arizona; and westslope cutthroat trout conservation efforts in southwestern Montana. There is even a previous example in terms of gray wolf recovery: according to some authors (e.g. Nowak 2003), the plains gray wolf (*Canis lupus nubilus*) occupied the northern Rocky Mountains historically rather than the northwestern gray wolf (*Canis lupus occidentalis*). However, *C. l. occidentalis* individuals from Alberta and British Columbia, Canada, were used for reintroductions because the animals were familiar with the habitats and prey (Fritts et al. 1997).

Threats due to climate change

In an increasingly dynamic and uncertain world, recovering taxa outside purported historical ranges following assessment of historical, contemporary, and future conditions will become increasingly common. This will likely be especially true for species that are defined by ecologically similar subspecies with historical distributions that included extensive zones of intergradation. Such an approach to recovery will allow such species to experience greater security than a more conservative approach based on an exclusive focus on subspecies' historical ranges (Frankham et al. 2017).

Recent court decisions for other species (e.g. Alaska Oil and Gas Association v P. Pritzker, et al., United States Court of Appeals for the Ninth Circuit. CV 00018-RRB 2016) have reinforced the conclusion that listing and recovery actions must consider the implications of projected climate change. Although Mexican wolves, like other wolf subspecies, are relatively generalist in their habitat preferences, increased aridity due to climate change (Notaro et al. 2012), especially in the southern portion of the range, might be expected to decrease forage and prey abundance. This implies that recovery plans should consider the role of areas to the north of Interstate 40, within the zone of historic genetic intergradation between Mexican wolves and northern wolves, in increasing resilience of recovery efforts to climate change.

Conclusion

Early wolf recovery plans (USFWS 1982, 1987) based their recovery criteria solely on expert judgement, thus precluding substantive and science-informed debate over their

adequacy. The FWS is to be commended for performing a quantitative PVA in association with development of the draft plan. This allows the scientific basis of proposed recovery criteria to rigorously evaluated by both invited peer reviewers and scientists such as myself who submit public comments. Some of the conclusions of the PVA analysis are clearly robust to the issues identified here. For example, the PVA demonstrates that in order for Mexican wolf populations to achieve recovery, a higher rate of releases from the captive to the wild population must occur than is envisioned in the recent EIS.

However, despite these strengths, I conclude based on the information presented above that the draft plan and its recovery criteria are based on a population viability analysis (PVA) which incorporates overly optimistic and inaccurate parameters which are unlikely to accurately represent dynamics of wild Mexican wolf populations. There is always some uncertainty regarding demographic parameter values for even well-studied species. However, it appears that the PVA authors have erred consistently in the direction of selecting the parameter value that provides the most optimistic outcome in terms of species viability. This results in a suite of parameter values which is strongly biased towards underpredicting extinction risk. The PVA's predictions regarding extinction risk (and hence the draft plan's criteria) are not robust or precautionary because they become invalid if even one or two of these overoptimistic parameter estimates is incorrect (Figure 1).

All previous Mexican wolf PVAs (Seal 1990, IUCN 1996, Carroll et al. 2014a) have included a sensitivity analysis to evaluate the robustness of conclusions to uncertain parameters. The fact that no sensitivity analysis is provided with the current PVA in itself makes the PVA conclusions of limited value in devising science-based recovery criteria. Even if one accepts the parameters used, the PVA results, if examined in detail, do not support the adequacy of the proposed criteria in ensuring recovery in the context of how the ESA defines the term. In combination, the use of overoptimistic parameters and a minimal set of criteria do not meet the ESA's mandate to comprehensively address threats and ensure population resilience.

The gray wolf, as well as its subspecies the Mexican wolf, have been listed under the ESA for several decades. The Eastern Timber Wolf recovery plan established a recovery criteria

of two populations, with one of 1,250-1,400 individuals, and a second population of >100 (USFWS 1992). The Northern Rocky Mountains Gray Wolf recovery plan established a recovery criteria of three populations of >100 each, interconnected by dispersal (USFWS 1987). The 1982 Mexican wolf recovery plan did not establish formal recovery criteria (USFWS 1982). The existing recovery plans for the Mexican wolf, Northern Rocky Mountains Gray Wolf, and Eastern Timber Wolf are relatively old, and significant changes in the best available science regarding wolf biology and genetics have occurred in the intervening decades. The new draft Mexican wolf recovery plan would ideally have been an opportunity to effectively incorporate the current best available scientific information.

Three attempts (initiated in approximately 1995, 2005, and 2011) have been initiated since 1982 to revise the Mexican wolf recovery plan. Both of the latter two efforts resulted in recommended population criteria involving three interconnected populations of >250 individuals each. The 2011-2013 process resulted in a draft recovery plan of similar length to the current draft plan (>250 pages including appendices), but the process was suspended after southwestern state governments objected to the proposed recovery criteria.

The current draft recovery plan results from a process initiated in 2015. This process differed from previous attempts in at least two aspects. Previously, while the larger recovery team included a diverse spectrum of stakeholders, a subgroup made up primarily of wolf biologists was charged with developing recovery criteria based solely on best available science. In the current process, criteria were devised by a group of which a majority of members lacked training in wolf biology. The group included state game biologists, FWS staff, several non-governmental wolf biologists, as well as non-biologists such as the Utah assistant attorney general. Secondly, final responsibility for drafting of criteria as well as writing of the plan rested with FWS staff rather than participating scientists or the recovery team as a whole. I raised these two issues at the time that the current planning process was initiated. When these issues were not resolved, I declined to accept an invitation to participate in the workshops because in my view the process did not guarantee that the resulting recovery criteria would be appropriately based on best available scientific information.

In the end, this process does in fact appear to have resulted in a draft plan whose criteria, rather than being based on best available science, were pre-determined as a policy decision in order to provide support for wolf population and distribution limits that had been negotiated between the FWS and state agencies as part of the 2014 revision to Mexican wolf management (USFWS 2014b). For example, notes from one of the workshops which resulted in the current draft plan record a decision to artificially limit habitat analysis to the south of Interstate 40 for "geopolitical reasons" (see page 4, Draft Notes Mexican Wolf Recovery Planning Workshop, April 11-15, 2016, Galleria Plaza Reforma, Mexico City, Mexico). Although I do not know at first hand the internal FWS process which resulted in development of the draft plan, I have concluded based on the information presented above that the process resulted in recovery criteria that do not represent best available science and thus do not meet the requirements of the ESA.

Thank you for your consideration of these comments.

Sincerely,

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Exhibit 3

Richard Fredrickson

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August 29, 2017

Public Comments Processing

Attn: Docket No. FWS-R2-ES-2017-0036

U.S. Fish and Wildlife Service,

New Mexico Ecological Services Field Office,

2105 Osuna Road NE,

Albuquerque, NM 87113

Submitted via www.regulations.gov

Re: Comments on Mexican Wolf Draft Recovery Plan, First Revision (Docket #: FWS–R2–ES–2017–0036)

Dear Regional Director Tuggle:

I, Dr. Richard Fredrickson, here submit my comments on the U.S. Fish and Wildlife Service's (FWS) Mexican Wolf Draft Recovery Plan, First Revision and associated documents and appendices (82 Fed. Reg. 22918-22920, June 30 2017), which requests "comments on the recovery strategy, recovery criteria, recovery actions, and the cost estimate associated with implementing the recommended recovery actions." My comments presented here are based on 30 years of experience working with endangered species as a wildlife manager and researcher, including work on habitat issues, population viability, and conservation genetics. In addition, I have been involved with Mexican wolves since 2002, and I was a member of the most recent Mexican wolf Recovery Team. More recently, I was a participant in the process leading up to the production of the Draft Plan (Plan), attending four of the five recovery planning workshops. In addition, I have authored and co-author scientific papers on Mexican wolf inbreeding and genetic rescue, taxonomy, and management. My comments focus on the application of best available science the in the development of the Plan.

The Plan does not rely on the best available science.

The Plan is largely underpinned by a population viability analysis (PVA) using Vortex (Miller 2017), and an assessment of potential habitat in Mexico and in the states of Arizona and New Mexico. Here I focus on the PVA.

<u>The PVA is flawed</u>

Rather than exploring a range of conditions that might adequately address the threats to Mexican wolves and result in a robust metapopulation, the PVA instead appears to be constructed to affirm the desires of the four-corners states, in regards to location and sizes of potential Mexican wolf populations. In practice this is manifested in simulation scenarios that considered only two populations: one wolf population in Arizona and New Mexico with a target population size of 320 wolves and another population in the northern Sierra Madre Occidental of Mexico with a target population size of 170 wolves. Populations in other locations and of greater sizes were not seriously considered. This apparently constrained the PVA into a search to find a management scenario that might be adequate.

Parameterization of the PVA simulations was also problematic. The proportion of adult females pairing is known to be a parameter that has large effects on the outcomes of simulated wolf populations (Carroll et al. 2014). The value of this parameter was based on the mean between two estimates using data from the Arizona-New Mexico population. Although both ways of estimating this parameter may be biased, one was likely more biased than the other. As a result, the value for this parameter used in the simulations was likely biased high. A review of the literature on the proportion of adult females breeding among wolves strongly suggests this parameter is density dependent – when prey density is high or wolf density is low, the proportion of adult females paired is high. And when the opposite occurs, the proportion of adult females pairing is low (Fredrickson unpublished). In the simulations, however, only a single, constant value was considered. In part, this was likely due to the very high carrying capacity (K = 1000 wolves) set for the MWEPA which would render density dependent functions largely inconsequential, given that this population was constrained to 320 wolves. The MWEPA, however, is a large area with discontinuous habitat spread across two states. And the existing wolves are concentrated in a single portion of the area. It is likely that wolves respond based on the conditions in their "neighborhood" rather than mean conditions across a two state area. Thus density dependence could be operating. And this is suggested by the data from the MWEPA (Figure 1).

In addition, inbreeding depression documented in the SSP population for the probability of a female giving live birth was not incorporated into the simulation model (Fredrickson

unpublished). And it is unclear whether inbreeding depression in the wild populations was fully accounted for. The PVA also assumes that a substantial proportion of Mexican wolf pairs will be fed annually for the next 100 years. Data from the MWEPA indicate that fed pairs produce greater numbers of pups that emerge from the den. Assuming that intensive feeding will continue in both populations for the next 100 years is unrealistic and inflates the viability of the simulated populations. Finally, the sensitivity analysis considered variation only in adult mortality rates, the sizes of populations triggering harvest, and population augmentation strategies. While these are all important, the modeling appendix did not include a thorough sensitivity analysis.

Because few parameters were considered in the sensitivity analysis, I ran simulations to further examine the effects of alternate parameterizations on the probabilities of extinction, quasi-extinction, and population sizes. In particular, I considered a small reduction in the percentage of adult females pairing, small increases in the adult mortality rate, and the effect of ending diversionary feeding once populations reach their targeted census population sizes. For these simulations I reduced the percentage of adult females pairing from 77.6 % used in the PVA to 73.2% based on the analyses in Appendix A (Oakleaf "Estimation of mean pairing rate among wild Mexican wolves). In this appendix this parameter was estimated using data from the MWEPA using two methods: the "direct observation" and "indirect estimation." Oakleaf arrived at 77.6% by taking the mean of these two estimates. But because the direct observation method is likely more biased than the indirect estimation method, I used the mean between 77.6% and the indirect estimation method for the simulations below.

Modestly reducing the percentage of adult females pairing to 73.2 and ending diversionary feeding had large effects on census population sizes. Table 1 presents the % of iterations becoming extinct, attaining the numerical delisting criterion, and two levels of quasi-extinction for the MEWPA and SMOCC-N populations. In all scenarios considered, 87 – 99% of iterations met the numerical criterion for delisting (eight year moving average of 320 wolves for MWEPA; eight year average of 170 wolves for SMOCC-N). But the eight year moving average dropped below 300 wolves in 80% of the 1,000 iterations when diversionary feeding was stopped and adult mortality was increased to 25.4% (Table 1). When the percentage of adult females pairing was reduced to 73.2% and diversionary feeding was stopped, the eight year average for the MWEPA dropped below 213 wolves in 67% of iterations, and dropped below 113 wolves in SMOCC-N in 81% of iterations. Mean population abundance for the scenario in which diversionary feeding is ended and adult mortality is increased from 24.9% to 25.4% is shown in Figure 2. Mean population abundance for the scenario in which the % of adult females pairing is reduced to 73.2% and diversionary feeding is ended is shown in Figure 3. These simulations illustrate that relatively small changes in parameterization can have large negative

effects on outcomes. It also calls into question whether the recovery criteria proposed in the draft plan will be adequate to ensure a viable and resilient metapopulation of Mexican wolves.

The augmentation plan for MWEPA and SMOCC-N has management priorities backwards.

The management plan portrayed in Table 2 of the PVA, prioritizes releasing wolves from captivity to SMOCC-N and translocating wolves from MWEPA to SMOCC-N. It appears to be an aggressive attempt to grow the small SMOCC-N population to larger size quickly. This would minimize the loss of genetic variation from this population while it is at very small size. But this comes at the cost of slower genetic enrichment of the MWEPA population which is currently about four times larger than SMOCC-N and has a mean kinship of around 0.25. The priority should be to genetically rehabilitate the MWEPA population before it grows to substantially larger size, at which point large improvements in the genetic composition of the population may become nearly impossible. The combination of releases of wolves from the SSP into MWEPA and translocation of wolves from MWEPA to SMOCC-N provides what is probably a one-time opportunity. A simulation that translocated high mean kinship wolves from MWEPA to SMOCC-N significantly reduced the overall mean kinship of MWEPA (results not shown). Translocations of this type paired with releases from captivity will provide the best opportunity for genetically improving the population. Under the draft plan, MWEPA will need to be the primary reservoir for genetic variation.

Table 1. Rates (%) of extinction, meeting numerical criteria for delisting, and quasiextinction for the MWEPA and SMOCC-N populations. Delisting is based on attainment of an eight year average of at least 320 and 170 wolves for the MWEPA and SMOCC-N populations, respectively. Quasiextinction rates present the % of iterations in which the 8-year dropped below numerical thresholds beginning in year 51 of the simulation.

	MWEPA				SMOCC-N			
	Extinction	Delisted	N<300	N<=213	Extinction	Delisted	N<150	N<=113
Baseline	3	95	51	20	1	100	69	30
Adult mortality 25.4%	5	92	55	26	1	99	72	36
Harvest begins at *N* = 350	4	95	68	24	Na[1]	Na	Na	Na
73.2% Adult females pair	8	88	67	34	4	97	79	49
Feeding stops at *N* = 320 / 170	5	96	81	42	5	99	87	60
Feeding stops & 25.4% adult mortality	6	93	80	46	4	99	89	61
73.2% Adult females pair & Feeding stops	12	87	90	67	19	87	95	81

[1] Not applicable

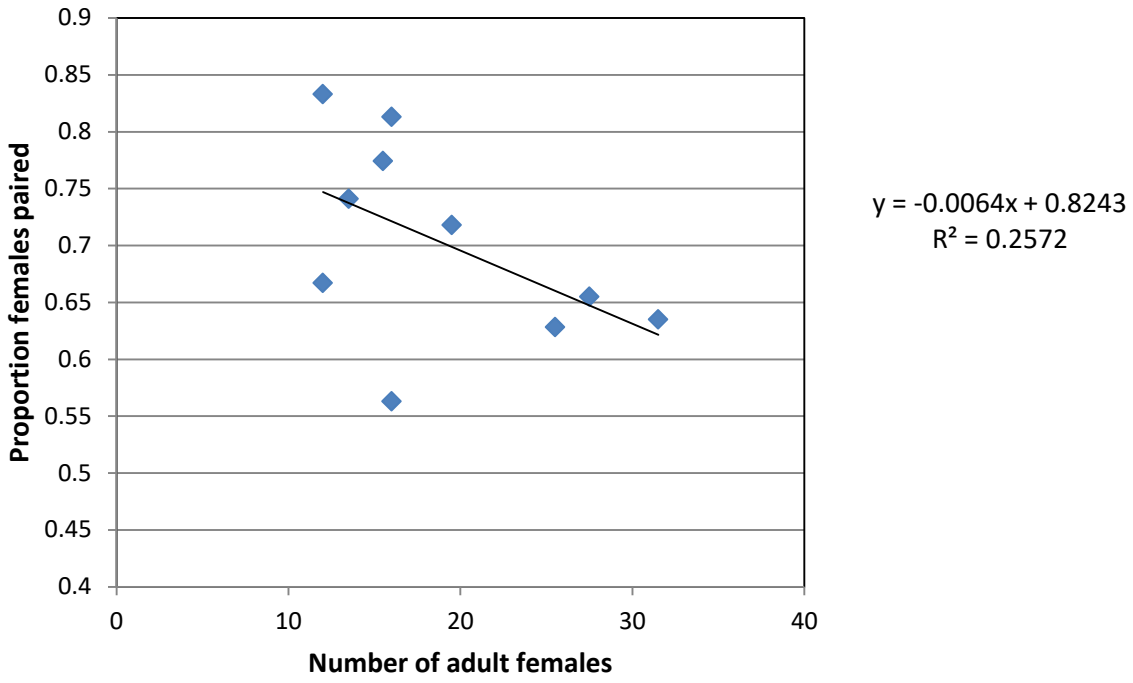

Figure 1. Proportion of adult females paired over ten years in the MWEPA (data from Appendix A).

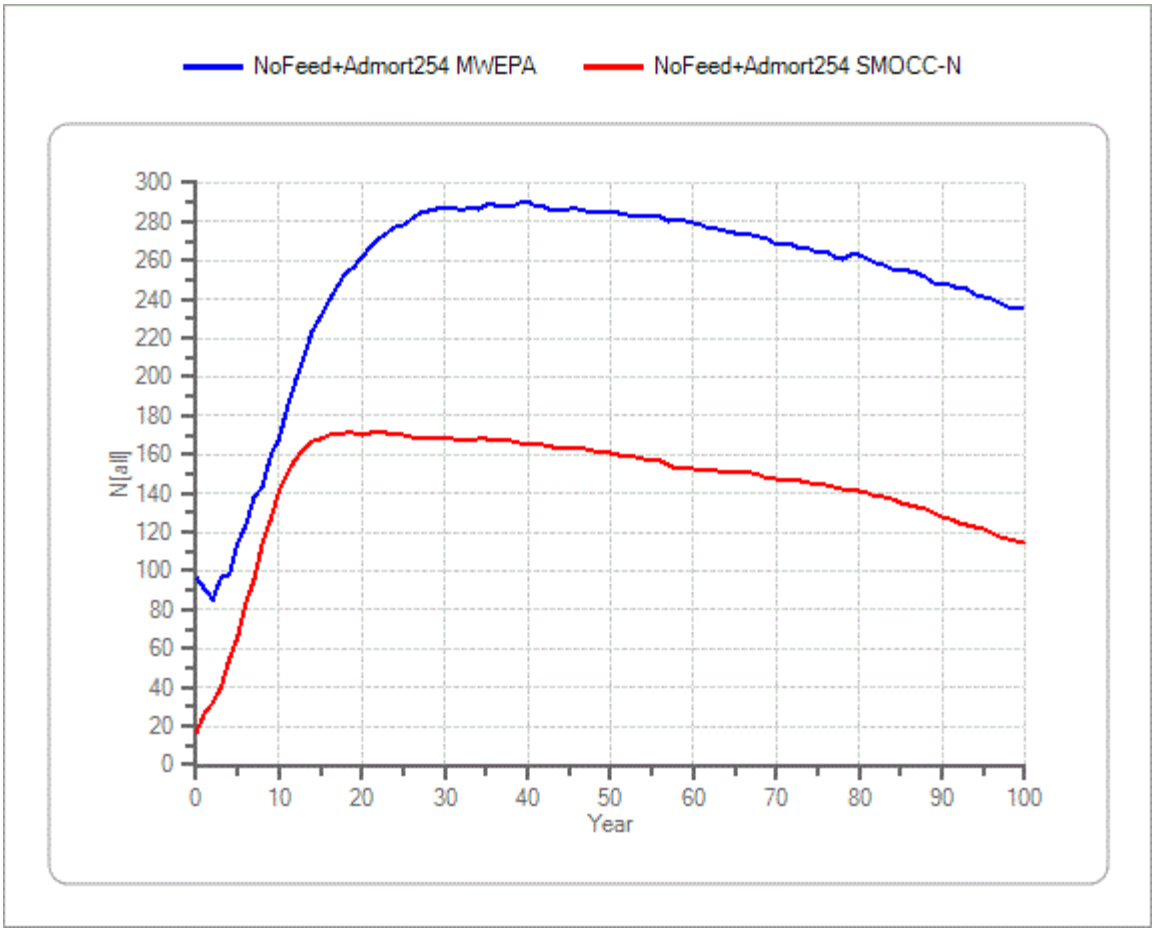

Figure 2. Mean numbers of wolves over time for the MWEPA and SMOCC-N populations when diversionary feeding is stopped once the populations reach their abundance targets (N= 320 for MWEPA, N=170 for SMOCC-N) and adult mortality is increased to 25.4%.

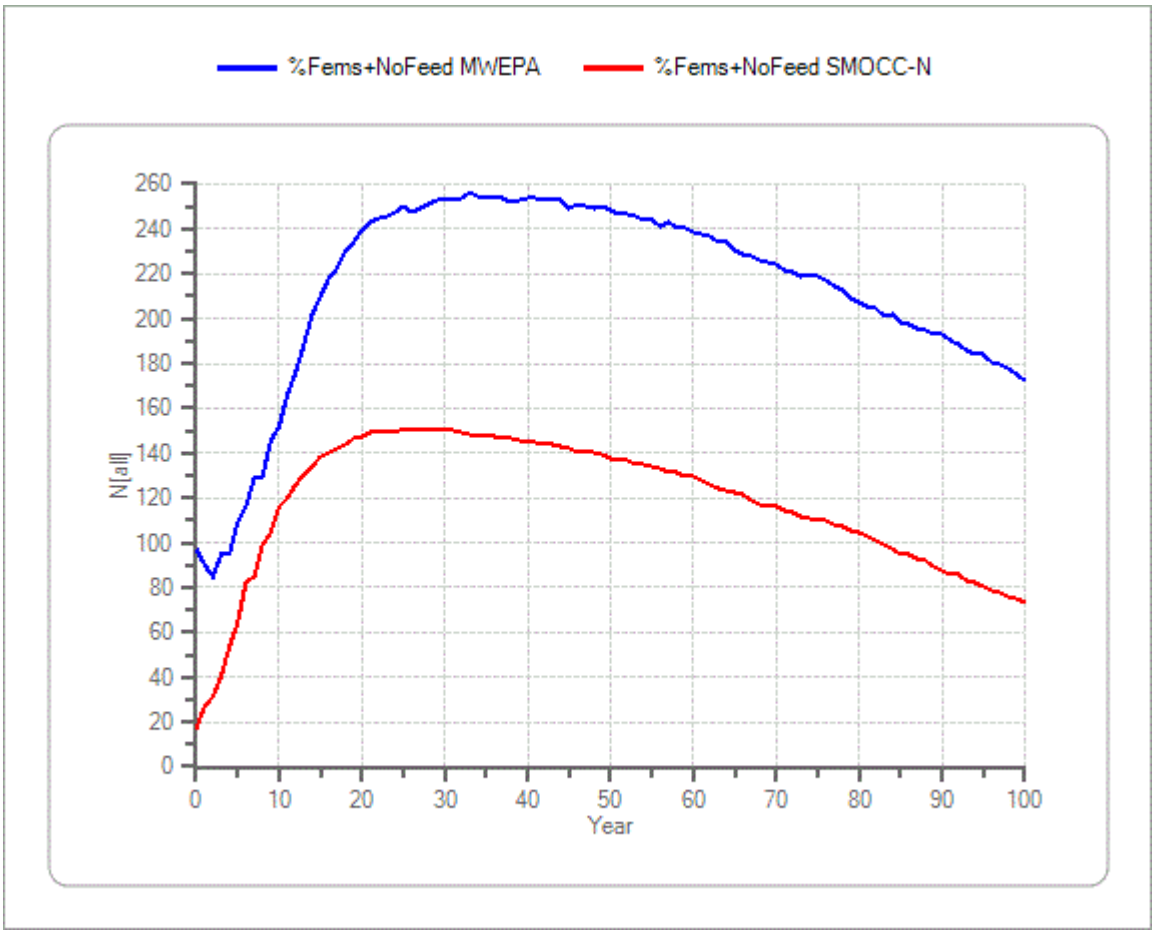

Figure 3. Mean numbers of wolves over time for the MWEPA and SMOCC-N populations when the proportion of adult females pairing is set to 0.732 and diversionary feeding is stopped once the populations reach population abundance targets (N= 320 for MWEPA, N=170 for SMOCC-N).

From:	Fishnet Conference Management
To:	Jim_Kurth@fws.gov
Subject:	Conference Nomination Submitted for: Amy Lueders
Date:	Friday, December 8, 2017 1:08:26 PM

This notification is provided to you as a Supervisor to review and edit the information submitted. If you did not give verbal approval to attend this event, please notify your Program Reviewer to mark the nomination as "Not Approved." Once your review is complete there is no further action required.

Nominations are currently receiving greater scrutiny with respect to attendee justifications, travel costs and registration fees. You are expected to personally oversee employee travel to prevent waste, fraud and abuse as detailed in the May 9, 2016, Supervisory Review and Approval Responsibilities Memorandum. If you would like to edit the information, open this link in Internet Explorer: https://fishnet.fws.doi.net/nt/CM/SitePages/My%20Employees.aspx

Conference Name: Trilateral Committee - CAN/MX/US (23rd)(2018)
Conference Dates: 4/9/2018 - 4/13/2018
Location: Shepherdstown, West Virginia
Registration Cost: $0.00
Travel Cost: $1,632.67
Total Cost: $1,632.67
Primary Purpose of Attendance: Senior Agency Representative
Justification Narrative: Amy Lueders is the Regional Director of the Southwest Region and projects that Mrs. Lueders is involved with are the masked bob-white quail, border fence issues, common threats to native fishes in Mexico, and oversees the Refuge program to promote protection and conservation of the monarch butterfly along its migration route in Canada and Mexico. She provides guidance and direction for the recovery of Sonoran pronghorn, jaguar, ocelot, lesser-long nosed bat, Mexican wolf, southwestern willow flycatcher, Sonoyta mud turtle, Tarahumara frog, Chiricahua leopard frog, etc., that reside on both sides of the border. Mrs. Lueders involvement in cross-border conservation is particularly important to maintain landscape conservation activities. As the Regional Director for the Southwest Region, she has over site on projects as they relate to fish and wildlife conservation. This meeting provides her the opportunity to work closely with his Canadian and Mexican counterparts and develop relationships.

If you did not give verbal approval to attend this event, please notify your Program Reviewer to withdraw the nomination.

From:	Gale, Michael
To:	Morris, Charisa
Cc:	Kashyap Patel
Subject:	Re: Notes from Directorate Meeting
Date:	Tuesday, January 9, 2018 6:57:20 AM
Attachments:	USFWS Directorate Mtg SUMMARY - Dec 2017.docx AFWA - USFWS Mtg Notes - Dec 2017.docx USFWS Directorate Mtg Notes - Dec 2017.docx

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Hi Charisa,

Did you get any response on this request related to the Directorate Meeting notes?

It's really kept me up at night, unsure of whether they live on in the minds and hearts of those who could benefit from their grace. LOL :-)

I've reattached the documents and copied Kashyap so that he's in the loop. Up to you guys on how to proceed.

cheers,

Michael

On Tue, Dec 19, 2017 at 10:45 AM, Morris, Charisa <charisa_morris@fws.gov> wrote:

> Checking in with the group to see if anybody had edits, or if we could add these to the google drive. If no response by COB today, I'm posting.
>
> Thanks!
> Charisa
>
> On Mon, Dec 11, 2017 at 12:21 PM, Gale, Michael <michael_gale@fws.gov> wrote:
>
> > Hello Charisa, Steve, and Jim,
> >
> > Attached are the various documents that I've pulled together to capture all the great discussions that were had at last week's **USFWS Directorate Meeting**, which are:
> >
> > - **Notes** (detailed notes)
> > - **AFWA - FWS Notes** (just the first half-day of discussions - the thinking was to share this document with AFWA)
> > - **Summary** (just the Action Items, Motions, and high-level highlights)
> >
> > Pasted below are just the action items so that you have an immediate reference to them.
> >
> > Please let me know what you think the next steps should be in terms of reviewing and disseminating this information.
> >
> > Thanks!
> >
> > Michael
> >
> > --

Michael Gale

Deputy Chief of Staff (Acting), Director's Office
U.S. Fish and Wildlife Service

202.208.4923 (office)
571.982.2158 (cell)

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ACTION ITEMS / MOTIONS

o **Action Item**: Prepare a shared letter of commitment between AFWA and USFWS to identify areas of common interest.

o **Action Item**: In the next AFWA newsletter, include information about Hunting and Fishing Chiefs to help connect state agencies to the Hunting and Fishing Chiefs

o **Action Item (AFWA)**: AFWA will delegate to staff the follow-up work on the items discussed today.

o **Action Item (AFWA)**: Task the Wildlife Policy with polling among the states for those existing agreements with FWS.

o **Action Item**: FWS and AFWA to provide feedback on draft policies and guideline document before the North American.

o **Action Item**: Calibrate the actions in the Secretarial Priorities with the Department's Strategic Plan

o **Action Item**: Go through the AFWA Committee list and put together Directorate leads and a plan for participating in the North American.

o **Action Item**: Submit nominations for the JAO Project Team (request to go out shortly).

o **Action Item**: Add the Regional Directors to the communications list for the S.O. 3356 implementation.

o **Motion** (Robyn Thorsen): agreement to fund proposals 1-4. Motion passed.

o **Action Item**: The proposal is for Brian Bloodsworth, Chris Nolin, and Shaun Sanchez to lead a small team that will be assigned to figure out how to pay for the enterprise investments, which will then be owned by the Director's Office.

o **Action Item**: Paul Rauch will re-send out the materials and put to a decision the furtherance of the EDC with the new charter, and then discuss this more at the next VTC.

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Charisa_Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

--

Michael Gale

Special Assistant
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U.S. Fish and Wildlife Service Directorate Meeting
Skyline Headquarters in Falls Church in Virginia *December 5-7, 2017*

Tuesday, December 5, 2017
Rachel Carson Conference Room (1W104), Breaks within scheduled sessions
Moderator: Steve Guertin

9:00am – 12:00pm
USFWS Directorate discussion with AFWA Executive Committee

Jim Kurth welcomed the group, particularly the state fish and wildlife agency colleagues. Virgil Moore, Director, Idaho Fish and Game Department and President, Association of Fish and Wildlife Agencies and Greg Sheehan, Principal Deputy Director, United States Fish and Wildlife Service, gave remarks. The topics covered included:

Topic One: SO 3356 and New Opportunities for Hunter and Angler Engagement

- **Action Item**: Prepare a shared letter of commitment to identify areas of common interest.
- **Action Item**: In the next AFWA newsletter, include information about Hunting and Fishing Chiefs to help connect state agencies to the Hunting and Fishing Chiefs

Topic Two: Landscape Level Partnership Models

Topic Three: Collaborative Governance Models

- **Action Item (AFWA)**: AFWA will delegate to staff the follow-up work on the items discussed today.
- **Action Item (AFWA)**: Task the Wildlife Policy with polling among the states for those existing agreements with FWS.
- **Action Item**: FWS and AFWA to provide feedback on draft policies and guideline document before the North American.

John Frampton gave an update on R3 efforts.

1:00pm – 3:00pm
Budget Updates, *Jim Kurth and Steve Guertin*
Additional Participants: Chris Nolin

Steve Guertin gave an overview of the current budget climate and the Administration's commitment to significant reductions in domestic programs, and Chris Nolin handed out budget tables for FY18. FY19 was also discussed.

3:00pm – 4:00pm
USFWS Priorities, *Greg Sheehan*

Greg provided an overview of the Secretary's Priorities and the step-down efforts for FWS priorities.

- **Action Item**: Calibrate the actions in the Secretarial Priorities with the Department's Strategic Plan
- **Action Item**: Go through the AFWA Committee list and put together Directorate leads and a plan for participating in the North American.

Wednesday, December 6, 2017
Murie Conference Room (3N057), Breaks within scheduled sessions
Moderator: Jim Kurth

11:00am – 12:00pm
ABA Transformation, *Steve Guertin, Janine Velasco, Denise Sheehan, Ken Taylor, and Brian Bloodsworth*

We are moving forward with a reprogramming request to Congress to consolidate administrative programs into a shared service provider, including work with a contractor for implementation.

- **Action Item**: Submit nominations for the JAO Project Team (request to go out shortly).

There are two areas of follow-up work:
1) All of the items in "Analysis Required" is now part of "Inside Scope" even though they may not be fully considered.
2) We need to have clear criteria for what is decided to be centralized with clear decision points with the Deputies and the Directorate.

2:00pm – 3:30pm
Meet and Greet with Jason Larrabee

Jason Larrabee introduced him and they had a general discussion about Departmental issues.

3:30pm – 5:00pm
Science Program, *Ben Tuggle and Seth Mott*

The conversation continued as a follow-up to the landscape conservation discussion in the morning with AFWA. Several options were discussed but none were decided upon specifically.

Thursday, December 7, 2017
Murie Conference Room (3N057), Breaks within scheduled sessions
Moderators: Jim Kurth and Steve Guertin

8:30am – 10:00am
Regulatory Updates, *Cynthia Martinez, Gloria Bell, Gary Frazer and Jerome Ford*

Updates were provided from the National Wildlife Refuge System, Ecological Services, International Affairs, and Migratory Birds.

- **Action Item**: Add the Regional Directors to the communications list for the S.O. 3356 implementation.

10:00am – 11:00pm
Report from the Deputies Group, *Shaun Sanchez*

The Deputies Group has been working on the FY18 Operations Plan and allocations. The three areas we are presenting to the Directorate are enterprise costs, national priority initiatives, and the investment proposals.

- **Motion** (Robyn Thorsen): agreement to fund proposals 1-4. Motion passed.

Alternative Proposal: choose between the two methodologies (i.e., FTE and Carryover) and then leave it up to the programs how best to pay for it. There was an interest in the FTE approach being more equitable.

- **Action Item**: The proposal is for Brian Bloodsworth, Chris Nolin, and Shaun Sanchez to lead a small team that will be assigned to figure out how to pay for the enterprise investments, which will then be owned by the Director's Office.

On the national priority initiatives, Jim Kurth provided an overview of the current status.

11:00am – 12:00pm
Legislative Updates, *Barbara Wainman*

We provided a summary on the bills that are out there. We are not operating under "regular order." We would like to do more courtesy Congressional visits that are not focused on "hot-button" issues.

1:00pm – 2:00pm
Diversity, *Jim Kurth, Paul Rauch, Inez Uhl*

A progress report was provided from the Office of Diversity and Inclusion and the results of the national hiring process. The data from this effort shows that there is possible discrimination in that minorities were selected at half the rate of their Caucasian counterparts. The Executive Committee for Diversity will continue with a focus on implementing the Diversity and Inclusion Plan.

- **Action Item**: Paul Rauch will re-send out the materials and put to a decision the furtherance of the EDC with the new charter, and then discuss this more at the next VTC.

2:00pm – 3:00pm
Hurricane Update, *Cynthia Martinez, Terrina Harford*

Our resources were stretched incredibly thin with our agency's response to three hurricanes while also being at a PL5 level for fire. Now we are undergoing after-action review.

3:00pm – 4:00pm
FEVS Update, *Steve Guertin*

Our employee engagement effort is in its fourth year. We have 60% participation in 2017. The Partnership for Public Service has just released its ranking of best places to work. DOI is #9 of 16 large agencies and FWS is #43 out of 150 across government (for comparison, USGS is #41, BLM is #115, and NPS is #128).

4:00pm – 4:30pm
Wrap-up, *Jim Kurth*

Meeting adjourned.

From:	Gustavson, Angela
To:	Angela Gustavson
Subject:	Congressional Affairs Update
Date:	Friday, February 16, 2018 12:51:10 PM
Attachments:	2.16.18.docx

Good afternoon,

The Congressional Affairs Update for this week is attached.

Have a good weekend,

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2253
Mobile: 202-909-5105
angela_gustavson@fws.gov

CONGRESSIONAL AFFAIRS UPDATE

Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

February 16, 2018

2018 Congressional Recess Schedule

Senate	***Holidays & Special Days***	***House***
State Work Period Feb. 19-Feb. 23	**Presidents' Day** Feb. 19	**District Work Period** Feb. 20-Feb. 23
State Work Period Mar. 26-Apr. 6		**District Work Period** Mar. 26-Apr. 6
State Work Period Apr. 30-May 4		**District Work Period** Apr.30-May 4
State Work Period May 28-June 1	**Memorial Day** May 28	**District Work Period** May 28-June 1
State Work Period July 2-July 6	**Independence Day** July 4	**District Work Period** July 2-July 6
State Work Period Aug. 6-Sep. 3	**Labor Day** Sep. 3	**District Work Period** July 30-Sep. 3
Sep. 10-Sep. 11	**Rosh Hashanah**	Sep. 10-Sep. 11
Sep. 19	**Yom Kippur**	**District Work Period** Sep. 17-Sep. 21
Oct. 8	**Columbus Day**	Oct. 8
State Work Period Oct. 29-Nov. 12	**Veterans Day** Nov. 12 (observed)	**District Work Period** Oct. 15-Nov. 9
State Work Period Nov. 19-Nov. 23	**Thanksgiving Day** Nov. 22	**District Work Period** Nov. 19-Nov. 23
	Targeted Adjournment Date Dec. 14	

HEARINGS AND MARKUPS OF INTEREST

House and Senate Committees Discuss President's Budget Request for Fiscal Year 2019
On Tuesday, February 13 and Wednesday, February 14, the Senate and House Committees on the Budget, respectively, held oversight hearings on the President's budget request for fiscal year 2019. Mick Mulvaney, Director of the Office of Management and Budget, testified before both committees. Members broadly discussed the Administration's proposed funding and priorities for the federal government for FY19; statements of interest to the Service include:

- **Senator Stabenow (D-MI)** expressed concern with proposed funding reductions for the Great Lakes Restoration Initiative. She discussed the importance of the Great Lakes for the Michigan economy, boating and fishing industries, and drinking water supplies. She also discussed the importance of the program for protecting the resource, including combating invasive species like Asian carp.

- **Senator Cory Gardner (R-CO)** expressed concern with the proposal to eliminate funding for the Land and Water Conservation Fund (LWCF). He discussed the importance of the outdoor economy to Colorado.

For more information, please visit: https://www.budget.senate.gov/presidents-fy-2019-budget-proposal and https://budget.house.gov/hearing/presidents-fiscal-year-2019-budget/

House Subcommittee Examines the State of the Nation's Water and Power Infrastructure

On Wednesday, February 14, the House Natural Resources Subcommittee on Water, Power and Oceans held an oversight hearing entitled, "The State of the Nation's Water and Power Infrastructure." Subcommittee members discussed several items of interest to the Service, including:

- **Chairman Doug Lamborn (R-CO-5)** largely attributed delays to infrastructure projects to federal environmental reviews.
- **Ranking Member Jared Huffman (D-CA-2)** cited recent reports from the Government Accountability Office and Congressional Research Service that found most local infrastructure projects are exempt from NEPA and that most project implementation delays are caused by lack of funding. He also discussed how certain proposed cuts in the President's budget would impact the ability for agencies to complete timely reviews.
- **Full Committee Chairman Rob Bishop (R-UT-1)** asked witnesses whether it would be helpful to have lead federal agency designated to coordinate reviews for a given project.
- **Representative Paul Gosar (R-AZ-4)** stated that the committee should focus on permitting reform, which he believes is a larger hurdle to infrastructure development than financing issues.
- **Representative Don Beyer (D-VA-8)** expressed concern with proposed cuts to certain water-quality related programs in the President's budget, including Chesapeake Bay restoration programs, superfund sites and Coastal Zone Management Act grants.
- **Representative Jody Hice (R-GA-10)** suggested that states are more knowledgeable and better positioned to evaluate and address environmental issues related to water infrastructure development.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=403880

House Hearing on Bills Addressing Cormorants and the Pittman-Robertson Fund

On Thursday, February 15, the House Natural Resources Subcommittee on Federal Lands held a legislative hearing on several bills, including three of interest to the Service:

- H.R. 2591, the Modernizing the Pittman-Robertson Fund for Tomorrow's Needs Act of 2017, sponsored by **Representative Austin Scott (R-GA-8)**. H.R. 2591 would allow a State to use up to 25 percent of its apportioned Pittman-Robertson funds for hunter and recreational shooter recruitment, and to include as an eligible activity constructing, maintaining, and operating public target ranges that are not connected with hunter education programs.

- H.R. 4429, the Cormorant Control Act, sponsored by **Representative Jack Bergman (R-MI-1)**. H.R. 4429 would reinstate the Service's two cormorant depredation orders that were vacated by the U.S. District Court for the District of Columbia in 2016.
- H.R. 4647, the Recovering America's Wildlife Act, sponsored by **Representative Jeff Fortenberry (R-NE-1)**. H.R. 4647 would direct an additional $1.3 billion in funding derived from offshore and onshore oil and gas royalties to a Wildlife Conservation subaccount for conservation for state wildlife action plans to address species "of greatest conservation need." Funds are derived from offshore and onshore oil and gas royalties.

Members made several statements of interest to the Service, including:

- **Rep. Scott** noted that the average age of Americans purchasing hunting licenses has been steadily rising and that it is becoming increasingly difficult for the public to participate in hunting and shooting.
- **Chairman Rob Bishop (R-UT-1)** asked if the committee had ever considered creating a program through which other recreational users that benefit from Pittman-Robertson (e.g., hikers and kayakers) pay into a wildlife restoration fund.
- **Rep. Fortenberry** noted that the committee is trying to create a bipartisan spirit around H.R. 4647 and that there is a better, more proactive, way to go about conserving species before they get listed as endangered.
- **Rep. Bergman** mentioned that cormorants have a cascading effect on Great Lakes fisheries that is of immense economic importance. Rep. Bergman also noted that the management of cormorants is a national issue going down to the Gulf of Mexico, not just a Great Lakes regional issue.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=403944

House Subcommittee Examines Effects of Environmental Laws on Border Security

On Thursday, February 15, the House Natural Resources Subcommittee on Oversight and Investigations held an oversight hearing entitled, "The Costs of Denying Border Patrol Access: Our Environment and Security." Subcommittee members discussed several items of interest to the Service, including:

- **Chairman Bruce Westerman (R-AR-4)** discussed his recent visit to the U.S-Mexico border with full committee **Chairman Rob Bishop (R-UT-1)**, and highlighted environmental review and permitting requirements, such as NEPA and ESA, for border security activities. He also discussed public lands located along the border, and the impacts of illegal activities on those lands.
- **Ranking Member Donald McEachin (D-VA-4)** expressed his disappointment that no federal witnesses were invited to the hearing. He also discussed the existing authority that the Secretary of Homeland Security has to waive environmental and other laws to build walls, fencing, roads, etc. for border security.
- **Rep. Johnson (R-LA-4)** discussed delays in border security activities despite MOU's between DOI, U.S. Department of Agriculture (USDA), and Department of Homeland Security (DHS). He also mentioned a report by DOI that included an assessment by FWS of the impacts of illegal border activities on wildlife and habitat, including the Sonoran

pronghorn. He also mentioned a bill he introduced (H.R. 3593) that addresses border security activities and wilderness areas.

- **Chairman Westerman** discussed a study by FWS on the number of unofficial roads used by illegal border crossers on the Cabeza Prieta National Wildlife Refuge (NWR) and asked about the need to deter unlawful activity along the border to protect natural resources. He also asked about the failure of the MOU's between DOI, USDA, and DHS to support border security activities, and asked about the impacts of environmental laws on border security activities, including remediating illegal tunnels under the border.
- **Ranking Member McEachin** asked about the benefits provided by environmental and other laws along the border and about how well the MOU's between DOI, USDA, and DHS are working. He also asked about funding reductions to DOI and USDA in the President's FY 2019 budget proposal and the impact on border security.
- **Rep. Huffman (D-CA-2)** asked about the economic impacts of the border wall on wildlife and ecotourism for local border communities.
- **Chairman Bishop** asked whether or not there is a conflict between the missions of DOI and DHS. He expressed concerns that environmental regulations are prohibiting DHS from obtaining the access they need, in a timely manner, to secure the border.
- **Rep. Beyer (D-VA-8)** asked about how roads built for border security on public lands can be counterproductive.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=403933

House Committee Discusses Legislation Addressing the Mine Permitting Process

On Thursday, February 15, the House Natural Resources Subcommittee on Energy and Mineral Resources held a legislative hearing on H.R. 520, the National Strategic and Critical Minerals Production Act, sponsored by **Representative Mark Amodei (R-NV-2)**. The bill would establish a limited process for permitting mining exploration and operations, which would include strict time limits and a designated permitting lead to coordinate with participating federal agencies. The bill effectively exempts the Bureau of Land Management and U.S. Forest Service from NEPA requirements should the agencies determine a permit would address certain criteria. The bill also exempts projects on National Forest System lands from regulations prohibiting tree harvest and road construction in certain areas. Subcommittee members discussed several items of interest to the Service, including:

- **Chairman Paul Gosar (R-AZ-4)** praised the bill for addressing what he believes is the greatest threat to mining in the United States - permitting delays. He discussed how excessive permitting requirements push mining companies to develop minerals in other nations with lower environmental standards.
- **Ranking Member Alan Lowenthal (D-CA-47)** criticized the bill as being too broad in its application and definition of "critical and strategic mineral." He also expressed concerns that the bill would limit public input.
- **Representative Greg Gianforte (R-MT-AL)** asked the witness representing Hecla Mining Company about the permitting process for the Rock Creek Mine in Montana. The witness discussed delays related to ESA requirements and litigation.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=403927

INTRODUCED LEGISLATION OF INTEREST

S.2436 — A bill to amend the Internal Revenue Code of 1986 to limit the amount of certain qualified conservation contributions.
Sponsor: Sen. Daines, Steve [R-MT] (Introduced 02/15/2018) Cosponsors: (1)
Committees: Senate - Finance
Latest Action: Senate - 02/15/2018 Read twice and referred to the Committee on Finance.

S.2421 — A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide an exemption from certain notice requirements and penalties for releases of hazardous substances from animal waste at farms.
Sponsor: Sen. Fischer, Deb [R-NE] (Introduced 02/13/2018) Cosponsors: (22)
Committees: Senate - Environment and Public Works
Latest Action: Senate - 02/13/2018 Read twice and referred to the Committee on Environment and Public Works.

H.R.5064 — To authorize aboriginal subsistence whaling pursuant to the regulations of the International Whaling Commission and for other purposes.
Sponsor: Rep. Young, Don [R-AK-At Large] (Introduced 02/15/2018) Cosponsors: (0)
Committees: House - Foreign Affairs
Latest Action: House - 02/15/2018 Referred to the House Committee on Foreign Affairs.

H.R.5061 — To amend title 46, United States Code, to limit recovery for certain injuries incurred in shellfish aquaculture activities if a remedy is available.
Sponsor: Rep. Sanford, Mark [R-SC-1] (Introduced 02/15/2018) Cosponsors: (0)
Committees: House - Transportation and Infrastructure, Judiciary
Latest Action: House - 02/15/2018 Referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the..

H.R.5056 — To direct the Secretary of the Interior, Secretary of Defense, and Secretary of Veterans Affairs to inventory Confederate commemorative works on certain Federal lands, and for other purposes.
Sponsor: Rep. McEachin, A. Donald [D-VA-4] (Introduced 02/15/2018) Cosponsors: (15)
Committees: House - Natural Resources, Armed Services, Veterans' Affairs
Latest Action: House - 02/15/2018 Referred to the Committee on Natural Resources, and in addition to the Committees on Armed Services, and Veterans' Affairs, for a period to be subsequently determined by the Speaker

H.R.5022 — To amend the Food Security Act of 1985 to authorize funding for the voluntary public access and habitat incentive program.
Sponsor: Rep. Marshall, Roger W. [R-KS-1] (Introduced 02/14/2018) Cosponsors: (3)

Committees: House - Agriculture
Latest Action: House - 02/14/2018 Referred to the House Committee on Agriculture

H.R.5015 — To direct the Administrator of the Environmental Protection Agency to take certain actions related to pesticides that may affect pollinators, and for other purposes.
Sponsor: Rep. Blumenauer, Earl [D-OR-3] (Introduced 02/14/2018) Cosponsors: (34)
Committees: House - Agriculture
Latest Action: House - 02/14/2018 Referred to the House Committee on Agriculture.

H.R.5014 — To provide for a moratorium on oil and gas leasing and exploration on the outer Continental Shelf off the coast of Florida until 2029, and for other purposes.
Sponsor: Rep. Rutherford, John H. [R-FL-4] (Introduced 02/14/2018) Cosponsors: (9)
Committees: House - Natural Resources
Latest Action: House - 02/14/2018 Referred to the House Committee on Natural Resources.

H.R.4994 — Energy Sovereignty Act
Sponsor: Rep. Perry, Scott [R-PA-4] (Introduced 02/08/2018) Cosponsors: (0)
Committees: House - Energy and Commerce
Latest Action: House - 02/08/2018 Referred to the House Committee on Energy and Commerce.

H.R.4988 — Conservation Assistance Loan Act of 2018
Sponsor: Rep. Bustos, Cheri [D-IL-17] (Introduced 02/08/2018) Cosponsors: (1)
Committees: House - Agriculture
Latest Action: House - 02/08/2018 Referred to the House Committee on Agriculture.

H.R.4977 — Coal Refuse Reclamation Act
Sponsor: Rep. Barletta, Lou [R-PA-11] (Introduced 02/08/2018) Cosponsors: (0)
Committees: House - Ways and Means
Latest Action: House - 02/08/2018 Referred to the House Committee on Ways and Means

H.Res.738 — Expressing support for designation of February 14 as World Bonobo Day.
Sponsor: Rep. Peters, Scott H. [D-CA-52] (Introduced 02/14/2018) Cosponsors: (12)
Committees: House - Natural Resources
Latest Action: House - 02/14/2018 Referred to the House Committee on Natural Resources.

From:	Jean Su
To:	congresstodhs@hq.dhs.gov; kevin.k.mcaleenan@dhs.gov; Jim_Kurth@fws.gov
Cc:	Brian Segee; Howard Crystal
Subject:	Notice of ESA violations in relation to New Mexico border wall construction
Date:	Wednesday, March 21, 2018 8:31:54 AM
Attachments:	18 03 21 NOI Letter re NM Border Wall_from CBD DOW SEC ALDF.pdf

Dear Secretary Nielsen, Deputy Director Kurth, and Acting Commissioner McAleenan:

On behalf of the Center for Biological Diversity, Southwest Environmental Center, Defenders of Wildlife, and the Animal Legal Defense Fund, we hereby provide notice in the attached letter that the Department of Homeland Security and the U.S. Customs and Border Protection are in violation of Section 7(a)(2) of the Endangered Species Act for their failure to consult with U.S. Fish and Wildlife Service in order to ensure that the proposed border wall fencing replacement construction in New Mexico does not jeopardize the continued existence of impacted threatened or endangered species, or result in the destruction or adverse modification of their critical habitat, and is further in violation of Section 9(a)(1)(B) of the Act for the likely "take" of threatened or endangered species caused by construction and related activities undertaken as part of the New Mexico border wall replacement project.

We have also sent a copy of the attached notice letter via certified mail.

Thank you for your attention to the allegations contained in the attached letter. Please contact me at the telephone number below should you wish to discuss this notice letter in further detail.

Best regards,
Jean Su

Jean Su
Associate Conservation Director // Staff Attorney
Center *for* Biological Diversity
1411 K Street NW, Suite 1300
Washington, D.C. 20005
Phone: (202) 849-8399
Twitter: @ajeansu
http://www.biologicaldiversity.org

March 21, 2018

Kirstjen Nielsen, Secretary
Department of Homeland Security
Washington, D.C. 20528
congresstodhs@hq.dhs.gov

Ryan Zinke, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
secretary_of_the_interior@ios.doi.gov

Kevin K. McAleenan, Acting Commissioner
U.S. Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Ave., N.W.
Washington, D.C. 20229
kevin.k.mcaleenan@dhs.gov

Jim Kurth, Deputy Director for Operations
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240
Jim_Kurth@fws.gov

Sent via certified and electronic mail

Re: Notice of Violations of the Endangered Species Act in Relation to Border Wall Fencing Replacement in New Mexico

Dear Secretaries Nielsen and Zinke, Deputy Director Kurth, and Acting Commissioner McAleenan:

On behalf of the Center for Biological Diversity, Southwest Environmental Center, Defenders of Wildlife, and the Animal Legal Defense Fund (collectively, "Environmental Groups"), we hereby provide notice, pursuant to Section 11(g)[1] of the Endangered Species Act ("ESA")[2] that the Department of Homeland Security ("DHS") and its component agency U.S. Customs and Border Protection ("CBP") are in violation of Section 7(a)(2) of the ESA[3] for their failure to consult with U.S. Fish and Wildlife Service ("FWS") in order to ensure that the proposed border wall fencing replacement construction in New Mexico—specifically, the replacement of approximately 20 miles of primarily existing vehicle fencing in New Mexico (the "New Mexico border wall replacement project")—does not jeopardize the continued existence of impacted threatened or endangered species, or result in the destruction or adverse modification of their critical habitat, and is further in violation of Section 9(a)(1)(B) of the ESA for the likely "take" of threatened or endangered species caused by construction and related activities undertaken as part of the New Mexico border wall replacement project.

Environmental Groups are environmental conservation organizations dedicated to protecting native wildlife species and their habitats. The Center for Biological Diversity ("the Center") is a non-profit, public interest environmental organization headquartered in Tucson, Arizona, with numerous offices across the United States, including New Mexico and Washington, D.C., dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center

[1] 16 U.S.C. § 1540(g)
[2] 16 U.S.C. § 1531 *et seq*.
[3] 16 U.S.C. § 1536(a)(2)

has more than 1.3 million members and on-line activists. The Southwest Environmental Center ("SEC") is a non-profit, member-supported, grassroots conservation organization based in Las Cruces, New Mexico. SEC is dedicated to protecting and restoring native wildlife and their habitats in the Southwestern borderlands, through advocacy, education and on-the-ground projects. Defenders of Wildlife ("Defenders") is a nonprofit organization with hundreds of thousands of members across the nation, including nearly 3,500 members in New Mexico. Defenders' mission is to preserve wildlife and emphasize appreciation and protection for all species in their ecological role through advocacy, litigation, and other efforts. Finally, the Animal Legal Defense Fund ("ALDF") is a nonprofit 501(c)(3) organization with more than 200,000 members and supporters, approximately 1,100 of whom live in New Mexico, and nearly 200 of whom live in El Paso County, Texas, near the New Mexico border wall replacement project. ALDF represents its members' interests by working to protect the lives of animals, including wildlife, through the legal system. ALDF is headquartered on Cotati, California, with regional offices in Los Angeles and Portland, Oregon.

Collectively, Environmental Groups have long advocated for better incorporation of environmental considerations into DHS border security planning and decision-making. Our ESA advocacy has resulted in the protection of numerous threatened and endangered species within the borderlands region and the designation of hundreds of thousands of acres of their critical habitat.

The threshold for triggering an agency's duties under the ESA is low; if an agency takes an action that may have environmental impacts or that "may affect" a listed species or critical habitat, then ESA section 7 consultation is required.[4] DHS and CBP, however, have provided no evidence to the public or to the Center that it has initiated or completed the required environmental analyses under either of these laws with respect to the New Mexico border wall replacement project.

I. LEGAL BACKGROUND

A. The Endangered Species Act

The ESA is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."[5] Its fundamental purposes are "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species . . . ."[6] To achieve these objectives, the ESA directs the FWS to determine which species of plants and animals are "threatened" and "endangered" and place them on the endangered species list.[7] An "endangered" or "threatened" species is one "in danger of extinction throughout all or a significant portion of its range," or "likely to become endangered in the near future throughout all or a significant portion of its range," respectively.[8]

[4] 50 C.F.R. § 402.14(a).
[5] *TVA v. Hill*, 437 U.S. 180 (1978).
[6] 16 U.S.C. § 1531(b).
[7] *Id*. § 1533.
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Once a species is listed, the ESA provides a variety of procedural and substantive protections to ensure not only the species' continued survival, but its ultimate recovery. One central protection, Section 7(a)(2), mandates that all federal agencies avoid actions that: (1) jeopardize listed species; or (2) destroy or adversely modify designated critical habitat.[9] Federal agency actions include those projects or programs "authorized, funded, or carried out by such agency."[10] To comply with these Section 7(a)(2) safeguards, the federal agency taking action and FWS take part in a cooperative analysis of potential impacts to listed species and their designated critical habitat known as a consultation process.

First, the agency must obtain "a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area" from FWS.[11] If a species or critical habitat may be present, the agency must prepare a biological assessment to determine whether the proposed action "may affect" or "is not likely to adversely affect" any listed species or critical habitat.[12]

Federal agencies must initiate formal consultation with FWS when their actions "may affect" a listed species or designated critical habitat.[13] The standard for consultation is low: "[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement."[14]Effects that must be considered as part of this inquiry include "direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline."[15] Indirect effects are "those that are caused by the proposed action and are later in time, but still are reasonably certain to occur."[16]

Through the formal consultation process, FWS prepares a "biological opinion" as to whether the action jeopardizes the species or destroys or adversely modifies critical habitat and, if so, suggests "reasonable and prudent alternatives."[17] During the consultation process, both agencies must "use the best scientific and commercial data available."[18]

In addition to duties under Section 7(a)(2) of the ESA, federal agencies are required under Section 7(a)(1) to "utilize their authority for the conservation [i.e. recovery] of endangered species and

[9] *Id*. § 1536(a)(2).
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threatened species."[19] As stated by the Ninth Circuit, agencies have an "affirmative obligation[] to conserve under section 7(a)(1)."[20]

Finally, Section 9 of the ESA prohibits the "taking" of any endangered species.[21] The ESA defines the term "take" broadly to include "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."[22] "Take" includes indirect as well as direct harm and need not be purposeful.[23] The ESA provides a limited exception to the prohibition on take under Section 9 for taking that is in compliance with an incidental take statement ("ITS").[24] Any take of a listed species that is not in compliance with an ITS violates Section 9.[25]

II. FACTUAL BACKGROUND

A. The New Mexico Border Wall Replacement Project

On January 25, 2017, President Donald J. Trump issued an Executive Order No. 13767 on "Border Security and Immigration Enforcement Improvements" ("the Border Security E.O."), directing DHS to construct a "secure, contiguous, and impassable physical barrier" along the entirety of the nearly 2,000 mile long U.S.-Mexico border, in order "to prevent illegal immigration, drug and human trafficking, and acts of terrorism." The Border Security E.O. defines "wall" to mean "a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier." (Sec. 3(e)).

On January 22, 2018, DHS Secretary Kirstjen Nielsen published a waiver determination in the Federal Register directing DHS to take "immediate action to replace existing vehicle barrier and pedestrian fencing with bollard wall" within a specific project area in New Mexico state, described as follows: "an approximately twenty mile segment of the border that starts at the Santa Teresa Land Port of Entry and extends westward" to Border Monument 10 in DHS's El Paso Sector. Determination Pursuant to Section 102 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), As Amended, 83 Fed. Reg. 3,012 (January 22, 2018) ("January 2018 Waiver"). For purposes of this letter, the proposed vehicle replacement fencing construction in New Mexico will be called the "New Mexico border wall replacement project." The January 2018 Waiver purports to waive the application of the ESA, NEPA, as well as 23 additional federal statutes, to the New Mexico border wall replacement project, pursuant to section 102(c) of IIRIRA, Pub. L. 104-208, Div. C, 110 Stat. 3009-546, codified at 8 U.S.C. § 1103 note.

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[20] *Pyramid Lake Paiute Tribe v. U.S. Dep't of Navy*, 898 F.2d 1410, 1416-17 (9th Cir. 1990)
[21] 16 U.S.C. §1538(a).
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[23] *See Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or*., 515 U.S. 687, 704 (1995).
[24] *See* 16 U.S.C. § 1536 (o)(2).
[25] *See Arizona Cattle Growers' Ass'n v. U.S. Fish & Wildlife, Bureau of Land Mgmt*., 273 F.3d 1229, 1239 (9th Cir. 2001).

B. Potential Impacts on Threatened and Endangered Species

The New Mexico border wall replacement project may impact several endangered and threatened species, as well as designated critical habitat, listed pursuant to the ESA. The New Mexico border wall replacement project is located in the Chihuahuan desert, which is considered to be one of the most biologically diverse and sensitive deserts in the world due to the abundance and endemism of species present. The proposed project area is within or in close proximity to populations of several endangered, threatened, and candidate species under the ESA, including the Yellow-billed Cuckoo, Southwestern willow flycatcher, Least tern, Mexican spotted owl, and Sneed pincushion cactus.[26] Additionally, the Northern Aplomado falcon and Mexican gray wolf in New Mexico are each federally designated as experimental non-essential populations under section 10(j) of the ESA.

Species may be impacted in numerous ways. To provide a few examples, the construction of replacement fencing for the currently existing vehicle barriers will likely affect the species whose populations reside or whose critical habitats are located near and at the site of construction. In addition, though certain imperiled species may not be affected directly by the construction of the wall itself, they may be negatively impacted by associated infrastructure, such as roads, structures, and traffic associated with enforcement and building the wall.

Further, the proposed bollard-style wall will likely impede the migration of species between New Mexico and Mexico. As Secretary Nielsen alleges that the proposed replacement wall will serve to "deter and prevent illegal crossings," the bollard-style wall typically consists of tall vertical posts that are spaced closely together, in contrast to the currently existing vehicle barriers which consist of low vertical posts placed several feet apart. The bollard-style wall increases the barriers' impermeability, serving to obstruct the natural migration of species. The agencies must consult with the FWS over these and other adverse impacts of the project on listed species.

Moreover, the Mexico border wall replacement project may also impact endangered and threatened species in adjacent areas to the proposed project site. Specifically, the project may result in the indirect effect of moving whatever existing traffic and crossings occurring in the proposed project area to adjacent areas that currently have less border construction and patrolling.[27] Increased traffic in more remote areas may necessarily affect the endangered or imperiled species and critical habitats in such adjacent areas.

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[26] These species have been identified utilizing a database maintained by the U.S. Fish and Wildlife Service identifying protected species by county and the New Mexico listed species database identifying both ESA-listed species and New Mexico State-listed species maintained by the New Mexico Department of Fish and Game.

[27] See. e.g., U.S. Government Accountability Office, "Agencies need to better coordinate their strategies and operations on Federal Lands" (Jan. 4, 2004), https://www.gao.gov/products/GAO-04-590 ("Rising illegal activity on these federal lands results from the Border Patrol's strategy to deter illegal entry by concentrating resources in populated areas--thus shifting illegal traffic to more remote federal lands, where Border Patrol has placed fewer resources.")

III. DHS AND CBP VIOLATIONS OF THE ENDANGERED SPECIES ACT

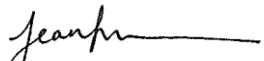
Consultation under ESA Section 7 is required whenever a discretionary agency action "may affect" any listed species or its critical habitat.[28] ESA implementing regulations define "action" as "all activities or programs of any kind authorized, funded, or carried out . . . by Federal agencies."[29] As detailed in this letter, the San Diego border wall replacement project will potentially directly, indirectly, and cumulatively impact several threatened and endangered species. Despite this fact, DHS and CBP have apparently failed to initiate or complete ESA section 7 (a)(2) consultation with FWS in order to ensure that the border wall replacement project does not jeopardize the continued existence of any listed species or adversely modify or destroy the designated critical habitat for any of those species. In addition, DHS and CBP have failed to take any affirmative action to conserve the threatened and endangered species that may be impacted by the project. Accordingly, DHS and CBP are also violating Section 7 (a)(1) of the ESA.

Finally, by failing to conduct surveys or other investigations into endangered or threatened species presence or otherwise taking measures to protect these species from harm, DHS and CBP are engaged in the unlawful take of listed species, in violation of section 9 of the ESA.

IV. CONCLUSION

Thank you for your attention to the allegations contained in this notice letter. Should DHS and CBP fail to remedy the ESA violations of law within 60 days, Environmental Groups intend to pursue this matter in federal District Court. Please contact Jean Su at (202) 849-8399 should you wish to discuss this notice letter in further detail.

Sincerely,



Jean Su, Associate Conservation Director and Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
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jsu@biologicaldiversity.org

/s/ Kevin Bixby
Kevin Bixby, Executive Director
SOUTHWEST ENVIRONMENTAL CENTER
275 North Main Street
Las Cruces, NM 88001
Telephone: (575) 522-5552
kevin@wildmesquite.org

[28] 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).
[29] 50 C.F.R. § 402.02 (emphasis added).

/s/ Jason Rylander
Jason Rylander, Senior Staff Attorney
DEFENDERS OF WILDLIFE
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/s/ Anthony T. Eliseuson
Anthony T. Eliseuson, Senior Staff Attorney
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245 Murray Lane, SW
Mail Stop 0475
U.S. Department of Homeland Security
Washington, D.C. 20528

CBP Office of General Counsel
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

From:	Jim Kurth
To:	Greg Sheehan; Gary Frazer; Cynthia Martinez
Subject:	Fwd: Notice of ESA violations in relation to New Mexico border wall construction
Date:	Wednesday, March 21, 2018 8:50:42 AM
Attachments:	ATT00001.htm 18 03 21 NOI Letter re NM Border Wall_from CBD DOW SEC ALDF.pdf

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FYI

Sent from my iPad

Begin forwarded message:

From: Jean Su <JSu@biologicaldiversity.org>
Date: March 21, 2018 at 11:31:40 AM EDT
To: "congresstodhs@hq.dhs.gov" <congresstodhs@hq.dhs.gov>, "kevin.k.mcaleenan@dhs.gov" <kevin.k.mcaleenan@dhs.gov>, "Jim_Kurth@fws.gov" <Jim_Kurth@fws.gov>
Cc: Brian Segee <BSegee@biologicaldiversity.org>, Howard Crystal <HCrystal@biologicaldiversity.org>
Subject: Notice of ESA violations in relation to New Mexico border wall construction

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We have also sent a copy of the attached notice letter via certified mail.

Thank you for your attention to the allegations contained in the attached letter. Please contact me at the telephone number below should you wish to discuss this notice letter in further detail.

Best regards,
Jean Su

Jean Su

Associate Conservation Director // Staff Attorney
Center *for* Biological Diversity
1411 K Street NW, Suite 1300
Washington, D.C. 20005
Phone: (202) 849-8399
Twitter: @ajeansu
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March 21, 2018

Kirstjen Nielsen, Secretary
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Washington, D.C. 20528
congresstodhs@hq.dhs.gov

Ryan Zinke, Secretary
U.S. Department of the Interior
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Washington, D.C. 20240
secretary_of_the_interior@ios.doi.gov

Kevin K. McAleenan, Acting Commissioner
U.S. Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Ave., N.W.
Washington, D.C. 20229
kevin.k.mcaleenan@dhs.gov

Jim Kurth, Deputy Director for Operations
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240
Jim_Kurth@fws.gov

Sent via certified and electronic mail

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The New Mexico border wall replacement project may impact several endangered and threatened species, as well as designated critical habitat, listed pursuant to the ESA. The New Mexico border wall replacement project is located in the Chihuahuan desert, which is considered to be one of the most biologically diverse and sensitive deserts in the world due to the abundance and endemism of species present. The proposed project area is within or in close proximity to populations of several endangered, threatened, and candidate species under the ESA, including the Yellow-billed Cuckoo, Southwestern willow flycatcher, Least tern, Mexican spotted owl, and Sneed pincushion cactus.[26] Additionally, the Northern Aplomado falcon and Mexican gray wolf in New Mexico are each federally designated as experimental non-essential populations under section 10(j) of the ESA.

Species may be impacted in numerous ways. To provide a few examples, the construction of replacement fencing for the currently existing vehicle barriers will likely affect the species whose populations reside or whose critical habitats are located near and at the site of construction. In addition, though certain imperiled species may not be affected directly by the construction of the wall itself, they may be negatively impacted by associated infrastructure, such as roads, structures, and traffic associated with enforcement and building the wall.

Further, the proposed bollard-style wall will likely impede the migration of species between New Mexico and Mexico. As Secretary Nielsen alleges that the proposed replacement wall will serve to "deter and prevent illegal crossings," the bollard-style wall typically consists of tall vertical posts that are spaced closely together, in contrast to the currently existing vehicle barriers which consist of low vertical posts placed several feet apart. The bollard-style wall increases the barriers' impermeability, serving to obstruct the natural migration of species. The agencies must consult with the FWS over these and other adverse impacts of the project on listed species.

Moreover, the Mexico border wall replacement project may also impact endangered and threatened species in adjacent areas to the proposed project site. Specifically, the project may result in the indirect effect of moving whatever existing traffic and crossings occurring in the proposed project area to adjacent areas that currently have less border construction and patrolling.[27] Increased traffic in more remote areas may necessarily affect the endangered or imperiled species and critical habitats in such adjacent areas.

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[26] These species have been identified utilizing a database maintained by the U.S. Fish and Wildlife Service identifying protected species by county and the New Mexico listed species database identifying both ESA-listed species and New Mexico State-listed species maintained by the New Mexico Department of Fish and Game.

[27] See. e.g., U.S. Government Accountability Office, "Agencies need to better coordinate their strategies and operations on Federal Lands" (Jan. 4, 2004), https://www.gao.gov/products/GAO-04-590 ("Rising illegal activity on these federal lands results from the Border Patrol's strategy to deter illegal entry by concentrating resources in populated areas--thus shifting illegal traffic to more remote federal lands, where Border Patrol has placed fewer resources.")

III. DHS AND CBP VIOLATIONS OF THE ENDANGERED SPECIES ACT

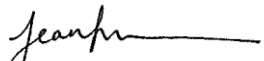
Consultation under ESA Section 7 is required whenever a discretionary agency action "may affect" any listed species or its critical habitat.[28] ESA implementing regulations define "action" as "all activities or programs of any kind authorized, funded, or carried out . . . by Federal agencies."[29] As detailed in this letter, the San Diego border wall replacement project will potentially directly, indirectly, and cumulatively impact several threatened and endangered species. Despite this fact, DHS and CBP have apparently failed to initiate or complete ESA section 7 (a)(2) consultation with FWS in order to ensure that the border wall replacement project does not jeopardize the continued existence of any listed species or adversely modify or destroy the designated critical habitat for any of those species. In addition, DHS and CBP have failed to take any affirmative action to conserve the threatened and endangered species that may be impacted by the project. Accordingly, DHS and CBP are also violating Section 7 (a)(1) of the ESA.

Finally, by failing to conduct surveys or other investigations into endangered or threatened species presence or otherwise taking measures to protect these species from harm, DHS and CBP are engaged in the unlawful take of listed species, in violation of section 9 of the ESA.

IV. CONCLUSION

Thank you for your attention to the allegations contained in this notice letter. Should DHS and CBP fail to remedy the ESA violations of law within 60 days, Environmental Groups intend to pursue this matter in federal District Court. Please contact Jean Su at (202) 849-8399 should you wish to discuss this notice letter in further detail.

Sincerely,



Jean Su, Associate Conservation Director and Staff Attorney
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Telephone: (202) 849-8399
jsu@biologicaldiversity.org

/s/ Kevin Bixby
Kevin Bixby, Executive Director
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Las Cruces, NM 88001
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[28] 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).
[29] 50 C.F.R. § 402.02 (emphasis added).

/s/ Jason Rylander
Jason Rylander, Senior Staff Attorney
DEFENDERS OF WILDLIFE
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/s/ Anthony T. Eliseuson
Anthony T. Eliseuson, Senior Staff Attorney
ANIMAL LEGAL DEFENSE FUND
150 South Wacker Drive, Suite 2400
Chicago, Illinois 60606
Telephone: (707) 795-2533
aeliseuson@aldf.org

cc: DHS Office of General Counsel
245 Murray Lane, SW
Mail Stop 0475
U.S. Department of Homeland Security
Washington, D.C. 20528

CBP Office of General Counsel
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

From:	Frazer, Gary
To:	Amy Lueders; Ted Koch
Cc:	Greg Sheehan; Cynthia Martinez; Jim Kurth; Seth Willey; Craig Aubrey; Carey Galst; Parks Gilbert
Subject:	Re: Notice of ESA violations in relation to New Mexico border wall construction
Date:	Wednesday, March 21, 2018 9:03:31 AM
Attachments:	18 03 21 NOI Letter re NM Border Wall_from CBD DOW SEC ALDF.pdf

---

+ Amy and Ted

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

On Wed, Mar 21, 2018 at 11:50 AM, Jim Kurth <jim_kurth@fws.gov> wrote:

> FYI
>
> Sent from my iPad
>
> Begin forwarded message:
>
>
> **From:** Jean Su <JSu@biologicaldiversity.org>
> **Date:** March 21, 2018 at 11:31:40 AM EDT
> **To:** "congresstodhs@hq.dhs.gov" <congresstodhs@hq.dhs.gov>, "kevin.k.mcaleenan@dhs.gov" <kevin.k.mcaleenan@dhs.gov>, "Jim_Kurth@fws.gov" <Jim_Kurth@fws.gov>
> **Cc:** Brian Segee <BSegee@biologicaldiversity.org>, Howard Crystal <HCrystal@biologicaldiversity.org>
> **Subject: Notice of ESA violations in relation to New Mexico border wall construction**
>
>
> Dear Secretary Nielsen, Deputy Director Kurth, and Acting Commissioner McAleenan:
>
>
> On behalf of the Center for Biological Diversity, Southwest Environmental Center, Defenders of Wildlife, and the Animal Legal Defense Fund, we hereby provide notice in the attached letter that the Department of Homeland Security and the U.S. Customs and Border Protection are in violation of Section 7(a)(2) of the Endangered Species Act for their failure to consult with U.S. Fish and Wildlife Service in order to ensure that the proposed border wall fencing replacement construction in New Mexico does not jeopardize the continued existence of impacted threatened or endangered species, or result in the destruction or adverse modification of their critical habitat, and is further in violation of Section 9(a)(1)(B) of the Act for the likely “take” of threatened or endangered species caused by construction and related activities undertaken as part of the New Mexico border wall replacement project.

We have also sent a copy of the attached notice letter via certified mail.

Thank you for your attention to the allegations contained in the attached letter. Please contact me at the telephone number below should you wish to discuss this notice letter in further detail.

Best regards,

Jean Su

Jean Su

Associate Conservation Director // Staff Attorney

Center *for* Biological Diversity

1411 K Street NW, Suite 1300

Washington, D.C. 20005

Phone: (202) 849-8399

Twitter: @ajeansu

http://www.biologicaldiversity.org

March 21, 2018

Kirstjen Nielsen, Secretary
Department of Homeland Security
Washington, D.C. 20528
congresstodhs@hq.dhs.gov

Ryan Zinke, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
secretary_of_the_interior@ios.doi.gov

Kevin K. McAleenan, Acting Commissioner
U.S. Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Ave., N.W.
Washington, D.C. 20229
kevin.k.mcaleenan@dhs.gov

Jim Kurth, Deputy Director for Operations
U.S. Fish and Wildlife Service
1849 C Street, N.W.
Washington, D.C. 20240
Jim_Kurth@fws.gov

Sent via certified and electronic mail

Re: Notice of Violations of the Endangered Species Act in Relation to Border Wall Fencing Replacement in New Mexico

Dear Secretaries Nielsen and Zinke, Deputy Director Kurth, and Acting Commissioner McAleenan:

On behalf of the Center for Biological Diversity, Southwest Environmental Center, Defenders of Wildlife, and the Animal Legal Defense Fund (collectively, "Environmental Groups"), we hereby provide notice, pursuant to Section 11(g)[1] of the Endangered Species Act ("ESA")[2] that the Department of Homeland Security ("DHS") and its component agency U.S. Customs and Border Protection ("CBP") are in violation of Section 7(a)(2) of the ESA[3] for their failure to consult with U.S. Fish and Wildlife Service ("FWS") in order to ensure that the proposed border wall fencing replacement construction in New Mexico—specifically, the replacement of approximately 20 miles of primarily existing vehicle fencing in New Mexico (the "New Mexico border wall replacement project")—does not jeopardize the continued existence of impacted threatened or endangered species, or result in the destruction or adverse modification of their critical habitat, and is further in violation of Section 9(a)(1)(B) of the ESA for the likely "take" of threatened or endangered species caused by construction and related activities undertaken as part of the New Mexico border wall replacement project.

Environmental Groups are environmental conservation organizations dedicated to protecting native wildlife species and their habitats. The Center for Biological Diversity ("the Center") is a non-profit, public interest environmental organization headquartered in Tucson, Arizona, with numerous offices across the United States, including New Mexico and Washington, D.C., dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center

[1] 16 U.S.C. § 1540(g)
[2] 16 U.S.C. § 1531 *et seq*.
[3] 16 U.S.C. § 1536(a)(2)

has more than 1.3 million members and on-line activists. The Southwest Environmental Center ("SEC") is a non-profit, member-supported, grassroots conservation organization based in Las Cruces, New Mexico. SEC is dedicated to protecting and restoring native wildlife and their habitats in the Southwestern borderlands, through advocacy, education and on-the-ground projects. Defenders of Wildlife ("Defenders") is a nonprofit organization with hundreds of thousands of members across the nation, including nearly 3,500 members in New Mexico. Defenders' mission is to preserve wildlife and emphasize appreciation and protection for all species in their ecological role through advocacy, litigation, and other efforts. Finally, the Animal Legal Defense Fund ("ALDF") is a nonprofit 501(c)(3) organization with more than 200,000 members and supporters, approximately 1,100 of whom live in New Mexico, and nearly 200 of whom live in El Paso County, Texas, near the New Mexico border wall replacement project. ALDF represents its members' interests by working to protect the lives of animals, including wildlife, through the legal system. ALDF is headquartered on Cotati, California, with regional offices in Los Angeles and Portland, Oregon.

Collectively, Environmental Groups have long advocated for better incorporation of environmental considerations into DHS border security planning and decision-making. Our ESA advocacy has resulted in the protection of numerous threatened and endangered species within the borderlands region and the designation of hundreds of thousands of acres of their critical habitat.

The threshold for triggering an agency's duties under the ESA is low; if an agency takes an action that may have environmental impacts or that "may affect" a listed species or critical habitat, then ESA section 7 consultation is required.[4] DHS and CBP, however, have provided no evidence to the public or to the Center that it has initiated or completed the required environmental analyses under either of these laws with respect to the New Mexico border wall replacement project.

I. LEGAL BACKGROUND

A. The Endangered Species Act

The ESA is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."[5] Its fundamental purposes are "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such endangered species and threatened species . . . ."[6] To achieve these objectives, the ESA directs the FWS to determine which species of plants and animals are "threatened" and "endangered" and place them on the endangered species list.[7] An "endangered" or "threatened" species is one "in danger of extinction throughout all or a significant portion of its range," or "likely to become endangered in the near future throughout all or a significant portion of its range," respectively.[8]

[4] 50 C.F.R. § 402.14(a).
[5] *TVA v. Hill*, 437 U.S. 180 (1978).
[6] 16 U.S.C. § 1531(b).
[7] *Id*. § 1533.
[8] *Id*. § 1532(6), (20).

Once a species is listed, the ESA provides a variety of procedural and substantive protections to ensure not only the species' continued survival, but its ultimate recovery. One central protection, Section 7(a)(2), mandates that all federal agencies avoid actions that: (1) jeopardize listed species; or (2) destroy or adversely modify designated critical habitat.[9] Federal agency actions include those projects or programs "authorized, funded, or carried out by such agency."[10] To comply with these Section 7(a)(2) safeguards, the federal agency taking action and FWS take part in a cooperative analysis of potential impacts to listed species and their designated critical habitat known as a consultation process.

First, the agency must obtain "a list of any listed or proposed species or designated or proposed critical habitat that may be present in the action area" from FWS.[11] If a species or critical habitat may be present, the agency must prepare a biological assessment to determine whether the proposed action "may affect" or "is not likely to adversely affect" any listed species or critical habitat.[12]

Federal agencies must initiate formal consultation with FWS when their actions "may affect" a listed species or designated critical habitat.[13] The standard for consultation is low: "[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement."[14]Effects that must be considered as part of this inquiry include "direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline."[15] Indirect effects are "those that are caused by the proposed action and are later in time, but still are reasonably certain to occur."[16]

Through the formal consultation process, FWS prepares a "biological opinion" as to whether the action jeopardizes the species or destroys or adversely modifies critical habitat and, if so, suggests "reasonable and prudent alternatives."[17] During the consultation process, both agencies must "use the best scientific and commercial data available."[18]

In addition to duties under Section 7(a)(2) of the ESA, federal agencies are required under Section 7(a)(1) to "utilize their authority for the conservation [i.e. recovery] of endangered species and

[9] *Id*. § 1536(a)(2).
[10] 50 C.F.R. § 402.02.
[11] 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12(c)–(d).
[12] 16 U.S.C. § 1536(c)(1); 50 C.F.R. §§ 402.12(f), 402.14(a), (b)(1).
[13] 50 C.F.R. § 402.14(a).
[14] *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 496 (9th Cir. 2011) (*quoting* 51 Fed. Reg. 19,949).
[15] 50 C.F.R. § 402.02.
[16] *Id*.
[17] 16 U.S.C. § 1536(b)(3)(A).
[18] *Id*. § 1536(a)(2); 50 CFR § 402.14(d).

threatened species."[19] As stated by the Ninth Circuit, agencies have an "affirmative obligation[] to conserve under section 7(a)(1)."[20]

Finally, Section 9 of the ESA prohibits the "taking" of any endangered species.[21] The ESA defines the term "take" broadly to include "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."[22] "Take" includes indirect as well as direct harm and need not be purposeful.[23] The ESA provides a limited exception to the prohibition on take under Section 9 for taking that is in compliance with an incidental take statement ("ITS").[24] Any take of a listed species that is not in compliance with an ITS violates Section 9.[25]

II. FACTUAL BACKGROUND

A. The New Mexico Border Wall Replacement Project

On January 25, 2017, President Donald J. Trump issued an Executive Order No. 13767 on "Border Security and Immigration Enforcement Improvements" ("the Border Security E.O."), directing DHS to construct a "secure, contiguous, and impassable physical barrier" along the entirety of the nearly 2,000 mile long U.S.-Mexico border, in order "to prevent illegal immigration, drug and human trafficking, and acts of terrorism." The Border Security E.O. defines "wall" to mean "a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier." (Sec. 3(e)).

On January 22, 2018, DHS Secretary Kirstjen Nielsen published a waiver determination in the Federal Register directing DHS to take "immediate action to replace existing vehicle barrier and pedestrian fencing with bollard wall" within a specific project area in New Mexico state, described as follows: "an approximately twenty mile segment of the border that starts at the Santa Teresa Land Port of Entry and extends westward" to Border Monument 10 in DHS's El Paso Sector. Determination Pursuant to Section 102 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), As Amended, 83 Fed. Reg. 3,012 (January 22, 2018) ("January 2018 Waiver"). For purposes of this letter, the proposed vehicle replacement fencing construction in New Mexico will be called the "New Mexico border wall replacement project." The January 2018 Waiver purports to waive the application of the ESA, NEPA, as well as 23 additional federal statutes, to the New Mexico border wall replacement project, pursuant to section 102(c) of IIRIRA, Pub. L. 104-208, Div. C, 110 Stat. 3009-546, codified at 8 U.S.C. § 1103 note.

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[19] 16 U.S.C. § 1536(a)(1); *see also* 16 U.S.C. § 1531(c)(1) ("It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species.").
[20] *Pyramid Lake Paiute Tribe v. U.S. Dep't of Navy*, 898 F.2d 1410, 1416-17 (9th Cir. 1990)
[21] 16 U.S.C. §1538(a).
[22] *Id*. § 1532(19) (emphasis added).
[23] *See Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or*., 515 U.S. 687, 704 (1995).
[24] *See* 16 U.S.C. § 1536 (o)(2).
[25] *See Arizona Cattle Growers' Ass'n v. U.S. Fish & Wildlife, Bureau of Land Mgmt*., 273 F.3d 1229, 1239 (9th Cir. 2001).

B. Potential Impacts on Threatened and Endangered Species

The New Mexico border wall replacement project may impact several endangered and threatened species, as well as designated critical habitat, listed pursuant to the ESA. The New Mexico border wall replacement project is located in the Chihuahuan desert, which is considered to be one of the most biologically diverse and sensitive deserts in the world due to the abundance and endemism of species present. The proposed project area is within or in close proximity to populations of several endangered, threatened, and candidate species under the ESA, including the Yellow-billed Cuckoo, Southwestern willow flycatcher, Least tern, Mexican spotted owl, and Sneed pincushion cactus.[26] Additionally, the Northern Aplomado falcon and Mexican gray wolf in New Mexico are each federally designated as experimental non-essential populations under section 10(j) of the ESA.

Species may be impacted in numerous ways. To provide a few examples, the construction of replacement fencing for the currently existing vehicle barriers will likely affect the species whose populations reside or whose critical habitats are located near and at the site of construction. In addition, though certain imperiled species may not be affected directly by the construction of the wall itself, they may be negatively impacted by associated infrastructure, such as roads, structures, and traffic associated with enforcement and building the wall.

Further, the proposed bollard-style wall will likely impede the migration of species between New Mexico and Mexico. As Secretary Nielsen alleges that the proposed replacement wall will serve to "deter and prevent illegal crossings," the bollard-style wall typically consists of tall vertical posts that are spaced closely together, in contrast to the currently existing vehicle barriers which consist of low vertical posts placed several feet apart. The bollard-style wall increases the barriers' impermeability, serving to obstruct the natural migration of species. The agencies must consult with the FWS over these and other adverse impacts of the project on listed species.

Moreover, the Mexico border wall replacement project may also impact endangered and threatened species in adjacent areas to the proposed project site. Specifically, the project may result in the indirect effect of moving whatever existing traffic and crossings occurring in the proposed project area to adjacent areas that currently have less border construction and patrolling.[27] Increased traffic in more remote areas may necessarily affect the endangered or imperiled species and critical habitats in such adjacent areas.

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[26] These species have been identified utilizing a database maintained by the U.S. Fish and Wildlife Service identifying protected species by county and the New Mexico listed species database identifying both ESA-listed species and New Mexico State-listed species maintained by the New Mexico Department of Fish and Game.

[27] See. e.g., U.S. Government Accountability Office, "Agencies need to better coordinate their strategies and operations on Federal Lands" (Jan. 4, 2004), https://www.gao.gov/products/GAO-04-590 ("Rising illegal activity on these federal lands results from the Border Patrol's strategy to deter illegal entry by concentrating resources in populated areas--thus shifting illegal traffic to more remote federal lands, where Border Patrol has placed fewer resources.")

III. DHS AND CBP VIOLATIONS OF THE ENDANGERED SPECIES ACT

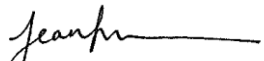
Consultation under ESA Section 7 is required whenever a discretionary agency action "may affect" any listed species or its critical habitat.[28] ESA implementing regulations define "action" as "all activities or programs of any kind authorized, funded, or carried out . . . by Federal agencies."[29] As detailed in this letter, the San Diego border wall replacement project will potentially directly, indirectly, and cumulatively impact several threatened and endangered species. Despite this fact, DHS and CBP have apparently failed to initiate or complete ESA section 7 (a)(2) consultation with FWS in order to ensure that the border wall replacement project does not jeopardize the continued existence of any listed species or adversely modify or destroy the designated critical habitat for any of those species. In addition, DHS and CBP have failed to take any affirmative action to conserve the threatened and endangered species that may be impacted by the project. Accordingly, DHS and CBP are also violating Section 7 (a)(1) of the ESA.

Finally, by failing to conduct surveys or other investigations into endangered or threatened species presence or otherwise taking measures to protect these species from harm, DHS and CBP are engaged in the unlawful take of listed species, in violation of section 9 of the ESA.

IV. CONCLUSION

Thank you for your attention to the allegations contained in this notice letter. Should DHS and CBP fail to remedy the ESA violations of law within 60 days, Environmental Groups intend to pursue this matter in federal District Court. Please contact Jean Su at (202) 849-8399 should you wish to discuss this notice letter in further detail.

Sincerely,



Jean Su, Associate Conservation Director and Staff Attorney
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1411 K Street NW, Suite 1300
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/s/ Kevin Bixby
Kevin Bixby, Executive Director
SOUTHWEST ENVIRONMENTAL CENTER
275 North Main Street
Las Cruces, NM 88001
Telephone: (575) 522-5552
kevin@wildmesquite.org

[28] 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).
[29] 50 C.F.R. § 402.02 (emphasis added).

/s/ Jason Rylander
Jason Rylander, Senior Staff Attorney
DEFENDERS OF WILDLIFE
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jrylander@defenders.org

/s/ Anthony T. Eliseuson
Anthony T. Eliseuson, Senior Staff Attorney
ANIMAL LEGAL DEFENSE FUND
150 South Wacker Drive, Suite 2400
Chicago, Illinois 60606
Telephone: (707) 795-2533
aeliseuson@aldf.org

cc: DHS Office of General Counsel
245 Murray Lane, SW
Mail Stop 0475
U.S. Department of Homeland Security
Washington, D.C. 20528

CBP Office of General Counsel
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

From:	Wainman, Barbara
To:	Greg Sheehan
Subject:	Fwd: Statement on the Omnibus and Santa Ana NWR
Date:	Friday, March 23, 2018 7:30:35 AM

---

this was not in any of Chris Nolin's information because it is in the CBP section not our section but it is Bill language so no wiggle room

Barbara W. Wainman
Assistant Director, External Affairs
US Fish and Wildlife Service
(202) 208-5256 (office)
(571) 471-4159 (cell)

---------- Forwarded message ----------
From: **Devin Helfrich** <devin_helfrich@fws.gov>
Date: Fri, Mar 23, 2018 at 10:12 AM
Subject: Fwd: Statement on the Omnibus and Santa Ana NWR
To: Barbara Wainman <barbara_wainman@fws.gov>

Devin

Sent from my cell phone

Begin forwarded message:

From: "Helfrich, Devin" <devin_helfrich@fws.gov>
Date: March 23, 2018 at 9:12:06 AM EDT
To: "Gray, Lesli" <lesli_gray@fws.gov>
Cc: Alyssa Hausman <alyssa_hausman@fws.gov>, "Martin Kodis (Marty)" <martin_kodis@fws.gov>, Angela Gustavson <angela_gustavson@fws.gov>
Subject: Re: Statement on the Omnibus and Santa Ana NWR

Hi Lesli, that sounds correct. FYI - I will be on the Hill for most of the day and out of pocket.

To add the conversation, here is the relevant omnibus language:

Bill

Sec. 230 (p.674)
...
(c) None of the funds provided in this or any other Act shall be obligated for construction of a border barrier in the Santa Ana National Wildlife Refuge.

JES

Sec. 230. A new provision is included designating the uses of certain amounts under "U.S. Customs and Border Protection - Procurement, Construction, and Improvements", limiting
the use of certain amounts under such account for previously deployed fencing designs, and prohibiting the use of funds to construct a border barrier in the Santa Ana National Wildlife Refuge.

Devin Helfrich
Congressional Legislative Affairs Specialist
U.S. Fish and Wildlife Service
Office Direct: (703) 358-2130
Mobile: (202) 365-5971

On Thu, Mar 22, 2018 at 9:14 PM, Gray, Lesli <lesli_gray@fws.gov> wrote:

> Hi Alyssa and Devin, so it sounds like some of our folks have received calls re the Omnibus and the Santa Ana NWR - https://www.cnn.com/2018/03/22/politics/border-wall-omnibus-santa-ana-wildlife-refuge/index.html.
>
> We have drafted a few possible short statements that could be used to respond to requests but I understand that any statements regarding the Omnibus (and this particular provision) would need to be worked out at probably a much higher level.
>
> Lesli
>
> --
> Lesli A. Gray
> U.S. Fish and Wildlife Service
> Public Affairs Specialist
> 972-439-4542
> lesli_gray@fws.gov
> www.fws.gov/southwest

From:	Cynthia Martinez
To:	Stephen Guertin
Subject:	Language
Date:	Tuesday, April 17, 2018 1:01:46 PM

Looks like the language is in the “Consolidated Appropriations Act, 2018”

Sec. 230 (p.674)
...
(c) None of the funds provided in this or any other Act shall be obligated for construction of a border barrier in the Santa Ana National Wildlife Refuge.

Cynthia

From:	Gustavson, Angela
To:	Angela Gustavson
Subject:	Congressional Affairs Update
Date:	Friday, July 13, 2018 2:24:32 PM
Attachments:	7.13.18.docx

Good afternoon,

The Congressional Affairs Update for this week is attached.

Last week, Senator Barrasso released a draft ESA reform bill that will be the subject of a hearing next week on July 17. In addition, yesterday, the House Western Caucus introduced a package of ESA reform bills.

Next week, the Interior appropriations bill for FY 2019 is expected to be considered on the House floor. A number of amendments of interest to the Service have been submitted for consideration by the Rules Committee at a meeting scheduled for July 16.

Next week there are several hearings of interest to the Service, including on the ESA, waterfowl hunting, and government reorganization efforts.

Have a good weekend,

Angela

Angela Gustavson
Deputy Chief
Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service
Office: 703-358-2253
Mobile: 202-909-5105
angela_gustavson@fws.gov

CONGRESSIONAL AFFAIRS UPDATE

Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

July 13, 2018

2018 Congressional Recess Schedule

Senate	***Holidays & Special Days***	***House***
State Work Period Aug. 6-Aug. 10	**Labor Day** Sep. 3	**District Work Period** July 30-Sep. 3
Sep. 10-Sep. 11	**Rosh Hashanah**	Sep. 10-Sep. 11
Sep. 19	**Yom Kippur**	**District Work Period** Sep. 17-Sep. 21
Oct. 8	**Columbus Day**	Oct. 8
State Work Period Oct. 29-Nov. 12	**Veterans Day** Nov. 12 (observed)	**District Work Period** Oct. 15-Nov. 9
State Work Period Nov. 19-Nov. 23	**Thanksgiving Day** Nov. 22	**District Work Period** Nov. 19-Nov. 23
	Targeted Adjournment Date Dec. 14	

UPDATES ON LEGISLATION OF INTEREST

Senate Releases ESA Reform Legislation

On Monday, July 2, the Senate Committee on Environment and Public Works **Chairman John Barrasso (R-WY)** released draft legislation to reform the Endangered Species Act. The Endangered Species Act Amendments of 2018 discussion draft, which was developed in consultation with the Western Governors Association, would provide the states with a greater role in implementation of the ESA through recovery teams, listing proposals, and candidate conservation, among other things. The draft bill will be the subject of a legislative hearing on July 17.

For more information, please visit: https://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=D10FBBBD-8886-4E0F-950B-A24DE5726CE4

House Western Caucus Introduces Package of ESA Reform Legislation

On Thursday, June 12, the House Western Caucus introduced nine bills as a part of a legislative package to reform the Endangered Species Act. The package includes legislation that would, among other things, authorize the Secretary of the Interior to delist species upon receipt of information demonstrating the species is recovered; require consultation with State agencies regarding listing determinations; establish voluntary conservation incentive programs; reform the petition process; authorize cooperative agreements between the Secretary of the Interior and State agencies to manage listed species; codify certain requirements for Safe Harbor Agreements, Candidate Conservation Agreements with Assurances, and Habitat Conservation

Plans; require consideration of all conservation actions underway; limit critical habitat designations in limited water storage areas; and require transparency and public disclosure of data used in listing determinations.

For more information, please visit: https://westerncaucus.house.gov/issues/issue/?IssueID=14890

Interior Appropriations Bill for FY 2019 to be Considered on House Floor

During the week of July 16, the House of Representatives is expected to take up H.R. 6147, the Interior, Environment, Financial Services, and General Government Appropriations Act of 2019. The bill funds the Service at $1.6 billion and increases funding for the State and Tribal Wildlife Grants and the North American Wetlands Conservation Act, among other programs. On Monday, July 16, the House Committee on Rules will consider numerous amendments that have been submitted to the Committee, including 36 of relevance to the Service. Some of these amendments include:

- #3: Smith (R-MO-8), Gianforte (R-MT-AL), which prevents the payment of attorney's fees as part of any settlement the Federal Government enters into under the Clean Air Act, the Clean Water Act, and the Endangered Species Act.
- #28: Beyer (D-VA-8), which strips all ESA riders from the bill.
- #35: Abraham (R-LA-5), Westerman (R-AR-4), Crawford (R-AR-1), which prevents the enforcement of limitations or prohibitions on the use of GMO seed in commercial agricultural operations conducted on National Wildlife Refuges.
- #68**:** Lamborn (R-CO-5), which prohibits the use of funds to implement or enforce the threatened species or endangered species listing of any plant or wildlife that has not undergone a review as required by section 4(c)(2) of the Endangered Species Act of 1973.
- #84**:** Soto (D-FL-9), which increases funding for the National Wildlife Refuge System by $500,000 for the Wildlife and Habitat Management of invasive species.
- #95**:** Grijalva (D-AZ-4), which prohibits funds for the construction of a border wall in the Santa Ana National Wildlife Refuge.
- #100**:** Grijalva (D-AZ-4), which prohibits funds for trophy hunting permits authorizing importation from any country of an elephant trophy or lion trophy from Zimbabwe, Zambia, or Tanzania.
- #127**:** Smith (R-MO-8), which prevents funds from being used to designate critical habitat on private land under the Endangered Species Act.

The bill will likely be considered on the House floor later in the week.

For a list of all submitted amendments to the Rules Committee, please visit:
https://rules.house.gov/bill/115/hr-6147
For the full bill text, please visit:
https://www.gpo.gov/fdsys/pkg/BILLS-115hr6147rh/pdf/BILLS-115hr6147rh.pdf
For the Report on H.R. 6147, please visit:
https://www.gpo.gov/fdsys/pkg/CRPT-115hrpt765/pdf/CRPT-115hrpt765.pdf

HEARINGS AND MARKUPS OF INTEREST

House Committee Marks Up Cormorant Depredation Legislation

On Wednesday, July 11, the House Committee on Natural Resources held a markup of pending bills referred to the Committee, one of which is of interest to the Service. H.R. 6302, sponsored by **Representative Jack Bergman (R-MI-1)**, reinstates both cormorant Depredation Orders, which allow the take of cormorants without FWS permits, until FWS finalizes new cormorant-related regulations. The bill was approved by the Committee by a vote of 19-13 with a minor technical amendment.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=405252

House Subcommittee Holds Legislative Hearing on Administration of Water Facilities

On Wednesday, July 11, the House Natural Resources Subcommittee on Water, Power and Oceans held a legislative hearing on several bills related to the administration of water facilities. Of interest to the Service, H.R. 5556, the Environmental Compliance Cost Transparency Act of 2018, sponsored by **Representative Paul Gosar (R-AZ-4)**, would require the four power marketing administrations to report in ratepayers' bills the cost of fish and wildlife compliance measures. Members of the Subcommittee spoke to several issues of interest to the Service, including:

- **Rep. Gosar** stated that fish and wildlife compliance costs are some of the highest variable costs for hydropower, and discussed his bill as providing the transparency necessary to keep hydropower viable.
- **Representative Jimmy Gomez (D-CA-34)** suggested that to increase transparency, H.R. 5556 should include other variable costs, including those related to irrigation and transmission. He also discussed the benefits of environmental conservation and the services that healthy ecosystems provide.
- **Representative Doug LaMalfa (R-CA-1)** discussed the challenges of balancing the water needs for power and irrigation in California with the requirements for fish and wildlife compliance.
- **Representative Don Beyer (D-VA-8)** asked how often consumers requested the information required by H.R. 5556, and questioned potential bias in calculating compliance costs.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=405249

House Subcommittee Considers the Role of Grazing on Federal Lands

On Thursday, July 12, the House Natural Resources Subcommittee on Federal Lands held an oversight hearing titled "The Essential Role of Livestock Grazing on Federal Lands and Its Importance to Rural America." Members of the Subcommittee spoke to several issues of interest to the Service, including:

- **Chairman Tom McClintock (R-CA-4)** discussed how litigation, and fear thereof, has impacted grazing on public lands and expressed the subcommittee's goal to restore responsible grazing to those lands.

- **Ranking Member Niki Tsongas (D-MA-3)** stated that the Committee should be focusing on giving federal agencies more tools for grazing management, citing that costs of management greatly outweigh the money. She expressed support for H.R. 3624, the Rural Economic Vitalization Act, which would allow ranchers to be paid by third parties to voluntarily retire grazing permits.
- **Full Committee Chairman Rob Bishop (R-UT-1)**, and **Representatives Greg Gianforte (R-MT-AL)** and **Scott Tipton (R-CO-3)** asked how grazing benefits sage grouse and sagebrush ecosystems by reducing risk of fire and invasives. **Representative Glenn Thompson (R-PA-5)** spoke directly to sage grouse and the need to address non-grazing threats to sage grouse, such as predation by ravens.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=405255

UPCOMING HEARINGS OF INTEREST

Senate Committee to Examine Amendments to the Endangered Species Act
On Tuesday, July 17, the Senate Committee on Environment and Public Works will hold a legislative hearing on a discussion draft of S. ____, the Endangered Species Act Amendments of 2018. Among other things, the proposal provides states with increased authority in writing species recovery goals, habitat objectives and other criteria for delisting or downlisting at-risk animals and plants under the Endangered Species Act. The Department of the Interior has not been invited to testify. The hearing is scheduled for 9:45 a.m. in 406 Dirksen Senate Office Building.

For more information, please visit:
https://www.epw.senate.gov/public/index.cfm/hearings?ID=69B85B0B-EFAB-487F-8BF6-92D668D9037A

House Subcommittee to Discuss Waterfowl Hunting Legislation
On Tuesday, July 17, the House Natural Resources Subcommittee on Federal Lands will hold a legislative hearing on numerous bills referred to the Committee, including one of interest to the Service. H.R. 6013, sponsored by **Chairman Rob Bishop (R-UT-1)**, opens the duck hunting season a week early for veterans and youth and prohibits the reduction in hunting season length or bag limits for ducks from the 2017-2018 hunting season. The Service will submit a Statement for the Record on the legislation. The hearing is scheduled for 10:00 a.m. in 1324 Longworth House Office Building.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=405309

Senate Committee to Examine Government Reorganization Proposal
On Wednesday, July 18, the Senate Committee on Homeland Security and Governmental Affairs will hold a full committee hearing to discuss the Administration's plan to reorganize the federal government. Margaret Weichert, Deputy Director for Management, will testify on behalf of the Office of Management and Budget. The hearing is scheduled for 10:00 a.m. in SD-342.

For more information, please visit:
https://www.hsgac.senate.gov/hearings/reviewing-the-administrations-government-reorganization-proposal

House Subcommittee to Discuss Preparations for 2018 Hurricane Season
On Wednesday, July 18, the House Transportation Subcommittee on Economic Development, Public Buildings, and Emergency Management will hold an oversight hearing to discuss recovery from the 2017 hurricane season and preparations for the 2018 season. The hearing is scheduled for 10:00 a.m. in 2167 Rayburn House Office Building.

For more information, please visit:
https://transportation.house.gov/calendar/eventsingle.aspx?EventID=402653

Senate Committee to Consider DOI Reorganization Proposal
On Thursday, July 19, the Senate Committee on Energy and Natural Resources will hold an oversight hearing to examine the reorganization and modernization proposals for the Department of the Interior and the Department of Energy. Susan Combs, Acting Assistant Secretary for Fish, Wildlife and Parks, will testify on behalf of the Department of the Interior. The hearing is scheduled for 10:00 a.m. in 366 Dirksen Senate Office Building.

For more information, please visit:
https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=F549B937-C758-4DD7-B41E-6BE83068C050

INTRODUCED LEGISLATION OF INTEREST

H.R.6364 — To amend the Endangered Species Act of 1973 to increase State and local involvement in management plans.
Sponsor: Rep. Young, Don [R-AK-At Large] (Introduced 07/12/2018) Cosponsors: (18)
Committees: House - Natural Resources
Latest Action: House - 07/12/2018 Referred to the House Committee on Natural Resources.

H.R.6362 — To establish an improved regulatory process to prevent the introduction and establishment in the United States of injurious wildlife.
Sponsor: Rep. Stefanik, Elise M. [R-NY-21] (Introduced 07/12/2018) Cosponsors: (0)
Committees: House - Natural Resources, Judiciary, Ways and Means, Budget
Latest Action: House - 07/12/2018 Referred to the Committee on Natural Resources, and in addition to the Committees on the Judiciary, Ways and Means, and the Budget, 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.

H.R.6360 — To amend the Endangered Species Act of 1973 to provide for greater certainty and improved planning for incidental take permit holders.
Sponsor: Rep. Norman, Ralph [R-SC-5] (Introduced 07/12/2018) Cosponsors: (17)
Committees: House - Natural Resources

Latest Action: House - 07/12/2018 Referred to the House Committee on Natural Resources.

H.R.6356 — To amend the Endangered Species Act of 1973 to provide for improved precision in the listing, delisting, and downlisting of endangered species and potentially endangered species.
Sponsor: Rep. Biggs, Andy [R-AZ-5] (Introduced 07/12/2018) Cosponsors: (23)
Committees: House - Natural Resources
Latest Action: House - 07/12/2018 Referred to the House Committee on Natural Resources.

H.R.6355 — To amend the Endangered Species Act of 1973 to define petition backlogs and provide expedited means for discharging petitions during such a backlog.
Sponsor: Rep. Westerman, Bruce [R-AR-4] (Introduced 07/12/2018) Cosponsors: (17)
Committees: House - Natural Resources
Latest Action: House - 07/12/2018 Referred to the House Committee on Natural Resources.

H.R.6354 — STORAGE Act of 2018
Sponsor: Rep. Gosar, Paul A. [R-AZ-4] (Introduced 07/12/2018) Cosponsors: (15)
Committees: House - Natural Resources
Latest Action: House - 07/12/2018 Referred to the House Committee on Natural Resources.

H.R.6346 — To amend the Endangered Species Act of 1973 to provide for consideration of the totality of conservation measures in determining the impact of proposed Federal agency action.
Sponsor: Rep. Johnson, Mike [R-LA-4] (Introduced 07/12/2018) Cosponsors: (24)
Committees: House - Natural Resources
Latest Action: House - 07/12/2018 Referred to the House Committee on Natural Resources.

H.R.6345 — To provide for greater county and State consultation with regard to petitions under the Endangered Species Act of 1973, and for other purposes.
Sponsor: Rep. Pearce, Stevan [R-NM-2] (Introduced 07/12/2018) Cosponsors: (23)
Committees: House - Natural Resources
Latest Action: House - 07/12/2018 Referred to the House Committee on Natural Resources.

H.R.6344 — To amend the Endangered Species Act of 1973 to encourage voluntary conservation efforts.
Sponsor: Rep. Tipton, Scott R. [R-CO-3] (Introduced 07/12/2018) Cosponsors: (15)
Committees: House - Natural Resources
Latest Action: House - 07/12/2018 Referred to the House Committee on Natural Resources.

H.R.6336 — Fair Access for Farmers and Ranchers Act of 2018
Sponsor: Rep. Fudge, Marcia L. [D-OH-11] (Introduced 07/11/2018) Cosponsors: (1)
Committees: House - Agriculture
Latest Action: House - 07/11/2018 Referred to the House Committee on Agriculture.

S.3196 — A bill to defend economic livelihoods and threatened animals in the greater Okavango River Basin, and for other purposes.
Sponsor: Sen. Portman, Rob [R-OH] (Introduced 07/11/2018) Cosponsors: (4)
Committees: Senate - Foreign Relations
Latest Action: Senate - 07/11/2018 Read twice and referred to the Committee on Foreign Relations.

S.3195 — A bill to encourage greater community accountability of law enforcement agencies, and for other purposes.
Sponsor: Sen. Cardin, Benjamin L. [D-MD] (Introduced 07/11/2018) Cosponsors: (0)
Committees: Senate - Judiciary
Latest Action: Senate - 07/11/2018 Read twice and referred to the Committee on the Judiciary.

S.3193 — A bill to limit the establishment or extension of national monuments in the State of Utah.
Sponsor: Sen. Lee, Mike [R-UT] (Introduced 07/11/2018) Cosponsors: (0)
Committees: Senate - Energy and Natural Resources
Latest Action: Senate - 07/11/2018 Read twice and referred to the Committee on Energy and Natural Resources.

S.Res.569 — A resolution recognizing the importance of public park and recreation facilities and activities and providing for the designation of the month of July 2018 as "Park and Recreation Month".
Sponsor: Sen. Wyden, Ron [D-OR] (Introduced 07/09/2018) Cosponsors: (8)
Committees: Senate - Judiciary
Latest Action: Senate - 07/09/2018 Referred to the Committee on the Judiciary.

H.R.6307 — Finger Lakes National Heritage Area Study Act
Sponsor: Rep. Reed, Tom [R-NY-23] (Introduced 07/03/2018) Cosponsors: (6)
Committees: House - Natural Resources
Latest Action: House - 07/03/2018 Referred to the House Committee on Natural Resources.

H.R.6302 — To enact as law certain regulations relating to the taking of double-crested cormorants.
Sponsor: Rep. Bergman, Jack [R-MI-1] (Introduced 07/03/2018) Cosponsors: (0)
Committees: House - Natural Resources
Latest Action: House - 07/11/2018 Ordered to be Reported (Amended) by the Yeas and Nays: 19 - 13.

H.R.6300 — National Ocean Policy Act of 2018
Sponsor: Rep. Panetta, Jimmy [D-CA-20] (Introduced 06/29/2018) Cosponsors: (0)
Committees: House - Natural Resources
Latest Action: House - 06/29/2018 Referred to the House Committee on Natural Resources.

H.R.6299 — To modify the process of the Secretary of the Interior for examining certain mining claims on Federal lands in Storey County, Nevada, to facilitate certain pinyon-juniper-related projects in Lincoln County, Nevada, to modify the boundaries of certain wilderness areas in the State of Nevada, to fully implement the White Pine County Conservation, Recreation, and Development Act, and for other purposes.
Sponsor: Rep. Amodei, Mark E. [R-NV-2] (Introduced 06/29/2018) Cosponsors: (0)
Committees: House - Natural Resources, Oversight and Government Reform
Latest Action: House - 06/29/2018 Referred to the Committee on Natural Resources, and in addition to the Committee on Oversight and Government Reform, 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.

From:	Gustavson, Angela
To:	Angela Gustavson
Subject:	Congressional Affairs Update
Date:	Friday, September 7, 2018 1:02:06 PM
Attachments:	9.7.18.docx

Good afternoon,

The Congressional Affairs Update for this week is attached.

This week, the House returned from a five-week recess and resumed normal business and the Senate continues to be in session.

There were a couple of bills of interest to the Service that were recently introduced or marked up this week, as well as a recent hearing on DOI reorganization.

Have a good weekend,

Angela

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CONGRESSIONAL AFFAIRS UPDATE

Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

September 7, 2018

2018 Congressional Recess Schedule

Senate	*Holidays & Special Days*	*House*
Sep. 10-Sep. 11	**Rosh Hashanah**	Sep. 10-Sep. 11
Sep. 19	**Yom Kippur**	**District Work Period** Sep. 17-Sep. 21
Oct. 8	**Columbus Day**	Oct. 8
State Work Period Oct. 29-Nov. 12	**Veterans Day** Nov. 12 (observed)	**District Work Period** Oct. 15-Nov. 9
State Work Period Nov. 19-Nov. 23	**Thanksgiving Day** Nov. 22	**District Work Period** Nov. 19-Nov. 23
	Targeted Adjournment Date Dec. 14	

UPDATES ON LEGISLATION OF INTEREST

House Introduces National Fish Habitat Conservation Through Partnerships Act
On August 7, **Representative Rob Wittman (R-VA-1)** introduced H.R. 6660, the National Fish Habitat Conservation Through Partnerships Act. The bill codifies the existing National Fish Habitat Partnership (NFHP) program. NFHP is a voluntary, non-regulatory, fish habitat conservation program, with partnerships comprised of federal, state, and local agencies, conservation and sportsmen's organizations, private landowners, and the business sector. The Service's Fish and Aquatic Conservation program implements the National Fish Habitat Action Plan by providing extensive technical assistance and allocating congressionally-appropriated funding to 18 eligible fish habitat partnerships through a competitive and results-driven process for partnership projects. S. 1514, HELP for Wildlife Act, also includes the National Fish Habitat Conservation through Partnerships Act within Section 12 of the bill.

Congress Back in Session
On Tuesday, September 4, the House of Representatives returned from a five-week recess and resumed normal business. The Senate continues to be in session.

HEARINGS AND MARKUPS OF INTEREST

House Committee Holds Roundtable on Interior Reorganization
On Tuesday, August 28, the House Committee on Natural Resources and Weber County Commission Chambers held a roundtable discussion titled "How Will the Department of Interior Reorganization Benefit Utahns?" Susan Combs, acting assistant secretary for policy,

management and budget, participated in the discussion on the behalf of the Department of the Interior. The discussion was the first of several hearings that the committee will hold in Utah on the reorganization, according to **Chairman Rob Bishop (R-UT-1)**, the only Committee member in attendance. During the roundtable, Acting Assistant Secretary Combs discussed the goal of improving the Department's interbureau coordination, with three focus areas - permitting, NEPA review, and recreation. She also discussed the recently updated map, which organizes the Department's bureaus into 12 integrated regions, and plans to launch a Senior Executive Service team into the proposed regions.

Senate Committee Marks Up Legislation Addressing Alaskan Handicrafts Under MMPA

On Wednesday, September 5, the Senate Commerce, Science and Transportation Committee marked up several bills, including S.1965, the Allowing Alaska IVORY Act, sponsored by **Senator Dan Sullivan (R-AK)**. The bill amends the MMPA to prevent states from implementing bans on legally carved walrus ivory and whalebone products, as well as mammoth ivory products. An amendment in the nature of a substitute was offered by **Sen. Sullivan** and adopted, which made minor technical corrections to the bill. The bill passed out of Committee by voice vote.

For more information, visit:
https://www.commerce.senate.gov/public/index.cfm/hearings?ID=C416A24F-6D55-4F46-82FA-504DC5BDEB13

House Committee Marks Up Legislation Addressing Waterfowl Hunting

On Wednesday, September 5, the House Natural Resources Committee marked up several bills, including H.R. 6013, the Migratory Bird Framework and Hunting Opportunities for Veterans Act, sponsored by **Chairman Rob Bishop (R-UT-1)**. The bill amends the Migratory Bird Treaty Act to establish special hunting seasons for youths, veterans and active military personnel. **Chairman Bishop** offered an amendment, approved via voice vote, allowing the States to establish an earlier closing date for duck season, while also providing States the choice to offer a special 2-day hunt for youths, veterans, and active military personnel. The amendment also clarifies that any special hunting days are to be in addition to the regular season, and removes the provision establishing a minimum season length and bag limits. Chairman Bishop agreed to work with **Representative Don Beyer (D-VA-8)** on minor changes to the bill, rectifying issues within the bill related to the Secretary of the Interior's final authority. **Representative Garrett Graves (R-LA-6)** withdrew his amendment; but, **Chairman Bishop** also agreed to work with him on the issue his amendment flagged. The bill passed by voice vote, as amended, without opposition.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=405537

House Committee Reviews the Federal Permitting Process

On Thursday, September 6, the House Oversight and Government Affairs Subcommittees on Intergovernmental Affairs and Interior, Energy and Environment held an oversight hearing to discuss a path forward for the federal permitting process. Members spoke to many issues of interest to the Service, including:

- **Representative Greg Gianforte (R-MT-AL)**, Chairman of the Subcommittee on Interior, Energy and Environment, discussed concerns that environmental permitting laws result in lengthy and costly delays to infrastructure projects. He discussed several ideas to streamline the process, including the Government Accountability Office developing a permitting scorecard to assess agencies' efforts to streamline reviews; increased process standardization and the development of best practices; and agencies taking more active roles in guiding applicants through the process.
- **Representative Gary Palmer (R-AL-6)**, Chairman of the Subcommittee on Intergovernmental Affairs, discussed the costs associated with permitting delays and inquired about the level of input required from state and local governments.
- **Representatives Stacey Plaskett (D-USVI)** and **Jamie Raskin (D-MD-8)**, Ranking Members of the Subcommittees on Interior, Energy and Environment and Intergovernmental Affairs, respectively, both stated that the best way to speed up the process is to adequately fund the permitting agencies. **Rep. Plaskett** also discussed the efforts of the Federal Permitting Steering Council in expediting review of large projects.

For more information, please visit:
https://oversight.house.gov/hearing/permitting-finding-a-path-forward/

House Committee Discusses Water Resources Projects and Policy
On Friday, September 7, the House Transportation and Infrastructure Subcommittee on Water Resources and Environment held an oversight hearing to examine ways to modernize water resources infrastructure. **Representative Brian Mast (R-FL-18)** discussed Everglades restoration efforts, including the Central Everglades Restoration Project (CERP) and associated water quality concerns. He requested the Army Corps of Engineers include human health and safety as a component of reporting on the CERP. **Representative Doug LaMalfa (R-CA-1)** discussed limitations on agriculture related to wetland management, citing a number of federal activities that would be prohibited for private landowners.

For more information, please visit:
https://transportation.house.gov/calendar/eventsingle.aspx?EventID=402752

UPCOMING HEARINGS

House to Hold Field Hearing on Federal Columbia River Power System
On Monday, September 10, the House Committee on Natural Resources will hold an oversight field hearing to discuss the Federal Columbia River Power System and its influence on local livelihoods and economies in the Pacific Northwest. The hearing is scheduled for 10:00 a.m. in Pasco City Hall, Pasco, Washington.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=405550

INTRODUCED LEGISLATION OF INTEREST

H.R.6727 — To establish an innovative water technology grant program and to amend the Safe Drinking Water Act and the Federal Water Pollution Control Act to encourage the use of emerging and innovative water technology, and for other purposes.
Sponsor: Rep. Moore, Gwen [D-WI-4] (Introduced 09/06/2018) Cosponsors: (3)
Committees: House - Energy and Commerce, Transportation and Infrastructure, Natural Resources
Latest Action: House - 09/06/2018 Referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure, and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R.6700 — Stop Harmful Discharges Act
Sponsor: Rep. Mast, Brian J. [R-FL-18] (Introduced 09/04/2018) Cosponsors: (0)
Committees: House - Transportation and Infrastructure
Latest Action: House - 09/05/2018 Referred to the Subcommittee on Water Resources and Environment.

H.R.6699 — Agricultural Export Promotion Act of 2018
Sponsor: Rep. Bustos, Cheri [D-IL-17] (Introduced 09/04/2018) Cosponsors: (0)
Committees: House - Agriculture
Latest Action: House - 09/04/2018 Referred to the House Committee on Agriculture.

H.R.6687 — To direct the Secretary of the Interior to manage the Point Reyes National Seashore in the State of California consistent with Congress' longstanding intent to maintain working dairies and ranches on agricultural property as part of the seashore's unique historic, cultural, scenic and natural values, and for other purposes.
Sponsor: Rep. Huffman, Jared [D-CA-2] (Introduced 08/28/2018) Cosponsors: (1)
Committees: House - Natural Resources
Latest Action: House - 08/28/2018 Referred to the House Committee on Natural Resources.

H.R.6682 — Protection and Transparency for Adjacent Landowners Act
Sponsor: Rep. Tipton, Scott R. [R-CO-3] (Introduced 08/28/2018) Cosponsors: (0)
Committees: House - Natural Resources, Agriculture
Latest Action: House - 08/28/2018 Referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, 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. (All Actions)

S.3400 — A bill to address the threat to national security from illegal, unreported, and unregulated fishing and associated illegal activity, to prevent the illegal trade of seafood and seafood products, and for other purposes.
Sponsor: Sen. Coons, Christopher A. [D-DE] (Introduced 08/28/2018) Cosponsors: (1)
Committees: Senate - Commerce, Science, and Transportation
Latest Action: Senate - 08/28/2018 Read twice and referred to the Committee on Commerce, Science, and Transportation.

S.3397 — A bill to promote conservation, improve public land, and provide for sensible development in Douglas County, Nevada, and for other purposes.
Sponsor: Sen. Heller, Dean [R-NV] (Introduced 08/28/2018) Cosponsors: (0)
Committees: Senate - Energy and Natural Resources
Latest Action: Senate - 08/28/2018 Read twice and referred to the Committee on Energy and Natural Resources.

S.3394 — Comprehensive National Mercury Monitoring Act
Sponsor: Sen. Collins, Susan M. [R-ME] (Introduced 08/28/2018) Cosponsors: (1)
Committees: Senate - Environment and Public Works
Latest Action: Senate - 08/28/2018 Read twice and referred to the Committee on Environment and Public Works.

S.3374 — South Florida Clean Coastal Waters Act of 2018
Sponsor: Sen. Rubio, Marco [R-FL] (Introduced 08/23/2018) Cosponsors: (1)
Committees: Senate - Commerce, Science, and Transportation
Latest Action: Senate - 08/23/2018 Read twice and referred to the Committee on Commerce, Science, and Transportation.

S.3349 — Storey County Land Conveyance Act
Sponsor: Sen. Cortez Masto, Catherine [D-NV] (Introduced 08/15/2018) Cosponsors: (1)
Committees: Senate - Energy and Natural Resources
Latest Action: Senate - 08/15/2018 Read twice and referred to the Committee on Energy and Natural Resources.

H.R.6676 — Douglas County Economic Development and Conservation Act
Sponsor: Rep. Amodei, Mark E. [R-NV-2] (Introduced 08/24/2018) Cosponsors: (0)
Committees: House - Natural Resources
Latest Action: House - 08/24/2018 Referred to the House Committee on Natural Resources.

H.R.6668 — MUSSELS Act
Sponsor: Rep. Rokita, Todd [R-IN-4] (Introduced 08/10/2018) Cosponsors: (0)
Committees: House - Natural Resources
Latest Action: House - 08/10/2018 Referred to the House Committee on Natural Resources.

H.R.6666 — To authorize the Secretary of the Interior to grant to States and local governments easements and rights-of-way over Federal land within Gateway National Recreation Area for construction, operation, and maintenance of projects for control and prevention of flooding and shoreline erosion.
Sponsor: Rep. Donovan, Daniel M., Jr. [R-NY-11] (Introduced 08/10/2018) Cosponsors: (0)
Committees: House - Natural Resources
Latest Action: House - 08/10/2018 Referred to the House Committee on Natural Resources.

H.R.6660 — National Fish Habitat Conservation Through Partnerships Act
Sponsor: Rep. Wittman, Robert J. [R-VA-1] (Introduced 08/07/2018) Cosponsors: (0)
Committees: House - Natural Resources

Latest Action: House - 08/07/2018 Referred to the House Committee on Natural Resources.

H.R.6658 — Offending Oil Polluters Act
Sponsor: Rep. Engel, Eliot L. [D-NY-16] (Introduced 08/07/2018)
Committees: House - Ways and Means
Latest Action: House - 08/07/2018 Referred to the House Committee on Ways and Means.

H.R.6657 — Fund and Complete the Border Wall
Sponsor: Rep. Biggs, Andy [R-AZ-5] (Introduced 08/07/2018)
Committees: House - Homeland Security; Ways and Means; Judiciary; Foreign Affairs; Financial Services; Education and the Workforce; Appropriations
Latest Action: House - 08/20/2018 Referred to the Subcommittee on Border and Maritime Security.

H.R.6652 — To direct the Secretary of the Interior to convey certain facilities, easements, and rights-of-way to the Kennewick Irrigation District, and for other purposes.
Sponsor: Rep. Newhouse, Dan [R-WA-4] (Introduced 08/03/2018) Cosponsors: (0)
Committees: House - Natural Resources
Latest Action: House - 08/03/2018 Referred to the House Committee on Natural Resources.

From:	Howze, Kim
To:	Kashyap Patel
Cc:	matthew_trott@fws.gov; Charisa Morris; melissa_beaumont@fws.gov
Subject:	Re: do we have a strategic plan online somewhere?
Date:	Monday, October 29, 2018 9:37:20 AM
Attachments:	DOI Strategic Plan - FY 2018-2022.pdf

Here is the DOI Strategic Plan as requested.

Kim

On Mon, Oct 29, 2018 at 12:34 PM Kashyap Patel <kashyap_patel@fws.gov> wrote:

> + Kim who may have our DOI FY18-22 Strategic Plan handy, if that's what your looking for.
>
> > On Oct 29, 2018, at 12:01, Trott, Matthew <matthew_trott@fws.gov> wrote:
> >
> > hi
> >
> > Matt Trott
> > U.S. FISH & WILDLIFE SERVICE
> > EA-Division of Marketing Communications
> > MS: EA
> > 5275 Leesburg Pike
> > Falls Church, VA 22041-3803
> > 703-358-2512
> > Email communication is easier and better for me.

--

Kimberly M. Howze, PMP
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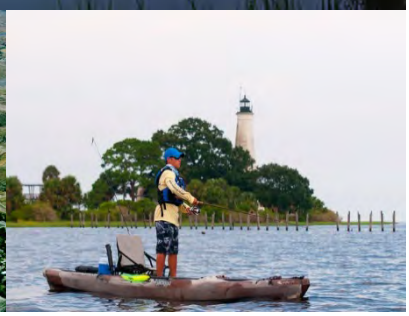
STRATEGIC PLAN FOR FISCAL YEARS 2018 – 2022



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LETTER FROM THE SECRETARY

The Department of the Interior's Strategic Plan for Fiscal Year 2018-2022 is our bold vision for the future under President Donald J. Trump. As the chief stewards of our public lands, it is our job to ensure that these lands continue to be used "for the benefit and enjoyment of the people," as the words engraved into the Roosevelt Arch at Yellowstone National Park so proudly proclaim.

We will restore the American conservation ethic that built our nation. Among the American traditions that made our country great was a philosophy of multiple-use on our public lands. I am an admirer of President Theodore Roosevelt – he had it right. As President Roosevelt once remarked, "It is not what we have that will make us a great nation; it is the way in which we use it."

Our public lands are our greatest treasures, and all Americans should be able to experience these treasures. One of my top priorities as Secretary of the Interior is public access to public land. Recognizing that hunting and fishing is an integral part of the American heritage, we must do more to ensure that all Americans can enjoy these sports – not just the wealthy elite. Americans should also be proud of their public lands, which is why investing in American infrastructure and addressing the maintenance backlog at our National Parks is critically important.

While "benefit and enjoyment" includes recreation, it also includes traditional uses like grazing and timber harvesting. Our mandate is multiple-use of public lands, and multiple-use also includes the development of natural resources as we seek to leverage American energy for American strength. Americans should have the right to make a living off the land, and one of our most critical responsibilities at Interior is upholding this right.

If we are going to preserve our heritage, we must bolster our standing in the world. It is in the economic and national security interest of the United States to pursue a policy of American energy dominance. An America-First energy policy is one which maximizes the use of American resources while freeing us from dependence on foreign oil.

American energy dominance requires aggressive regulatory reform. With our strategic plan, the Interior Department has a unique opportunity to cut the burdensome, unnecessary regulations that have suppressed job creation and wealth generation. Regulatory reform also includes reduced permitting times. The Trump Administration will not deregulate or streamline at the expense of environmental standards or worker safety, but we will strike a balance and strive toward regulatory certainty going forward when creating a bureaucratic framework.

Along with our conservation stewardship responsibilities, we must also be the greatest champion of our tribal nations. Native Americans and Alaska Natives are proud people with a rich history. Sovereignty has to have meaning, and the days of empty promises to our tribal communities are over. Our priorities in Indian Country will be self-determination, government-to-government interaction, and empowerment.

To accomplish our goals, a reorganization of the Department is necessary. We will chart a path forward for the next 100 years at Interior, as Teddy Roosevelt did over a century ago. As a former Navy SEAL, I have long believed that a healthy front line makes for a healthy operation – it is in this spirit that the reorganization plan will focus on our front lines and how we can better engage those on the ground.

Our strategic plan will restore trust in local communities. The federal government has a long way to go when it comes to being a good neighbor, but I am confident we can get there. With a renewed focus on conservation and a bold approach to energy, the Department of the Interior can lead the way in making America great again. This is our desired outcome.

With purpose,

Secretary Ryan K. Zinke
United States Department of the Interior

MISSION AND ORGANIZATION

Mission

The Department of the Interior (DOI) conserves and manages the Nation's natural resources and cultural heritage for the benefit and enjoyment of the American people, provides scientific and other information about natural resources and natural hazards to address societal challenges and create opportunities for the American people, and honors the Nation's trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities to help them prosper.

Vision

The Department of the Interior strives to fulfill a vision to:

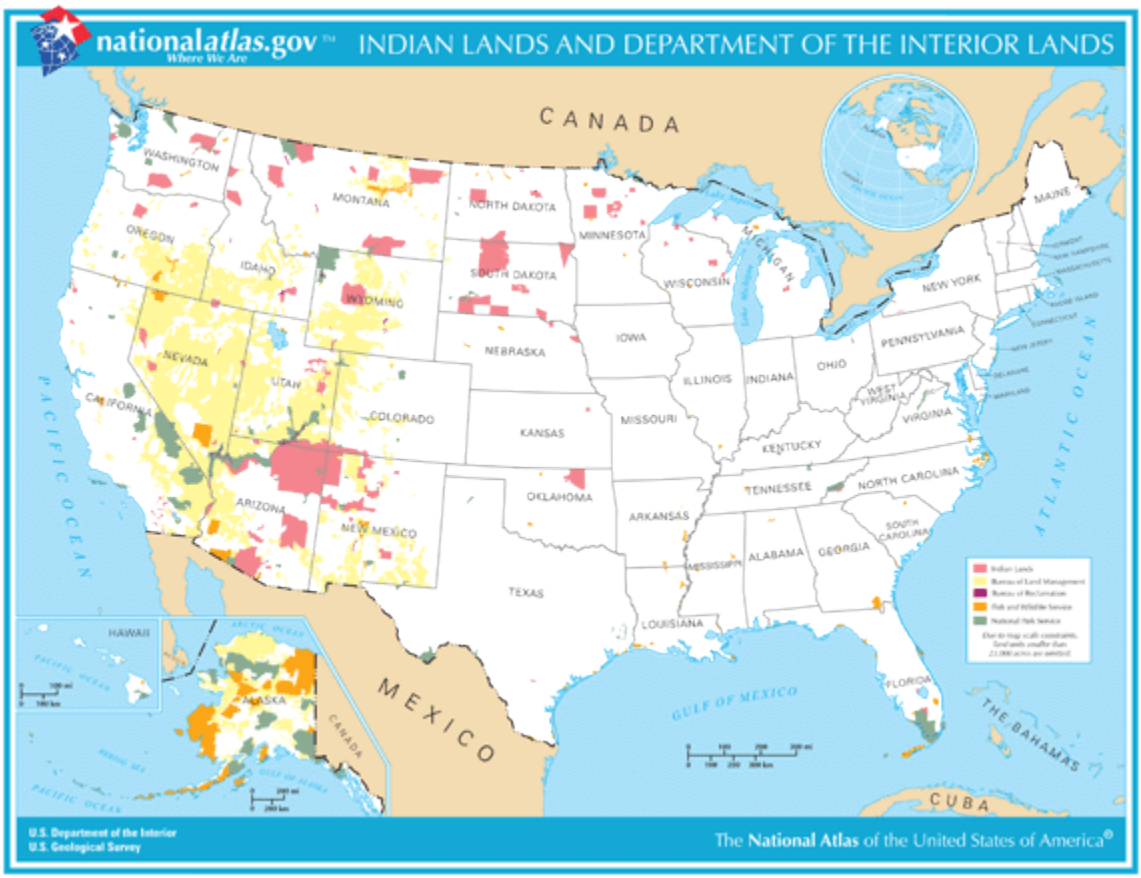
- *Promote energy dominance and critical minerals development* to create jobs for Americans, insulate our nation from volatile political developments overseas, provide additional energy security to allies via surplus domestic supply, and generate revenue for all levels of government so they in turn have the resources to better serve the American people.
- *Increase access to outdoor recreation opportunities for all Americans* so that our people can be healthier, more fully enjoy the wonderful features of their federal lands, and take advantage of hunting, fishing, and other outdoor recreation pursuits that are the roots of the conservation movement.
- *Enhance conservation stewardship* whereby all levels of government and private landowners work cooperatively together in an atmosphere of mutual respect to achieve shared natural resource management goals across landscapes.
- *Improve management of species and their habitats* by focusing our financial and staff resources on improving the status of our nation's fish and wildlife and the healthy habitats that support them, and by streamlining bureaucracy to help us spend relatively more of our funding productively on the ground to better meet societal needs and our own natural resource management responsibilities.
- *Uphold trust and related responsibilities*, recognizing the importance of government-to-government relationships with Indian tribes, Alaska Natives, and insular areas, and respecting self-determination and sovereignty.

History

The Department of the Interior (DOI) was established in 1849. The DOI was charged with managing a wide variety of programs, which included overseeing Indian Affairs, exploring the western wilderness, directing the District of Columbia jail, constructing the National Capital's water system, managing hospitals and universities, improving historic western emigrant routes, marking boundaries, issuing patents, conducting the census, and researching the geological resources of the United States. As the country matured during the last half of the 19th Century, so did the DOI and its mission began to evolve as some of these functions moved to other agencies at the same time the DOI acquired new responsibilities.

With information from Robert Utley and Barry Mackintosh, *The Department of Everything Else: Highlights of Interior History*, 1988, pp. 1-2.

Surface Lands Managed by the Department of the Interior



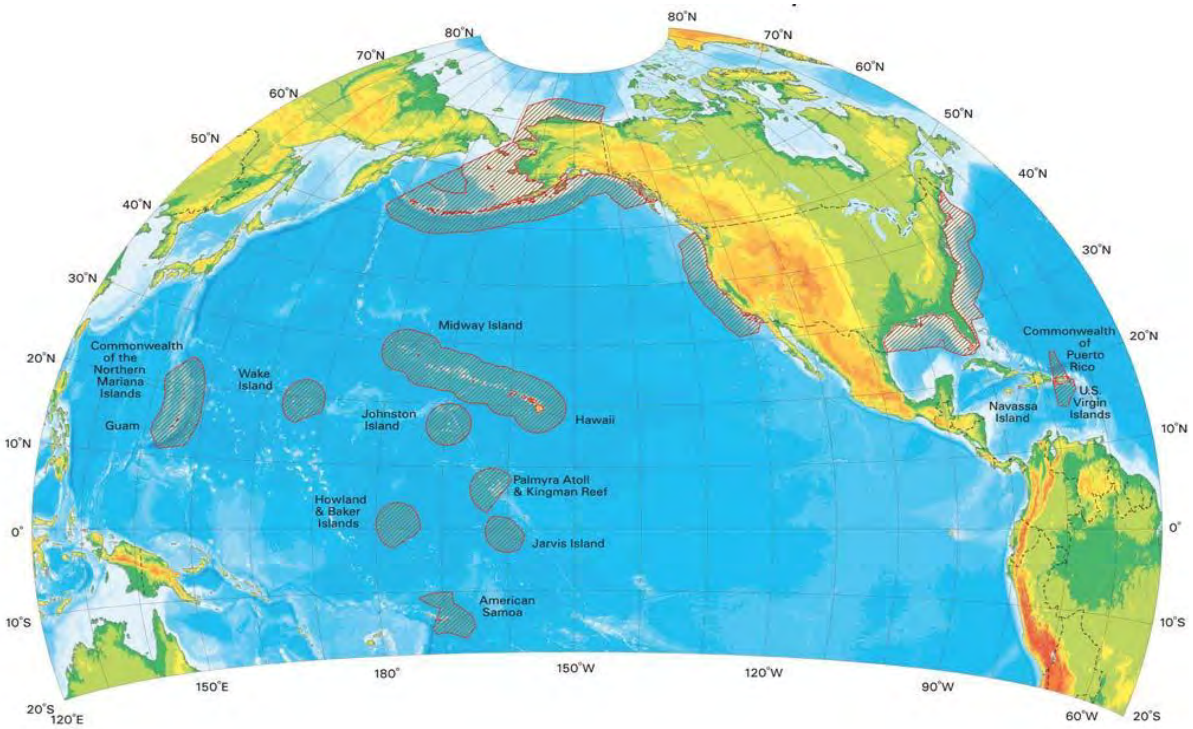
USGS Map, Oct 2014 (except for US Territories that are identified on next graphic)

Following Theodore Roosevelt's conservation summit and the awakening of the conservation movement at the beginning of the 20th Century, there was an increasing urgency and expanding congressional mandate to protect and more effectively manage the nation's natural resources. In 1905, management of the federal forests changed from the Department of the Interior to the United States Forest Service within the Department of Agriculture. Its Chief, Gifford Pinchot, introduced better forestry methods. Pinchot sought to turn public land policy from one that disposed of resources to private parties, to one that maintained federal ownership and management of public land. Pinchot argued that scientific management of forests and natural resources was profitable. He generally opposed preservation for the sake of preservation. During the 1960's and 1970's the DOI's authorizing statutes shifted to put more emphasis on the preservation, management, and use of public lands and natural and cultural resources.

Today, the DOI manages the Nation's public lands and minerals, including providing access to more than 480 million acres of public lands, 700 million acres of subsurface minerals, and 1.7 billion acres of the Outer Continental Shelf. The DOI is the steward of 20 percent of the Nation's lands, including national parks, national wildlife refuges, and other public lands; manages resources that supply 30 percent of the Nation's energy; supplies and manages water in the 17 Western States and supplies 15 percent of the Nation's hydropower energy; and upholds Federal trust responsibilities to 573 federally recognized Indian tribes and Alaska Native villages. The DOI is responsible for migratory bird and wildlife conservation, historic preservation, endangered species conservation, surface-mined lands protection and restoration, mapping, geological, hydrological, and biological science

for the Nation, and financial and technical assistance for the insular areas (many of which are depicted in the following graphic).

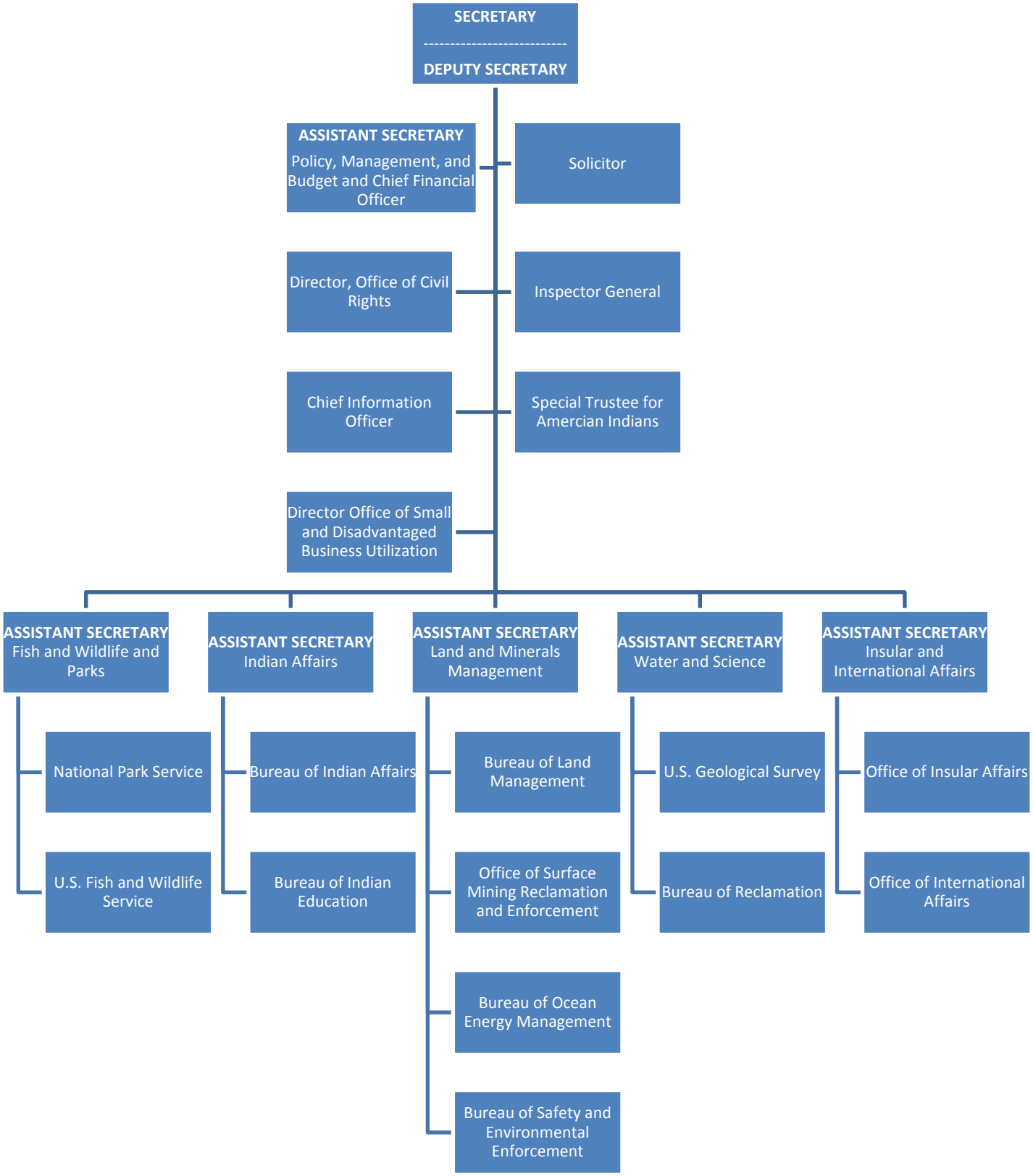
United States Continental Shelf Boundary Areas



National Geophysical Data Center, Sep 2001

The DOI's programs encompassed in this Strategic Plan cover a broad spectrum of activities that are performed by 10 bureaus and multiple offices and are captured in the following presentation of each entity's unique mission and set of responsibilities. The Strategic Plan's six mission areas capture the vitality, inventiveness, and potential of the bureaus and offices and the DOI's 70,000 dedicated and skilled employees. Along with our hardworking and skilled employees, over 350,000 much appreciated volunteers annually contribute their time in support of bureau and office missions, bringing unique local knowledge to park operations, assisting in recovery from natural disasters, and participating in environmental education, among other activities. We cannot effectively address all our responsibilities alone, so it is critical to strengthen partnerships with our sister federal agencies with related missions. In the federal family, we share forest, minerals, rangeland, and wildland fire management responsibilities with the US Department of Agriculture's Forest Service. We share water resource management and hydroelectric power generation responsibilities with the US Army Corps of Engineers, and we share fishery and endangered species management responsibilities with the Department of Commerce's National Marine Fisheries Service. In some ways, our relationships with state, tribal, and local government are even more important. We operate within the bounds of state water law, and respect state authority over resident wildlife. We deal with tribal governments on a government to government basis, respecting each other's authority and jurisdiction. We share land use planning responsibilities with local government, so we must make our own land management plans in a way that is mindful of the goals and plans of those local government neighbors.

US Department of the Interior Organization Chart



Bureau and Office Summaries

Bureau of Land Management (BLM)

- Manages public lands for the benefit of all Americans under the dual framework of multiple use and sustained yield on nearly 250 million surface acres, as well as 700 million acres of subsurface mineral estate. Priorities include:
  - Making full use of the Nation's domestic energy and mineral sources, including conventional and renewable energy sources;
  - Serving American families by providing outdoor recreation opportunities that are key to the Nation's heritage and its economy; and
  - Managing working landscapes to support sustainable livestock grazing operations; and timber and biomass production.
  - Developing and maintaining strong partnerships with State, local, and private stakeholders in shared conservation stewardship.

Office of Surface Mining Reclamation and Enforcement (OSMRE)

- Protects the environment during coal mining through Federal programs, grants to states and Tribes, and oversight activities.
- Ensures the land is reclaimed afterwards.
- Mitigates the effects of past mining by pursuing reclamation of abandoned coal mine lands.

Bureau of Ocean Energy Management (BOEM)

- Manages access to renewable and conventional energy resources of the Outer Continental Shelf (OCS);
- Administers nearly 3,000 active fluid mineral leases on over 16 million OCS acres;
- Oversees 4 percent of the natural gas and 18 percent of the oil produced domestically; and
- Oversees lease and grant issuance for off shore renewable energy projects.
- Manages leasing for marine mineral resources such as sand to facilitate beach replenishment and coastal nourishment projects.

U.S. Geological Survey (USGS)

- Produces information to increase understanding of natural hazards such as earthquakes, volcanoes, and landslides.
- Conducts research and delivers assessments on oil, gas, and alternative energy potential, production, consumption, and environmental effects.
- Conducts reliable scientific research in land resources, mineral assessments, and water resources to inform effective decision making and planning.
- Provides science information that supports natural resource decisions.
- Produces topographic, geologic, hydrographic, and biogeographic data and maps.

Bureau of Safety and Environmental Enforcement (BSEE)

- Fosters secure and reliable energy production from the 1.7 billion acre U.S. Outer Continental Shelf (OCS) for America's energy future.
- Conducts inspections, permitting, incident and equipment failure analysis, oil spill preparedness and enforcement programs aimed at promoting a culture of safety and reducing risk to those who work offshore.
- Supports the technical expertise to engage opportunities and to meet challenges to tap the full potential of OCS energy resources.

Bureau of Reclamation (BOR)

- Manages, develops, and protects water and related resources in an environmentally and economically sound manner in the interest of the American public.
- Largest wholesale supplier of water in the Nation
- Manages 492 dams and 338 reservoirs.
- Delivers water to 1 in every 5 western farmers and more than 31 million people.
- America's second largest producer of hydroelectric power.

Fish and Wildlife Service (FWS)

- Manages the lands and waters of the 855 million-acre National Wildlife Refuge System, primarily for the benefit of fish and wildlife.
- Manages 73 fish hatcheries and other related facilities for endangered species recovery and to restore native fisheries.
- Protects and conserves:
  - Migratory birds;
  - Threatened and endangered species; and
  - Certain marine mammals.
- Hosts about 48 million visitors annually at more than 560 refuges located in all 50 states and 38 wetland management districts.

Indian Affairs (IA)

- Fulfills Indian trust responsibilities.
- Promotes self-determination on behalf of 573 federally recognized Indian Tribes.
- Funds self-governance compacts and self-determination contracts to support all Federal programs including education, law enforcement, and social service programs that are delivered by Tribal Nations.
- Supports 183 elementary and secondary schools and dormitories, providing educational services to approximately 48,000 students in 23 states.
- Supports 32 community colleges, universities, post-secondary schools, and technical colleges.

Note: IA includes the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE)

National Park Service (NPS)

- Maintains and manages a system of 417 natural, cultural, and recreational sites for the benefit and enjoyment of the American people.
- Manages and protects over 27,000 historic and prehistoric structures, nearly 44 million acres of designated wilderness, and a wide range of museum collections and cultural and natural landscapes.
- Provides outdoor recreation to nearly 324 million visitors at national park units.
- Provides technical assistance and support to state, tribal and local natural and cultural resource sites and programs, and fulfills responsibilities under the National Historic Preservation Act of 1966.

Insular and International Affairs

- Coordinates federal policy for the territories of American Samoa, Guam, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands.
- Oversees the Department's involvement with oceans policy
- Manages the Department's involvement in international affairs
- Responsible for administering and overseeing U.S. federal assistance to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau under the Compacts of Free Association, as well as providing technical and financial assistance to all the Insular Areas.

Note: Includes Office of Insular Affairs and Office of International Affairs

Departmental Offices

- Immediate Office of the Secretary, Deputy Secretary, and Assistant Secretaries
- Office of the Solicitor
- Policy, Management and Budget provides leadership and support for the following:
  - Budget, Finance, Performance and Acquisition;
  - Public Safety, Resource Protection, and Emergency Services;
  - Natural Resources Revenue Management;
  - Human Capital and Diversity;
  - Technology, Information and Business Services;
  - Policy and Environmental Management
- Office of Inspector General
- Office of the Special Trustee for American Indians

CROSS-CUTTING PRINCIPLES

As the Department of the Interior (DOI) advances through FY 2018-2022, the following principles guide our leadership, management, and workforce.

Effective and Accountable Leadership - The DOI is committed to being an outstanding steward of approximately 500 million acres of public lands, 700 million onshore subsurface acres, and 1.7 billion acres of the Outer Continental Shelf (OCS) including magnificent vistas, valuable energy and mineral resources, unique ecosystems, range, and treasured natural, cultural, and heritage assets. The management and oversight of these resources require a dedicated cadre of employees, the contributions of volunteers, and the input of stakeholders to inform decision-making. The challenges of managing for a diverse constituency while meeting national goals for energy development and sustaining high levels of recreation and access require technical expertise, the best available science, and an understanding of the balance of development and conservation.

A critical role for DOI's senior executives is providing the necessary leadership to guide the efforts of DOI's offices, bureaus, and field locations in effectively achieving Presidential and Secretarial goals especially through:

- Ensuring cost effective operations and quality customer-centric service to the public;
- Facilitating cooperation and collaboration across organizations within the DOI and its federal and nonfederal partners;
- Ensuring a workplace environment that is safe, fair, and conducive to employee productivity; resolving conflicts as needed; and
- Holding individuals at all levels accountable for their actions.

Empowering the Field - Accomplishing the multi-faceted missions of the DOI involves the skills of 10 bureaus and spans 2,400 locations across the U.S. These locations are often remote and present managers with unique challenges. Managers and experts in the field organization must be allowed to exercise informed judgement and discretion, and must have a skilled workforce to address the issues and manage their operations. The DOI's agency reform plan, developed in response to the President's Executive Order "Comprehensive Plan for Reorganizing the Executive Branch," provides a strategy for better enabling our managers and workforce in the field through regional realignment and executive empowerment, increased colocation, and shifting workforce resources closer to the DOI's field locations.

Engaging the Nation in Cooperative Stewardship - In managing such a broad range of resources for the benefit of the public, the DOI works closely with other federal agencies, state, tribal, territorial, and local governments, and the public. The DOI's reform plan calls for increased coordination across agency lines and levels of government to achieve common goals and resolve differences without expensive and time-consuming litigation. DOI is working to increase its collaborations and partnerships across all levels of government.

Improving Infrastructure - The DOI manages an infrastructure asset portfolio with a replacement value exceeding $300 billion. Most well-known are the DOI's iconic and unique national treasures, which have priceless historical significance. More broadly, the DOI owns approximately 43,000 buildings, 100,000 miles of roads, and 80,000 structures; including dams, laboratories, employee housing, Indian schools, visitor facilities, historic structures and hydropower infrastructure. The related deferred maintenance backlog has grown to over $15 billion in 2016, of which over $11 billion belongs to the National Park Service. DOI is committed to determining how to best address

this backlog and maintain its facilities for the safety and productivity of its workforce, and the continued high quality experience and enjoyment by the American public.

Striking a Regulatory Balance – In accordance with the Executive Order on Enforcing the Regulatory Reform Agenda, the DOI will identify regulations for repeal, replacement, or modification that eliminate jobs, inhibit job creation, are outdated, unnecessary, ineffective, impose costs that exceed benefits, or rely on data or methods that are not publicly available or insufficiently transparent to meet the standard for reproducibility. The DOI will continue to protect human health and the environment in a responsible, cost-effective manner but in a way that avoids imposing an undue process or economic burden on the public.

Generating Revenue, Jobs, and Economic Activity - The DOI grants access to public lands and offshore areas for all forms of energy development—representing roughly a quarter of the Nation's domestic supplies of oil and natural gas—while ensuring safety, environmental protection and revenue generation for the American public. It is important to the Nation's future that these natural resources are managed wisely and – as appropriate -- made accessible for public use to help generate revenues, enhance national security, create jobs, and grow the U.S. economy.

Restoring Trust - It is critical that the DOI can be trusted to operate in the best interest of the American public. Key to maintaining public trust and confidence in the integrity of government is the adherence to high ethical standards and ensuring that government business is conducted with impartiality, transparency, accountability, and integrity. While many of our employees have important law enforcement responsibilities as part of their jobs, more generally we want the public to primarily view our employees as helpful and friendly technical experts, not as law enforcement. When we do need to perform our law enforcement responsibilities, our preference is to achieve compliance through education and demonstrating a sincere desire to create win-win situations with the public we serve. The DOI embodies this principle, follows the law and holds people accountable. Decisions are based on sound science and the best interest of the public.

The DOI is committed to effective and efficient financial operations and accountability characterized by high quality and timely reporting, robust internal controls, clean audits, and effective follow-up on audit and internal control findings. The DOI utilizes the enterprise Financial and Business Management System for the integration of business functions including budget execution, finance, acquisition, improved internal controls, a secure information technology environment, and a community of business innovation, efficiency, and transparency.

Respect for Tribal Sovereignty – As a steward of tribal trust assets, the DOI plays a critical role for the United States in fulfilling the trust responsibility to Indian tribes. The DOI is committed to effectively meeting that responsibility by assisting tribes and Indian individual land owners to create greater economic opportunities, build safer and healthier communities, and effectively consulting with tribal governments.

OVERVIEW OF THE FY 2018-2022 STRATEGIC PLAN

The DOI's FY 2018-2022 Strategic Plan provides the framework for the programs and activities that are performed by 10 bureaus and multiple offices, and take place at approximately 2,400 locations throughout the Nation.

The Strategic Plan facilitates the integration of programs, the allocation and alignment of resources, and collaboration and coordination with stakeholders to achieve key goals. A set of six mission areas, 21 goals, 34 strategies, and approximately 120 performance measures will guide the DOI's activities for the next five years. These mission areas reflect the Secretary of the Interior's priorities, while the goals and strategies describe the means by which those priorities will be achieved.

The mission areas, goals, and strategies that constitute the Strategic Plan are displayed in the Strategic Plan Framework, followed by a description of the mission areas, goals, strategic objectives, and performance measures. An FY 2022 goal is provided for each performance measure that reflects a desirable annual level of achievement that DOI aspires to assuming the availability of a reasonable level of resources. The anticipated level of performance for these measures on an annual basis in consideration of actual resource levels will be reported in the DOI's Annual Performance Plan and Report that is released with the FY 2019 President's budget and available at www.doi.gov/bpp.

There is some continuity of performance measures from the FY 2014-2018 Strategic Plan because the core of our statutory mission remains the same regardless of shifts in policy emphasis resulting from a change in Administrations. Trends in performance related to funding and programmatic plans are available in the DOI's FY 2019 Annual Performance Plan and Report available at www.doi.gov/bpp.

STRATEGIC PLAN FRAMEWORK

Conserving Our Land and Water

- Utilize science in land, water, species and habitat management supporting decisions and activities
- Manage DOI water storage and delivery to resolve conflicts and expand capacity
- Foster partnerships to achieve balanced stewardship and use of public lands
- Inform land use planning processes especially for public use and access

Generating Revenue and Utilizing Our Natural Resources

- Ensure energy and economic security for America
- Ensure access to mineral resources
- Ensure public receives fair market value for resources; and recover costs where appropriate
- Focus timber programs on "healthy forests" lifecycle
- Manage grazing resources

Expanding Outdoor Recreation and Access

- Expand hunting, fishing, and other recreation on DOI lands and waters
- Enhance public satisfaction at DOI sites

Fulfilling Our Trust and Insular Responsibilities

- Support tribal self-determination, self governance and sovereignty
- Fulfill fiduciary trust
- Strengthen economic and health capacities in the US Territories and fulfill US compact obligations to the freely associated states

Protecting Our People and the Border

- Ensure emergency preparedness and DOI law enforcement staffing addresses public safety risks
- Support securing our southern continental US border
- Manage wildland fire to reduce risk and improve ecosystem and community resilience
- Provide science to safeguard communities against natural hazards

Modernizing Our Organization and Infrastructure for the Next 100 Years

- Align DOI organizational structure and workforce to improve partnership engagement and mission delivery
- Reduce administrative and regulatory burden
- Prioritize DOI infrastructure needs and reduce deferred maintenance backlog

Crosscutting principles: Senior executives provide leadership in achieving Presidential and Secretarial goals and are expected to: ensure cost-effective operations and quality service to the public; facilitate organizational cooperation and conflict resolution; ensure workplace environment conducive to employee productivity and safety; and hold individuals accountable for their actions.

DESCRIPTION OF MISSION AREAS

(With Supporting Goals, Strategies, and Performance Measures)

MISSION AREA 1: Conserving Our Land and Water

The DOI ensures that America's natural endowment – the lands and waters of the United States – is conserved for the benefit, use, and enjoyment of current and future generations. The DOI's bureaus use the best available science, modern natural resource management techniques, technology and engineering, efficient decision-making processes, robust partnerships, and improved land use planning to ensure balanced stewardship and use of the public lands and its resources, including wildlife and fish species.

GOAL #1: Utilize science in land, water, species and habitat management supporting decisions and activities

The DOI will ensure that it delivers data, tools, techniques, and analyses that advance understanding of natural resources, the forces that shape them, and the interactions of plants, animals, and people that live within them. Research, monitoring, and remote sensing are necessary to understand and detect changes that affect land resources and processes that are essential to the Nation's economic growth, well-being, and ecological health. These efforts support the DOI in its role as the largest manager of the Nation's land and water resources.

The DOI's land and water management bureaus are stewards of the lands and waters managed by the DOI. These bureaus will utilize the best available scientific data, tools, techniques, and analyses provided by our researchers, our nonfederal government partners, or others to maintain and restore lands and waters and ensure that habitats support healthy fish and wildlife populations.

STRATEGY #1: Apply science to land, water, and species management

The USGS seeks to understand the Nation's environmental, natural resource, and economic challenges with scientific monitoring and research to support the development of management strategies that address the impacts of land use on the availability and sustainability of land and water resources. The USGS helps management agencies by providing them the measures designed to prevent or control invasive species and wildlife disease outbreaks; and apply decision science to actions.

The USGS conducts monitoring, assessments, and research in order to understand and predict changes in the quality and quantity of water resources in response to land-use and management scenarios. Through advanced understanding and integrated modeling of processes that determine water availability, the USGS informs the balanced management of water resources for multiple purposes, including energy production, human and crop consumption, the sustainability of fish and other aquatic communities valued by society, and public enjoyment. The USGS works with land and water resources managers in applying its data and research results to help them make informed decisions for effectively managing the resources with which they are entrusted.

Bureaus	Key Performance Indicators	2022 Goal
USGS	Percent completion of targeted land and water management research actions	100%
USGS	Millions of people living in targeted watersheds covered by completed water quality models	306.7
USGS	Percent completion of planned water quality sampling and studies for the Nation's groundwater, streams and rivers	100%
USGS	Percent completion of the USGS National Water Census baseline	100%
USGS	Percent completion of U.S. aquifer groundwater availability baseline studies	43%
USGS	Percent completion of targeted species management research actions	100%
USGS	Percent completion of targeted biological threats research actions	100%
USGS	Percent completion of collaborative research projects on factors affecting fish and wildlife habitat	100%

STRATEGY #2: Provide stewardship of land, surface water, streams and shorelines

The Bureau of Land Management, the Fish and Wildlife Service, the National Park Service, and the Bureau of Reclamation manage, maintain and restore uplands, wetlands, lakes, streams and some marine areas through efforts that include controlling invasive plants and animals, restoring land or waters to a condition that is self-sustaining, and ensuring that habitats support healthy fish and wildlife populations. The DOI's Natural Resource Damage Assessment and Restoration program works with the bureaus to assess the impacts of oil spills and hazardous waste sites and coordinates restoration efforts. The Office of Surface Mining Reclamation and Enforcement works with states and tribes to ensure that coal mining is conducted in a manner that protects citizens and the environment during mining, restores the land to beneficial use following mining, and mitigates the effects of historic mining by pursuing reclamation of abandoned mine lands. The DOI aims to balance the conservation of special places with resource development while also providing visitors with opportunities for outdoor recreation.

Bureaus administer their resource management and conservation programs on more than 400 million acres of upland, wetland, and aquatic lands within their jurisdiction. Many of these lands have special status as national parks, seashores, monuments, wildlife refuges, wilderness areas, national conservation lands or wild and scenic rivers. Land managers utilize earth and natural science, social science, partnerships with other DOI bureau, federal, state, local and tribal entities, and other tools and resources (including its front-line managers) in managing these lands and waters.

Bureaus	Key Performance Indicators	2022 Goal
BLM, FWS, NPS	Percent of DOI acres that have achieved desired conditions	88.9%
BLM, FWS	Percent of DOI riparian (stream/shoreline) miles that have achieved desired conditions	89.2%
BLM, BOR, FWS, NPS	Percent of acres infested with invasive plant species that are under control	0.2%
FWS, NPS	Percent of invasive animal species populations that are under control	8.7%
OSMRE	Percent completion of abandoned mine lands restored by eliminating health, safety, and environmental concerns	57%
OSMRE	Percent of active coal mining sites that are free of off-site impacts	88%
OSMRE	Percent of coal mine acreage reclaimed to beneficial post-mining land use	44%

STRATEGY #3: Provide stewardship of wildlife, bird, fish, and plant species

The Fish and Wildlife Service (FWS) is tasked with the conservation and protection of certain populations of fish, wildlife, plants, and their habitats. The FWS works first to prevent species from becoming listed as threatened or endangered by using the best available science to make land management decisions that might affect species viability. The FWS conducts, consults or coordinates many species management activities in partnership with others including NPS, BLM, Reclamation, and other federal, state, local and tribal agencies and private organizations. The strategy to sustain species focuses on identifying and implementing corrective actions that will lead to species recovery.

Congress passed the Endangered Species Act (ESA) in 1973, to protect and recover imperiled species from becoming extinct and to conserve the habitats upon which they depend. The FWS and the Commerce Department's National Marine Fisheries Service (NMFS) administer the ESA. The FWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of NMFS are mainly marine wildlife such as whales and anadromous fish such as salmon.

FWS works with many partners using a range of conservation tools to recover listed species (threatened and endangered) to ensure that they are able to survive on their own in the wild. These tools can include acquiring and restoring habitat, removing invasive species, conducting surveys, monitoring individual populations, and breeding species in captivity to release them into their historic range.

The DOI uses a number of datasets and metrics to track its progress on species listings, downlistings, delistings, critical habitat, scientific findings, and Species Status Assessments (SSA). The SSA is the scientific foundation supporting listing, delisting, and downlisting decisions and recovery plans and includes biological and threats information and analyses that help FWS and its partners better understand the species status. Recovery criteria, describing the conditions of the species when the protections of the act are no longer necessary, address both the biological status in terms of the 3 R's (resiliency, representation and redundancy) and the mitigation of threats necessary to achieve that status. The DOI is working to include more information on critical habitat,

estimated costs of recovery and economic impact of its threatened and endangered species listings and recovery action plans, to provide a more complete perspective to states and the public of the actions being planned for attempting to save each species.

In its Policy Regarding the Role of State Agencies in ESA Activities, FWS coordinates, collaborates, and uses the expertise of state agencies in developing the scientific foundation upon which FWS bases its determinations for listing actions. By September 30, 2018, all FWS decisions on whether to list a species under the ESA will be informed by input from state fish and wildlife agencies, subject to the affected states' willingness to participate (some state fish and wildlife agencies have declined participation due to lack of authority for some species under ESA review). This input should include (but is not limited to) a solicitation of state data and state personnel involvement in the development of SSAs.

Per Section 4(c)(1) of the ESA, FWS is required to review the status of each listed species at least once every 5 years and determine whether it should be: (1) removed from the List (delisted), (2) reclassified from endangered to threatened (downlisted), or (3) reclassified from threatened to endangered (uplisted). By September 30, 2019, for 100% of all species with 5-year reviews recommending downlisting or delisting FWS will have proposed downlisting or delisting rules acted on by the Director, or a new status review initiated if new information indicates the need for an updated assessment prior to initiating rulemaking, within 2 years of the 5-year review recommendation.

The DOI's responsibility to protect fish, wildlife, and native plants transcends jurisdictional boundaries, and includes efforts that affect almost 1,500 species with special status under the Endangered Species Act and more than 1,000 migratory birds that receive Federal protection under the Migratory Bird Treaty Act. The DOI works to combat domestic and international wildlife trafficking by improving enforcement of domestic laws, strengthening international cooperation and global enforcement, promoting legal trade and hunting, and helping to reduce demand for illegal wildlife products. Under Executive Order 13771 of January 30, 2017, i.e. Reducing Regulation and Controlling Regulatory Costs, the DOI is reviewing its regulations and administrative processes to determine what cost savings, to the government and to private constituents, are possible by repealing regulations for which the perceived benefits might not be justified relative to their implementation costs, and which administrative processes could be streamlined or made more efficient. This activity is described further in the second goal under the sixth Mission Area on reducing administrative and regulatory burden.

Agency Priority Performance Goals:

- ***By September 30, 2018, 100% of proposed species listings will be based on best available information that includes state input and/or data provided through participation in Species Status Assessments (SSA).***
- ***By September 30, 2019, 100% of all Fish and Wildlife Service recovery plans will have quantitative criteria for what constitutes a recovered species.***

Bureaus	Key Performance Indicators	2022 Goal
FWS	Percent of Threatened or Endangered species listed for 2.5 years or more with a final recovery plan	75%
FWS	Percent of five-year Threatened or Endangered species five-year status review recommendations to downlist or delist acted on within five years *(prior to next status review)*	60%
FWS	Percent of listed species with current five-year reviews *(completed in the last five years)*	90%
FWS	Percent of rules and findings completed based on Threatened or Endangered Species Status Assessments	100%
FWS	Percent of threatened and endangered species listings with proposed critical habitat	100%
FWS	Percent of migratory bird species that are at healthy and sustainable levels	72%
FWS	Percent of fish species of management concern that are managed to self-sustaining levels	23%

GOAL #2 Manage DOI water storage and delivery to resolve conflicts and expand capacity

The Western U.S. is one of the fastest growing regions of the country, and urbanization has created significant demands for water use and service. The DOI strives to keep its water storage facilities in good condition to ensure safe and reliable water supply. Stretching existing water supplies for multiple uses are among the many significant challenges facing Reclamation. The Bureau of Reclamation is the nation's largest wholesale water supplier and manages water in 17 western states. Reclamation's projects and programs are an important driver of economic growth bringing water to more than 31 million people and providing one of five western farmers (140,000) with irrigation water for 10 million acres of farmland that produce 60 percent of the nation's vegetables and 25 percent of its fruits and nuts. Reclamation's facilities also provide substantial flood control, hydropower, recreation, and fish and wildlife benefits.

The DOI is the lead agency in defining and protecting water rights for Indian tribes and individual Indian land owners. The Bureau of Indian Affairs (BIA) is responsible for maintaining 137 dams on tribal lands. The BIA also provides irrigation water to over 780,000 acres through 17 congressionally authorized irrigation projects.

STRATEGY #1 Manage water resources and delivery

Changes in water supplies, water demands, and the increased duration and frequency of droughts have the potential to affect Reclamation's ability to fulfill its mission. Many rural communities face significant challenges in financing the cost of replacing or upgrading aging and obsolete facilities and systems. Water conservation programs increase the available water supply and contribute to DOI's broader objective of achieving a more sustainable, secure water supply. Protecting and extending the life of aging infrastructure are significant challenges facing Reclamation, and maintenance, rehabilitation, and replacement will become more costly over time. Reclamation

prioritizes infrastructure assets based on detailed design criteria: engineering need, consequence of failure, financial considerations, efficiency opportunities, scheduling, and others.

The Bureau of Indian Affairs (BIA) water management functions are implemented through three complementary programs. The Water Rights Negotiation/Litigation Program defines and protects Indian water rights and settles claims through negotiations if possible, or alternatively, through litigation. The Water Management Program assists tribes in managing, conserving, and utilizing trust water resources. The BIA Irrigation, Power and Safety of Dams program operates and manages irrigation, power, and dam infrastructure. The program sets high standards for maintenance, collaboration with stakeholders, and effective water and power distribution. The BIA manages facilities to ensure they do not present an unacceptable risk to downstream lives and property; and are managed in an economically, technically, environmentally, and culturally sound manner.

Agency Priority Performance Goal: By September 30, 2019, the Bureau of Reclamation will facilitate water conservation capacity of 53,800 acre-feet to help reduce the impact of drought.

Bureaus	Key Performance Indicators	2022 Goal
BOR	Percent of water infrastructure in good condition as measured by the Facility Reliability Rating (FRR) [high- and significant-hazard dams]	74%
BOR	Amount of acre feet of water conservation capacity enabled to help address drought	1,392,000
BIA	Percent of projects completed in support of water management, planning, and pre-development.	77%

GOAL #3: Foster partnerships to achieve balanced stewardship and use of our public lands

The DOI will assess, utilize and enhance the most promising of partnership practices and explore the potential for furthering these types of opportunities to work jointly with other individuals and organizations for the benefit of the nation's public lands, waters, and historic and cultural sites and the fish and wildlife species.

STRATEGY #1: Build and maintain partnership programs

Public and private partnerships provide opportunities for greater engagement of people and organizations in caring for and managing the natural, historical, cultural and physical resources across the DOI's 500 million acres. This can be especially beneficial for our national park units, National Wildlife Refuges, wildlife management areas, and national conservation public lands. Support can come from other federal or state agencies, tribal nations, volunteers, non-profit organizations, educational institutions, corporations or foundations through sponsorship or philanthropy. DOI bureaus should endeavor to partner with non-traditional stakeholders to increase our relevance to the American public, rather than just relying on traditional constituencies.

The National Park Service already has the authority from Congress to accept monetary and in-kind gifts, including those collected through the National Park Foundation. Similarly, the Fish and Wildlife Service has authority to accept gifts from some entities, including some non-profits organizations and the federally chartered non-profit National Fish and Wildlife Foundation. The Bureau of Land Management has Congressional authority to accept monetary and other types of donations, along with Congressional authorization to create a Bureau of Land Management Foundation. The BLM works with local, state, federal, and private partners on nearly all of the activities undertaken on public lands, from identifying important fish and wildlife habitat with the state game and fish agencies, working with local rangeland fire protection associations, to providing hunting and fishing opportunities for sports men groups. As permitted under current law, the DOI hopes to develop further philanthropic and sponsorship opportunities, and promote other partnering best practices.

The DOI utilizes migratory bird joint ventures as collaborative, regional partnerships of government agencies, non-profit organizations, corporations, tribes, and individuals that conserve habitat for the benefit of priority bird species, other wildlife, and people. Joint ventures bring these diverse partners together under the guidance of national and international bird conservation plans to design and implement landscape-scale conservation efforts in support of the North American Waterfowl Management Plan and the other bird management plans. These joint ventures use state-of-the-art science to ensure that diverse habitat is available to sustain migratory bird populations for the benefit of those species, other wildlife, and the public. These partnerships have a three-decade record of success, they use non-regulatory solutions and economically sound business approaches, promote working lands conservation, sporting, and outdoor traditions, and support resilient urban and rural communities.

The Department of the Interior and the U.S. Department of Agriculture working near each other in the field continue to pool resources, conduct joint projects and share services under Service First agreements. Service First authority promotes collaborating across bureau and agency boundaries to develop joint solutions to common problems and integrate responses to federal land management issues and opportunities. Bureaus of the Department of the Interior and the U.S. Department of Agriculture cooperate in jointly managing some areas. For example, the National Trail, and Wild and Scenic River Systems span every state of our nation and exceed the length of the interstate highway system. Federal land management agencies, as well as state and local jurisdictions and partners enhance recreational access, conserve the Nation's heritage, and leverage the federal investment to manage these nationally recognized resources cooperatively.

Building new partnerships for infrastructure improvement is a priority at the DOI. There are also numerous volunteer opportunities, where individuals or associations provide service in caring for natural resources and cultural and historic assets on our public lands (see www.volunteer.gov). The DOI will also empower managers in the field to directly engage in further collaboration within the units they manage, identify best practices for collaboration and partnering, provide training and technical support, and encourage field managers to find or create and execute partnerships on a local basis.

Bureaus	Key Performance Indicators	2022 Goal
BLM, FWS, NPS	Number of estimated work hours in a national park unit, National Wildlife Refuge, or Bureau of Land Management site that are performed or sponsored by a private citizen, National Service participant or non-federal entity	9,870,000
BOR, FWS, CUPCA	Number of non-DOI acres restored, including through partnerships	593,876
FWS	Number of non-DOI acres managed or protected to maintain desired condition, including acres restored through partnerships	602,654
FWS, CUPCA	Number of non-DOI riparian (stream/shoreline) miles restored, including through partnerships	255

GOAL #4: Inform land use planning processes especially for public use and access

The DOI will review and improve its land planning processes to enable expanded access and use of the public lands while restoring a balance between conservation and utilization of the lands, energy and mineral resources, waters, fish and wildlife, and other natural and cultural resources. The DOI will employ the latest available science, land-imaging and other technology tools and datasets to inform land use planning to maximize the societal value of land planning. The DOI land use planning will take into account the land use plans of affected local and state governments.

STRATEGY #1: Assess land use planning processes for public access and use of DOI lands

DOI land use and management plans ensure that the public lands are managed in accordance with the intent of Congress as stated in several authorities including, but not limited to: the Federal Land Policy and Management Act (FLPMA), the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Wildlife Refuge System Administration and Improvement Acts, the Organic Act of 1916 (National Park Service), the Alaska Native Claims Settlement Act, and the Alaska National Interest Lands Conservation Act (ANILCA).

Land use planning efforts vary across bureaus based on enabling legislation. The National Park Service creates management plans to execute its mission. The National Wildlife Refuge system creates Comprehensive Conservation Plans for each refuge as part of their mission. The BLM's mission states that its duty is to sustain the health, diversity, and productivity of America's public lands for the multiple use and enjoyment of present and future generations.

A common thread through all three bureaus' mission is the need to accommodate and benefit the use and enjoyment of these public lands for both present and future generations. Some lands are made available for multiple use and sustained yield, other lands for conservation and preservation values.

The DOI is undertaking the challenge to review and improve its planning processes in ways that can best meet the sometimes-conflicting uses for public lands. The DOI will strive to enhance public participation and input to the planning processes, engage our state, local, and tribal government partners, provide open and understandable decision-making, expedite the decision-making process

so that implementation is not delayed, and ensure that public access and use is appropriately built into every land use plan.

STRATEGY #2: Inform land use planning with mapping and land imaging

The USGS is the lead civilian mapping agency for the Nation and supports the conduct of detailed surveys and the resulting distribution of high-quality and highly-accurate topographic, geologic, hydrographic, and biogeographic maps and data. Remote sensing satellites and aircraft monitor the Earth providing information that is broad, precise, impartial, and easily available. For more than 45 years, Landsat satellites have collected data over the planet's land surface to support global research studies. These data constitute the longest continuous record of the Earth's land surface as seen from space.

High-resolution information results in geologic maps and geospatial products that enable precise planning of civil engineering and transportation infrastructure, versatile urban planning, improved flood projection, timely and accurate emergency response, effective hazard identification and mitigation, and detailed environmental analyses. This information is also used by DOI bureau land managers in exercising their responsibilities to help plan for public land use and access.

In the next decade, the USGS will continue to improve spatial and temporal resolution through research and development of products such as full four-dimensional geologic maps, showing how the complex geologic structure of the Earth has changed through time. Mapping accuracy through cutting-edge technology allows for precise planning for energy development, transportation and pipeline infrastructure projects, urban planning, flood prediction, emergency response, and hazard mitigation.

Bureaus	Key Performance Indicators	2022 Goal
USGS	Percent of land-area coverage available to the public over the internet through the National Geologic Mapping Database	55.5%
USGS	Percent of foundational topographic information services updated quarterly to support on-demand mapping	100%
USGS	Percent completion of research efforts related to land resource management	100%
USGS	Number of terabytes of remotely-sensed data managed	20,140
USGS	Percent increase of scientific research enhanced with Advanced Research Computation	100%

MISSION AREA 2 Generating Revenue and Utilizing Our Natural Resources

The DOI provides access to and manages energy and other resources including oil, gas, coal, timber, grazing, and non-energy minerals on public lands and oil and gas on the Outer Continental Shelf (OCS). The DOI is committed to achieve and maintain American energy dominance through responsible productivity of the public lands for the multiple use and economic benefit of present and future generations.

GOAL #1 Ensure energy and economic security for America

The DOI is the steward and manager of much of America's natural resources which include oil, gas, coal, minerals, and renewable energy sources, such as solar, wind, geothermal, and hydropower. There are vast amounts of untapped domestic energy reserves on public lands. DOI is also reinitiating the National OCS Oil and Gas Leasing Program development process, which is a key component of the America First Energy Plan and the Executive Order on Implementing an America-First Offshore Energy Strategy, to bring jobs and prosperity to millions of Americans. Our nation will use the revenues from energy production to rebuild our roads, schools, bridges and public infrastructure. The Department's "all-of-the-above" strategy facilitates development of all energy resources and makes our nation stronger by decreasing dependency on other nations, creating jobs, and helping drive economic growth.

STRATEGY #1: Promote safe and robust oil, gas, coal, and renewable energy resource development

Oil, gas, coal and renewable energy form the cornerstones of our nation's energy base, and the DOI will continue to expand production of both offshore and onshore conventional and renewable U.S. energy resources while ensuring safety and reliability through efficient permitting, appropriate standards, assessment and oversight. As demand for energy resources grows, agencies within the DOI, such as BIA, BLM, BOEM, BSEE, OSMRE, and USGS conduct work that is increasingly critical to understand the exploration, development, quality, supply, and use of our energy resources. This work enables the DOI to advance new sources of efficient energy generation, facilitate the construction of new or upgraded infrastructure including transmission networks, develop resources responsibly, and ensure that the American public receives a fair return on that development.

Agency Priority Performance Goals:

- ***By September 30, 2019, the Bureau of Land Management will eliminate its backlog of fluid mineral Applications for Permits to Drill (APD's) that have been pending for 3 years or more.***
- ***By September 30, 2019, the Bureau of Land Management will process 80% of parcels created for leasing public lands for oil, gas, or other mineral extraction within 180 days.***

Bureaus	Key Performance Indicators	2022 Goal
BLM	Percent of pending fluid minerals Applications for Permits to Drill (APDs) which are processed	75%
BLM	Percent of high priority fluid mineral cases that have completed inspection during the year	100%

BLM	Percent of coal lease applications processed	15%
BLM	Number of acres of public lands made available for oil and natural gas leasing	25,000,000
BLM, BOEM	Number of megawatts of approved capacity authorized (that year) on public land and the OCS for renewable energy development while ensuring compliant environmental review	2,020
BOEM	Percentage of Exploration and Development Plan reviews completed within statutory timelines	100%
BOEM	Percent of offshore lease sale processes completed, pursuant to the Secretary's approved National OCS Oil and Gas Leasing Program	100%
USGS	Percent completion of targeted energy resource assessments and research	100%
BSEE	Amount of operational offshore oil spilled (in barrels) per million barrels produced	3.1
BSEE	Percent of high risk production facilities and operations inspected	95%
BSEE	Number of recordable injuries per 200,000 offshore man hours worked	.390
BSEE	Percentage of high risk well operation (e.g., drilling) inspections completed	95%

STRATEGY #2: Provide hydropower

The DOI facilitates the development and use of renewable energy that employs hydropower energy to strengthen US energy security, economic vitality, and quality of life. The Bureau of Reclamation (BOR) is the second largest producer of hydroelectric power in the U.S., operating and maintaining 53 hydroelectric power facilities, comprising over 14,700 megawatts of capacity. On average, Reclamation generates 40 million megawatt-hours of electricity each year – the equivalent demand of over 3.5 million U.S. homes, returning over one billion dollars in federal revenue through power sales. Sustainable, low cost hydropower generated by Reclamation projects has provided significant value to the nation, spurring the development of the western U.S. – through the provision of firm electric power to rural communities as well as ancillary service to support western interconnect grid reliability. Reclamation works to promote domestic energy production by enabling new energy generation from hydropower, a renewable source, and facilitating the construction of new or upgraded transmission networks, helping to create new industries and supply chains, driving economic growth and job creation, and helping provide more energy from domestic sources.

Bureaus	Key Performance Indicators	2022 Goal
BOR	Amount of hydropower capability, in megawatts (MW), installed from 2018 through 2022	50
BOR	Percent of hydropower facilities in good condition as measured by the Facility Reliability Rating	73%

BOR	Percent of time that Bureau of Reclamation hydroelectric generating units are available to the interconnected Western electrical system during daily peak demand periods	80%

GOAL #2: Ensure access to mineral resources

The DOI recognizes that public lands are an important source of the Nation's non-energy mineral resources, some of which are critical and strategic. The DOI is committed to ensuring appropriate access to public lands, for orderly and efficient development of these resources under principles of multiple use management.

STRATEGY #1: Manage non-energy mineral development

DOI promotes energy security, environmental protection, and economic development through responsible, science-informed management of mineral resources. The BLM conducts environmental analysis of complex issues necessary to authorize use on BLM public lands and meet the increasing demand for non-energy solid leasable minerals, especially potash and phosphate. BOEM's Marine Minerals Program provides sand and gravel resources to protect and improve coastal infrastructure and the environment locally, regionally and nationally. Additionally, the in-depth science provided by the USGS Mineral Resources Program (http://minerals.usgs.gov) facilitates resource discovery and provides essential information and analyses for strategic, evidence-based economic and geopolitical decisions.

Bureaus	Key Performance Indicators	2022 Goal
BLM	Percent of non-energy mineral exploration and development requests processed	30%
BOEM	Number of sand and gravel requests processed for coastal restoration projects	8
USGS	Percent completion of targeted non-fuel mineral resource assessments and research	100%
USGS	Percent completion of targeted Critical Mineral Early Warning System (CMEWS) analyses and evaluations	100%

GOAL #3: Ensure public receives fair market value for resources; and recover costs where appropriate

Rents, royalties, and bonuses are collected from issuing leases on public lands, and offshore on the OCS, and for the amount of the resource extracted. These resources include oil, gas, coal, forage for grazing, and access to renewable energy resources such as solar, wind, and geothermal. It is important that these financial transactions include appropriate accountability and fair return to the American public. The associated regulations and practices for these fees and collections must also be rational and transparent to ensure businesses that extract and process these resources can function efficiently and profitably in order to support the economic growth and security of the nation.

STRATEGY #1: Ensure accurate and timely accounting and collection of energy revenues

The Department collects, disburses and verifies natural resource revenue generated from issuing leases on public lands, and offshore on the OCS. This revenue is then shared with states and localities according to specific statutory obligations, allocated to various Federal programs, or deposited in the General Fund of the Treasury, thus serving to reduce the deficit. The DOI is committed to managing these transactions accurately, responsibly, and in a timely manner. The Royalty Policy Committee has been reinstated by the Secretary to elicit robust advice and recommendations regarding policies related to royalties from these resources and their benefit to the American public.

The BSEE helps ensure the accuracy of metering from higher risk hydrocarbon sites that experience high volumes of throughput and/or have a past history of noncompliance to help ensure the appropriate financial benefit is obtained for the American people. Additionally, data driven procedures enable the BOEM and the BLM to ensure bid adequacy through a two phased review system for onshore and offshore leasing, and also allow for timely collection and disbursement of mineral and renewable energy revenues by the Office of Natural Resources Revenue (ONRR). ONRR's distributions benefit the Land and Water Conservation Fund, the Historic Preservation Fund, and the Reclamation Fund, helping to ensure America's natural resources and rich history are available to be enjoyed by current and future generations. Distributions to states are used to fund capital projects such as schools, roads, and public buildings. Revenues collected from leases on Indian lands directly benefit members of the Indian community.

Bureaus/ Offices	Key Performance Indicators	2022 Goal
ONRR	Percent of federal and Indian oil and gas revenues disbursed on a timely basis per statute ($ Billions)	98%
BSEE	Percent of oil royalty meters, identified as high-risk using a risk based methodology, where meter provings will be observed	10%

STRATEGY #2: Ensure effective collection and application of recreation fees

The nation's public lands offer many excellent locations for public recreation in the outdoors at national parks and monuments, National Wildlife Refuges, BLM public lands and other locations, in historic sites and buildings and at national treasures such as the Statue of Liberty. Facilities (roads, visitor centers, bathrooms, historic buildings, museums, etc.) that enable visitors to enjoy their public lands and sites are expensive to maintain. All of the major land management bureaus have large backlogs of deferred maintenance at these facilities. The DOI will continuously review its fee structure to determine how best to accommodate visitors enjoyment while collecting fees that help to offset some of the maintenance costs required to keep visitor-facing infrastructure in good shape for visitors. All such reviews of fees and changes will remain consistent with Congressional direction that has been provided through a series of laws including the Federal Lands Recreation Enhancement Act.

The National Park Service established fee structure guidelines in 2006 to standardize rates across the country. The resulting tier system assigns each park unit to a tier and associated entrance fee schedule based on the type of site and the amenities provided for the public. During 2017, the National Park Service initiated a comprehensive review to evaluate and consider bringing entrance fees at all park units into compliance with their assigned tier through a process of public engagement by January 1, 2018. Even with proposed increases, entrance fees remain affordable at $15-$30 per vehicle, which is normally good for several days. The America the Beautiful Pass Annual Pass remains at the price of $80 for one year for unlimited entrance fees for almost all national parks, Fish and Wildlife and BLM sites where fees are required. Congress raised the one-time cost of the America the Beautiful Lifetime Senior Pass for those age 62 or older from the previous fee of $10 to $80 effective in August 2017.

Reviews of other amenity fees (such as for campgrounds and special use permits) will also strive to set fair and equitable fees for activities that visitors enjoy after they enter the park, refuge, or recreation area. The bureaus will seek public comment during any process to review and modify fee amounts to ensure that the public has an opportunity to raise questions and provide comments regarding any fee changes. The bureaus will also identify ways to modernize and enhance fee collection mechanisms that speed access to facilities and/or reduce the cost to the federal government for fee collection.

GOAL #4: Focus timber programs on "healthy forests" lifecycle

The BLM manages forests or woodlands for the benefit of the American public. The BLM maintains a permanent source of timber supply, which supports the production of lumber, plywood, and paper, while also protecting watersheds, regulating stream flow, contributing to the economic stability of local communities and industries, and providing recreational opportunities. Responsible management that reduces fire fuels improves the health and resilience of our forests and helps to prevent forest fires.

The BIA manages forests as a trust asset of Indian tribes. Tribally owned forest assets contribute substantially to national sources of timber supply. Many tribes now actively participate in management of their forest assets through self-governance and self-determination programs.

STRATEGY #1: Manage sales of timber and forest product resources

Forest management programs within the DOI generate economic benefits through timber harvests on public and Indian trust lands, and restoring forest health. The benefits of healthy forests include typical forest products such as timber and biomass but also include opportunities for recreation and maintenance of watershed health.

The BLM has two focus areas for forest management, the Oregon and California grant lands and the public domain lands. For Oregon and California lands, generating revenue for counties is the primary driver of forest management treatments, while for public domain lands, fire management is the primary driver for forest management. The BLM is currently reviewing its management plans to determine prospects for offering additional timber for sale in the future.

The BIA manages forests as a trust asset of Indian tribes. Tribally owned forest assets contribute substantially to the national sources of timber supply. Many tribes now actively participate in management of their forest assets through the self-governance and self-determination programs.

Bureaus	Key Performance Indicators	2022 Goal
BLM	Percent of allowable sale quantity (ASQ) timber offered for sale consistent with applicable resource management plans (O&C--Oregon and California--only)	100%
BLM	Volume (mmbf) of wood products offered consistent with applicable management plans	285
BIA	Percent of Annual Allowable Cut prepared and offered for sale or free use	48%

GOAL #5: Manage grazing resources

The BLM manages livestock grazing on over half of its public lands; approximately 18,000 permits and leases are held by ranchers that graze their livestock on over 21,000 grazing allotments throughout BLM managed lands. The BLM's overall objective is to ensure the long-term health and productivity of these lands. BLM uses a variety of methods to accomplish this objective – periodic rest or deferment of grazing in pastures in specific allotments during critical growth periods; vegetation treatments; and projects such as water developments and fences. The terms and conditions for grazing on BLM-managed lands such as stipulations on forage use and season of use are set forth in the permits and leases issued by the Bureau to public land ranchers.

STRATEGY #1: Provide for sustainable forage and grazing

Livestock grazing contributes to food production and adds to local economic stability, and it can be used in certain areas to maintain and improve land health by reducing hazardous fuels and minimizing the likelihood and impact of catastrophic wildfires. The BLM partners with local communities and state and local governments to develop rangeland improvement projects, stewardship contracting, and good neighbor authority in its rangeland management. In recent years, the number of grazing permits and leases processed has decreased due to dramatic increases in litigation and drought. The BLM continues to look for opportunities to streamline the grazing permit process and provide livestock operators greater flexibility in grazing their livestock on public lands.

Bureaus	Key Performance Indicators	2022 Goal
BLM	Percent of grazing permits and leases processed as planned consistent with applicable resource management plans	16%
BIA	Percent of tribal range units assessed during the reporting year for level of utilization	15%

MISSION AREA 3 Expanding Outdoor Recreation and Access

Outdoor recreation is integral to a healthy lifestyle for millions of Americans. Visitors to the DOI's public lands and waters take advantage of the physical, mental, and social benefits that outdoor recreational experiences provide. Americans have the opportunity to hunt and fish on public lands managed by the DOI as part of its multiple-use policy that also includes hiking, camping, climbing, boating, wildlife viewing, and other outdoor pursuits.

GOAL #1: Expand hunting, fishing, and other recreation on DOI lands and waters

Hunting, fishing and other outdoor activities contributed $156 billion in economic activity across the United States according to the FWS National Survey of Fishing, Hunting and Wildlife-Associated Recreation. More than 101 million Americans, or 40 percent of the United States' population 16 and older, pursue wildlife-related recreation, which supports 480,000 American jobs.

Following two initial Secretarial Orders issued on his first day, Secretary Zinke issued Secretarial Order 3356 in September, 2017, to further expand public access to lands and waters administered by the DOI, for hunting, fishing, recreational shooting, and other forms of outdoor recreation. In addition, this Order gave greater priority to recruiting and retaining sportsmen and women conservationists, with an emphasis on engaging youth, veterans, minorities, and underserved communities that traditionally have low participation in outdoor recreation activities.

STRATEGY #1: Promote hunting, fishing, and other recreation on DOI lands and waters

There are 372 National Wildlife Refuges and wetland management districts open to hunting and 308 refuges and wetland management districts open to fishing. As practiced on refuges, hunting and fishing do not pose a threat to wildlife populations, and in some instances, are actually necessary for sound wildlife management. For example, deer populations will often grow too large for the refuge habitat to support. If some of the deer are not harvested, they destroy habitat for themselves and other animals and die from starvation or disease. The harvesting of wildlife on refuges is carefully regulated to ensure an appropriate balance between population levels and wildlife habitat. The FWS National Fish Hatcheries continue to be a valuable tool in managing fisheries providing recreation opportunities to America's 36 million anglers who spend $46 billion annually in pursuit of their favored pastime.

There are 76 areas managed by the National Park Service that permit hunting. A total of 51,097,000 acres managed by the NPS are open to hunting at various times during the year, representing approximately 60% of the total acreage of the NPS system. The Bureau of Land Management estimates that over 95 percent of the nearly 250 million acres of BLM-managed public lands are open to hunting.

The recreation areas developed as a result of Bureau of Reclamation water projects are among the Nation's most popular for water-based outdoor recreation. There are 289 Reclamation project areas that have developed recreation facilities and opportunities available for public use. Reclamation has approximately 6.5 million acres of land and water, most of which is available for public outdoor recreation. The 187 developed recreation areas managed by Reclamation or a non-Federal recreation partner draw over 24 million visits annually. The 187 developed recreation areas provide 549 campgrounds, 454 boat launch ramps, and more than 5,500 miles of shoreline.

Bureaus	Key Performance Indicators	2022 Goal
FWS	Number of National Wildlife Refuge acres newly opened to hunting and fishing	250,000
BLM	Number of legal public access transactions completed that facilitate open access to recreation opportunities	20
BLM	Number of newly installed campsites, restrooms, and other facilities that promote public access to BLM-managed public lands	30
BLM, BOR, FWS	Number of individuals participating in outdoor recreation activities at special events	5,420,000

GOAL #2: Enhance public satisfaction at DOI sites

Visitor satisfaction with the quality of experiences on public lands remains very high. Collectively, satisfaction is above 90 percent for the bureaus providing recreation services, e.g., interpretive programs, visitor centers, camping, fishing, hiking, horseback riding, boating, off-highway vehicle driving, wildlife viewing, photography, and climbing. Satisfaction with recreation services provided through facilitated programs remains very high – also above 90 percent.

STRATEGY #1: Enhance the enjoyment and appreciation of our natural and cultural heritage

Survey results show that a sizeable percentage of visitors are satisfied with their experiences at parks, refuges and other public lands. Competition from other forms of entertainment pose challenges to the DOI in its quest to ensure that all Americans understand, appreciate and enjoy the special places protected by the national parks, wildlife refuges and BLM lands.

Bureaus	Key Performance Indicators	2022 Goal
BLM, FWS, NPS	Percent of visitors satisfied with the quality of the experience	95%
BLM, NPS	Percent of visitors satisfied with facilitated programs	94%

MISSION AREA 4 Fulfilling Our Trust and Insular Responsibilities

The DOI upholds the Federal government's unique trust responsibilities by fostering the government-to-government relationships between the Federal government and federally recognized Tribes, and by providing services to individual American Indians, and Alaskan Natives. The U.S. also has important relationships with the affiliated insular areas including the Territories of American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. The DOI administers and oversees Federal Assistance to the three Freely Associated States: The Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

GOAL #1: Support tribal self-determination, self-governance, and sovereignty

The DOI is strengthening the nation-to-nation relationship between the Federal Government and tribal nations because self-determination, sovereignty, self-government, and self-reliance are the tools that will enable tribal nations to shape their own destiny. Tribes have also assumed an expanded role in the operation of Indian programs through Public Law 93-638 contracting. Tribes contract with the Federal Government to operate programs serving their tribal members and other eligible persons.

STRATEGY #1: Support self-governance and self-determination

Self-Governance: Under a self-governance compact, a tribe takes over most or all operations affecting that tribe. The Indian Affairs' Office of Self-Governance (OSG) implements the Tribal Self Governance Act of 1994 by developing and implementing regulations, policies, and guidance in support of self-governance initiatives. Indian Affairs advocates for the transfer of Federal programmatic authorities and resources to tribal governments and supports tribal sovereignty and an expanded role in the operation of Indian programs. The program work includes negotiating annual funding agreements with eligible tribes and consortia, and resolving issues identified in financial and program audits of self-governance operations.

Self-Determination: Under a self-determination contract, a tribe contracts with BIA to take over operation of a program formerly delivered by BIA employees. The funds BIA previously used to run the program transfer to the tribe. Self-determination typically is a program-by-program decision. The Indian Self-Determination Program within BIA works to further American Indian tribes' exercise of self-determination and conducts oversight of self-determination contracts and grants.

Bureaus	Key Performance Indicators	2022 Goal
AS-IA	Percent of Self-Governance Single Audit Act reports submitted during the reporting year for which management action decisions on audits are made within 6 months	99%
BIA	Percent of Self-Determination Single Audit Act reports submitted during the reporting year for which management action decisions on audits are made within 6 months	91%
AS-IA	Percent of P.L. 93-638 contracts with clean audits	90%

GOAL #2: Fulfill fiduciary trust

The DOI has ongoing responsibilities to ensure that trust and restricted Federal Indian-owned lands are managed effectively and to accurately account for revenues and disbursements in a timely and efficient manner. The Office of the Special Trustee for American Indians and the Bureau of Indian Affairs oversee fiduciary trust activities. The DOI assists American Indian and Alaska Native communities in developing capabilities needed to strengthen their communities and maintain economic self-sufficiency. Efforts such as reducing fractionation of Indian lands and developing conservation and resource management plans help tribes maximize economic benefits of their lands. Securing unsubsidized employment reduces dependency on Federal subsidized programs such as childcare assistance, food stamps, and welfare.

Trust assets are crucial to the financial well-being of individual Indian beneficiaries and key components in the economies of tribes. As such, these assets must be managed with great care, paying attention that all financial transactions are completed accurately and as quickly as possible. Since passage of the American Indian Trust Fund Management Reform of 1994, the trust accounts managed by OST are balanced to the penny on a daily basis. OST has also incorporated industry-standard practices, such as a lockbox facility, to shorten the time between the payment of a lease and deposit of those funds into a trust account. For Fiscal Years (FY) 2013 through 2017, OST has received a "clean" audit opinion for Individual Indian Monies (IIM) accounts, attesting to its professionalism in managing these assets. Despite this proven record of success, OST retains a commitment to continual reform, looking for more ways to improve its service to individual Indians and tribes.

The Bureau of Indian Education (BIE) helps provide quality education opportunities starting in early childhood in accordance with tribally identified strategies and needs that contribute to the social well-being of the community and sustain Indian cultures. Tribes directly operate 150 of the 183 BIE funded schools through self-determination contracts and Tribally Controlled Schools Act grants.

STRATEGY #1: Ensure accurate and timely management of fiduciary trust assets

In its effort to promote the fulfillment of fiduciary trust processes, the DOI assists Indian tribes in developing capacity and infrastructure needed to attain economic self-sufficiency on reservations to enhance their quality of life. One critical path is economic development and job creation. The BIA coordinates development of comprehensive tribal programs with the Departments of Labor and Health and Human Services. The DOI offers programs and financial services that encourage start-ups and help position Indian businesses and individuals to compete in today's economy.

Bureaus	Key Performance Indicators	2022 Goal
BIA	Total average gain in earnings of participants that obtain unsubsidized employment through Job Placement Training programs for tribes submitting P.L. 102-477 related reports	$10.82
BIA	Percent of active, supervised Individual Indian Monies (IIM) case records reviewed in accordance with regulations	98%

BIA	Increase in the percentage of submitted land-into-trust applications with determinations (Fee to Trust)	40%
OST	Percent of financial information initially processed accurately in trust beneficiaries' accounts.	99%
OST	Percent of oil and gas revenue transmitted by ONRR recorded in the Trust Funds Accounting System within 24 hours of receipt.	99%
OST	Percent of timeliness of financial account information provided to trust beneficiaries.	100%

STRATEGY #2: Strengthen Indian Education

Improving performance in BIE schools is a challenge the DOI is addressing through initiatives aimed at increasing student achievement. Students at BIE-funded schools receive a culturally relevant, high-quality education that prepares them with the knowledge, skills, and behaviors needed to flourish in the opportunities of tomorrow, become healthy and successful individuals, and lead their communities and sovereign nations to a thriving future that preserves their unique cultural identities.

Bureaus	Key Performance Indicators	2022 Goal
BIE	Percent of students attending BIE-funded schools completing high school with a regular diploma within four years of their 9th grade entry date	69%

GOAL #3: Strengthen economic and health capacities in the US Territories, and fulfill US compact obligations to the freely associated states

The DOI supports the U.S. Territories and Freely Associated States (FAS) through the Office of Insular Affairs (OIA) under the Assistant Secretary for Insular and International Affairs. The U.S.-affiliated insular areas are: the territories of American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Residents of these U.S. territories are U.S. citizens or nationals. The DOI also administers and oversees Federal assistance provided to the three Freely Associated States: the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. The Assistant Secretary Insular and International Affairs and the Office of Insular Affairs carry out these responsibilities on behalf of the Secretary.

STRATEGY #1: Bolster Healthcare Capacity

The Territories and FAS experience significant healthcare challenges. The DOI along with other partners, such as the Department of Health and Human Services (HHS), will work with insular area partners to improve the quality of healthcare across the insular areas. The DOI will make investments to implement corrective action plans which address chronic operational and facility shortcomings at territorial hospitals, which serve their U.S. citizens and nationals, with a focus on those identified by the HHS/Centers for Medicare/Medicaid (CMS) and local elected officials. Additional investments will be made to combat non-communicable and communicable diseases impacting the Pacific and Caribbean islands such as obesity, diabetes, and tuberculosis.

Offices	Key Performance Indicators	2022 Goal
OIA	Percent of Community Water Systems (CWS) that receive health based violations notices from the US Environmental Protection Agency	9%
OIA	Number of new and relapse tuberculosis cases occurring during the calendar year on the islands (per 1,000 people in the population)	1
OIA	Percent of patients with newly diagnosed tuberculosis disease for whom 12 months or less of treatment is indicated, who complete treatment within 12 months	95%
OIA	Infant mortality rate per 1,000 live births (number of deaths to infants from birth through 1 year of age per number of live births)	6

STRATEGY #2: Strengthen Island Economies

Strong local economies provide employment and a viable tax base for citizens in the Insular Areas. The DOI will assist the insular areas to strengthen their economies through strategic investments in infrastructure, public services and technical assistance which will attract and retain private sector investment. The DOI will promote policies and improve Federal coordination on issues impacting insular economies.

Capital investments will be made in basic utilities, hospitals, schools, ports, tourist areas, telecommunications and roads as they create the backbone for increased economic activity. Pursuing renewable energy strategies lessens dependence on oil imports and provides more reliable and affordable energy.

Stable economies and fiscally prudent insular governments foster a more hospitable climate for investment in the islands. Technical assistance will be provided to equip the insular areas with the statistical and management information necessary for informed leadership decision making, expert consultants to effectively improve insular government financial policies and procedures, and strong financial management systems along with technical planning abilities.

The DOI will help create economic opportunity by forging partnerships that bolster tourism and attract industry by promoting the unique island cultures, natural resources, and by preparing the next generation of business leaders. Key indicators of OIA's effectiveness include the following:

Average per capita Gross Domestic Product (GDP): In the four U.S. Territories (Guam, US Virgin Islands, American Samoa, and Commonwealth of the Northern Mariana Islands (CNMI)) for which it is measured, GDP remains a fraction of that for other U.S. citizens in the states. OIA provides technical assistance to the insular areas to assist with economic development planning and execution and supports local planning and education activities related to tourism, agriculture, and aquaculture. In addition, OIA funds infrastructure projects related to economic development, such as fiber optic connectivity, port improvements and renovations to tourist districts.

Cost of electricity: Without indigenous fossil fuels, insular areas face great challenges in achieving reliable, affordable, and secure energy, which can have severe economic effects on the island communities. These areas depend almost entirely on imported petroleum products for energy. The residential cost per kilowatt hour for power in the territories directly impacts the quality of life in

the insular areas and remains over three times higher than the national average. To try to address high electricity costs, the Office of Insular Affairs (OIA) contracts with the Department of Energy's National Renewable Energy Laboratory (NREL) to engage territories and provide energy efficiency and renewable energy assessments, help develop strategic energy plans, and provide technical assistance in reviewing and implementing alternative energy projects. The OIA, through its Empowering Insular Communities grant program, continues to provide funding for the highest priority projects identified in the energy plans including photovoltaic, wind and geothermal development projects, as well as assuring traditional energy plants continue operating.

Offices	Key Performance Indicators	2022 Goal
OIA	Difference in the mean GDP per capita in the 4 US territories compared to the mean GDP per capita in the US	60%
OIA	Difference in the residential cost per kilowatt hour for power from the national average	2X

STRATEGY #3: Fulfill US Compact Obligations

In coordination with the State Department, the DOI will implement compact obligations with three U.S.-affiliated Freely Associated States (FAS): the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI) and the Republic of Palau (Palau). The DOI will make direct grants to the FSM and RMI under their amended Compacts to provide assistance in six sectors: education, health care, infrastructure, public sector capacity building, private sector development, and environment. The DOI will also continue to support U.S. compact obligations to Palau.

Offices	Key Performance Indicators	2022 Goal
OIA	Ratio of FAS private sector jobs versus total FAS employment	55%
OIA	Ratio of FAS public sector jobs versus total FAS Employment	45%
OIA	Percent of FAS employment attributable to OIA Grants and Programs	30%
OIA	Percent of FAS employee compensation attributable to OIA grants and programs	25%
OIA	Average FAS private sector wage rate as a percentage of average FAS central government wage rate	45%

MISSION AREA 5 Protecting Our People and the Border

Inherent in DOI's management responsibilities of the public lands is the requirement to protect employees and visitors. Ensuring employee and public safety is complex and requires the resources of multiple bureaus and offices covering four disciplines – law enforcement, emergency management, wildland fire, and natural hazards science. The DOI's Law Enforcement Program has the third largest contingent of Federal law enforcement officers in the Executive Branch. Depending on the season, approximately 3,500-4,000 law enforcement officers, rangers, and other employees patrol vast acres of public lands, national parks, wildlife refuges, and Indian communities and protect people, as well as natural, cultural, and heritage resources from illegal activities. Wildland fires potentially endanger lives and property. The Office of Wildland Fire (OWF) coordinates among the DOI's land management bureaus and the US Forest Service to safely, efficiently, and effectively prevent, respond to, and manage the impacts of wildfires. The USGS also protects lives by monitoring and warning of natural hazards such as earthquakes, volcanoes, landslides, and environmental health hazards.

The DOI has land on both the Canadian and Mexican borders, and a presence in the Pacific that exposes Americans to risks from Asia. The Administration is presently emphasizing securing our southern border with Mexico to better protect our country. The DOI has a considerable amount of land that borders Mexico. As such, the DOI's law enforcement officers work in partnership with the US Customs and Border Patrol, Immigration and Customs Enforcement, Drug Enforcement Agency, and tribal, state and local governments to address the flow of illegal immigration, gun and drug trafficking, and to mitigate the impacts associated with these activities, which affect DOI lands and our community partners. In addition, OWF shares wildfire management responsibilities with Mexico along the southern border.

GOAL 1: Ensure emergency preparedness & DOI law enforcement staffing addresses public safety risks

The DOI places a high priority on safety, security, and preparedness, and will uphold its responsibilities for protecting lives, resources, and property through a wide variety of program areas, including law enforcement, health and safety, security, and emergency management. The DOI's preference is to achieve public and visitor compliance with applicable laws and regulations by using techniques that are not confrontational and are designed to elicit voluntary as opposed to coerced compliance.

STRATEGY #1: Ensure public safety on our lands

The Office of Law Enforcement and Security (OLES) provides program direction and oversight on law enforcement policy, border security, drug enforcement, training at the national academy, internal affairs, victims assistance, program compliance, and inspections as well as emergency deployment of DOI law enforcement resources. The Office coordinates with other Federal, state and local agencies (including the Department of Homeland Security, Federal Bureau of Investigation (FBI), and Central Intelligence Agency) on law enforcement and security issues, including infrastructure on the Outer Continental Shelf, the Trans-Alaska pipeline, and gas transmission lines.

To help ensure effective protection of people on DOI lands, each bureau will determine the effective level and distribution of law enforcement staffing for each of its programs on a unit-by-unit basis. The effective level and distribution of staffing needs is dependent on the differing

conditions, levels of risk, and populations served in each unit, captured through a staffing model developed and monitored by each bureau. The DOI's bureaus will engage in developing these staffing models, to determine on a program basis the effective levels of law enforcement staffing that are needed across its units, evaluate the actual level of law enforcement staffing that presently exists, and develop recommendations for better ensuring the effective level of staffing for protecting the people in each unit.

The DOI will strengthen law enforcement in Indian Country by putting more officers on the streets, bolstering tribal courts, and helping fight violent crime and drug abuse. Tribal justice systems are an essential part of tribal governments, which interface with BIA and tribal law enforcement activities. Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for adjudicating disputes and minor criminal activity within Indian Country. It is important that the BIA and tribal law enforcement activities complement the operations of the tribal courts to ensure that justice in the tribal forums is administered effectively.

Bureaus	Key Performance Indicators	2022 Goal
OLES	Percent of DOI law enforcement agencies with a current law enforcement staffing plan	100%
BIA	Percent of criminal offenses solved by arrest (Part 1 Offense Clearance Rate)	44%

Strategy 2: Prepare DOI to respond to and recover from emergencies and incidents

The Office of Emergency Management (OEM) promotes all-hazard preparedness and response; ensures continuity of the DOI to perform essential functions during catastrophic events; and assists communities during imminent threats. Collectively, the DOI supports the five National Planning Frameworks (Protection, Prevention, Mitigation, Response, and Recovery) and their related five Federal Interagency Operational Plans, the National Incident Management System, and the National Oil and Hazardous Substances Pollution Contingency Plan while continuing the DOI's mission to protect natural and cultural resources. The DOI's All-Hazards Baseline Operational Plan provides the baseline guidance for how the Department prepares for and responds to emergencies, regardless of type or cause. The OEM leads coordination and information sharing for emergency management regarding communications, public health, environmental health, wildlife health, integrated pest management, invasive species, and occupational safety and health across the DOI's bureaus and offices.

Offices	Key Performance Indicator	2022 Goal
PEM	Average Interior Readiness (I-READ) Index score for emergency preparedness across DOI Bureaus/Offices	91.0%

GOAL 2: Support securing our southern continental US border

The DOI manages 41% of the southwest border of the continental United States. The DOI's managers in the field are daily faced with tough decisions on how to best utilize their law

enforcement assets. An integrated government approach is essential to effectively securing the border and supporting the construction of a physical barrier where needed. Through partnering, federal, state, tribal, and local law enforcement agencies working in proximity to each other have been able to address critical issues like illegal immigration and marijuana smuggling.

STRATEGY #1: Support securing our southern continental US border

The DOI's goal is to increase collaboration among the agencies operating along the border to better understand each other's mission, share resources, and coordinate efforts. This is accomplished by routine interagency coordination, participating in local Border Management Task Force (BMTF) meetings, interagency training, an annual interagency border forum, and law enforcement specific operations.

The US Border Patrol is the main federal agency responsible for patrolling DOI lands adjacent to the US/Mexican Border. The DOI's goal is to work with US Border Patrol to decrease illegal immigration on DOI managed public lands through collaborative efforts with partnering agencies.

Bureaus	Key Performance Indicators	2022 Goal
PMB/OLES	Number of apprehensions on DOI-managed lands	Reduced Annually

GOAL #3: Manage wildland fire to reduce risk and improve ecosystem and community resilience

The DOI, working with the Department of Agriculture, will improve the way that both agencies manage wildland fire by ensuring that fire management assets are used in the most efficient way possible. The DOI will work with state, local, tribal, and other partners to ensure a coordinated approach to wildland fire management that enables protection responsibilities to be exchanged and resources shared to improve operational efficiency and reduce management duplication. The DOI will continue to integrate science and technology into informing and supporting the firefighters with the appropriate training tools, resources and program support to enable them to work safely and effectively.

The DOI is developing new wildland fire management performance measures to better articulate and determine the efficacy of Department and Administration resources in achieving desired resource conditions that reduce the intensity, severity or negative effects of wildfire. As part of this effort, the Department has established a working group among the four DOI wildland fire bureaus, as well as the U.S. Forest Service, which will explore the feasibility of concepts and principles in wildfire risk mitigation, and examine the value of the strategic placement of fuels treatments as informed by a risk assessment and mitigation plan. This group will develop recommendations for a) establishing outcome-based targets, and b) annually evaluating the performance of the program in meeting the desired objectives of the National Cohesive Wildland Fire Management Strategy. When

completed, the DOI will incorporate the new performance measures into its strategic plan implementation.

STRATEGY #1: Integrate fire ecology, risk management, and collaboration to mitigate wildfire impacts

The Department's Office of Wildland Fire coordinates programs and funding across four bureaus (BLM, FWS, NPS, and BIA) that manage wildland fire programs to implement the National Cohesive Wildland Fire Management Strategy, a science-based collaborative approach to mitigating wildfire risk. The DOI, in partnership with the Department of Agriculture's Forest Service, is committed to the inclusive principles of providing safe and effective response to wildfires, promoting fire-adapted communities, and creating fire-resilient landscapes. The DOI strives to achieve a science-based and technically effective wildland fire management program that is integrated with natural resources programs.

Successful management in fire-adapted communities and landscapes depends on implementation of a broad-based, intergovernmental, collaborative, and national cohesive strategy to address the mounting challenges of escalating fire behavior, increased risk to responders, greater natural and cultural resource losses, and increased threats and losses to communities. The DOI is a lead agency in this collaborative approach with the Forest Service and other Federal, state, tribal, and local governments and stakeholders.

Bureaus/ Offices	Key Performance Indicators	2022 Goal
OWF	Percent of DOI-managed landscape acres that are in desired condition as a result of fire management	36%
OWF	Percent of DOI-managed treatments that reduce risk to communities that have a wildland fire mitigation plan	94%
OWF	Percent of wildfires on DOI-managed landscapes where the initial strategies fully succeeded during the initial response phase	97%

GOAL #4: Provide science to safeguard communities from natural hazards

The USGS helps protect public safety, public health, and property by effectively delivering natural hazards and environmental health science. The Nation's emergency managers and public officials use USGS science to inform citizens of the potential risks these hazards pose to natural systems and the built environment, improve preparation and response activities, and protect the health of the public, which reduce the loss of life and property.

STRATEGY #1: Monitor and assess natural hazards risk and response planning

Responsibilities in natural hazards include the issuing of warnings and advisories for earthquakes, volcanic eruptions, landslides, and coastal erosion; informing warnings issued by other agencies for floods, tsunamis, and wildfires; providing timely information to emergency managers and response officials, the media, and the public to inform and educate communities during and between crises.

The USGS supports these activities by implementing 24x7 operations for seismic, volcanic, and geomagnetic monitoring efforts; maintaining an extensive national network of streamgages measuring rainfall, streamflow, stream height or lake levels; and developing the next generation of tools for rapid evaluation of hazards.

Bureaus	Key Performance Indicators	2022 Goal
USGS	Percent completion of targeted natural hazards assessments of very high and high-threat regions of the Nation (Index)	4%
USGS	Percent completion of targeted landslide hazard research	8%
USGS	Percent completion of coastal and marine hazards and subsidence research (Index)	87%
USGS	Percent progress towards optimal monitoring capability for natural hazards situational awareness (Index)	52%
USGS	Percent of the National Streamflow Network (NSN) streamgages that are fully operational	88%

MISSION AREA 6 Modernizing Our Organization and Infrastructure for the Next 100 Years

The DOI is looking to better ensure effective operations and service delivery through coordinated organizational alignments in the field across bureaus and with other federal and nonfederal partners, and through putting a relatively larger fraction of our employees into the field to serve the public. Expediting environmental analysis and compliance, reducing the cost of space, collocating offices for more convenient public service and improved interagency coordination, and common regional boundaries are all being explored to help improve the DOI's infrastructure and related effectiveness.

GOAL #1: Align DOI organizational structure and workforce to improve partnership engagement and mission delivery

The DOI is reevaluating its organizational model to determine how to best achieve its mission of serving the American public, honoring our tribal and fiduciary trust responsibilities, and managing and protecting our land, water and natural resources for the next 100 years.

STRATEGY #1: Ensure effective alignment of DOI organizational structure in the field and with partners

The DOI intends to establish unified regional boundaries for its bureaus in 2018 and to further develop this approach in 2019. The goal is to improve overall operations, internal communications, customer service, and stakeholder engagement. Aligning geographic areas across the DOI will enhance coordination of resource decisions and policies and will simplify how citizens engage with the DOI.

Organizing bureaus with common geographic areas will allow for more integrated and better coordinated decision making across bureaus. Currently, the DOI's bureaus have more than 40 distinct regions, each with its own geographic boundaries. This complicates coordination and hampers the DOI's ability to get things done expeditiously. Having unified regions will help streamline operations and in doing so, provide better service to the American people. Bureaus within a region will focus on common issues, taking a comprehensive approach versus a bureau-centric approach. This culture shift will help us work better together to accomplish one vision. The new regional boundaries currently under discussion – and subject to modification – are expected to have minimal budgetary impact.

To improve customer service and reduce operational costs, sharing functions at field locations has already begun. For a number of years, the Department of the Interior and Department of Agriculture's US Forest Service (USFS) have pooled resources, conducted joint projects, and shared services under Service First agreements where field locations are in close proximity to each other. Service First authority promotes partnering across agency boundaries to develop joint solutions to common problems and to address federal land management issues in an integrated way.

STRATEGY #2: Improve strategic hiring, placement and retention efforts to ensure mission-critical service delivery through data driven processes and increased employee engagement efforts

The DOI is committed to managing America's vast natural and cultural resources with a 70,000-strong and 350 occupation-plus workforce that exemplifies high performance, customer service and

accountability. Historically, it has been difficult to attract certain DOI employees or recruits in certain occupations to positions in headquarters, or even to regional offices, because many of our employees enjoy living in relatively rural areas and because the cost of living is so much higher in large cities. Moving a larger fraction of our staff of some bureaus to relatively more rural and considerably less expensive areas in the West might therefore both reduce payroll cost because fewer employees would receive locality pay, and improve employee retention.

To facilitate strategic human capital planning, the Department has put in place hiring controls to emphasize new hiring for field-related positions rather than administrative and support positions in the Washington, D.C., and Denver, Colorado metropolitan areas.

The DOI will leverage automation to improve employee performance and training opportunities, and examine additional data to determine if operational efficiencies can be gained while minimizing redundancies under the current organizational design.

Data to be analyzed include:

- Federal Employee Viewpoint Survey (*e.g.*, employee engagement)
- Geographic Representation of Bureau Mission Critical Occupations
- Geographic Representation of Administrative and Support Services
- Customer Service data
- Benchmarking cost allocations for administrative and support functions
- DOI Human Capital Framework Evaluations
- Accountability drivers on performance, labor management, EEO, etc.
- Bureau plans in response to the Department-wide Workplace Environment Survey

Offices	Key Performance Indicator	2022 Goal
PHR	Employee engagement index for DOI in the Federal Employee Viewpoint Survey	75%
PHR	DOI's ranking among large agencies in the Partnership for Public Services' Best Places to Work report	1

GOAL #2: Reduce administrative and regulatory burden

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, directed agencies to "manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations." The DOI is reviewing its regulations and administrative processes to determine what cost savings, to the government and to the public, are possible by repealing regulations for which the perceived benefits might not be justified relative to their implementation costs, and which administrative processes could be streamlined or made more efficient.

STRATEGY #1: Evaluate and improve the net benefits of regulatory reform initiatives and policies, and identify regulations for repeal, replacement, or modification

On February 24, 2017, President Trump signed Executive Order 13777 entitled, "Enforcing the Regulatory Reform Agenda" to alleviate unnecessary regulatory burdens placed on the American people. The Executive Order established a Regulatory Reform Officer (RRO) for each agency and a Regulatory Reform Task Force. The efforts of the RRO and the task force will help identify

regulations for repeal, replacement, or modification that eliminate jobs, inhibit job creation, are outdated, unnecessary, ineffective, impose costs that exceed benefits, or rely on data or methods that are not publicly available or insufficiently transparent to meet the standard for reproducibility. The costs of the regulatory and deregulatory actions are measured as the opportunity costs or cost savings to society, as defined in OMB Circular A-4 (i.e. the values reported are the cumulative net savings from deregulatory actions and costs of newly required regulatory actions over multiple years starting in FY 2017). In 2017, the DOI achieved cumulative net savings of $1.15B (net present value) from its deregulatory actions. Goals for subsequent years will be established as the DOI completes its review of target regulations.

Office	Key Performance Indicator	2022 Goal
DOI	Total incremental cost of all EO 13771 regulatory actions and EO 13771 deregulatory actions (including costs or cost savings carried over from previous fiscal years)	TBD
DOI	Number of EO 13771 regulatory actions issued.	TBD
DOI	Number of EO 13771 deregulatory actions issued.	TBD

STRATEGY #2: Improve transparency and timeliness of the infrastructure permitting process

As outlined in the President's Executive Order "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure," and the corresponding Secretarial Order 3355, a significant opportunity exists for agencies to streamline and collaborate on National Environmental Protection Act (NEPA) compliance efforts. The DOI believes this can best be achieved through a unified regional structure adopted across the DOI which focuses on the intersecting issues within the same geographical boundaries.

The DOI is also establishing an Executive Committee for Expedited Permitting (ECEP) to expedite the responsible leasing and permitting of energy and mineral production. More specifically, this involves, but is not limited to, the processing of Applications for Permit to Drill (APD), Expressions of Interest (EOI), coal leasing actions, Right-of-Way (ROW) applications, and harmonization of appurtenant environmental reviews.

Office	Key Performance Indicator	2022 Goal
DOI	*Cross-Agency Priority Goal metric on improving infrastructure permitting to be added*	
BLM	Average amount of time (in days) to process and administratively complete Applications for Permit to Drill	90 days
BLM	Average amount of time (in months) to issue a decision on major right-of-way applications	48 months
BLM	Average amount of time (in days) to process and administratively complete a grazing permit	390 days
FWS	Percent of formal Endangered Species Act Section 7 consultations addressed in a timely manner	100%

GOAL #3: Prioritize DOI infrastructure needs and reduce deferred maintenance backlog

Real property assets are integral to the success of Interior's mission. DOI's real property inventory includes approximately 43,000 buildings and 80,000 structures across six major land-holding bureaus, with a replacement value of approximately $300 billion. DOI manages the full life-cycle requirements of nearly every type of constructed asset found, including visitor centers, dams, schools, health clinics, power generating facilities, housing, hotels, fire stations, campgrounds, roads, water and wastewater treatment plants, offices, and more. Many of these assets have historic or cultural significance that not only support the DOI's mission, but are important to our Nation's heritage.

STRATEGY #1: Maintain critical DOI infrastructure and facilities to ensure effective operations and service delivery

The DOI's goal is to balance mission delivery demands with adequate investments in operations and maintenance to sustain the portfolio in an appropriate condition befitting of our role as America's stewards. Appropriately maintained assets enable the DOI to accomplish habitat and resource management, provide outdoor recreation activities, deliver water, fulfill trust and treaty responsibilities, and provide critical economic inputs and job creation for local communities. Adequately constructed and maintained Federal real property supports healthy habitats and populations, availability of safe and reliable public use opportunities, and robust local economies.

A significant factor impacting a sustainable portfolio of constructed assets is DOI's aging infrastructure. Many assets already exceed original design life, and this trend of aging infrastructure continues to threaten mission delivery. Prioritizing repairs on a portfolio scale will ensure the assets condition is maintained at an acceptable level. Effective management of deferred maintenance is a Departmental priority to ensure completion of needed repairs and prevent further deterioration and unsafe conditions. The DOI prioritizes addressing deferred maintenance/repair needs for mission critical activities. Furthermore, proactive maintenance, replacement of components and colocation of programs and staff in owned facilities will help to reduce future costs.

The DOI conserves the Nation's cultural and heritage sites that reflect a rich and diverse history. The DOI safeguards our heritage for the generations that follow, to better understand our country and learn from our past. Many challenges exist in protecting and maintaining historic and archeological sites, especially with the impacts of weather on fragile sites and structures. Sites are exposed to changing weather conditions that cause damage and deterioration of the structures and sites and some locations are vandalized or accidentally damaged by visitors to federal lands.

The Road Construction Program maintains and operates the 29,000 miles of BIA-owned roads and bridges. These roads and bridges serve as the primary access points to tribal communities, without which critical resources and services would not reach tribal members.

The DOI will continue to improve and provide safe, functional, energy efficient, and universally accessible BIA facilities. The DOI is allocating funds to improve its Bureau of Indian Education (BIE) funded schools, and improve the learning environment of BIE students.

Agency Priority Performance Goal: By September 30, 2019, the Department of the Interior will improve the condition of its priority real property assets such that 82% are in the desired state of acceptable condition.

Bureaus/ Offices	Key Performance Indicators	2022 Goal
PAM	Percent of priority assets in acceptable condition (i.e. meet investment objective)	84%
PAM	Amount of priority deferred maintenance (repair) needs/activities addressed (i.e. completed for that year)	$1.2 billion
NPS	Value of NPS deferred maintenance work orders closed ($000)	TBD
BIA, BLM, FWS, NPS	Percent of historic structures on DOI inventory in good condition	57%
BIA, BLM, BOR, FWS, NPS	Percent of museum collections on DOI inventory in good condition	59%
BIA, BLM, FWS, NPS	Percent of archaeological sites on DOI inventory in good condition	67%
BOR	Maintain a completion rate of 95% for Safety of Dam recommendations	95%
BIA	Percent of miles of BIA road in acceptable condition based on the Service Level Index	14%
BIA	Percent of BIA bridges in acceptable condition based on the Service Level Index	69%
BIE	Percent of students in BIE school facilities that are in acceptable condition as measured by the Facilities Condition Index	67%

STRATEGY #2: Provide dependable and efficient information technology

Information Management and Technology (IMT) provides modern and secure technology solutions to advance the DOI's ability to deliver programs and services to the public and our customers. To do so, the DOI must protect its critical information assets from cyber exploitation and attack to ensure that employees and the public can rely on the confidentiality, integrity, and availability of the DOI's data and information systems. The DOI is implementing advanced technologies that will increase visibility into its IMT environment, improve protections around our high-value information assets, and empower its workforce to better detect, respond, and recover from cyber-attacks and breaches. With a more secure computing environment in place, its employees can more easily obtain the tools and data they need to perform the mission securely efficiently and effectively, anywhere and anytime.

The DOI will continue to deploy and mature Continuous Diagnostics and Mitigation (CDM) capabilities that help to fortify its networks and systems. These capabilities provide the DOI with tools necessary to better identify cybersecurity risks on an ongoing basis, prioritize these risks based upon potential impacts, and enable cybersecurity personnel to mitigate the most significant

problems first. Achieving the performance objectives will enable the DOI to meet the requirements of Presidential Executive Order 13800, "Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure." The DOI has adopted the National Institute of Standards and Technology (NIST) Cybersecurity Framework and will work towards implementing and maturing the set of activities known to be effective in managing cybersecurity risks and that are necessary to achieve key cybersecurity outcomes that support the following functions: Identify, Protect, Detect, Respond and Recover.

The DOI is working collaboratively with its user community to understand operational needs better in the field, resulting in expanding network capabilities to improve connectivity in remote areas so employees can be as productive as possible. To improve collaboration, the DOI will enhance its Geospatial Platform capabilities, which is an internet-based tool for sharing trusted geospatial data with the public, government agencies, and partners to meet their mission needs. The DOI will also seek to deliver improved services at a lower cost by consolidating and standardizing IT services and systems, including consolidating and optimizing its data center and network operations and standardizing security, customer support, and administrative functions.

Offices	Key Performance Indicator	2022 Goal
PIO	Percent of unclassified network hardware and software assets appropriately authorized and managed	95%
PIO	Percent completion of DOI's Federal Information Technology Acquisition Reform Act (FITARA) Implementation Plan	100%

APPENDIX A – ACRONYMS

APD	Application for Permit to Drill	I-READ	Interior Readiness (index)
APIPA	Association of Pacific Island Public Auditors	LHP	Landslide Hazard Program
APP	Annual Performance Plan	LIDAR	Light Detection And Ranging
APP&R	Annual Performance Plan and Report	LTRO	Land Title and Records Office
APR	Annual Performance Report	MMBF	Million Board Feet
ARPA	Archeological Resources Protection Act	MR&R	Major Rehabilitations and Replacements
AS-IA	Assistant Secretary for Indian Affairs	MRP	Mineral Resource Program
AS-IN	Assistant Secretary for Insular Affairs	MTS	Mineral Tracking System
AS-PMB	Assistant Secretary for Policy, Management, and	NAGPRA	Native American Graves Protection and
	Budget		Repatriation Act
BIA	Bureau of Indian Affairs	NAWQA	National Water Quality Assessment Program
BIE	Bureau of Indian Education	NCGMP	National Geologic Map Database
BLM	Bureau of Land Management	NEPA	National Environmental Policy Act
BOEM	Bureau of Ocean Energy Management	NFHS	National Fish Hatchery System
BOR	Bureau of Reclamation	NHPA	National Historic Preservation Act
BSEE	Bureau of Safety and Environmental	NIBRS	National Incident Based Reporting System
	Enforcement	NIMS	National Incident Management System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	NLCD	National Land Cover Database
CFR	Code of Federal Regulations	NOAA	National Oceanic and Atmospheric Administration
CFS	Cubic Foot per Second	NPS	National Park Service
CNMI	Commonwealth of the Northern Mariana Islands	NWRS	National Wildlife Refuge System
CWS	Community Water Systems	O&C	Oregon and California
DOI	Department of the Interior	O&M	Operations and Maintenance
EHP	Earthquake Hazard Program	OCS	Outer Continental Shelf
EPA	Environmental Protection Agency	OEPC	Office of Environmental Policy and Compliance
ERP	Energy Resource Program	OIA	Office of Insular Affairs
FASS-CMS	Financial Assistance and Social Services – Case Management System	OIG	Office of the Inspector General
FCI	Facilities Condition Index	OJS	Office of Justice Services
FRPP	Federal Real Property Profile	OLES	Office of Law Enforcement and Security
FRR	Facility Reliability Rating	OMB	Office of Management and Budget
FWS	Fish and Wildlife Service	OSG	Office of Self-Governance
GAO	Government Accountability Office	OSMRE	Office of Surface Mining Reclamation and Enforcement
GDP	Gross Domestic Product	OST	Office of Special Trustee
GIS	Geographic Information System	ONRR	Office of Natural Resources Revenue
GPRA	Government Performance Results Act	OPM	Office of Personnel Management
GPS	Geospatial Positioning System	OWF	Office of Wildland Fire
HHS	Department of Health and Human Services	PAM	Office of Acquisitions and Property
HMA	Herd Management Area		Management
HPPG	High Priority Performance Goal	PEM	Office of Emergency Management
ICWA	Indian Child Welfare Act	PEP	Office of Environmental Policy and Compliance
IGFOA	Island Government Finance Officers'	PFM	Office of Financial Management
	Association	PHR	Office of Human Resources
IIM	Individual Indian Money	PIO	Office of the Chief Information Officer
ILCO	Indian Land Consolidation Office	ROW	Right of Way
ILCP	Indian Land Consolidation Program	SMART	Sustain and Manage America's Resources for Tomorrow

IMARS	Incident Management Analysis Reporting System		
SMCRA	Surface Mining Control and Reclamation Act of 1977		
STEM	Science, Technology, Engineering and		
	Mathematics		
T&E	Threatened and Endangered		
TFAS	Trust Financial Accounting System		
USDA	U.S. Department of Agriculture		
USGS	U.S. Geological Survey		
VHP	Volcano Hazard Program		
WUI	Wildland-Urban Interface		

From: Katherine Spomer
To: Nolin, Chris
Cc: Cynthia Martinez; Stephen Guertin; Katherine Spomer; Keenan Delawder
Subject: Re: Border Wall
Date: Monday, November 5, 2018 2:26:01 PM

My office received a similar question twice today. I have a message into our Regional staff. Would you mind sharing your response so I can ensure consistency?

Thank you!

Sent from my iPhone

On Nov 5, 2018, at 5:20 PM, Nolin, Chris <chris_nolin@fws.gov> wrote:

> Approps staff asked today if the border wall segment that CBP just let a contract for will affect LRGV NWR. It will, as I believe it is the same segment we have been asked about several times.
>
> I provided that information to the Dept. Budget Office. Just a heads up in case questions come your way.
>
> --
> Chris Nolin
> Budget Officer
> US Fish & Wildlife Service
> 703-358-2343 desk
> 240-305-0490 cell
> U.S. Fish and Wildlife Service Headquarters
> MS: BPHC
> 5275 Leesburg Pike
> Falls Church, VA 22041-3803

From:	Gustavson, Angela
To:	Angela Gustavson
Subject:	Congressional Affairs Update
Date:	Friday, November 16, 2018 2:03:09 PM
Attachments:	11.16.18.docx

Good afternoon,

The Congressional Affairs Update for this week is attached.

Have a good weekend,

Angela

Angela Gustavson
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CONGRESSIONAL AFFAIRS UPDATE

Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

November 16, 2018

2018 Congressional Recess Schedule

Senate	***Holidays & Special Days***	***House***
State Work Period Nov. 19-Nov. 23	**Thanksgiving Day** Nov. 22	**District Work Period** Nov. 19-Nov. 23
	Targeted Adjournment Date Dec. 14	

ELECTION UPDATE

Senate Outlook for the 116th Congress

The Senate in the 116th Congress will have 51 Republican, 45 Democratic and 2 Independent Senators. The Senate race in Mississippi will not be determined until November 27 in a runoff election. The Senate race in Florida remains undecided and is undergoing a recount.

Some confirmed leadership and committee changes include:

- **Senator John Thune (R-SD)** will replace **Senator John Cornyn (R-TX)** as Senate Majority Whip. Sen. Cornyn reached the term limit for the position.
- There are no confirmed changes to membership for the Senate Committee on Environment and Public Works at this time.
- There are no confirmed changes at this time to membership for the Senate Appropriations Subcommittee on the Interior, Environment, and Related Agencies. Subcommittee member **Senator Cindy Hyde-Smith (R-MS)** faces a runoff election to retain her seat in the Senate.

House of Representatives Outlook for the 116th Congress

The House of Representatives in the 116th Congress will have 231 Democratic and 198 Republican members, with 6 races still undecided. The following districts have not yet been determined: California's 39th, New York's 22nd and 27th, Utah's 4th, Georgia's 7th, and Texas' 23rd.

Some confirmed leadership and committee changes include:

- **Representative Kevin McCarthy (R-CA-23)** will replace **Representative Paul Ryan (R-WI-1)** as Republican Leader. Rep. Ryan retires at the end of the 115th Congress.
- Democrats are expected to elect party leadership for the House later this month.
- The House Committee on Natural Resources has not announced new leadership roles. **Representatives Raúl Grijalva (D-AZ-3)** and **Rob Bishop (R-UT-1)** are expected to lead the committee as Chairman and Ranking Member, respectively. Committee members not returning for the 116th Congress include **Representatives Stevan Pearce**

(R-NM-2), **Raúl Labrador (R-ID-1)**, **Madeleine Bordallo (D-GU-AL)**, **Niki Tsongas (D-MA-3)**, and **Colleen Hanabusa (D-HI-1)**.

- The House Committee on Appropriations has not announced new leadership roles. **Representatives Nita Lowey (D-NY-17)** and **Betty McCollum (D-MN-4)** are expected to lead as Chairs of the full committee and Subcommittee on Interior, Environment and Related Agencies, respectively. All subcommittee members will return for the 116th Congress.

UPDATES ON LEGISLATION OF INTEREST

House Passes Legislation to Delist Wolves in Lower 48 States

On Friday, November 16, the House of Representatives voted 196 - 180 to pass H.R. 6784, the Manage Our Wolves Act, sponsored by **Representative Sean Duffy (R-WI-7)**. The bill would reinstate the final rules delisting wolves in Wyoming and the Western Great Lakes and direct FWS to delist gray wolves in the contiguous 48 states by the end of 2019, exempting the Mexican gray wolf subspecies. The bill would shield all covered rules from judicial review. **Representative Andy Biggs (R-AZ-5)** filed an amendment to remove the exemption for the Mexican gray wolf subspecies, but the amendment was not considered. The bill now goes to the Senate for consideration.

Senate Passes Bill Directing Hobe Sound National Wildlife Refuge Land Transfer

On Wednesday, November 14, the Senate voted 94 - 6 to pass S. 140, the Senate's vehicle for the reauthorization the Coast Guard's authorities. The bill includes language to transfer approximately five acres of U.S. Coast Guard property within the Town of Jupiter Island, Florida to the Hobe Sound National Wildlife Refuge to support key sea turtle nesting and shorebird habitat. Similar language was included in the version of the FY 2019 National Defense Authorization Act that passed in the House earlier this year, but was not included the final bill that was signed into law. S. 140 now goes to the House for consideration.

House Passes CBRA Bill

On Friday, November 16, the House of Representatives voted 375 - 1 to pass H.R. 5787, the Strengthening Coastal Communities Act of 2018, sponsored by **Representative Neal Dunn (R-FL-2)**. The bill would adopt the Service's final recommended maps for 59 units of the Coastal Barrier Resources System (CBRS), including maps for 57 units developed through the Service's digital mapping pilot project. H.R. 5787 would also direct the Service to make any determination as to whether a location is within or outside of the CBRS using only printed versions of official maps, without regard to digital maps. The bill now goes to the Senate for consideration.

House Passes Bill to Rename Wildlife Refuge

On Tuesday, November 13, the Senate voted 385 - 4 to pass H.R. 6064. The bill, sponsored by **Representative Tom Suozzi (D-NY-3)**, would rename the Oyster Bay National Wildlife Refuge the Congressman Lester Wolff National Wildlife Refuge. The bill now goes to the Senate for consideration.

HEARINGS AND MARKUPS OF INTEREST

Senate Committee Discusses Funding for Wildlife Management

On Thursday, November 15, the Senate Committee on Environment and Public Works held an oversight hearing titled, "Examining Funding Needs for Wildlife Conservation, Recovery, and Management." Members spoke to several issues of interest to the Service:

- **Chairman John Barrasso (R-WY)** discussed Recovering America's Wildlife Act (RAWA) and his support for robust funding for wildlife conservation at the state and federal levels. The Chairman also spoke in support of the Partners for Fish and Wildlife Program, the HELP for Wildlife Act which he noted contains reauthorization of NAWCA, and prioritizing the modernization of ESA. The Chairman also asked about spending funds for hunting recruitment.
- **Ranking Member Tom Carper (D-DE)** expressed his support for the WILD Act and the HELP for Wildlife Act, and additional funding for wildlife conservation.
- **Senator Ben Cardin (D-MD)** expressed his support for wetland conservation and neotropical birds legislation.
- **Senator Mike Rounds (R-SD)** spoke about limiting the duration of wetland easements to less than permanent and wanted that issue to be part of the legislative conversation.
- **Senator Cory Booker (D-NJ)** spoke about the dire global situation for wildlife.
- **Senator Tammy Duckworth (D-IL)** discussed the option of adding a prioritization of species and requiring a portion of the funding to be spent on recovering species in RAWA. Sen. Duckworth also stressed that funding should be spent on invasive species.
- **Senator Ed Markey (D-MA)** discussed climate change and species population declines and what resiliency measures should be put in place.

For more information, please visit:
https://www.epw.senate.gov/public/index.cfm/hearings?ID=978D4E05-69FA-436E-AA08-9FDD635CD9D2

House Committee Advances Legislation on Wilderness along International Borders

On Thursday, November 15, the House Committee on Natural Resources favorably reported H.R. 3593, the Securing Our Borders and Wilderness Act, by a vote of 19 - 12. The bill, sponsored by **Representative Mike Johnson (R-LA-4)**, would amend the Wilderness Act to authorize U.S. Customs and Border Protection to conduct certain activities, including the use of motor vehicles and construction of roads and fences, with the approval of the Secretary of the Interior, to secure the international land borders of the United States, and for other purposes. The legislation would affect Cabeza Prieta National Wildlife Refuge.

For more information, please visit:
https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=405947

INTRODUCED LEGISLATION OF INTEREST

S.3646 - A bill to authorize the Secretary of the Interior to accept certain properties in the State of Missouri.

Sponsor: Sen. Blunt, Roy [R-MO] (Introduced 11/15/2018) Cosponsors: (0)
Committees: Senate - Energy and Natural Resources
Latest Action: Senate - 11/15/2018 Read twice and referred to the Committee on Energy and Natural Resources.

S.3644 - A bill to authorize a special resource study on the spread vectors of chronic wasting disease in Cervidae, and for other purposes.
Sponsor: Sen. Barrasso, John [R-WY] (Introduced 11/15/2018) Cosponsors: (9)
Committees: Senate - Agriculture, Nutrition, and Forestry
Latest Action: Senate - 11/15/2018 Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

S.3641 - A bill to enhance efforts to combat human trafficking in connection with the catching and processing of seafood products imported into the United States, and for other purposes.
Sponsor: Sen. Thune, John [R-SD] (Introduced 11/15/2018) Cosponsors: (2)
Committees: Senate - Foreign Relations
Latest Action: Senate - 11/15/2018 Read twice and referred to the Committee on Foreign Relations.

S.3628 - A bill to reauthorize the National Flood Insurance Program.
Sponsor: Sen. Kennedy, John [R-LA] (Introduced 11/15/2018) Cosponsors: (4)
Committees: Senate - Banking, Housing, and Urban Affairs
Latest Action: Senate - 11/15/2018 Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.

S.Res.701 - A resolution designating November 15, 2018, as "National GIS Day".
Sponsor: Sen. Hatch, Orrin G. [R-UT] (Introduced 11/15/2018) Cosponsors: (10)
Latest Action: Senate - 11/15/2018 Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

S.Res.698 - A resolution designating November 3, 2018, as National Bison Day.
Sponsor: Sen. Hoeven, John [R-ND] (Introduced 11/15/2018) Cosponsors: (22)
Latest Action: Senate - 11/15/2018 Submitted in the Senate, considered, and agreed to without amendment and with a preamble by Unanimous Consent.

H.R.7078 - Protection from Algal Toxins Act
Sponsor: Rep. Kaptur, Marcy [D-OH-9] (Introduced 10/19/2018) Cosponsors: (6)
Committees: House - Energy and Commerce
Latest Action: House - 10/19/2018 Referred to the House Committee on Energy and Commerce.

H.Res.1145 - Expressing the need for bold climate action in response to the release of the United Nations report titled "Global Warming of 1.5 degrees Celsius, an IPCC special report on the impacts of global warming of 1.5 degrees Celsius above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the

global response to the threat of climate change, sustainable development, and efforts to eradicate poverty".
Sponsor: Rep. Quigley, Mike [D-IL-5] (Introduced 11/13/2018) Cosponsors: (87)
Committees: House - Energy and Commerce, Foreign Affairs
Latest Action: House - 11/13/2018 Referred to the Committee on Energy and Commerce

H.Res.1136 - Expressing support for the designation of the week of October 24, 2018, to October 31, 2018, as "BatWeek".
Sponsor: Rep. Thompson, Glenn [R-PA-5] (Introduced 10/26/2018) Cosponsors: (1)
Committees: House - Agriculture
Latest Action: House - 10/26/2018 Referred to the House Committee on Agriculture.

From:	Gustavson, Angela
To:	Angela Gustavson
Subject:	Congressional Affairs Update
Date:	Friday, December 7, 2018 12:46:10 PM
Attachments:	12.7.18.docx

Good afternoon,

The Congressional Affairs Update for this week is attached. Of note, the House and Senate passed a continuing resolution (CR) to extend government funding for several federal agencies, including the Department of the Interior, through December 21. The President signed the CR into law today.

Have a good weekend,

Angela

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CONGRESSIONAL AFFAIRS UPDATE

Division of Congressional and Legislative Affairs
U.S. Fish and Wildlife Service

December 7, 2018

2018 Congressional Recess Schedule

Senate	*Holidays & Special Days*	*House*
	Targeted Adjournment Date Dec. 14	

UPDATES ON LEGISLATION OF INTEREST

Funding for Federal Government Extended through December 21
On Thursday, December 6, the Senate and House of Representatives passed by voice vote a continuing resolution (H.J. Res. 143) to extend funding for several federal agencies, including the Department of the Interior, through December 21, 2018. The President signed the measure into law on Friday, December 7, the day on which funding for the covered agencies was previously set to expire. The continuing resolution also extends authorization for the National Flood Insurance Program through December 21.

Legislation with NWRS Land Transfers and Invasive Species Measures Signed into Law
On Tuesday, December 4, the President signed into law S. 140, the Frank LoBiondo Coast Guard Authorization Act of 2018. The new law includes language to execute a land transfer to Hobe Sound National Wildlife Refuge (NWR) and a land exchange of certain submerged lands for Ayakulik Island to be added to Alaska Maritime NWR. The law also creates a national ballast water standard administered by the U.S. Coast Guard in consultation with the EPA and adds quagga mussels to the list of injurious species under the Lacey Act.

INTRODUCED LEGISLATION OF INTEREST

S.3727 — A bill to promote remediation of orphan hardrock mines, and for other purposes.
Sponsor: Sen. Gardner, Cory [R-CO] (Introduced 12/06/2018) Cosponsors: (0)
Committees: Senate - Environment and Public Works
Latest Action: Senate - 12/06/2018 Read twice and referred to the Committee on Environment and Public Works.

S.3715 — A bill to establish a National Wildlife Corridors Program to provide for the protection and restoration of certain native fish, wildlife, and plant species, and for other purposes.
Sponsor: Sen. Udall, Tom [D-NM] (Introduced 12/06/2018) Cosponsors: (0)
Committees: Senate - Environment and Public Works
Latest Action: Senate - 12/06/2018 Read twice and referred to the Committee on Environment and Public Works

S.3713 — A bill to appropriate $25,000,000,000 for the construction of a border wall between the United States and Mexico, and for other purposes.
Sponsor: Sen. Inhofe, James M. [R-OK] (Introduced 12/05/2018) Cosponsors: (3)
Committees: Senate - Finance
Latest Action: Senate - 12/05/2018 Read twice and referred to the Committee on Finance.

S.3705 — A bill to provide for restoration, economic development, recreation, and conservation on Federal lands in Northern California, and for other purposes.
Sponsor: Sen. Harris, Kamala D. [D-CA] (Introduced 12/05/2018) Cosponsors: (0)
Committees: Senate - Energy and Natural Resources
Latest Action: Senate - 12/05/2018 Read twice and referred to the Committee on Energy and Natural Resources.

S.3703 — A bill to reauthorize the National Flood Insurance Program.
Sponsor: Sen. Rubio, Marco [R-FL] (Introduced 12/04/2018) Cosponsors: (3)
Committees: Senate - Banking, Housing, and Urban Affairs
Latest Action: Senate - 12/04/2018 Read twice and referred to the Committee on Banking, Housing, and Urban Affairs.

H.R.7226 — To promote remediation of orphan hardrock mines, and for other purposes.
Sponsor: Rep. Tipton, Scott R. [R-CO-3] (Introduced 12/06/2018) Cosponsors: (0)
Committees: House - Transportation and Infrastructure, Energy and Commerce, Natural Resources
Latest Action: House - 12/06/2018 Referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Energy and Commerce, and Natural Resources

PUBLIC LAW 112–74—DEC. 23, 2011

CONSOLIDATED APPROPRIATIONS ACT, 2012

Public Law 112–74
112th Congress

An Act

Dec. 23, 2011
[H.R. 2055]

Making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2012, and for other purposes.

Consolidated Appropriations Act, 2012.

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 "Consolidated Appropriations Act, 2012".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.
Sec. 4. Statement of appropriations.
Sec. 5. Availability of funds.

DIVISION A—DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2012

Title I—Military Personnel
Title II—Operation and Maintenance
Title III—Procurement
Title IV—Research, Development, Test and Evaluation
Title V—Revolving and Management Funds
Title VI—Other Department of Defense Programs
Title VII—Related agencies
Title VIII—General provisions
Title IX—Overseas contingency operations

DIVISION B—ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2012

Title I—Corps of Engineers—Civil
Title II—Department of the Interior
Title III—Department of Energy
Title IV—Independent agencies
Title V—General provisions

DIVISION C—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2012

Title I—Department of the Treasury
Title II—Executive Office of the President and Funds Appropriated to the President
Title III—The Judiciary
Title IV—District of Columbia
Title V—Independent agencies
Title VI—General provisions—This Act
Title VII—General provisions—Government-wide
Title VIII—General provisions—District of Columbia

DIVISION D—DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2012

Title I—Departmental management and operations

Title II—Security, enforcement, and investigations
Title III—Protection, preparedness, response, and recovery
Title IV—Research and development, training, and services
Title V—General provisions

DIVISION E—DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

Title I—Department of the Interior
Title II—Environmental Protection Agency
Title III—Related agencies
Title IV—General provisions

DIVISION F—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

Title I—Department of Labor
Title II—Department of Health and Human Services
Title III—Department of Education
Title IV—Related agencies
Title V—General provisions

DIVISION G—LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2012

Title I—Legislative branch
Title II—General provisions

DIVISION H—MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

Title I—Department of Defense
Title II—Department of Veterans Affairs
Title III—Related agencies
Title IV—Overseas contingency operations
Title V—General provisions

DIVISION I—DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2012

Title I—Department of State and related agency
Title II—United States Agency for International Development
Title III—Bilateral economic assistance
Title IV—International security assistance
Title V—Multilateral assistance
Title VI—Export and investment assistance
Title VII—General provisions
Title VIII—Overseas contingency operations

SEC. 3. REFERENCES.

1 USC 1 note.

Except as expressly provided otherwise, any reference to "this Act" contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 4. STATEMENT OF APPROPRIATIONS.

The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2012.

SEC. 5. AVAILABILITY OF FUNDS.

Each amount designated in this Act by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

Department of Defense Appropriations Act, 2012.

DIVISION A—DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2012

TITLE I

MILITARY PERSONNEL, ARMY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty, (except members of reserve components provided for elsewhere), cadets, and aviation cadets; for members of the Reserve Officers' Training Corps; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $43,298,409,000.

MILITARY PERSONNEL, NAVY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; for members of the Reserve Officers' Training Corps; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $26,803,334,000.

MILITARY PERSONNEL, MARINE CORPS

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except members of the Reserve provided for elsewhere); and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $13,635,136,000.

MILITARY PERSONNEL, AIR FORCE

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; for members of the Reserve Officers' Training Corps; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $28,096,708,000.

RESERVE PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army Reserve on active duty under sections 10211, 10302, and 3038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $4,289,407,000.

RESERVE PERSONNEL, NAVY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Navy Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,935,544,000.

RESERVE PERSONNEL, MARINE CORPS

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Marine Corps Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Marine Corps platoon leaders class, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $644,722,000.

RESERVE PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air Force Reserve on active duty under sections 10211, 10305, and 8038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,712,705,000.

NATIONAL GUARD PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard

while on duty under section 10211, 10302, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $7,585,645,000.

NATIONAL GUARD PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under section 10211, 10305, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $3,088,929,000.

TITLE II

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $12,478,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, $31,072,902,000.

OPERATION AND MAINTENANCE, NAVY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; and not to exceed $14,804,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes, $38,120,821,000.

OPERATION AND MAINTENANCE, MARINE CORPS

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law, $5,542,937,000.

OPERATION AND MAINTENANCE, AIR FORCE

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law;

and not to exceed $7,699,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes, $34,985,486,000.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law, $30,152,008,000: *Provided*, That not more than $47,026,000 may be used for the Combatant Commander Initiative Fund authorized under section 166a of title 10, United States Code: *Provided further*, That not to exceed $36,000,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes: *Provided further*, That of the funds provided under this heading, not less than $34,311,000 shall be made available for the Procurement Technical Assistance Cooperative Agreement Program, of which not less than $3,600,000 shall be available for centers defined in 10 U.S.C. 2411(1)(D): *Provided further*, That none of the funds appropriated or otherwise made available by this Act may be used to plan or implement the consolidation of a budget or appropriations liaison office of the Office of the Secretary of Defense, the office of the Secretary of a military department, or the service headquarters of one of the Armed Forces into a legislative affairs or legislative liaison office: *Provided further*, That $8,420,000, to remain available until expended, is available only for expenses relating to certain classified activities, and may be transferred as necessary by the Secretary of Defense to operation and maintenance appropriations or research, development, test and evaluation appropriations, to be merged with and to be available for the same time period as the appropriations to which transferred: *Provided further*, That any ceiling on the investment item unit cost of items that may be purchased with operation and maintenance funds shall not apply to the funds described in the preceding proviso: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

OPERATION AND MAINTENANCE, ARMY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $3,071,733,000.

OPERATION AND MAINTENANCE, NAVY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and

administration, of the Navy Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $1,305,134,000.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Marine Corps Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $271,443,000.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Air Force Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $3,274,359,000.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; supplying and equipping the Army National Guard as authorized by law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft), $6,924,932,000.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For expenses of training, organizing, and administering the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; transportation of things, hire of passenger motor vehicles; supplying and equipping the Air National Guard, as authorized by law; expenses for repair, modification, maintenance, and issue of supplies and equipment, including those furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau, $6,098,780,000.

UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

For salaries and expenses necessary for the United States Court of Appeals for the Armed Forces, $13,861,000, of which not to exceed $5,000 may be used for official representation purposes.

ENVIRONMENTAL RESTORATION, ARMY

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Army, $346,031,000, to remain available until transferred: *Provided*, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Army, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

Determination.

ENVIRONMENTAL RESTORATION, NAVY

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Navy, $308,668,000, to remain available until transferred: *Provided*, That the Secretary of the Navy shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Navy, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Navy, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

Determinations.

ENVIRONMENTAL RESTORATION, AIR FORCE

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Air Force, $525,453,000, to remain available until transferred: *Provided*, That the Secretary of the Air Force shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Air Force, or for similar purposes, transfer the funds made

Determinations.

available by this appropriation to other appropriations made available to the Department of the Air Force, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

ENVIRONMENTAL RESTORATION, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

Determinations.

For the Department of Defense, $10,716,000, to remain available until transferred: *Provided*, That the Secretary of Defense shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of Defense, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of Defense, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

ENVIRONMENTAL RESTORATION, FORMERLY USED DEFENSE SITES

(INCLUDING TRANSFER OF FUNDS)

Determinations.

For the Department of the Army, $326,495,000, to remain available until transferred: *Provided*, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris at sites formerly used by the Department of Defense, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

OVERSEAS HUMANITARIAN, DISASTER, AND CIVIC AID

For expenses relating to the Overseas Humanitarian, Disaster, and Civic Aid programs of the Department of Defense (consisting of the programs provided under sections 401, 402, 404, 407, 2557,

and 2561 of title 10, United States Code), $107,662,000, to remain available until September 30, 2013.

COOPERATIVE THREAT REDUCTION ACCOUNT

For assistance to the republics of the former Soviet Union and, with appropriate authorization by the Department of Defense and Department of State, to countries outside of the former Soviet Union, including assistance provided by contract or by grants, for facilitating the elimination and the safe and secure transportation and storage of nuclear, chemical and other weapons; for establishing programs to prevent the proliferation of weapons, weapons components, and weapon-related technology and expertise; for programs relating to the training and support of defense and military personnel for demilitarization and protection of weapons, weapons components and weapons technology and expertise, and for defense and military contacts, $508,219,000, to remain available until September 30, 2014: *Provided*, That of the amounts provided under this heading, not less than $13,500,000 shall be available only to support the dismantling and disposal of nuclear submarines, submarine reactor components, and security enhancements for transport and storage of nuclear warheads in the Russian Far East and North.

DEPARTMENT OF DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND

For the Department of Defense Acquisition Workforce Development Fund, $105,501,000.

TITLE III

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $5,360,334,000, to remain available for obligation until September 30, 2014.

MISSILE PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and

procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,461,223,000, to remain available for obligation until September 30, 2014.

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

For construction, procurement, production, and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $2,070,405,000, to remain available for obligation until September 30, 2014.

PROCUREMENT OF AMMUNITION, ARMY

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities, authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,884,424,000, to remain available for obligation until September 30, 2014.

OTHER PROCUREMENT, ARMY

For construction, procurement, production, and modification of vehicles, including tactical, support, and non-tracked combat vehicles; the purchase of passenger motor vehicles for replacement only; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $7,924,214,000, to remain available for obligation until September 30, 2014.

AIRCRAFT PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, spare

parts, and accessories therefor; specialized equipment; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $17,675,734,000, to remain available for obligation until September 30, 2014.

WEAPONS PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts, and accessories therefor; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $3,224,432,000, to remain available for obligation until September 30, 2014.

PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities, authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $626,848,000, to remain available for obligation until September 30, 2014.

SHIPBUILDING AND CONVERSION, NAVY

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; procurement of critical, long lead time components and designs for vessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, as follows:

Carrier Replacement Program (AP), $554,798,000;
Virginia Class Submarine, $3,221,314,000;
Virginia Class Submarine (AP), $1,461,361,000;
CVN Refuelings (AP), $529,652,000;
DDG–1000 Program, $453,727,000;
DDG–51 Destroyer, $1,980,709,000;
DDG–51 Destroyer (AP), $100,723,000;

Littoral Combat Ship, $1,755,093,000;
LPD–17, $1,837,444,000;
LHA–Replacement, $1,999,191,000;
Joint High Speed Vessel, $372,332,000;
Oceanographic Ships, $89,000,000;
Moored Training Ship, $131,200,000;
LCAC Service Life Extension Program, $84,076,000;
Service Craft, $3,863,000; and

For outfitting, post delivery, conversions, and first destination transportation, $270,639,000.

Completion of Prior Year Shipbuilding Programs, $73,992,000.

In all: $14,919,114,000, to remain available for obligation until September 30, 2016: *Provided*, That additional obligations may be incurred after September 30, 2016, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction: *Provided further*, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel: *Provided further*, That none of the funds provided under this heading shall be used for the construction of any naval vessel in foreign shipyards.

Vessels.

OTHER PROCUREMENT, NAVY

For procurement, production, and modernization of support equipment and materials not otherwise provided for, Navy ordnance (except ordnance for new aircraft, new ships, and ships authorized for conversion); the purchase of passenger motor vehicles for replacement only; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $6,013,385,000, to remain available for obligation until September 30, 2014.

PROCUREMENT, MARINE CORPS

For expenses necessary for the procurement, manufacture, and modification of missiles, armament, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including the purchase of passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, $1,422,570,000, to remain available for obligation until September 30, 2014.

AIRCRAFT PROCUREMENT, AIR FORCE

(INCLUDING TRANSFER OF FUNDS)

For construction, procurement, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $12,950,000,000, to remain available for obligation until September 30, 2014: *Provided*, That of the amount made available under this heading, $63,500,000 made available for C–130J aircraft shall be transferred to the Department of Homeland Security, Coast Guard, "Acquisition, Construction, and Improvements": *Provided further,* That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

MISSILE PROCUREMENT, AIR FORCE

For construction, procurement, and modification of missiles, spacecraft, rockets, and related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $6,080,877,000, to remain available for obligation until September 30, 2014.

PROCUREMENT OF AMMUNITION, AIR FORCE

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities, authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $499,185,000, to remain available for obligation until September 30, 2014.

OTHER PROCUREMENT, AIR FORCE

For procurement and modification of equipment (including ground guidance and electronic control equipment, and ground electronic and communication equipment), and supplies, materials, and

spare parts therefor, not otherwise provided for; the purchase of passenger motor vehicles for replacement only; lease of passenger motor vehicles; and expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon, prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $17,403,564,000, to remain available for obligation until September 30, 2014.

PROCUREMENT, DEFENSE-WIDE

For expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for procurement, production, and modification of equipment, supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of passenger motor vehicles for replacement only; expansion of public and private plants, equipment, and installation thereof in such plants, erection of structures, and acquisition of land for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $4,893,428,000, to remain available for obligation until September 30, 2014.

DEFENSE PRODUCTION ACT PURCHASES

For activities by the Department of Defense pursuant to sections 108, 301, 302, and 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2078, 2091, 2092, and 2093), $169,964,000, to remain available until expended.

TITLE IV

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $8,745,492,000, to remain available for obligation until September 30, 2013.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $17,753,940,000, to remain available for obligation until September 30, 2013: *Provided*, That funds appropriated in this paragraph which are available for the V–22 may be used to meet unique operational requirements of the Special Operations Forces: *Provided further*, That funds appropriated in this paragraph shall be available for the Cobra Judy program.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $26,535,996,000, to remain available for obligation until September 30, 2013.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For expenses of activities and agencies of the Department of Defense (other than the military departments), necessary for basic and applied scientific research, development, test and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; maintenance, rehabilitation, lease, and operation of facilities and equipment, $19,193,955,000, to remain available for obligation until September 30, 2013: *Provided*, That of the funds made available in this paragraph, $200,000,000 for the Defense Rapid Innovation Program shall only be available for expenses, not otherwise provided for, to include program management and oversight, to conduct research, development, test and evaluation to include proof of concept demonstration; engineering, testing, and validation; and transition to full-scale production: *Provided further,* That the Secretary of Defense may transfer funds provided herein for the Defense Rapid Innovation Program to appropriations for research, development, test and evaluation to accomplish the purpose provided herein: *Provided further,* That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further,* That the Secretary of Defense shall, not fewer than 30 days prior to making transfers from this appropriation, notify the congressional defense committees in writing of the details of any such transfer.

Deadline.
Notification.

OPERATIONAL TEST AND EVALUATION, DEFENSE

For expenses, not otherwise provided for, necessary for the independent activities of the Director, Operational Test and Evaluation, in the direction and supervision of operational test and evaluation, including initial operational test and evaluation which is conducted prior to, and in support of, production decisions; joint operational testing and evaluation; and administrative expenses in connection therewith, $191,292,000, to remain available for obligation until September 30, 2013.

TITLE V

REVOLVING AND MANAGEMENT FUNDS

DEFENSE WORKING CAPITAL FUNDS

For the Defense Working Capital Funds, $1,575,010,000.

NATIONAL DEFENSE SEALIFT FUND

For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $1,100,519,000, to remain available until expended: *Provided*, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: *Provided further*, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: *Provided further*, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes.

Contracts.

Contracts.

Waiver authority. Certification.

TITLE VI

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For expenses, not otherwise provided for, for medical and health care programs of the Department of Defense as authorized by law, $32,482,059,000; of which $30,582,235,000 shall be for operation and maintenance, of which not to exceed 1 percent shall remain available until September 30, 2013, and of which up to $16,512,141,000 may be available for contracts entered into under the TRICARE program; of which $632,518,000, to remain available for obligation until September 30, 2014, shall be for procurement; and of which $1,267,306,000, to remain available for obligation until September 30, 2013, shall be for research, development, test and evaluation: *Provided*, That, notwithstanding any other provision of law, of the amount made available under this heading for research, development, test and evaluation, not less than $8,000,000 shall be available for HIV prevention educational activities undertaken in connection with United States military training, exercises, and humanitarian assistance activities conducted primarily in African nations.

CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, DEFENSE

For expenses, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with the provisions of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), and for the destruction of other chemical warfare materials

that are not in the chemical weapon stockpile, $1,554,422,000, of which $1,147,691,000 shall be for operation and maintenance, of which no less than $71,211,000, shall be for the Chemical Stockpile Emergency Preparedness Program, consisting of $19,211,000 for activities on military installations and $52,000,000, to remain available until September 30, 2013, to assist State and local governments and $406,731,000, to remain available until September 30, 2013, shall be for research, development, test and evaluation, of which $401,768,000 shall only be for the Assembled Chemical Weapons Alternatives (ACWA) program.

DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

(INCLUDING TRANSFER OF FUNDS)

For drug interdiction and counter-drug activities of the Department of Defense, for transfer to appropriations available to the Department of Defense for military personnel of the reserve components serving under the provisions of title 10 and title 32, United States Code; for operation and maintenance; for procurement; and for research, development, test and evaluation, $1,209,620,000: *Provided*, That the funds appropriated under this heading shall be available for obligation for the same time period and for the same purpose as the appropriation to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority contained elsewhere in this Act: *Provided further*, That $23,000,000 may not be obligated or expended until the Secretary of Defense submits an implementation plan for the expansion of prescription drug testing to the congressional defense committees.

Determination.

Implementation plan.

OFFICE OF THE INSPECTOR GENERAL

For expenses and activities of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $346,919,000, of which $341,419,000 shall be for operation and maintenance, of which not to exceed $700,000 is available for emergencies and extraordinary expenses to be expended on the approval or authority of the Inspector General, and payments may be made on the Inspector General's certificate of necessity for confidential military purposes; of which $1,000,000, to remain available until September 30, 2014, shall be for procurement; and of which $4,500,000, to remain available until September 30, 2013, shall be for research, development, testing, and evaluation.

TITLE VII

RELATED AGENCIES

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

For payment to the Central Intelligence Agency Retirement and Disability System Fund, to maintain the proper funding level

for continuing the operation of the Central Intelligence Agency Retirement and Disability System, $513,700,000.

INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT

For necessary expenses of the Intelligence Community Management Account, $547,891,000.

TITLE VIII

GENERAL PROVISIONS

SEC. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

10 USC 1584 note.

SEC. 8002. During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further,* That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.

Pay rates. Foreign nationals.

Turkey.

SEC. 8003. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly so provided herein.

SEC. 8004. No more than 20 percent of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last 2 months of the fiscal year: *Provided*, That this section shall not apply to obligations for support of active duty training of reserve components or summer camp training of the Reserve Officers' Training Corps.

(TRANSFER OF FUNDS)

SEC. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $3,750,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested

has been denied by the Congress: *Provided further*, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act: *Provided further*, That no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress: *Provided further*, That a request for multiple reprogrammings of funds using authority provided in this section shall be made prior to June 30, 2012: *Provided further*, That transfers among military personnel appropriations shall not be taken into account for purposes of the limitation on the amount of funds that may be transferred under this section.

Notification.

Reprogramming requests.

Deadline.

SEC. 8006. (a) With regard to the list of specific programs, projects, and activities (and the dollar amounts and adjustments to budget activities corresponding to such programs, projects, and activities) contained in the tables titled "Explanation of Project Level Adjustments" in the explanatory statement regarding this Act, the obligation and expenditure of amounts appropriated or otherwise made available in this Act for those programs, projects, and activities for which the amounts appropriated exceed the amounts requested are hereby required by law to be carried out in the manner provided by such tables to the same extent as if the tables were included in the text of this Act.

(b) Amounts specified in the referenced tables described in subsection (a) shall not be treated as subdivisions of appropriations for purposes of section 8005 of this Act: *Provided*, That section 8005 shall apply when transfers of the amounts described in subsection (a) occur between appropriation accounts.

Applicability.

SEC. 8007. (a) Not later than 60 days after enactment of this Act, the Department of Defense shall submit a report to the congressional defense committees to establish the baseline for application of reprogramming and transfer authorities for fiscal year 2012: *Provided*, That the report shall include—

Deadline.
Reports.

(1) a table for each appropriation with a separate column to display the President's budget request, adjustments made by Congress, adjustments due to enacted rescissions, if appropriate, and the fiscal year enacted level;

(2) a delineation in the table for each appropriation both by budget activity and program, project, and activity as detailed in the Budget Appendix; and

(3) an identification of items of special congressional interest.

(b) Notwithstanding section 8005 of this Act, none of the funds provided in this Act shall be available for reprogramming or transfer until the report identified in subsection (a) is submitted to the congressional defense committees, unless the Secretary of Defense certifies in writing to the congressional defense committees that such reprogramming or transfer is necessary as an emergency requirement.

Certification.

(TRANSFER OF FUNDS)

SEC. 8008. During the current fiscal year, cash balances in working capital funds of the Department of Defense established

pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: *Provided*, That transfers may be made between such funds: *Provided further*, That transfers may be made between working capital funds and the "Foreign Currency Fluctuations, Defense" appropriation and the "Operation and Maintenance" appropriation accounts in such amounts as may be determined by the Secretary of Defense, with the approval of the Office of Management and Budget, except that such transfers may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure or increase the value of war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.

Notification.

Notification.

Notification. Deadline.

SEC. 8009. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in advance to the congressional defense committees.

Contracts. Notification. Deadlines. 10 USC 2306b note.

SEC. 8010. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement: *Provided further*, That none of the funds provided in this Act may be used for a multiyear contract executed after the date of the enactment of this Act unless in the case of any such contract—

Deadline. Notification.

Budget request.

(1) the Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract and, in the case of a contract for procurement of aircraft, that includes, for any aircraft unit to be procured through the contract for which procurement funds are requested in that budget request for production beyond advance procurement activities in the fiscal year covered by the budget, full funding of procurement of such unit in that fiscal year;

(2) cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract;

(3) the contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and

(4) the contract does not provide for a price adjustment based on a failure to award a follow-on contract.

Funds appropriated in title III of this Act may be used for a multiyear procurement contract as follows:

UH–60M/HH–60M and MH–60R/MH–60S Helicopter Airframes; and MH–60R/S Mission Avionics and Common Cockpits.

SEC. 8011. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported as required by section 401(d) of title 10, United States Code: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.

Reports.

Humanitarian assistance.
Territories.

SEC. 8012. (a) During fiscal year 2012, the civilian personnel of the Department of Defense may not be managed on the basis of any end-strength, and the management of such personnel during that fiscal year shall not be subject to any constraint or limitation (known as an end-strength) on the number of such personnel who may be employed on the last day of such fiscal year.

(b) The fiscal year 2013 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2013 Department of Defense budget request shall be prepared and submitted to the Congress as if subsections (a) and (b) of this provision were effective with regard to fiscal year 2013.

Budget request.
Effective date.

(c) Nothing in this section shall be construed to apply to military (civilian) technicians.

SEC. 8013. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

Lobbying.

SEC. 8014. None of the funds appropriated by this Act shall be available for the basic pay and allowances of any member of the Army participating as a full-time student and receiving benefits paid by the Secretary of Veterans Affairs from the Department of Defense Education Benefits Fund when time spent as a full-time student is credited toward completion of a service commitment: *Provided*, That this section shall not apply to those members who

Applicability.

have reenlisted with this option prior to October 1, 1987: *Provided further*, That this section applies only to active components of the Army.

(TRANSFER OF FUNDS)

SEC. 8015. Funds appropriated in title III of this Act for the Department of Defense Pilot Mentor-Protege Program may be transferred to any other appropriation contained in this Act solely for the purpose of implementing a Mentor-Protege Program developmental assistance agreement pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note), as amended, under the authority of this provision or any other transfer authority contained in this Act.

Anchor and mooring chain.

SEC. 8016. None of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States: *Provided*, That for the purpose of this section, the term "manufactured" shall include cutting, heat treating, quality control, testing of chain and welding (including the forging and shot blasting process): *Provided further*, That for the purpose of this section substantially all of the components of anchor and mooring chain shall be considered to be produced or manufactured in the United States if the aggregate cost of the components produced or manufactured in the United States exceeds the aggregate cost of the components produced or manufactured outside the United States: *Provided further*, That when adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations that such an acquisition must be made in order to acquire capability for national security purposes.

Waiver authority. Certification.

Arms and munitions. Certification.

SEC. 8017. None of the funds available to the Department of Defense may be used to demilitarize or dispose of M–1 Carbines, M–1 Garand rifles, M–14 rifles, .22 caliber rifles, .30 caliber rifles, or M–1911 pistols, or to demilitarize or destroy small arms ammunition or ammunition components that are not otherwise prohibited from commercial sale under Federal law, unless the small arms ammunition or ammunition components are certified by the Secretary of the Army or designee as unserviceable or unsafe for further use.

SEC. 8018. No more than $500,000 of the funds appropriated or made available in this Act shall be used during a single fiscal year for any single relocation of an organization, unit, activity or function of the Department of Defense into or within the National Capital Region: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the congressional defense committees that such a relocation is required in the best interest of the Government.

Waiver authority. Certification.

Contracts.

SEC. 8019. In addition to the funds provided elsewhere in this Act, $15,000,000 is appropriated only for incentive payments authorized by section 504 of the Indian Financing Act of 1974

(25 U.S.C. 1544): *Provided*, That a prime contractor or a subcontractor at any tier that makes a subcontract award to any subcontractor or supplier as defined in section 1544 of title 25, United States Code, or a small business owned and controlled by an individual or individuals defined under section 4221(9) of title 25, United States Code, shall be considered a contractor for the purposes of being allowed additional compensation under section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) whenever the prime contract or subcontract amount is over $500,000 and involves the expenditure of funds appropriated by an Act making Appropriations for the Department of Defense with respect to any fiscal year: *Provided further*, That notwithstanding section 1906 of title 41, United States Code, this section shall be applicable to any Department of Defense acquisition of supplies or services, including any contract and any subcontract at any tier for acquisition of commercial items produced or manufactured, in whole or in part, by any subcontractor or supplier defined in section 1544 of title 25, United States Code, or a small business owned and controlled by an individual or individuals defined under section 4221(9) of title 25, United States Code.

Applicability.

SEC. 8020. Funds appropriated by this Act for the Defense Media Activity shall not be used for any national or international political or psychological activities.

Kuwait.

SEC. 8021. During the current fiscal year, the Department of Defense is authorized to incur obligations of not to exceed $350,000,000 for purposes specified in section 2350j(c) of title 10, United States Code, in anticipation of receipt of contributions, only from the Government of Kuwait, under that section: *Provided*, That upon receipt, such contributions from the Government of Kuwait shall be credited to the appropriations or fund which incurred such obligations.

SEC. 8022. (a) Of the funds made available in this Act, not less than $37,745,000 shall be available for the Civil Air Patrol Corporation, of which—

(1) $27,838,000 shall be available from "Operation and Maintenance, Air Force" to support Civil Air Patrol Corporation operation and maintenance, readiness, counterdrug activities, and drug demand reduction activities involving youth programs;

(2) $8,990,000 shall be available from "Aircraft Procurement, Air Force"; and

(3) $917,000 shall be available from "Other Procurement, Air Force" for vehicle procurement.

(b) The Secretary of the Air Force should waive reimbursement for any funds used by the Civil Air Patrol for counter-drug activities in support of Federal, State, and local government agencies.

SEC. 8023. (a) None of the funds appropriated in this Act are available to establish a new Department of Defense (department) federally funded research and development center (FFRDC), either as a new entity, or as a separate entity administrated by an organization managing another FFRDC, or as a nonprofit membership corporation consisting of a consortium of other FFRDCs and other nonprofit entities.

(b) No member of a Board of Directors, Trustees, Overseers, Advisory Group, Special Issues Panel, Visiting Committee, or any similar entity of a defense FFRDC, and no paid consultant to any defense FFRDC, except when acting in a technical advisory capacity, may be compensated for his or her services as a member

of such entity, or as a paid consultant by more than one FFRDC in a fiscal year: *Provided*, That a member of any such entity referred to previously in this subsection shall be allowed travel expenses and per diem as authorized under the Federal Joint Travel Regulations, when engaged in the performance of membership duties.

(c) Notwithstanding any other provision of law, none of the funds available to the department from any source during fiscal year 2012 may be used by a defense FFRDC, through a fee or other payment mechanism, for construction of new buildings, for payment of cost sharing for projects funded by Government grants, for absorption of contract overruns, or for certain charitable contributions, not to include employee participation in community service and/or development.

(d) Notwithstanding any other provision of law, of the funds available to the department during fiscal year 2012, not more than 5,750 staff years of technical effort (staff years) may be funded for defense FFRDCs: *Provided*, That of the specific amount referred to previously in this subsection, not more than 1,125 staff years may be funded for the defense studies and analysis FFRDCs: *Provided further*, That this subsection shall not apply to staff years funded in the National Intelligence Program (NIP) and the Military Intelligence Program (MIP).

Reports.

(e) The Secretary of Defense shall, with the submission of the department's fiscal year 2013 budget request, submit a report presenting the specific amounts of staff years of technical effort to be allocated for each defense FFRDC during that fiscal year and the associated budget estimates.

(f) Notwithstanding any other provision of this Act, the total amount appropriated in this Act for FFRDCs is hereby reduced by $150,245,000.

Contracts.

SEC. 8024. None of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: *Provided*, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: *Provided further*, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That these restrictions shall not apply to contracts which are in being as of the date of the enactment of this Act.

Applicability.

Waiver authority.
Certification.

Definition.

SEC. 8025. For the purposes of this Act, the term "congressional defense committees" means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

SEC. 8026. During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and

repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: *Provided*, That the Senior Acquisition Executive of the military department or Defense Agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: *Provided further*, That Office of Management and Budget Circular A–76 shall not apply to competitions conducted under this section.

Certification.

SEC. 8027. (a)(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

Determination. Contracts. Rescission. 41 USC 8304 note.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

Memorandum.

(b) The Secretary of Defense shall submit to the Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2012. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

Reports.

(c) For purposes of this section, the term "Buy American Act" means chapter 83 of title 41, United States Code.

Definition.

SEC. 8028. During the current fiscal year, amounts contained in the Department of Defense Overseas Military Facility Investment Recovery Account established by section 2921(c)(1) of the National Defense Authorization Act of 1991 (Public Law 101–510; 10 U.S.C. 2687 note) shall be available until expended for the payments specified by section 2921(c)(2) of that Act.

SEC. 8029. (a) Notwithstanding any other provision of law, the Secretary of the Air Force may convey at no cost to the Air Force, without consideration, to Indian tribes located in the States of Nevada, Idaho, North Dakota, South Dakota, Montana, Oregon, Minnesota, and Washington relocatable military housing units located at Grand Forks Air Force Base, Malmstrom Air Force Base, Mountain Home Air Force Base, Ellsworth Air Force Base, and Minot Air Force Base that are excess to the needs of the Air Force.

Housing. Native Americans. State listing.

(b) The Secretary of the Air Force shall convey, at no cost to the Air Force, military housing units under subsection (a) in accordance with the request for such units that are submitted to the Secretary by the Operation Walking Shield Program on behalf of Indian tribes located in the States of Nevada, Idaho, North Dakota, South Dakota, Montana, Oregon, Minnesota, and Washington. Any such conveyance shall be subject to the condition

that the housing units shall be removed within a reasonable period of time, as determined by the Secretary.

(c) The Operation Walking Shield Program shall resolve any conflicts among requests of Indian tribes for housing units under subsection (a) before submitting requests to the Secretary of the Air Force under subsection (b).

Definition.

(d) In this section, the term "Indian tribe" means any recognized Indian tribe included on the current list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe Act of 1994 (Public Law 103–454; 108 Stat. 4792; 25 U.S.C. 479a–1).

SEC. 8030. During the current fiscal year, appropriations which are available to the Department of Defense for operation and maintenance may be used to purchase items having an investment item unit cost of not more than $250,000.

SEC. 8031. (a) During the current fiscal year, none of the appropriations or funds available to the Department of Defense Working Capital Funds shall be used for the purchase of an investment item for the purpose of acquiring a new inventory item for sale or anticipated sale during the current fiscal year or a subsequent fiscal year to customers of the Department of Defense Working Capital Funds if such an item would not have been chargeable to the Department of Defense Business Operations Fund during fiscal year 1994 and if the purchase of such an investment item would be chargeable during the current fiscal year to appropriations made to the Department of Defense for procurement.

Budget request.

(b) The fiscal year 2013 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2013 Department of Defense budget shall be prepared and submitted to the Congress on the basis that any equipment which was classified as an end item and funded in a procurement appropriation contained in this Act shall be budgeted for in a proposed fiscal year 2013 procurement appropriation and not in the supply management business area or any other area or category of the Department of Defense Working Capital Funds.

SEC. 8032. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 2013: *Provided*, That funds appropriated, transferred, or otherwise credited to the Central Intelligence Agency Central Services Working Capital Fund during this or any prior or subsequent fiscal year shall remain available until expended: *Provided further*, That any funds appropriated or transferred to the Central Intelligence Agency for advanced research and development acquisition, for agent operations, and for covert action programs authorized by the President under section 503 of the National Security Act of 1947, as amended, shall remain available until September 30, 2013.

50 USC 403 note.

SEC. 8033. Notwithstanding any other provision of law, funds made available in this Act for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.

SEC. 8034. Of the funds appropriated to the Department of Defense under the heading "Operation and Maintenance, Defense-Wide", not less than $12,000,000 shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritization of mitigation and cost to complete estimates for mitigation, on Indian lands resulting from Department of Defense activities.

SEC. 8035. (a) None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term "Buy American Act" means chapter 83 of title 41, United States Code.

Determination.
Labeling.
Fraud.
Debarment.

(b) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.

(c) In the case of any equipment or products purchased with appropriations provided under this Act, it is the sense of the Congress that any entity of the Department of Defense, in expending the appropriation, purchase only American-made equipment and products, provided that American-made equipment and products are cost-competitive, quality competitive, and available in a timely fashion.

Contracts.
Determination.

SEC. 8036. None of the funds appropriated by this Act shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—

(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;

(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support: *Provided*, That this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

Determination.

SEC. 8037. (a) Except as provided in subsections (b) and (c), none of the funds made available by this Act may be used—

(1) to establish a field operating agency; or

(2) to pay the basic pay of a member of the Armed Forces or civilian employee of the department who is transferred or reassigned from a headquarters activity if the member or employee's place of duty remains at the location of that headquarters.

Waiver authority. Determination. Certification.

(b) The Secretary of Defense or Secretary of a military department may waive the limitations in subsection (a), on a case-by-case basis, if the Secretary determines, and certifies to the Committees on Appropriations of the House of Representatives and Senate that the granting of the waiver will reduce the personnel requirements or the financial requirements of the department.

(c) This section does not apply to—

(1) field operating agencies funded within the National Intelligence Program;

(2) an Army field operating agency established to eliminate, mitigate, or counter the effects of improvised explosive devices, and, as determined by the Secretary of the Army, other similar threats; or

(3) an Army field operating agency established to improve the effectiveness and efficiencies of biometric activities and to integrate common biometric technologies throughout the Department of Defense.

Grants.

SEC. 8038. The Secretary of Defense, notwithstanding any other provision of law, acting through the Office of Economic Adjustment of the Department of Defense, may use funds made available in this Act under the heading "Operation and Maintenance, Defense-Wide" to make grants and supplement other Federal funds in accordance with the guidance provided in the explanatory statement regarding this Act.

SEC. 8039. (a) None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by Department of Defense civilian employees unless—

(1) the conversion is based on the result of a public-private competition that includes a most efficient and cost effective organization plan developed by such activity or function;

(2) the Competitive Sourcing Official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Department of Defense by an amount that equals or exceeds the lesser of—

(A) 10 percent of the most efficient organization's personnel-related costs for performance of that activity or function by Federal employees; or

(B) $10,000,000; and

(3) the contractor does not receive an advantage for a proposal that would reduce costs for the Department of Defense by—

(A) not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of that activity or function under the contract; or

(B) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Defense for health benefits for civilian employees under chapter 89 of title 5, United States Code.

Contracts.

(b)(1) The Department of Defense, without regard to subsection (a) of this section or subsection (a), (b), or (c) of section 2461

of title 10, United States Code, and notwithstanding any administrative regulation, requirement, or policy to the contrary shall have full authority to enter into a contract for the performance of any commercial or industrial type function of the Department of Defense that—

(A) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (section 8503 of title 41, United States Code);

(B) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or

(C) is planned to be converted to performance by a qualified firm under at least 51 percent ownership by an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), or a Native Hawaiian Organization, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).

(2) This section shall not apply to depot contracts or contracts for depot maintenance as provided in sections 2469 and 2474 of title 10, United States Code.

(c) The conversion of any activity or function of the Department of Defense under the authority provided by this section shall be credited toward any competitive or outsourcing goal, target, or measurement that may be established by statute, regulation, or policy and is deemed to be awarded under the authority of, and in compliance with, subsection (h) of section 2304 of title 10, United States Code, for the competition or outsourcing of commercial activities.

(RESCISSIONS)

SEC. 8040. Of the funds appropriated in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts and programs in the specified amounts:

"National Defense Sealift Fund, 2002/XXXX", $20,444,000;

"National Defense Sealift Fund, 2003/XXXX", $8,500,000;

"National Defense Sealift Fund, 2004/XXXX", $6,500,000;

"Aircraft Procurement, Army, 2010/2012", $5,100,000;

"Procurement of Weapons and Tracked Combat Vehicles, Army, 2010/2012", $4,353,000;

"Procurement of Ammunition, Army, 2010/2012", $21,674,000;

"Other Procurement, Army, 2010/2012", $58,647,000;

"Aircraft Procurement, Navy, 2010/2012", $90,000,000;

"Aircraft Procurement, Air Force, 2010/2012", $32,897,000;

"Missile Procurement, Air Force, 2010/2012", $3,889,000;

"Other Procurement, Air Force, 2010/2012", $12,200,000;

"Procurement, Defense-Wide, 2010/2012", $716,000;

"Aircraft Procurement, Army, 2011/2013", $21,500,000;

"Missile Procurement, Army, 2011/2013", $99,800,000;

"Procurement of Weapons and Tracked Combat Vehicles, Army, 2011/2013", $18,834,000;

"Procurement of Ammunition, Army, 2011/2013", $15,000,000;

"Other Procurement, Army, 2011/2013", $438,436,000;

"Aircraft Procurement, Navy, 2011/2013", $78,000,000;

"Weapons Procurement, Navy, 2011/2013", $34,276,000;

"Procurement of Ammunition, Navy and Marine Corps, 2011/2013", $28,262,000;

"Other Procurement, Navy, 2011/2013", $59,598,000;

Under the heading, "Shipbuilding and Conversion, Navy, 2011/2015": Littoral Combat Ship Advance Procurement: $110,351,000;

"Aircraft Procurement, Air Force, 2011/2013", $220,213,000;

"Missile Procurement, Air Force, 2011/2013", $193,900,000;

"Other Procurement, Air Force, 2011/2013", $52,868,000;

"Procurement, Defense-Wide, 2011/2013", $4,312,000;

"Research, Development, Test and Evaluation, Army, 2011/2012", $356,625,000;

"Research, Development, Test and Evaluation, Navy, 2011/2012", $65,687,000;

"Research, Development, Test and Evaluation, Air Force, 2011/2012", $258,094,000;

"Research, Development, Test and Evaluation, Defense-Wide, 2011/2012", $254,284,000;

"Defense Health Program, 2011/2012", $257,000:

Provided, That the funds rescinded from the National Defense Sealift accounts are those described under the heading "National Defense Sealift Fund" in Public Law 107–117, Public Law 107–248, and Public Law 108–87, or for the purposes described in section 115 of division H of Public Law 108–199, as amended by section 1017 of division A of Public Law 109–13.

SEC. 8041. None of the funds available in this Act may be used to reduce the authorized positions for military technicians (dual status) of the Army National Guard, Air National Guard, Army Reserve and Air Force Reserve for the purpose of applying any administratively imposed civilian personnel ceiling, freeze, or reduction on military technicians (dual status), unless such reductions are a direct result of a reduction in military force structure.

North Korea.

SEC. 8042. None of the funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the Democratic People's Republic of Korea unless specifically appropriated for that purpose.

SEC. 8043. Funds appropriated in this Act for operation and maintenance of the Military Departments, Combatant Commands and Defense Agencies shall be available for reimbursement of pay, allowances and other expenses which would otherwise be incurred against appropriations for the National Guard and Reserve when members of the National Guard and Reserve provide intelligence or counterintelligence support to Combatant Commands, Defense Agencies and Joint Intelligence Activities, including the activities and programs included within the National Intelligence Program and the Military Intelligence Program: *Provided*, That nothing in this section authorizes deviation from established Reserve and National Guard personnel and training procedures.

SEC. 8044. During the current fiscal year, none of the funds appropriated in this Act may be used to reduce the civilian medical and medical support personnel assigned to military treatment facilities below the September 30, 2003, level: *Provided*, That the Service Surgeons General may waive this section by certifying to the

Waiver authority.
Certification.

congressional defense committees that the beneficiary population is declining in some catchment areas and civilian strength reductions may be consistent with responsible resource stewardship and capitation-based budgeting.

Drugs and drug abuse.
10 USC 374 note.

SEC. 8045. (a) None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

50 USC 403f note.

(b) None of the funds available to the Central Intelligence Agency for any fiscal year for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

Ball and roller bearings.
Waiver authority.
Certification.

SEC. 8046. None of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: *Provided*, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That this restriction shall not apply to the purchase of "commercial items", as defined by section 4(12) of the Office of Federal Procurement Policy Act, except that the restriction shall apply to ball or roller bearings purchased as end items.

Applicability.

Supercomputer.
Certification.

SEC. 8047. None of the funds in this Act may be used to purchase any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the congressional defense committees that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.

Salaries.

SEC. 8048. None of the funds made available in this or any other Act may be used to pay the salary of any officer or employee of the Department of Defense who approves or implements the transfer of administrative responsibilities or budgetary resources of any program, project, or activity financed by this Act to the jurisdiction of another Federal agency not financed by this Act without the express authorization of Congress: *Provided*, That this limitation shall not apply to transfers of funds expressly provided for in Defense Appropriations Acts, or provisions of Acts providing supplemental appropriations for the Department of Defense.

Notification.
Deadline.

SEC. 8049. (a) Notwithstanding any other provision of law, none of the funds available to the Department of Defense for the current fiscal year may be obligated or expended to transfer to another nation or an international organization any defense articles or services (other than intelligence services) for use in the activities described in subsection (b) unless the congressional defense committees, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate are notified 15 days in advance of such transfer.

Applicability.

(b) This section applies to—

(1) any international peacekeeping or peace-enforcement operation under the authority of chapter VI or chapter VII

of the United Nations Charter under the authority of a United Nations Security Council resolution; and

(2) any other international peacekeeping, peace-enforcement, or humanitarian assistance operation.

(c) A notice under subsection (a) shall include the following:

(1) A description of the equipment, supplies, or services to be transferred.

(2) A statement of the value of the equipment, supplies, or services to be transferred.

(3) In the case of a proposed transfer of equipment or supplies—

(A) a statement of whether the inventory requirements of all elements of the Armed Forces (including the reserve components) for the type of equipment or supplies to be transferred have been met; and

(B) a statement of whether the items proposed to be transferred will have to be replaced and, if so, how the President proposes to provide funds for such replacement.

Contracts.

SEC. 8050. None of the funds available to the Department of Defense under this Act shall be obligated or expended to pay a contractor under a contract with the Department of Defense for costs of any amount paid by the contractor to an employee when—

(1) such costs are for a bonus or otherwise in excess of the normal salary paid by the contractor to the employee; and

(2) such bonus is part of restructuring costs associated with a business combination.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8051. During the current fiscal year, no more than $30,000,000 of appropriations made in this Act under the heading "Operation and Maintenance, Defense-Wide" may be transferred to appropriations available for the pay of military personnel, to be merged with, and to be available for the same time period as the appropriations to which transferred, to be used in support of such personnel in connection with support and services for eligible organizations and activities outside the Department of Defense pursuant to section 2012 of title 10, United States Code.

SEC. 8052. During the current fiscal year, in the case of an appropriation account of the Department of Defense for which the period of availability for obligation has expired or which has closed under the provisions of section 1552 of title 31, United States Code, and which has a negative unliquidated or unexpended balance, an obligation or an adjustment of an obligation may be charged to any current appropriation account for the same purpose as the expired or closed account if—

(1) the obligation would have been properly chargeable (except as to amount) to the expired or closed account before the end of the period of availability or closing of that account;

(2) the obligation is not otherwise properly chargeable to any current appropriation account of the Department of Defense; and

(3) in the case of an expired account, the obligation is not chargeable to a current appropriation of the Department of Defense under the provisions of section 1405(b)(8) of the

National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended (31 U.S.C. 1551 note): *Provided*, That in the case of an expired account, if subsequent review or investigation discloses that there was not in fact a negative unliquidated or unexpended balance in the account, any charge to a current account under the authority of this section shall be reversed and recorded against the expired account: *Provided further*, That the total amount charged to a current appropriation under this section may not exceed an amount equal to 1 percent of the total appropriation for that account.

SEC. 8053. (a) Notwithstanding any other provision of law, the Chief of the National Guard Bureau may permit the use of equipment of the National Guard Distance Learning Project by any person or entity on a space-available, reimbursable basis. The Chief of the National Guard Bureau shall establish the amount of reimbursement for such use on a case-by-case basis.

Reimbursement.

(b) Amounts collected under subsection (a) shall be credited to funds available for the National Guard Distance Learning Project and be available to defray the costs associated with the use of equipment of the project under that subsection. Such funds shall be available for such purposes without fiscal year limitation.

SEC. 8054. Using funds made available by this Act or any other Act, the Secretary of the Air Force, pursuant to a determination under section 2690 of title 10, United States Code, may implement cost-effective agreements for required heating facility modernization in the Kaiserslautern Military Community in the Federal Republic of Germany: *Provided*, That in the City of Kaiserslautern and at the Rhine Ordnance Barracks area, such agreements will include the use of United States anthracite as the base load energy for municipal district heat to the United States Defense installations: *Provided further*, That at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of United States coal as an energy source.

Germany.

Anthracite.

SEC. 8055. None of the funds appropriated in title IV of this Act may be used to procure end-items for delivery to military forces for operational training, operational use or inventory requirements: *Provided*, That this restriction does not apply to end-items used in development, prototyping, and test activities preceding and leading to acceptance for operational use: *Provided further*, That this restriction does not apply to programs funded within the National Intelligence Program: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

Waiver authority.
Certification.

SEC. 8056. None of the funds made available in this Act may be used to approve or license the sale of the F–22A advanced tactical fighter to any foreign government: *Provided*, That the Department of Defense may conduct or participate in studies, research, design and other activities to define and develop a future export version of the F–22A that protects classified and sensitive information, technologies and U.S. warfighting capabilities.

SEC. 8057. (a) The Secretary of Defense may, on a case-by-case basis, waive with respect to a foreign country each limitation on the procurement of defense items from foreign sources provided

Waiver authority.
Determination.

in law if the Secretary determines that the application of the limitation with respect to that country would invalidate cooperative programs entered into between the Department of Defense and the foreign country, or would invalidate reciprocal trade agreements for the procurement of defense items entered into under section 2531 of title 10, United States Code, and the country does not discriminate against the same or similar defense items produced in the United States for that country.

Applicability. Contracts.

(b) Subsection (a) applies with respect to—

(1) contracts and subcontracts entered into on or after the date of the enactment of this Act; and

(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (a).

(c) Subsection (a) does not apply to a limitation regarding construction of public vessels, ball and roller bearings, food, and clothing or textile materials as defined by section 11 (chapters 50–65) of the Harmonized Tariff Schedule and products classified under headings 4010, 4202, 4203, 6401 through 6406, 6505, 7019, 7218 through 7229, 7304.41 through 7304.49, 7306.40, 7502 through 7508, 8105, 8108, 8109, 8211, 8215, and 9404.

Human rights.

SEC. 8058. (a) None of the funds made available by this Act may be used to support any training program involving a unit of the security forces or police of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

(b) The Secretary of Defense, in consultation with the Secretary of State, shall ensure that prior to a decision to conduct any training program referred to in subsection (a), full consideration is given to all credible information available to the Department of State relating to human rights violations by foreign security forces.

Waiver authority. Determination.

(c) The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a) if he determines that such waiver is required by extraordinary circumstances.

Deadline. Reports.

(d) Not more than 15 days after the exercise of any waiver under subsection (c), the Secretary of Defense shall submit a report to the congressional defense committees describing the extraordinary circumstances, the purpose and duration of the training program, the United States forces and the foreign security forces involved in the training program, and the information relating to human rights violations that necessitates the waiver.

SEC. 8059. None of the funds appropriated or otherwise made available by this or other Department of Defense Appropriations Acts may be obligated or expended for the purpose of performing repairs or maintenance to military family housing units of the Department of Defense, including areas in such military family housing units that may be used for the purpose of conducting official Department of Defense business.

Deadline. Reports.

SEC. 8060. Notwithstanding any other provision of law, funds appropriated in this Act under the heading "Research, Development, Test and Evaluation, Defense-Wide" for any new start advanced concept technology demonstration project or joint capability demonstration project may only be obligated 45 days after a report,

including a description of the project, the planned acquisition and transition strategy and its estimated annual and total cost, has been provided in writing to the congressional defense committees: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying to the congressional defense committees that it is in the national interest to do so.

Waiver authority. Certification.

SEC. 8061. The Secretary of Defense shall provide a classified quarterly report beginning 30 days after enactment of this Act, to the House and Senate Appropriations Committees, Subcommittees on Defense on certain matters as directed in the classified annex accompanying this Act.

Classified information. Deadlines. Reports. Effective date.

SEC. 8062. During the current fiscal year, none of the funds available to the Department of Defense may be used to provide support to another department or agency of the United States if such department or agency is more than 90 days in arrears in making payment to the Department of Defense for goods or services previously provided to such department or agency on a reimbursable basis: *Provided*, That this restriction shall not apply if the department is authorized by law to provide support to such department or agency on a nonreimbursable basis, and is providing the requested support pursuant to such authority: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

Waiver authority. Certification.

SEC. 8063. Notwithstanding section 12310(b) of title 10, United States Code, a Reserve who is a member of the National Guard serving on full-time National Guard duty under section 502(f) of title 32, United States Code, may perform duties in support of the ground-based elements of the National Ballistic Missile Defense System.

SEC. 8064. None of the funds provided in this Act may be used to transfer to any nongovernmental entity ammunition held by the Department of Defense that has a center-fire cartridge and a United States military nomenclature designation of "armor penetrator", "armor piercing (AP)", "armor piercing incendiary (API)", or "armor-piercing incendiary tracer (API–T)", except to an entity performing demilitarization services for the Department of Defense under a contract that requires the entity to demonstrate to the satisfaction of the Department of Defense that armor piercing projectiles are either: (1) rendered incapable of reuse by the demilitarization process; or (2) used to manufacture ammunition pursuant to a contract with the Department of Defense or the manufacture of ammunition for export pursuant to a License for Permanent Export of Unclassified Military Articles issued by the Department of State.

Arms and munitions.

SEC. 8065. Notwithstanding any other provision of law, the Chief of the National Guard Bureau, or his designee, may waive payment of all or part of the consideration that otherwise would be required under section 2667 of title 10, United States Code, in the case of a lease of personal property for a period not in excess of 1 year to any organization specified in section 508(d) of title 32, United States Code, or any other youth, social, or fraternal nonprofit organization as may be approved by the Chief of the National Guard Bureau, or his designee, on a case-by-case basis.

Waiver authority. Time period.

Alcohol and alcoholic beverages.

SEC. 8066. None of the funds appropriated by this Act shall be used for the support of any nonappropriated funds activity of the Department of Defense that procures malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine are procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation is located: *Provided*, That in a case in which the military installation is located in more than one State, purchases may be made in any State in which the installation is located: *Provided further*, That such local procurement requirements for malt beverages and wine shall apply to all alcoholic beverages only for military installations in States which are not contiguous with another State: *Provided further*, That alcoholic beverages other than wine and malt beverages, in contiguous States and the District of Columbia shall be procured from the most competitive source, price and other factors considered.

Applicability.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8067. Of the amounts appropriated in this Act under the heading "Operation and Maintenance, Army", $124,493,000 shall remain available until expended: *Provided*, That notwithstanding any other provision of law, the Secretary of Defense is authorized to transfer such funds to other activities of the Federal Government: *Provided further*, That the Secretary of Defense is authorized to enter into and carry out contracts for the acquisition of real property, construction, personal services, and operations related to projects carrying out the purposes of this section: *Provided further*, That contracts entered into under the authority of this section may provide for such indemnification as the Secretary determines to be necessary: *Provided further*, That projects authorized by this section shall comply with applicable Federal, State, and local law to the maximum extent consistent with the national security, as determined by the Secretary of Defense.

Contracts.
Real property.

Applicability.

SEC. 8068. Section 8106 of the Department of Defense Appropriations Act, 1997 (titles I through VIII of the matter under subsection 101(b) of Public Law 104–208; 110 Stat. 3009–111; 10 U.S.C. 113 note) shall continue in effect to apply to disbursements that are made by the Department of Defense in fiscal year 2012.

SEC. 8069. In addition to amounts provided elsewhere in this Act, $4,000,000 is hereby appropriated to the Department of Defense, to remain available for obligation until expended: *Provided*, That notwithstanding any other provision of law, that upon the determination of the Secretary of Defense that it shall serve the national interest, these funds shall be available only for a grant to the Fisher House Foundation, Inc., only for the construction and furnishing of additional Fisher Houses to meet the needs of military family members when confronted with the illness or hospitalization of an eligible military beneficiary.

Grants.
Fisher House Foundation, Inc.

SEC. 8070. (a) IN GENERAL.—Subchapter I of chapter 88 of title 10, United States Code, is amended by adding the following new section at its end—

"§ 1790. MILITARY PERSONNEL CITIZENSHIP PROCESSING

"AUTHORIZATION OF PAYMENTS.—Using funds provided for operation and maintenance and notwithstanding section 2215 of title 10, United States Code, the Secretary of Defense may reimburse the Secretary of Homeland Security for costs associated with the processing and adjudication by the United States Citizenship and Immigration Services (USCIS) of applications for naturalization described in sections 328(b)(4) and 329(b)(4) of the Immigration and Nationality Act (8 U.S.C. §§ 1439(b)(4) and 1440(b)(4)). Such reimbursements shall be deposited and remain available as provided by sections 286(m) and (n) of such Act (8 U.S.C. § 1356(m)). Such reimbursements shall be based on actual costs incurred by USCIS for processing applications for naturalization, and shall not exceed $7,500,000 per fiscal year.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter I of chapter 88 of title 10, United States Code, is amended by inserting after the item relating to section 1789 the following new item:

"1790. Military personnel citizenship processing.".

(INCLUDING TRANSFER OF FUNDS)

SEC. 8071. Of the amounts appropriated in this Act under the heading "Research, Development, Test and Evaluation, Defense-Wide", $235,700,000 shall be for the Israeli Cooperative Programs: *Provided,* That of this amount, $110,525,000 shall be for the Short Range Ballistic Missile Defense (SRBMD) program, including cruise missile defense research and development under the SRBMD program, of which $15,000,000 shall be for production activities of SRBMD missiles in the United States and in Israel to meet Israel's defense requirements consistent with each nation's laws, regulations, and procedures, $66,220,000 shall be available for an upper-tier component to the Israeli Missile Defense Architecture, and $58,955,000 shall be for the Arrow System Improvement Program including development of a long range, ground and airborne, detection suite: *Provided further,* That funds made available under this provision for production of missiles and missile components may be transferred to appropriations available for the procurement of weapons and equipment, to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred: *Provided further,* That the transfer authority provided under this provision is in addition to any other transfer authority contained in this Act.

SEC. 8072. (a) None of the funds available to the Department of Defense may be obligated to modify command and control relationships to give Fleet Forces Command operational and administrative control of U.S. Navy forces assigned to the Pacific fleet.

(b) None of the funds available to the Department of Defense may be obligated to modify command and control relationships to give United States Transportation Command operational and administrative control of C–130 and KC–135 forces assigned to the Pacific and European Air Force Commands.

(c) The command and control relationships in subsections (a) and (b) which existed on March 13, 2011, shall remain in force unless changes are specifically authorized in a subsequent Act.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8073. Of the amounts appropriated in this Act under the heading "Shipbuilding and Conversion, Navy", $73,992,000 shall be available until September 30, 2012, to fund prior year shipbuilding cost increases: *Provided,* That upon enactment of this Act, the Secretary of the Navy shall transfer funds to the following appropriations in the amounts specified: *Provided further,* That the amounts transferred shall be merged with and be available for the same purposes as the appropriations to which transferred to:

(1) Under the heading "Shipbuilding and Conversion, Navy, 2005/2012": LPD–17 Amphibious Transport Dock Program $18,627,000;

(2) Under the heading "Shipbuilding and Conversion, Navy, 2006/2012": LPD–17 Amphibious Transport Dock Program $23,437,000; and

(3) Under the heading "Shipbuilding and Conversion, Navy, 2008/2012": LPD–17 Amphibious Transport Dock Program $31,928,000.

(INCLUDING TRANSFER OF FUNDS)

Deadlines. Reports.

SEC. 8074. (a) Of the amounts appropriated in title IV of this Act under the heading "Research, Development, Test and Evaluation, Army", for Budget Activities 4, 5 and 7, $50,000,000 shall be transferred to Program Element 0605601A: *Provided,* That no funds may be transferred until 30 days after the Secretary of the Army provides to the congressional defense committees a report including the details of any such transfer: *Provided further,* That the transfer authority provided under this provision is in addition to any other transfer authority contained in this Act.

(b) Of the amounts appropriated in title IV of this Act under the heading "Research, Development, Test and Evaluation, Air Force", for Budget Activities 4, 5 and 7, $34,000,000 shall be transferred to Program Element 0605807F: *Provided,* That no funds may be transferred until 30 days after the Secretary of the Air Force provides to the congressional defense committees a report including the details of any such transfer: *Provided further,* That the transfer authority provided under this provision is in addition to any other transfer authority contained in this Act.

SEC. 8075. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2012 until the enactment of the Intelligence Authorization Act for Fiscal Year 2012.

Notification.

SEC. 8076. None of the funds provided in this Act shall be available for obligation or expenditure through a reprogramming of funds that creates or initiates a new program, project, or activity unless such program, project, or activity must be undertaken immediately in the interest of national security and only after written prior notification to the congressional defense committees.

10 USC 221 note.

SEC. 8077. The budget of the President for fiscal year 2013 submitted to the Congress pursuant to section 1105 of title 31, United States Code, shall include separate budget justification documents for costs of United States Armed Forces' participation in contingency operations for the Military Personnel accounts, the

Operation and Maintenance accounts, and the Procurement accounts: *Provided*, That these documents shall include a description of the funding requested for each contingency operation, for each military service, to include all Active and Reserve components, and for each appropriations account: *Provided further*, That these documents shall include estimated costs for each element of expense or object class, a reconciliation of increases and decreases for each contingency operation, and programmatic data including, but not limited to, troop strength for each Active and Reserve component, and estimates of the major weapons systems deployed in support of each contingency: *Provided further*, That these documents shall include budget exhibits OP–5 and OP–32 (as defined in the Department of Defense Financial Management Regulation) for all contingency operations for the budget year and the two preceding fiscal years.

SEC. 8078. None of the funds in this Act may be used for research, development, test, evaluation, procurement or deployment of nuclear armed interceptors of a missile defense system.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8079. In addition to the amounts appropriated or otherwise made available elsewhere in this Act, $44,000,000 is hereby appropriated to the Department of Defense: *Provided*, That upon the determination of the Secretary of Defense that it shall serve the national interest, he shall make grants in the amounts specified as follows: $20,000,000 to the United Service Organizations and $24,000,000 to the Red Cross.

Determination. Grants.

SEC. 8080. None of the funds appropriated or made available in this Act shall be used to reduce or disestablish the operation of the 53rd Weather Reconnaissance Squadron of the Air Force Reserve, if such action would reduce the WC–130 Weather Reconnaissance mission below the levels funded in this Act: *Provided*, That the Air Force shall allow the 53rd Weather Reconnaissance Squadron to perform other missions in support of national defense requirements during the non-hurricane season.

53rd Weather Reconnaissance Squadron.

SEC. 8081. None of the funds provided in this Act shall be available for integration of foreign intelligence information unless the information has been lawfully collected and processed during the conduct of authorized foreign intelligence activities: *Provided*, That information pertaining to United States persons shall only be handled in accordance with protections provided in the Fourth Amendment of the United States Constitution as implemented through Executive Order No. 12333.

Foreign intelligence.

SEC. 8082. (a) At the time members of reserve components of the Armed Forces are called or ordered to active duty under section 12302(a) of title 10, United States Code, each member shall be notified in writing of the expected period during which the member will be mobilized.

Notification. Deployment.

(b) The Secretary of Defense may waive the requirements of subsection (a) in any case in which the Secretary determines that it is necessary to do so to respond to a national security emergency or to meet dire operational requirements of the Armed Forces.

Waiver authority. Determination.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8083. The Secretary of Defense may transfer funds from any available Department of the Navy appropriation to any available Navy ship construction appropriation for the purpose of liquidating necessary changes resulting from inflation, market fluctuations, or rate adjustments for any ship construction program appropriated in law: *Provided*, That the Secretary may transfer not to exceed $100,000,000 under the authority provided by this section: *Provided further*, That the Secretary may not transfer any funds until 30 days after the proposed transfer has been reported to the Committees on Appropriations of the House of Representatives and the Senate, unless a response from the Committees is received sooner: *Provided further,* That any funds transferred pursuant to this section shall retain the same period of availability as when originally appropriated: *Provided further*, That the transfer authority provided by this section is in addition to any other transfer authority contained elsewhere in this Act.

Deadline. Reports.

SEC. 8084. For purposes of section 7108 of title 41, United States Code, any subdivision of appropriations made under the heading "Shipbuilding and Conversion, Navy" that is not closed at the time reimbursement is made shall be available to reimburse the Judgment Fund and shall be considered for the same purposes as any subdivision under the heading "Shipbuilding and Conversion, Navy" appropriations in the current fiscal year or any prior fiscal year.

Tactical unmanned aerial vehicles.

SEC. 8085. (a) None of the funds appropriated by this Act may be used to transfer research and development, acquisition, or other program authority relating to current tactical unmanned aerial vehicles (TUAVs) from the Army.

(b) The Army shall retain responsibility for and operational control of the MQ–1C Sky Warrior Unmanned Aerial Vehicle (UAV) in order to support the Secretary of Defense in matters relating to the employment of unmanned aerial vehicles.

SEC. 8086. Up to $15,000,000 of the funds appropriated under the heading "Operation and Maintenance, Navy" may be made available for the Asia Pacific Regional Initiative Program for the purpose of enabling the Pacific Command to execute Theater Security Cooperation activities such as humanitarian assistance, and payment of incremental and personnel costs of training and exercising with foreign security forces: *Provided*, That funds made available for this purpose may be used, notwithstanding any other funding authorities for humanitarian assistance, security assistance or combined exercise expenses: *Provided further*, That funds may not be obligated to provide assistance to any foreign country that is otherwise prohibited from receiving such type of assistance under any other provision of law.

SEC. 8087. None of the funds appropriated by this Act for programs of the Office of the Director of National Intelligence shall remain available for obligation beyond the current fiscal year, except for funds appropriated for research and technology, which shall remain available until September 30, 2013.

Applicability.

SEC. 8088. For purposes of section 1553(b) of title 31, United States Code, any subdivision of appropriations made in this Act under the heading "Shipbuilding and Conversion, Navy" shall be considered to be for the same purpose as any subdivision under the heading "Shipbuilding and Conversion, Navy" appropriations

in any prior fiscal year, and the 1 percent limitation shall apply to the total amount of the appropriation.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8089. During the current fiscal year, not to exceed $200,000,000 from funds available under "Operation and Maintenance, Defense-Wide" may be transferred to the Department of State "Global Security Contingency Fund": *Provided,* That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further,* That the Secretary of Defense shall, not fewer than 30 days prior to making transfers to the Department of State "Global Security Contingency Fund", notify the congressional defense committees in writing with the source of funds and a detailed justification, execution plan, and timeline for each proposed project.

Deadline. Notification. Execution plan.

SEC. 8090. The Director of National Intelligence shall include the budget exhibits identified in paragraphs (1) and (2) as described in the Department of Defense Financial Management Regulation with the congressional budget justification books:

50 USC 415a–2 note.

(1) For procurement programs requesting more than $10,000,000 in any fiscal year, the P–1, Procurement Program; P–5, Cost Analysis; P–5a, Procurement History and Planning; P–21, Production Schedule; and P–40, Budget Item Justification.

(2) For research, development, test and evaluation projects requesting more than $5,000,000 in any fiscal year, the R–1, Research, Development, Test and Evaluation Program; R–2, Research, Development, Test and Evaluation Budget Item Justification; R–3, Research, Development, Test and Evaluation Project Cost Analysis; and R–4, Research, Development, Test and Evaluation Program Schedule Profile.

SEC. 8091. The amounts appropriated in title II of this Act are hereby reduced by $515,000,000 to reflect excess cash balances in Department of Defense Working Capital Funds, as follows: From "Operation and Maintenance, Army", $515,000,000.

SEC. 8092. (a) Not later than 60 days after enactment of this Act, the Office of the Director of National Intelligence shall submit a report to the congressional intelligence committees to establish the baseline for application of reprogramming and transfer authorities for fiscal year 2012: *Provided*, That the report shall include—

Deadline. Reports.

(1) a table for each appropriation with a separate column to display the President's budget request, adjustments made by Congress, adjustments due to enacted rescissions, if appropriate, and the fiscal year enacted level;

(2) a delineation in the table for each appropriation by Expenditure Center and project; and

(3) an identification of items of special congressional interest.

(b) None of the funds provided for the National Intelligence Program in this Act shall be available for reprogramming or transfer until the report identified in subsection (a) is submitted to the congressional intelligence committees, unless the Director of National Intelligence certifies in writing to the congressional intelligence committees that such reprogramming or transfer is necessary as an emergency requirement.

Certification.

Notification. Deadlines.

SEC. 8093. (a) None of the funds provided for the National Intelligence Program in this or any prior appropriations Act shall be available for obligation or expenditure through a reprogramming or transfer of funds in accordance with section 102A(d) of the National Security Act of 1947 (50 U.S.C. 403–1(d)) that—

(1) creates a new start effort;

(2) terminates a program with appropriated funding of $10,000,000 or more;

(3) transfers funding into or out of the National Intelligence Program; or

(4) transfers funding between appropriations,

unless the congressional intelligence committees are notified 30 days in advance of such reprogramming of funds; this notification period may be reduced for urgent national security requirements.

(b) None of the funds provided for the National Intelligence Program in this or any prior appropriations Act shall be available for obligation or expenditure through a reprogramming or transfer of funds in accordance with section 102A(d) of the National Security Act of 1947 (50 U.S.C. 403–1(d)) that results in a cumulative increase or decrease of the levels specified in the classified annex unless the congressional intelligence committees are notified 30 days in advance of such reprogramming of funds; this notification period may be reduced for urgent national security requirements.

Submission. 50 USC 415a–9 note.

SEC. 8094. The Director of National Intelligence shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, United States Code, a future-years intelligence program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years intelligence program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

Definition.

SEC. 8095. For the purposes of this Act, the term "congressional intelligence committees" means the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives, and the Subcommittee on Defense of the Committee on Appropriations of the Senate.

Reports. Deadlines.

SEC. 8096. The Department of Defense shall continue to report incremental contingency operations costs for Operation New Dawn and Operation Enduring Freedom on a monthly basis in the Cost of War Execution Report as prescribed in the Department of Defense Financial Management Regulation Department of Defense Instruction 7000.14, Volume 12, Chapter 23 "Contingency Operations", Annex 1, dated September 2005.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8097. During the current fiscal year, not to exceed $11,000,000 from each of the appropriations made in title II of this Act for "Operation and Maintenance, Army", "Operation and Maintenance, Navy", and "Operation and Maintenance, Air Force" may be transferred by the military department concerned to its central fund established for Fisher Houses and Suites pursuant to section 2493(d) of title 10, United States Code.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8098. Of the funds appropriated in the Intelligence Community Management Account for the Program Manager for the Information Sharing Environment, $20,000,000 is available for transfer by the Director of National Intelligence to other departments and agencies for purposes of Government-wide information sharing activities: *Provided*, That funds transferred under this provision are to be merged with and available for the same purposes and time period as the appropriation to which transferred: *Provided further*, That the Office of Management and Budget must approve any transfers made under this provision.

SEC. 8099. Funds appropriated by this Act for operation and maintenance may be available for the purpose of making remittances to the Defense Acquisition Workforce Development Fund in accordance with the requirements of section 1705 of title 10, United States Code.

Web posting. Reports.

SEC. 8100. (a) Any agency receiving funds made available in this Act, shall, subject to subsections (b) and (c), post on the public website of that agency any report required to be submitted by the Congress in this or any other Act, upon the determination by the head of the agency that it shall serve the national interest.

(b) Subsection (a) shall not apply to a report if—

(1) the public posting of the report compromises national security; or

(2) the report contains proprietary information.

Time period.

(c) The head of the agency posting such report shall do so only after such report has been made available to the requesting Committee or Committees of Congress for no less than 45 days.

Contracts.

SEC. 8101. (a) None of the funds appropriated or otherwise made available by this Act may be expended for any Federal contract for an amount in excess of $1,000,000, unless the contractor agrees not to—

(1) enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

(2) take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

Certification.

(b) None of the funds appropriated or otherwise made available by this Act may be expended for any Federal contract unless the contractor certifies that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce any provision of, any agreement as described in paragraphs (1) and (2) of subsection (a), with respect to any employee or independent contractor performing work related to such subcontract. For purposes of this subsection, a "covered subcontractor" is an

entity that has a subcontract in excess of $1,000,000 on a contract subject to subsection (a).

(c) The prohibitions in this section do not apply with respect to a contractor's or subcontractor's agreements with employees or independent contractors that may not be enforced in a court of the United States.

Waiver authority. Determination.

(d) The Secretary of Defense may waive the application of subsection (a) or (b) to a particular contractor or subcontractor for the purposes of a particular contract or subcontract if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is not longer than necessary to avoid such harm. The determination shall set forth with specificity the grounds for the waiver and for the contract or subcontract term selected, and shall state any alternatives considered in lieu of a waiver and the reasons each such alternative would not avoid harm to national security interests of the United States. The Secretary of Defense shall transmit to Congress, and simultaneously make public, any determination under this subsection not less than 15 business days before the contract or subcontract addressed in the determination may be awarded.

Public information. Deadline.

SEC. 8102. (a)(1) No National Intelligence Program funds appropriated in this Act may be used for a mission critical or mission essential business management information technology system that is not registered with the Director of National Intelligence. A system shall be considered to be registered with that officer upon the furnishing notice of the system, together with such information concerning the system as the Director of the Business Transformation Office may prescribe.

Notice.

(2) During the fiscal year 2012 no funds may be obligated or expended for a financial management automated information system, a mixed information system supporting financial and nonfinancial systems, or a business system improvement of more than $3,000,000, within the Intelligence Community without the approval of the Business Transformation Investment Review Board.

(b) This section shall not apply to any programmatic or analytic systems or programmatic or analytic system improvements.

ACORN.

SEC. 8103. None of the funds made available under this Act may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8104. From within the funds appropriated for operation and maintenance for the Defense Health Program in this Act, up to $135,631,000, shall be available for transfer to the Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund in accordance with the provisions of section 1704 of the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84: *Provided,* That for purposes of section 1704(b), the facility operations funded are operations of the integrated Captain James A. Lovell Federal Health Care Center, consisting of the North Chicago Veterans Affairs Medical Center, the Navy Ambulatory Care Center, and supporting facilities designated as a combined Federal medical facility as described by

section 706 of Public Law 110–417: *Provided further,* That additional funds may be transferred from funds appropriated for operation and maintenance for the Defense Health Program to the Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund upon written notification by the Secretary of Defense to the Committees on Appropriations of the House of Representatives and the Senate.

Notification.

SEC. 8105. Section 310(b) of the Supplemental Appropriations Act, 2009 (Public Law 111–32; 124 Stat. 1871), as amended by Public Law 112–10, is amended by striking "2 years" both places it appears and inserting "3 years".

SEC. 8106. The Office of the Director of National Intelligence shall not employ more Senior Executive employees than are specified in the classified annex: *Provided*, That not later than 90 days after the enactment of this Act, the Director of National Intelligence shall submit to the congressional intelligence committees the Office of the Director of National Intelligence strategic human capital plan and the Office of Director of National Intelligence current and future grade structure, to include General Schedule 15 positions.

Deadline.
Strategic plan.

SEC. 8107. None of the funds appropriated or otherwise made available by this Act may be obligated or expended to pay a retired general or flag officer to serve as a senior mentor advising the Department of Defense unless such retired officer files a Standard Form 278 (or successor form concerning public financial disclosure under part 2634 of title 5, Code of Federal Regulations) to the Office of Government Ethics.

SEC. 8108. Appropriations available to the Department of Defense may be used for the purchase of heavy and light armored vehicles for the physical security of personnel or for force protection purposes up to a limit of $250,000 per vehicle, notwithstanding price or other limitations applicable to the purchase of passenger carrying vehicles.

SEC. 8109. The Inspector General of the Department of Defense shall conduct a review of Anti-deficiency Act violations and their causes in the Department of Defense Military Personnel accounts. Based on the findings of the review, the Inspector General shall submit to the congressional defense committees a report containing the results of the review and recommendations for corrective actions to be implemented.

Review.
Reports.
Recommendations.

SEC. 8110. Of the amounts appropriated for "Operation and Maintenance, Defense-Wide", $33,000,000 shall be available to the Secretary of Defense, notwithstanding any other provision of law, acting through the Office of Economic Adjustment of the Department of Defense, to make grants, conclude cooperative agreements, and supplement other Federal funds, to remain available until expended, to assist the civilian population of Guam in response to the military buildup of Guam, to include addressing the need for vehicles and supplies for civilian student transportation, preservation and repository of artifacts unearthed during military construction, and construction of a mental health and substance abuse facility: *Provided*, That the Secretary of Defense shall, not fewer than 15 days prior to obligating funds for this purpose, notify the congressional defense committees in writing of the details of any such obligation.

Grants.
Contracts.
Guam.

Deadline.
Notification.

SEC. 8111. None of the funds made available by this Act may be used by the Secretary of Defense to take beneficial occupancy

Waiver authority. Certification. Notification. Deadline.

of more than 2,000 parking spaces (other than handicap-reserved spaces) to be provided by the BRAC 133 project: *Provided,* That this limitation may be waived in part if: (1) the Secretary of Defense certifies to Congress that levels of service at existing intersections in the vicinity of the project have not experienced failing levels of service as defined by the Transportation Research Board Highway Capacity Manual over a consecutive 90-day period; (2) the Department of Defense and the Virginia Department of Transportation agree on the number of additional parking spaces that may be made available to employees of the facility subject to continued 90-day traffic monitoring; and (3) the Secretary of Defense notifies the congressional defense committees in writing at least 14 days prior to exercising this waiver of the number of additional parking spaces to be made available: *Provided further,* That the Secretary of Defense shall implement the Department of Defense Inspector General recommendations outlined in report number DODIG–2012–024, and certify to Congress not later than 180 days after enactment of this Act that the recommendations have been implemented.

Recommendations. Certification. Deadline.

Reports. Deadline.

SEC. 8112. (a) None of the funds provided in this title for Operation and Maintenance may be available for obligation or expenditure to relocate Air Force program offices, or acquisition management functions of major weapons systems, to a central location, or to any location other than the Air Force Material Command site where they are currently located until 30 days after the Secretary of the Air Force submits the initial report under subsection (b).

(b) The Secretary of the Air Force shall submit to the congressional defense committees a report which includes the following: a listing of all Air Force Material Command functions to be transferred and an identification of the locations where these functions will be transferred from and to; a listing of all Air Force Material Command personnel positions to be transferred and an identification of the locations these positions will be transferred from and to; and the cost benefit analysis and the life-cycle cost analysis underpinning the Secretary of the Air Force's decision to relocate Air Force Material Command functions and personnel.

Deadlines. Reports.

SEC. 8113. Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall resume quarterly reporting of the numbers of civilian personnel end strength by appropriation account for each and every appropriation account used to finance Federal civilian personnel salaries to the congressional defense committees within 15 days after the end of each fiscal quarter.

SEC. 8114. In addition to amounts provided elsewhere in this Act, $10,000,000 is hereby appropriated, for an additional amount for "Research, Development, Test and Evaluation, Army", to remain available until September 30, 2013. Such funds may be available for the Secretary of the Army to conduct research on alternative energy resources for deployed forces.

Study. Reports. Deadline.

SEC. 8115. The Secretary of Defense shall study and report to the Congressional Defense Committees the feasibility of using commercially available telecommunications expense management solutions across the Department of Defense by March 1, 2012.

SEC. 8116. None of the funds appropriated in this or any other Act may be used to plan, prepare for, or otherwise take any action to undertake or implement the separation of the National

Intelligence Program budget from the Department of Defense budget.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8117. Upon a determination by the Director of National Intelligence that such action is necessary and in the national interest, the Director may, with the approval of the Office of Management and Budget, transfer not to exceed $2,000,000,000 of the funds made available in this Act for the National Intelligence Program: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen intelligence requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress: *Provided further*, That a request for multiple reprogrammings of funds using authority provided in this section shall be made prior to June 30, 2012.

Determination.

Reprogramming request. Deadline.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8118. In addition to amounts provided elsewhere in this Act, there is appropriated $250,000,000, for an additional amount for "Operation and Maintenance, Defense-Wide", to be available until expended: *Provided*, That such funds shall only be available to the Secretary of Defense, acting through the Office of Economic Adjustment of the Department of Defense, or for transfer to the Secretary of Education, notwithstanding any other provision of law, to make grants, conclude cooperative agreements, or supplement other Federal funds to construct, renovate, repair, or expand elementary and secondary public schools on military installations in order to address capacity or facility condition deficiencies at such schools: *Provided further*, That in making such funds available, the Office of Economic Adjustment or the Secretary of Education shall give priority consideration to those military installations with schools having the most serious capacity or facility condition deficiencies as determined by the Secretary of Defense.

Grants. Contracts.

Determination.

SEC. 8119. None of the funds appropriated or otherwise made available in this or any other Act may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions Khalid Sheikh Mohammed or any other detainee who—

(1) is not a United States citizen or a member of the Armed Forces of the United States; and

(2) is or was held on or after June 24, 2009, at the United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.

Khalid Sheikh Mohammed. Detainees. Cuba.

SEC. 8120. (a)(1) Except as provided in paragraph (2) and subsection (d), none of the funds appropriated or otherwise made available in this or any other Act may be used to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity unless the Secretary of Defense submits to Congress the certification described in subsection (b) not later than 30 days before the transfer of the individual.

Cuba. Certification. Deadline.

(2) Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate—

Notification.

(A) an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance); or

(B) a pre-trial agreement entered in a military commission case prior to the date of the enactment of this Act.

(b) A certification described in this subsection is a written certification made by the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, that—

(1) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo is to be transferred—

(A) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

(B) maintains control over each detention facility in which the individual is to be detained if the individual is to be housed in a detention facility;

(C) is not, as of the date of the certification, facing a threat that is likely to substantially affect its ability to exercise control over the individual;

(D) has taken or agreed to take effective actions to ensure that the individual cannot take action to threaten the United States, its citizens, or its allies in the future;

(E) has taken or agreed to take such actions as the Secretary of Defense determines are necessary to ensure that the individual cannot engage or reengage in any terrorist activity; and

(F) has agreed to share with the United States any information that—

(i) is related to the individual or any associates of the individual; and

(ii) could affect the security of the United States, its citizens, or its allies; and

(2) includes an assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or entity in relation to the Secretary's certifications.

Cuba.

(c)(1) Except as provided in paragraph (2) and subsection (d), none of the funds appropriated or otherwise made available in this or any other Act may be used to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity if there is a confirmed case of any individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, who was transferred to such foreign country or entity and subsequently engaged in any terrorist activity.

(2) Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate—

Notification.

(A) an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance); or

(B) a pre-trial agreement entered in a military commission case prior to the date of the enactment of this Act.

(d)(1) The Secretary of Defense may waive the applicability to a detainee transfer of a certification requirement specified in subparagraph (D) or (E) of subsection (b)(1) or the prohibition in subsection (c), if the Secretary certifies the rest of the criteria required by subsection (b) for transfers prohibited by (c) and, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, determines that—

Waiver authority. Certification. Determination.

(A) alternative actions will be taken to address the underlying purpose of the requirement or requirements to be waived;

(B) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated, but the actions to be taken under subparagraph (A) will substantially mitigate such risks with regard to the individual to be transferred;

(C) in the case of a waiver of subsection (c), the Secretary has considered any confirmed case in which an individual who was transferred to the country subsequently engaged in terrorist activity, and the actions to be taken under subparagraph (A) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and

(D) the transfer is in the national security interests of the United States.

(2) Whenever the Secretary makes a determination under paragraph (1), the Secretary shall submit to the appropriate committees of Congress, not later than 30 days before the transfer of the individual concerned, the following:

Deadline. Submissions.

(A) A copy of the determination and the waiver concerned.

(B) A statement of the basis for the determination, including—

(i) an explanation why the transfer is in the national security interests of the United States; and

(ii) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), an explanation why it is not possible to certify that the risks addressed in the subparagraph to be waived have been completely eliminated.

(C) A summary of the alternative actions to be taken to address the underlying purpose of, and to mitigate the risks addressed in, the subparagraph or subsection to be waived.

(D) The assessment required by subsection (b)(2).

(e) In this section:

Definitions.

(1) The term "appropriate committees of Congress" means—

(A) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term "individual detained at Guantanamo" means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

(A) is not a citizen of the United States or a member of the Armed Forces of the United States; and

(B) is—

(i) in the custody or under the control of the Department of Defense; or

(ii) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

(3) The term "foreign terrorist organization" means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

SEC. 8121. (a) None of the funds appropriated or otherwise made available in this or any other Act may be used to construct, acquire, or modify any facility in the United States, its territories, or possessions to house any individual described in subsection (c) for the purposes of detention or imprisonment in the custody or under the effective control of the Department of Defense.

(b) The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) An individual described in this subsection is any individual who, as of June 24, 2009, is located at United States Naval Station, Guantanamo Bay, Cuba, and who—

(1) is not a citizen of the United States or a member of the Armed Forces of the United States; and

(2) is—

(A) in the custody or under the effective control of the Department of Defense; or

(B) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

SEC. 8122. Of the funds made available to the Department of Defense under "Operation and Maintenance, Defense-Wide" in title II, $1,000,000 may be available to the Department to competitively commission an independent assessment of the current and prospective situation on the ground in Afghanistan and Pakistan, including the strategic environment in and around Afghanistan and Pakistan; the security, political, and economic and reconstruction developments in those two countries; and relevant policy recommendations relating thereto.

Deadline.
Reports.

SEC. 8123. Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the approximately $100,000,000,000 in efficiency savings identified by the military departments in the defense budget covering fiscal years 2012 through 2016 that are to be reinvested in the priorities of the military departments. Such report shall include an analysis of—

(1) each savings identified by the military departments, including—

(A) the budget account from which such savings will be derived;

(B) the number of military personnel and full-time civilian employees of the Federal Government affected by such savings;

(C) the estimated reductions in the number and funding of contractor personnel caused by such savings; and

(D) a specific description of activities or services that will be affected by such savings, including the locations of such activities or services; and

(2) each reinvestment planned to be funded with such savings, including—

(A) with respect to such reinvestment in procurement and research, development, test and evaluation accounts, the budget account to which such savings will be reinvested, including, by line item, the number of items to be procured, as shown in annual P–1 and R–1 documents;

(B) with respect to such reinvestment in military personnel and operation and maintenance accounts, the budget account and the subactivity (as shown in annual–1 and O–1 budget documents) to which such savings will be reinvested;

(C) the number of military personnel and full-time civilian employees of the Federal Government affected by such reinvestment;

(D) the estimated number and funding of contractor personnel affected by such reinvestment; and

(E) a specific description of activities or services that will be affected by such reinvestment, including the locations of such activities or services.

Corporations. Tax liability. Determination.

SEC. 8124. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

Corporations. Criminal violation. Determination.

SEC. 8125. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8126. There is hereby established in the Treasury of the United States the "Military Intelligence Program Transfer Fund". In addition to amounts provided elsewhere in this Act, there is appropriated $310,758,000 for the "Military Intelligence Program Transfer Fund": *Provided,* That of the funds made available in this section, the Secretary of Defense may transfer these funds only to "Operation and Maintenance, Defense-Wide" or "Research, Development, Test and Evaluation, Defense-Wide" and only for the purposes described in the classified annex accompanying this Act: *Provided further,* That the Secretary shall notify the congressional defense committees in writing of the details of any such transfer not fewer than 15 days prior to making such transfers: *Provided further,* That funds transferred shall be merged with and be available for the same purposes and for the same time

Notification. Deadline.

period as the appropriations to which the funds are transferred: *Provided further,* That this transfer authority is in addition to any other transfer authority provided in this Act.

SEC. 8127. None of the funds made available by this Act may be used in contravention of section 1590 or 1591 of title 18, United States Code, or in contravention of the requirements of section 106(g) or (h) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g) or (h)).

Country listing.
Child soldiers.

SEC. 8128. None of the funds made available by this Act for international military education and training, foreign military financing, excess defense articles, assistance under section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3456), issuance for direct commercial sales of military equipment, or peacekeeping operations for the countries of Chad, Yemen, Somalia, Sudan, Democratic Republic of the Congo, and Burma may be used to support any military training or operations that include child soldiers, as defined by the Child Soldiers Prevention Act of 2008, and except if such assistance is otherwise permitted under section 404 of the Child Soldiers Prevention Act of 2008 (Public Law 110–457; 22 U.S.C. 2370c–1).

SEC. 8129. None of the funds made available by this Act may be used in contravention of the War Powers Resolution (50 U.S.C. 1541 et seq.).

TITLE IX

OVERSEAS CONTINGENCY OPERATIONS

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For an additional amount for "Military Personnel, Army", $7,195,335,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

MILITARY PERSONNEL, NAVY

For an additional amount for "Military Personnel, Navy", $1,259,234,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

MILITARY PERSONNEL, MARINE CORPS

For an additional amount for "Military Personnel, Marine Corps", $714,360,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

MILITARY PERSONNEL, AIR FORCE

For an additional amount for "Military Personnel, Air Force", $1,492,381,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RESERVE PERSONNEL, ARMY

For an additional amount for "Reserve Personnel, Army", $207,162,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RESERVE PERSONNEL, NAVY

For an additional amount for "Reserve Personnel, Navy", $44,530,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RESERVE PERSONNEL, MARINE CORPS

For an additional amount for "Reserve Personnel, Marine Corps", $25,421,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RESERVE PERSONNEL, AIR FORCE

For an additional amount for "Reserve Personnel, Air Force" $26,815,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

NATIONAL GUARD PERSONNEL, ARMY

For an additional amount for "National Guard Personnel, Army", $664,579,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

NATIONAL GUARD PERSONNEL, AIR FORCE

For an additional amount for "National Guard Personnel, Air Force", $9,435,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for "Operation and Maintenance, Army", $44,794,156,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, NAVY

For an additional amount for "Operation and Maintenance, Navy", $7,674,026,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for "Operation and Maintenance, Marine Corps", $3,935,210,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for "Operation and Maintenance, Air Force", $10,879,347,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

For an additional amount for "Operation and Maintenance, Defense-Wide", $9,252,211,000: *Provided*, That each amount in this section is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That of the funds provided under this heading: Not to exceed $1,690,000,000, to remain available until September 30, 2013, for payments to reimburse key cooperating nations for logistical, military, and other support, including access, provided to United States military operations in support of Operation Enduring Freedom, Operation New Dawn, and post-operation Iraq border security related to the activities of the Office of Security Cooperation in Iraq, notwithstanding any other provision of law: *Provided further,* That such reimbursement payments may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State, and in consultation with the Director of the Office of Management and Budget, may determine, in his discretion, based on documentation determined by

Notification.

the Secretary of Defense to adequately account for the support provided, and such determination is final and conclusive upon the accounting officers of the United States, and 15 days following notification to the appropriate congressional committees: *Provided further,* That the requirement to provide notification shall not apply with respect to a reimbursement for access based on an international agreement: *Provided further*, That these funds may be used for the purpose of providing specialized training and procuring supplies and specialized equipment and providing such supplies and loaning such equipment on a non-reimbursable basis to coalition forces supporting United States military operations in Afghanistan, and 15 days following notification to the appropriate congressional committees: *Provided further*, That the Secretary of Defense shall provide quarterly reports to the congressional defense committees on the use of funds provided in this paragraph.

Notification.

Deadlines.
Reports.

OPERATION AND MAINTENANCE, ARMY RESERVE

For an additional amount for "Operation and Maintenance, Army Reserve", $217,500,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, NAVY RESERVE

For an additional amount for "Operation and Maintenance, Navy Reserve", $74,148,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For an additional amount for "Operation and Maintenance, Marine Corps Reserve", $36,084,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For an additional amount for "Operation and Maintenance, Air Force Reserve", $142,050,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For an additional amount for "Operation and Maintenance, Army National Guard", $377,544,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas

Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For an additional amount for "Operation and Maintenance, Air National Guard", $34,050,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

AFGHANISTAN INFRASTRUCTURE FUND

(INCLUDING TRANSFER OF FUNDS)

For the "Afghanistan Infrastructure Fund", $400,000,000, to remain available until September 30, 2013: *Provided,* That such sums shall be available for infrastructure projects in Afghanistan, notwithstanding any other provision of law, which shall be undertaken by the Secretary of State, unless the Secretary of State and the Secretary of Defense jointly decide that a specific project will be undertaken by the Department of Defense: *Provided further,* That the infrastructure referred to in the preceding proviso is in support of the counterinsurgency strategy, requiring funding for facility and infrastructure projects, including, but not limited to, water, power, and transportation projects and related maintenance and sustainment costs: *Provided further,* That the authority to undertake such infrastructure projects is in addition to any other authority to provide assistance to foreign nations: *Provided further,* That any projects funded by this appropriation shall be jointly formulated and concurred in by the Secretary of State and Secretary of Defense: *Provided further,* That funds may be transferred to the Department of State for purposes of undertaking projects, which funds shall be considered to be economic assistance under the Foreign Assistance Act of 1961 for purposes of making available the administrative authorities contained in that Act: *Provided further,* That the transfer authority in the preceding proviso is in addition to any other authority available to the Department of Defense to transfer funds: *Provided further,* That any unexpended funds transferred to the Secretary of State under this authority shall be returned to the Afghanistan Infrastructure Fund if the Secretary of State, in coordination with the Secretary of Defense, determines that the project cannot be implemented for any reason, or that the project no longer supports the counterinsurgency strategy in Afghanistan: *Provided further,* That any funds returned to the Secretary of Defense under the previous proviso shall be available for use under this appropriation and shall be treated in the same manner as funds not transferred to the Secretary of State: *Provided further,* That contributions of funds for the purposes provided herein to the Secretary of State in accordance with section 635(d) of the Foreign Assistance Act from any person, foreign government, or international organization may be credited to this Fund, to remain available until expended, and used for such purposes: *Provided further,* That the Secretary of Defense shall, not fewer than 15 days prior to making transfers to or from, or obligations from the Fund, notify the appropriate committees of Congress

Determination.

Deadline.
Notification.

in writing of the details of any such transfer: *Provided further,* That the "appropriate committees of Congress" are the Committees on Armed Services, Foreign Relations and Appropriations of the Senate and the Committees on Armed Services, Foreign Affairs and Appropriations of the House of Representatives: *Provided further*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

AFGHANISTAN SECURITY FORCES FUND

For the "Afghanistan Security Forces Fund", $11,200,000,000, to remain available until September 30, 2013: *Provided*, That such funds shall be available to the Secretary of Defense, notwithstanding any other provision of law, for the purpose of allowing the Commander, Combined Security Transition Command—Afghanistan, or the Secretary's designee, to provide assistance, with the concurrence of the Secretary of State, to the security forces of Afghanistan, including the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, and construction, and funding: *Provided further*, That the authority to provide assistance under this heading is in addition to any other authority to provide assistance to foreign nations: *Provided further,* That contributions of funds for the purposes provided herein from any person, foreign government, or international organization may be credited to this Fund and used for such purposes: *Provided further*, That the Secretary of Defense shall notify the congressional defense committees in writing upon the receipt and upon the obligation of any contribution, delineating the sources and amounts of the funds received and the specific use of such contributions: *Provided further*, That the Secretary of Defense shall, not fewer than 15 days prior to obligating from this appropriation account, notify the congressional defense committees in writing of the details of any such obligation: *Provided further*, That the Secretary of Defense shall notify the congressional defense committees of any proposed new projects or transfer of funds between budget sub-activity groups in excess of $20,000,000: *Provided further*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Notification.

Deadline.
Notification.

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For an additional amount for "Aircraft Procurement, Army", $1,137,381,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

MISSILE PROCUREMENT, ARMY

For an additional amount for "Missile Procurement, Army", $126,556,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

For an additional amount for "Procurement of Weapons and Tracked Combat Vehicles, Army", $37,117,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PROCUREMENT OF AMMUNITION, ARMY

For an additional amount for "Procurement of Ammunition, Army", $208,381,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OTHER PROCUREMENT, ARMY

For an additional amount for "Other Procurement, Army", $1,334,345,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

AIRCRAFT PROCUREMENT, NAVY

For an additional amount for "Aircraft Procurement, Navy", $480,935,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

WEAPONS PROCUREMENT, NAVY

For an additional amount for "Weapons Procurement, Navy", $41,070,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

For an additional amount for "Procurement of Ammunition, Navy and Marine Corps", $317,100,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OTHER PROCUREMENT, NAVY

For an additional amount for "Other Procurement, Navy", $236,125,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PROCUREMENT, MARINE CORPS

For an additional amount for "Procurement, Marine Corps", $1,233,996,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

AIRCRAFT PROCUREMENT, AIR FORCE

For an additional amount for "Aircraft Procurement, Air Force", $1,235,777,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

MISSILE PROCUREMENT, AIR FORCE

For an additional amount for "Missile Procurement, Air Force", $41,220,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PROCUREMENT OF AMMUNITION, AIR FORCE

For an additional amount for "Procurement of Ammunition, Air Force", $109,010,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OTHER PROCUREMENT, AIR FORCE

For an additional amount for "Other Procurement, Air Force", $3,088,510,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by

the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PROCUREMENT, DEFENSE-WIDE

For an additional amount for "Procurement, Defense-Wide", $405,768,000, to remain available until September 30, 2014: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

NATIONAL GUARD AND RESERVE EQUIPMENT

For procurement of aircraft, missiles, tracked combat vehicles, ammunition, other weapons and other procurement for the reserve components of the Armed Forces, $1,000,000,000, to remain available for obligation until September 30, 2014: *Provided*, That the Chiefs of National Guard and Reserve components shall, not later than 30 days after the enactment of this Act, individually submit to the congressional defense committees the modernization priority assessment for their respective National Guard or Reserve component: *Provided further,* That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Deadline. Assessment.

MINE RESISTANT AMBUSH PROTECTED VEHICLE FUND

(INCLUDING TRANSFER OF FUNDS)

For the Mine Resistant Ambush Protected Vehicle Fund, $2,600,170,000, to remain available until September 30, 2013: *Provided*, That such funds shall be available to the Secretary of Defense, notwithstanding any other provision of law, to procure, sustain, transport, and field Mine Resistant Ambush Protected vehicles: *Provided further*, That the Secretary shall transfer such funds only to appropriations made available in this or any other Act for operation and maintenance; procurement; research, development, test and evaluation; and defense working capital funds to accomplish the purpose provided herein: *Provided further*, That such transferred funds shall be merged with and be available for the same purposes and the same time period as the appropriation to which transferred: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further,* That the Secretary shall, not fewer than 10 days prior to making transfers from this appropriation, notify the congressional defense committees in writing of the details of any such transfer: *Provided further*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Deadline. Notification.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

For an additional amount for "Research, Development, Test and Evaluation, Army", $18,513,000, to remain available until September 30, 2013: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For an additional amount for "Research, Development, Test and Evaluation, Navy", $53,884,000, to remain available until September 30, 2013: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For an additional amount for "Research, Development, Test and Evaluation, Air Force", $259,600,000, to remain available until September 30, 2013: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For an additional amount for "Research, Development, Test and Evaluation, Defense-Wide", $194,361,000, to remain available until September 30, 2013: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

REVOLVING AND MANAGEMENT FUNDS

DEFENSE WORKING CAPITAL FUNDS

For an additional amount for "Defense Working Capital Funds", $435,013,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For an additional amount for "Defense Health Program", $1,228,288,000, which shall be for operation and maintenance, to remain available until September 30, 2012: *Provided*, That such amounts in this paragraph are designated by the Congress for

Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

For an additional amount for "Drug Interdiction and Counter-Drug Activities, Defense", $456,458,000, to remain available until September 30, 2013: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

JOINT IMPROVISED EXPLOSIVE DEVICE DEFEAT FUND

(INCLUDING TRANSFER OF FUNDS)

For the "Joint Improvised Explosive Device Defeat Fund", $2,441,984,000, to remain available until September 30, 2014: *Provided,* That such funds shall be available to the Secretary of Defense, notwithstanding any other provision of law, for the purpose of allowing the Director of the Joint Improvised Explosive Device Defeat Organization to investigate, develop and provide equipment, supplies, services, training, facilities, personnel and funds to assist United States forces in the defeat of improvised explosive devices: *Provided further,* That the Secretary of Defense may transfer funds provided herein to appropriations for military personnel; operation and maintenance; procurement; research, development, test and evaluation; and defense working capital funds to accomplish the purpose provided herein: *Provided further,* That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further,* That the Secretary of Defense shall, not fewer than 15 days prior to making transfers from this appropriation, notify the congressional defense committees in writing of the details of any such transfer: *Provided further*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Deadline.
Notification.

OFFICE OF THE INSPECTOR GENERAL

For an additional amount for the "Office of the Inspector General", $11,055,000: *Provided*, That such amounts in this paragraph are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS—THIS TITLE

SEC. 9001. Notwithstanding any other provision of law, funds made available in this title are in addition to amounts appropriated or otherwise made available for the Department of Defense for fiscal year 2012.

(INCLUDING TRANSFER OF FUNDS)

SEC. 9002. Upon the determination of the Secretary of Defense that such action is necessary in the national interest, the Secretary may, with the approval of the Office of Management and Budget, transfer up to $4,000,000,000 between the appropriations or funds made available to the Department of Defense in this title: *Provided*, That the Secretary shall notify the Congress promptly of each transfer made pursuant to the authority in this section: *Provided further*, That the authority provided in this section is in addition to any other transfer authority available to the Department of Defense and is subject to the same terms and conditions as the authority provided in the Department of Defense Appropriations Act, 2012.

Determination.

Notification.

SEC. 9003. Supervision and administration costs associated with a construction project funded with appropriations available for operation and maintenance, "Afghanistan Infrastructure Fund", or the "Afghanistan Security Forces Fund" provided in this Act and executed in direct support of overseas contingency operations in Afghanistan, may be obligated at the time a construction contract is awarded: *Provided*, That for the purpose of this section, supervision and administration costs include all in-house Government costs.

SEC. 9004. From funds made available in this title, the Secretary of Defense may purchase for use by military and civilian employees of the Department of Defense in the U.S. Central Command area of responsibility: (a) passenger motor vehicles up to a limit of $75,000 per vehicle; and (b) heavy and light armored vehicles for the physical security of personnel or for force protection purposes up to a limit of $250,000 per vehicle, notwithstanding price or other limitations applicable to the purchase of passenger carrying vehicles.

SEC. 9005. Not to exceed $400,000,000 of the amount appropriated in this title under the heading "Operation and Maintenance, Army" may be used, notwithstanding any other provision of law, to fund the Commander's Emergency Response Program (CERP), for the purpose of enabling military commanders in Afghanistan to respond to urgent, small-scale, humanitarian relief and reconstruction requirements within their areas of responsibility: *Provided,* That each project (including any ancillary or related elements in connection with such project) executed under this authority shall not exceed $20,000,000: *Provided further,* That not later than 45 days after the end of each fiscal year quarter, the Secretary of Defense shall submit to the congressional defense committees a report regarding the source of funds and the allocation and use of funds during that quarter that were made available pursuant to the authority provided in this section or under any other provision of law for the purposes described herein: *Provided further,* That, not later than 30 days after the end of each month, the Army shall submit to the congressional defense committees monthly commitment, obligation, and expenditure data for the Commander's Emergency Response Program in Afghanistan: *Provided further,* That not less than 15 days before making funds available pursuant to the authority provided in this section or under any other provision of law for the purposes described herein for a project with a total anticipated cost for completion of $5,000,000

Deadlines.

Reports.

Data submissions.

Notice.

or more, the Secretary shall submit to the congressional defense committees a written notice containing each of the following:

(1) The location, nature and purpose of the proposed project, including how the project is intended to advance the military campaign plan for the country in which it is to be carried out.

(2) The budget, implementation timeline with milestones, and completion date for the proposed project, including any other CERP funding that has been or is anticipated to be contributed to the completion of the project.

Plans.

(3) A plan for the sustainment of the proposed project, including the agreement with either the host nation, a non-Department of Defense agency of the United States Government or a third-party contributor to finance the sustainment of the activities and maintenance of any equipment or facilities to be provided through the proposed project.

SEC. 9006. Funds available to the Department of Defense for operation and maintenance may be used, notwithstanding any other provision of law, to provide supplies, services, transportation, including airlift and sealift, and other logistical support to coalition forces supporting military and stability operations in Iraq and Afghanistan: *Provided*, That the Secretary of Defense shall provide quarterly reports to the congressional defense committees regarding support provided under this section.

Deadlines.
Reports.

Iraq.
Afghanistan.

SEC. 9007. None of the funds appropriated or otherwise made available by this or any other Act shall be obligated or expended by the United States Government for a purpose as follows:

(1) To establish any military installation or base for the purpose of providing for the permanent stationing of United States Armed Forces in Iraq.

(2) To exercise United States control over any oil resource of Iraq.

(3) To establish any military installation or base for the purpose of providing for the permanent stationing of United States Armed Forces in Afghanistan.

SEC. 9008. None of the funds made available in this Act may be used in contravention of the following laws enacted or regulations promulgated to implement the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (done at New York on December 10, 1984):

(1) Section 2340A of title 18, United States Code.

(2) Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (division G of Public Law 105–277; 112 Stat. 2681–822; 8 U.S.C. 1231 note) and regulations prescribed thereto, including regulations under part 208 of title 8, Code of Federal Regulations, and part 95 of title 22, Code of Federal Regulations.

(3) Sections 1002 and 1003 of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Public Law 109–148).

SEC. 9009. None of the funds provided for the "Afghanistan Security Forces Fund" (ASFF) may be obligated prior to the approval of a financial and activity plan by the Afghanistan Resources Oversight Council (AROC) of the Department of Defense: *Provided*, That the AROC must approve the requirement and acquisition plan for any service requirements in excess of

$50,000,000 annually and any non-standard equipment requirements in excess of $100,000,000 using ASFF: *Provided further,* That the AROC must approve all projects and the execution plan under the "Afghanistan Infrastructure Fund" (AIF) and any project in excess of $5,000,000 from the Commanders Emergency Response Program (CERP): *Provided further,* That the Department of Defense must certify to the congressional defense committees that the AROC has convened and approved a process for ensuring compliance with the requirements in the preceding provisos and accompanying report language for the ASFF, AIF, and CERP.

Certification.

SEC. 9010. (a) FUNDING FOR OUTREACH AND REINTEGRATION SERVICES UNDER YELLOW RIBBON REINTEGRATION PROGRAM.—Of the amounts appropriated or otherwise made available by title IX, up to $20,000,000 may be available for outreach and reintegration services under the Yellow Ribbon Reintegration Program under section 582(h) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 125; 10 U.S.C. 10101 note).

(b) SUPPLEMENT NOT SUPPLANT.—The amount made available by subsection (a) for the services described in that subsection is in addition to any other amounts available in this Act for such services.

SEC. 9011. Funds made available in this title to the Department of Defense for operation and maintenance may be used to purchase items having an investment unit cost of not more than $250,000: *Provided*, That, upon determination by the Secretary of Defense that such action is necessary to meet the operational requirements of a Commander of a Combatant Command engaged in contingency operations overseas, such funds may be used to purchase items having an investment item unit cost of not more than $500,000.

Determination.

SEC. 9012. Notwithstanding any other provision of law, up to $150,000,000 of funds made available in this title under the heading "Operation and Maintenance, Army" may be obligated and expended for purposes of the Task Force for Business and Stability Operations, subject to the direction and control of the Secretary of Defense, with concurrence of the Secretary of State, to carry out strategic business and economic assistance activities in Afghanistan in support of Operation Enduring Freedom: *Provided,* That not less than 15 days before making funds available pursuant to the authority provided in this section for any project with a total anticipated cost of $5,000,000 or more, the Secretary shall submit to the congressional defense committees a written notice containing a detailed justification and timeline for each proposed project.

Deadline.
Notice.

SEC. 9013. From funds made available to the Department of Defense in this title under the heading "Operation and Maintenance, Air Force" up to $524,000,000 may be used by the Secretary of Defense, notwithstanding any other provision of law, to support United States Government transition activities in Iraq by funding the operations and activities of the Office of Security Cooperation in Iraq and security assistance teams, including life support, transportation and personal security, and facilities renovation and construction: *Provided*, That not less than 15 days before making funds available pursuant to the authority provided in this section, the Secretary shall submit to the congressional defense committees a written notice containing a detailed justification and timeline for each proposed site.

Deadline.
Notice.

Applicability.

Deadline. Notification.

SEC. 9014. The amounts appropriated in title IX of this Act are hereby reduced by $4,042,500,000 to reflect reduced troop strength in theater: *Provided,* That the reductions shall be applied to the military personnel and operation and maintenance appropriations only: *Provided further,* That the Secretary of Defense shall, not fewer than 15 days prior to reducing funds for this purpose, notify the congressional defense committees in writing of the details of any such reduction by appropriation and budget line item.

SEC. 9015. Of the funds appropriated in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts and programs in the specified amounts: *Provided*, That such amounts are designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985:

"Overseas Contingency Operations Transfer Fund, 2010", $356,810,000;

"Procurement of Ammunition, Army, 2010/2012", $21,000,000;

"Other Procurement, Air Force, 2010/2012", $2,250,000.

This division may be cited as the "Department of Defense Appropriations Act, 2012".

Energy and Water Development and Related Agencies Appropriations Act, 2012.

DIVISION B—ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2012

TITLE I

CORPS OF ENGINEERS—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

The following appropriations shall be expended under the direction of the Secretary of the Army and the supervision of the Chief of Engineers for authorized civil functions of the Department of the Army pertaining to river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related efforts.

INVESTIGATIONS

For expenses necessary where authorized by law for the collection and study of basic information pertaining to river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related needs; for surveys and detailed studies, and plans and specifications of proposed river and harbor, flood and storm damage reduction, shore protection, and aquatic ecosystem restoration projects and related efforts prior to construction; for restudy of authorized projects; and for miscellaneous investigations and, when authorized by law, surveys and detailed studies, and plans and specifications of projects prior to construction, $125,000,000, to remain available until expended.

CONSTRUCTION

For expenses necessary for the construction of river and harbor, flood and storm damage reduction, shore protection, aquatic ecosystem restoration, and related projects authorized by law; for conducting detailed studies, and plans and specifications, of such projects (including those involving participation by States, local governments, or private groups) authorized or made eligible for selection by law (but such detailed studies, and plans and specifications, shall not constitute a commitment of the Government to construction); $1,694,000,000, to remain available until expended; of which such sums as are necessary to cover the Federal share of construction costs for facilities under the Dredged Material Disposal Facilities program shall be derived from the Harbor Maintenance Trust Fund as authorized by Public Law 104–303; and of which such sums as are necessary to cover one-half of the costs of construction, replacement, rehabilitation, and expansion of inland waterways projects (including only Olmsted Lock and Dam, Ohio River, Illinois and Kentucky; Emsworth Locks and Dam, Ohio River, Pennsylvania; Lock and Dams 2, 3, and 4, Monongahela River, Pennsylvania; and Lock and Dam 27, Mississippi River, Illinois) shall be derived from the Inland Waterways Trust Fund.

MISSISSIPPI RIVER AND TRIBUTARIES

For expenses necessary for flood damage reduction projects and related efforts in the Mississippi River alluvial valley below Cape Girardeau, Missouri, as authorized by law, $252,000,000, to remain available until expended, of which such sums as are necessary to cover the Federal share of eligible operation and maintenance costs for inland harbors shall be derived from the Harbor Maintenance Trust Fund.

OPERATION AND MAINTENANCE

For expenses necessary for the operation, maintenance, and care of existing river and harbor, flood and storm damage reduction, aquatic ecosystem restoration, and related projects authorized by law; providing security for infrastructure owned or operated by the Corps, including administrative buildings and laboratories; maintaining harbor channels provided by a State, municipality, or other public agency that serve essential navigation needs of general commerce, where authorized by law; surveying and charting northern and northwestern lakes and connecting waters; clearing and straightening channels; and removing obstructions to navigation, $2,412,000,000, to remain available until expended, of which such sums as are necessary to cover the Federal share of eligible operation and maintenance costs for coastal harbors and channels, and for inland harbors shall be derived from the Harbor Maintenance Trust Fund; of which such sums as become available from the special account for the Corps of Engineers established by the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(i)) shall be derived from that account for resource protection, research, interpretation, and maintenance activities related to resource protection in the areas at which outdoor recreation is available; and of which such sums as become available from fees collected under section 217 of Public Law 104–303 shall be used to cover the cost of operation and maintenance of the dredged

material disposal facilities for which such fees have been collected: *Provided*, That 1 percent of the total amount of funds provided for each of the programs, projects or activities funded under this heading shall not be allocated to a field operating activity prior to the beginning of the fourth quarter of the fiscal year and shall be available for use by the Chief of Engineers to fund such emergency activities as the Chief of Engineers determines to be necessary and appropriate, and that the Chief of Engineers shall allocate during the fourth quarter any remaining funds which have not been used for emergency activities proportionally in accordance with the amounts provided for the programs, projects or activities.

REGULATORY PROGRAM

For expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, $193,000,000, to remain available until September 30, 2013.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

For expenses necessary to clean up contamination from sites in the United States resulting from work performed as part of the Nation's early atomic energy program, $109,000,000, to remain available until expended.

FLOOD CONTROL AND COASTAL EMERGENCIES

For expenses necessary to prepare for flood, hurricane, and other natural disasters and support emergency operations, repairs, and other activities in response to such disasters as authorized by law, $27,000,000, to remain available until expended.

EXPENSES

For expenses necessary for the supervision and general administration of the civil works program in the headquarters of the Corps of Engineers and the offices of the Division Engineers; and for costs of management and operation of the Humphreys Engineer Center Support Activity, the Institute for Water Resources, the United States Army Engineer Research and Development Center, and the United States Army Corps of Engineers Finance Center allocable to the civil works program, $185,000,000, to remain available until September 30, 2013, of which not to exceed $5,000 may be used for official reception and representation purposes and only during the current fiscal year: *Provided*, That no part of any other appropriation provided in title I of this Act shall be available to fund the civil works activities of the Office of the Chief of Engineers or the civil works executive direction and management activities of the division offices: *Provided further*, That any Flood Control and Coastal Emergencies appropriation may be used to fund the supervision and general administration of emergency operations, repairs, and other activities in response to any flood, hurricane, or other natural disaster.

OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS

For the Office of the Assistant Secretary of the Army for Civil Works as authorized by 10 U.S.C. 3016(b)(3), $5,000,000, to remain available until September 30, 2013.

ADMINISTRATIVE PROVISION

The Revolving Fund, Corps of Engineers, shall be available during the current fiscal year for purchase (not to exceed 100 for replacement only) and hire of passenger motor vehicles for the civil works program.

GENERAL PROVISIONS—CORPS OF ENGINEERS—CIVIL

(INCLUDING TRANSFERS OF FUNDS)

SEC. 101. (a) None of the funds provided in title I of this Act, or provided by previous appropriations Acts to the agencies or entities funded in title I of this Act that remain available for obligation or expenditure in fiscal year 2012, shall be available for obligation or expenditure through a reprogramming of funds that:

(1) creates or initiates a new program, project, or activity;

(2) eliminates a program, project, or activity;

(3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by this Act, unless prior approval is received from the House and Senate Committees on Appropriations;

(4) proposes to use funds directed for a specific activity for a different purpose, unless prior approval is received from the House and Senate Committees on Appropriations;

(5) augments or reduces existing programs, projects or activities in excess of the amounts contained in subsections 6 through 10, unless prior approval is received from the House and Senate Committees on Appropriations;

(6) INVESTIGATIONS.—For a base level over $100,000, reprogramming of 25 percent of the base amount up to a limit of $150,000 per project, study or activity is allowed: *Provided*, That for a base level less than $100,000, the reprogramming limit is $25,000: *Provided further,* That up to $25,000 may be reprogrammed into any continuing study or activity that did not receive an appropriation for existing obligations and concomitant administrative expenses;

(7) CONSTRUCTION.—For a base level over $2,000,000, reprogramming of 15 percent of the base amount up to a limit of $3,000,000 per project, study or activity is allowed: *Provided*, That for a base level less than $2,000,000, the reprogramming limit is $300,000: *Provided further,* That up to $3,000,000 may be reprogrammed for settled contractor claims, changed conditions, or real estate deficiency judgments: *Provided further,* That up to $300,000 may be reprogrammed into any continuing study or activity that did not receive an appropriation for existing obligations and concomitant administrative expenses;

(8) OPERATION AND MAINTENANCE.—Unlimited reprogramming authority is granted in order for the Corps to be able

Notification.

to respond to emergencies: *Provided*, That the Chief of Engineers must notify the House and Senate Committees on Appropriations of these emergency actions as soon thereafter as practicable: *Provided further,* That for a base level over $1,000,000, reprogramming of 15 percent of the base amount a limit of $5,000,000 per project, study or activity is allowed: *Provided further,* That for a base level less than $1,000,000, the reprogramming limit is $150,000: *Provided further,* That $150,000 may be reprogrammed into any continuing study or activity that did not receive an appropriation;

(9) MISSISSIPPI RIVER AND TRIBUTARIES.—The same reprogramming guidelines for the Investigations, Construction, and Operation and Maintenance portions of the Mississippi River and Tributaries Account as listed above; and

(10) FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM.—Reprogramming of up to 15 percent of the base of the receiving project is permitted.

(b) DE MINIMUS REPROGRAMMINGS.—In no case should a reprogramming for less than $50,000 be submitted to the House and Senate Committees on Appropriations.

(c) CONTINUING AUTHORITIES PROGRAM.—Subsection (a)(1) shall not apply to any project or activity funded under the continuing authorities program.

Deadline.
Reports.

(d) Not later than 60 days after the date of enactment of this Act, the Corps of Engineers shall submit a report to the House and Senate Committees on Appropriations to establish the baseline for application of reprogramming and transfer authorities for the current fiscal year: *Provided*, That the report shall include:

(1) A table for each appropriation with a separate column to display the President's budget request, adjustments made by Congress, adjustments due to enacted rescissions, if appropriate, and the fiscal year enacted level;

(2) A delineation in the table for each appropriation both by object class and program, project and activity as detailed in the budget appendix for the respective appropriations; and

(3) An identification of items of special congressional interest.

SEC. 102. None of the funds made available in this title may be used to award or modify any contract that commits funds beyond the amounts appropriated for that program, project, or activity that remain unobligated, except that such amounts may include any funds that have been made available through reprogramming pursuant to section 101.

SEC. 103. None of the funds in this Act, or previous Acts, making funds available for Energy and Water Development, shall be used to award any continuing contract that commits additional funding from the Inland Waterways Trust Fund unless or until such time that a long-term mechanism to enhance revenues in this Fund sufficient to meet the cost-sharing authorized in the Water Resources Development Act of 1986 (Public Law 99–662) is enacted.

Deadline.
Reports.

SEC. 104. Within 120 days of the date of the Chief of Engineers Report on a water resource matter, the Assistant Secretary of the Army (Civil Works) shall submit the report to the appropriate authorizing and appropriating committees of the Congress.

Time period.
Determination.

SEC. 105. During the fiscal year period covered by this Act, the Secretary of the Army is authorized to implement measures

recommended in the efficacy study authorized under section 3061 of the Water Resources Development Act of 2007 (121 Stat. 1121) or in interim reports, with such modifications or emergency measures as the Secretary of the Army determines to be appropriate, to prevent aquatic nuisance species from dispersing into the Great Lakes by way of any hydrologic connection between the Great Lakes and the Mississippi River Basin.

SEC. 106. The Secretary is authorized to transfer to "Corps of Engineers—Civil—Construction" up to $100,000,000 of the funds provided for reinforcing or replacing flood walls under the heading "Corps of Engineers—Civil—Flood Control and Coastal Emergencies" in Public Law 109–234 and Public Law 110–252 and up to $75,000,000 of the funds provided for projects and measures for the West Bank and Vicinity and Lake Ponchartrain and Vicinity projects under the heading "Corps of Engineers—Civil—Flood Control and Coastal Emergencies" in Public Law 110–28, to be used with funds provided for the West Bank and Vicinity project under the heading "Corps of Engineers—Civil—Construction" in Public Law 110–252 and Public Law 110–329, consistent with 65 percent Federal and 35 percent non-Federal cost share and the financing of, and payment terms for, the non-Federal cash contribution associated with the West Bank and Vicinity project.

SEC. 107. The Secretary of the Army may transfer to the Fish and Wildlife Service, and the Fish and Wildlife Service may accept and expend, up to $3,800,000 of funds provided in this title under the heading "Operation and Maintenance" to mitigate for fisheries lost due to Corps of Engineers projects.

SEC. 108. The Secretary of the Army may authorize a member of the Armed Forces under the Secretary's jurisdiction and employees of the Department of the Army to serve without compensation as director, officer, or otherwise in the management of the organization established to support and maintain the participation of the United States in the permanent international commission of the congresses of navigation, or any successor entity.

Real property.
New Hampshire.

SEC. 109. (a) ACQUISITION.—The Secretary is authorized to acquire any real property and associated real property interests in the vicinity of Hanover, New Hampshire as may be needed for the Engineer Research and Development Center laboratory facilities at the Cold Regions Research and Engineering Laboratory. This real property to be acquired consists of 18.5 acres more or less, identified as Tracts 101–1 and 101–2, together with all necessary easements located entirely within the Town of Hanover, New Hampshire. The real property is generally bounded to the east by state route 10-Lyme Road, to the north by the vacant property of the Trustees of the Dartmouth College, to the south by Fletcher Circle graduate student housing owned by the Trustees of Dartmouth College, and to the west by approximately 9 acres of real property acquired in fee through condemnation in 1981 by the Secretary of the Army.

(b) REVOLVING FUND.—The Secretary is authorized to use the Revolving Fund (33 U.S.C. 576) through the Plant Replacement and Improvement Program to acquire the real property and associated real property interests in subsection (a). The Secretary shall ensure that the Revolving Fund is appropriately reimbursed from the benefitting appropriations.

(c) RIGHT OF FIRST REFUSAL.—The Secretary may provide the Seller of any real property and associated property interests identified in subsection (a)—

(1) a right of first refusal to acquire such property, or any portion thereof, in the event the property, or any portion thereof, is no longer needed by the Department of the Army.

(2) a right of first refusal to acquire any real property or associated real property interests acquired by condemnation in Civil Action No. 81–360–L, in the event the property, or any portion thereof, is no longer needed by the Department of the Army.

(3) the purchase of any property by the Seller exercising either right of first refusal authorized in this section shall be for consideration acceptable to the Secretary and shall be for not less than fair market value at the time the property becomes available for purchase. The right of first refusal authorized in this section shall not inure to the benefit of the Sellers successors or assigns.

(d) DISPOSAL.—The Secretary of the Army is authorized to dispose of any property or associated real property interests that are subject to the exercise of the right of first refusal as set forth herein.

SEC. 110. None of the funds made available in this Act may be used by the Corps of Engineers to relocate, or study the relocation of, any regional division headquarters of the Corps located at a military installation or any permanent employees of such headquarters.

SEC. 111. (a) Section 5 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes," approved June 22, 1936, (33 U.S.C. 701h), is amended by—

(1) inserting "for work, which includes planning and design," before "to be expended";

(2) striking "flood control or environmental restoration work" and inserting "water resources development study or project"; and

Definition.

(3) inserting ": *Provided further*, That the term 'States' means the several States, the District of Columbia, the commonwealths, territories, and possessions of the United States, and Federally recognized Indian tribes" before the period.

Notification.
Negotiations.

(b) The Secretary shall notify the appropriate committees of Congress prior to initiation of negotiations for accepting contributed funds under 33 U.S.C. 701h.

Real property.
Washington.

SEC. 112. With respect to the property covered by the deed described in Auditor's instrument No. 2006–014428 of Benton County, Washington, approximately 1.5 acres, the following deed restrictions are hereby extinguished and of no further force and effect:

(1) The reversionary interest and use restrictions related to port and industrial purposes;

(2) The right for the District Engineer to review all preconstruction plans and/or specifications pertaining to construction and/or maintenance of any structure intended for human habitation, if the elevation of the property is above the standard project flood elevation; and

(3) The right of the District Engineer to object to, and thereby prevent, in his/her discretion, such activity.

Rhode Island.

SEC. 113. That portion of the project for navigation, Block Island Harbor of Refuge, Rhode Island adopted by the Rivers and Harbors Act of July 11, 1870, consisting of the cut-stone breakwater lining the west side of the Inner Basin; beginning at a point with coordinates N32579.55, E312625.53, thence running northerly about 76.59 feet to a point with coordinates N32655.92, E312631.32, thence running northerly about 206.81 feet to a point with coordinates N32858.33, E312673.74, thence running easterly about 109.00 feet to a point with coordinates N32832.15, E312779.54, shall no longer be authorized after the date of enactment.

SEC. 114. The Secretary of the Army, acting through the Chief of Engineers, is authorized, using amounts available in the Revolving Fund established by section 101 of the Act of July 27, 1953, chap. 245 (33 U.S.C. 576), to construct a Consolidated Infrastructure Research Equipment Facility, an Environmental Processes and Risk Lab, a Hydraulic Research Facility, an Engineer Research and Development Center headquarters building, a Modular Hydraulic Flume building, and to purchase real estate, perform construction, and make facility, utility, street, road, and infrastructure improvements to the Engineer Research and Development Center's installations and facilities. The Secretary shall ensure that the Revolving Fund is appropriately reimbursed from the benefitting appropriations.

SEC. 115. Section 1148 of the Water Resources Development Act of 1986 (100 Stat. 4254; 110 Stat. 3718; 114 Stat. 2609) is amended by striking subsection (b) and inserting the following:

"(b) DISPOSITION OF ACQUIRED LAND.—The Secretary may transfer land acquired under this section to the non-Federal sponsor by quitclaim deed subject to such terms and conditions as the Secretary determines to be in the public interest.".

SEC. 116. The New London Disposal Site and the Cornfield Shoals Disposal Site in Long Island Sound selected by the Department of the Army as alternative dredged material disposal sites under section 103(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, shall remain open for 5 years after enactment of this Act to allow for completion of a Supplemental Environmental Impact Statement to support final designation of an Ocean Dredged Material Disposal Site in eastern Long Island Sound under section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972.

SEC. 117. (a) That portion of the project for navigation, Newport Harbor, Rhode Island adopted by the Rivers and Harbors Acts of March 2, 1907 (34 Stat. 1075); June 25, 1910 (36 Stat. 632); August 26, 1937 (50 Stat. 845); and, modified by the Consolidated Appropriations Act, 2000, Public Law 106–113, appendix E, title II, section 221 (113 Stat. 1501A–298); consisting of a 13-foot anchorage, an 18-foot anchorage, a 21-foot channel, and 18-foot channels described by the following shall no longer be authorized after the date of enactment of this Act: the 21-Foot Entrance Channel, beginning at a point (1) with coordinates 374986.03, 150611.01; thence running south 46 degrees 54 minutes 30.7 seconds east 900.01 feet to a point (2) with coordinates 375643.27, 149996.16; thence running south 8 degrees 4 minutes 58.3 east 2,376.87 feet to a point (3) with coordinates 375977.47, 147643.00; thence running south 4 degrees 28 minutes 20.4 seconds west 738.56 feet to a point (4) with coordinates 375919.88, 146906.60; thence running south 6 degrees 2 minutes 42.4 seconds east 1,144.00 feet to a

point (5) with coordinates 376040.35, 145768.96; thence running south 34 degrees 5 minutes 51.7 seconds west 707.11 feet to a point (6) with coordinates 375643.94, 145183.41; thence running south 73 degrees 11 minutes 42.9 seconds west 1,300.00 feet to the end point (7) with coordinates 374399.46, 144807.57; Returning at a point with coordinates (8) with coordinates 374500.64, 144472.51; thence running north 73 degrees 11 minutes 42.9 seconds east 1,582.85 feet to a point (9) with coordinates 376015.90, 144930.13; thence running north 34 degrees 5 minutes 51.7 seconds east 615.54 feet to a point (10) with coordinates 376360.97, 145439.85; thence running north 2 degrees 10 minutes 43.3 seconds west 2,236.21 feet to a point (11) with coordinates 376275.96, 147674.45; thence running north 8 degrees 4 minutes 55.6 seconds west 2,652.83 feet to a point (12) with coordinates 375902.99, 150300.93; thence running north 46 degrees 54 minutes 30.7 seconds west 881.47 feet to an end point (13) with coordinates 375259.29, 150903.12; and the 18-Foot South Goat Island Channel beginning at a point (14) with coordinates 375509.09, 149444.83; thence running south 25 degrees 44 minutes 0.5 second east 430.71 feet to a point (15) with coordinates 375696.10, 149056.84; thence running south 10 degrees 13 minutes 27.4 seconds east 1,540.89 feet to a point (16) with coordinates 375969.61, 147540.41; thence running south 4 degrees 29 minutes 11.3 seconds west 1,662.92 feet to a point (17) with coordinates 375839.53, 145882.59; thence running south 34 degrees 5 minutes 51.7 seconds west 547.37 feet to a point (18) with coordinates 375532.67, 145429.32; thence running south 86 degrees 47 minutes 37.7 seconds west 600.01 feet to an end point (19) with coordinates 374933.60, 145395.76; and the 18-Foot Entrance Channel beginning at a point (20) with coordinates 374567.14, 144252.33; thence running north 73 degrees 11 minutes 42.9 seconds east 1,899.22 feet to a point (21) with coordinates 376385.26, 144801.42; thence running north 2 degrees 10 minutes 41.5 seconds west 638.89 feet to an end point (10) with coordinates 376360.97, 145439.85; and the 18-Foot South Anchorage beginning at a point (22) with coordinates 376286.81, 147389.37; thence running north 78 degrees 56 minutes 15.6 seconds east 404.86 feet to a point (23) with coordinates 376684.14, 147467.05; thence running north 78 degrees 56 minutes 15.6 seconds east 1,444.33 feet to a point (24) with coordinates 378101.63, 147744.18; thence running south 5 degrees 18 minutes 43.8 seconds west 1,228.20 feet to a point (25) with coordinates 377987.92, 146521.26; thence running south 3 degrees 50 minutes 3.4 seconds east 577.84 feet to a point (26) with coordinates 378026.56, 145944.71; thence running south 44 degrees 32 minutes 14.7 seconds west 2,314.09 feet to a point (27) with coordinates 376403.52, 144295.24 thence running south 60 degrees 5 minutes 58.2 seconds west 255.02 feet to an end point (28) with coordinates 376182.45, 144168.12; and the 13-Foot Anchorage beginning at a point (29) with coordinates 376363.39, 143666.99; thence running north 63 degrees 34 minutes 19.3 seconds east 1,962.37 feet to a point (30) with coordinates 378120.68, 144540.38; thence running north 3 degrees 50 minutes 3.1 seconds west 1,407.47 feet to an end point (26) with coordinates 378026.56, 145944.71; and the 18-Foot East Channel beginning at a point (23) with coordinates 376684.14, 147467.05; thence running north 2 degrees 10 minutes 43.3 seconds west 262.95 feet to a point (31) with coordinates 376674.14, 147729.81; thence running north 9 degrees 42 minutes 20.3 seconds

west 301.35 feet to a point (32) with coordinates 376623.34, 148026.85; thence running south 80 degrees 17 minutes 42.4 seconds west 313.6 feet to a point (33) with coordinates 376314.23, 147973.99; thence running north 7 degrees 47 minutes 21.9 seconds west 776.24 feet to an end point (34) with coordinates 376209.02, 148743.06; and the 18-Foot North Anchorage beginning at a point (35) with coordinates 376123.98, 148744.69; thence running south 88 degrees 54 minutes 16.2 seconds east 377.90 feet to a point (36) with coordinates 376501.82, 148737.47; thence running north 9 degrees 42 minutes 19.0 seconds west 500.01 feet to a point (37) with coordinates 376417.52, 149230.32; thence running north 6 degrees 9 minutes 53.2 seconds west 1,300.01 feet to an end point (38) with coordinates 376277.92, 150522.81.

(b) The area described by the following shall be redesignated as an eighteen-foot channel and turning basin: Beginning at a point (1) with coordinates N144759.41, E374413.16; thence running north 73 degrees 11 minutes 42.9 seconds east 1,252.88 feet to a point (2) with coordinates N145121.63, E375612.53; thence running north 26 degrees 29 minutes 48.1 seconds east 778.89 feet to a point (3) with coordinates N145818.71, E375960.04; thence running north 0 degrees 3 minutes 38.1 seconds west 1,200.24 feet to a point (4) with coordinates N147018.94, E375958.77; thence running north 2 degrees 22 minutes 45.2 seconds east 854.35 feet to a point (5) with coordinates N147872.56, E375994.23; thence running north 7 degrees 47 minutes 21.9 seconds west 753.83 feet to a point (6) with coordinates N148619.44, E375892.06; thence running north 88 degrees 46 minutes 16.7 seconds east 281.85 feet to a point (7) with coordinates N148625.48, E376173.85; thence running south 7 degrees 47 minutes 21.9 seconds east 716.4 feet to a point (8) with coordinates N147915.69, E376270.94; thence running north 80 degrees 17 minutes 42.3 seconds east 315.3 feet to a point (9) with coordinates N147968.85, E.76581.73; thence running south 9 degrees 42 minutes 20.3 seconds east 248.07 feet to a point (10) with coordinates N147724.33, E376623.55; thence running south 2 degrees 10 minutes 43.3 seconds east 318.09 feet to a point (11) with coordinates N147406.47, E376635.64; thence running north 78 degrees 56 minutes 15.6 seconds east 571.11 feet to a point (12) with coordinates N147516.06, E377196.15; thence running south 88 degrees 57 minutes 2.3 seconds east 755.09 feet to a point (13) with coordinates N147502.23, E377951.11; thence running south 1 degree 2 minutes 57.7 seconds west 100.00 feet to a point (14) with coordinates N147402.25, E377949.28; thence running north 88 degrees 57 minutes 2.3 seconds west 744.48 feet to a point (15) with coordinates N147415.88, E377204.92; thence running south 78 degrees 56 minutes 15.6 seconds west 931.17 feet to a point (16) with coordinates N147237.21, E376291.06; thence running south 39 degrees 26 minutes 18.7 seconds west 208.34 feet to a point (17) with coordinates N147076.31, E376158.71; thence running south 0 degrees 3 minutes 38.1 seconds east 1,528.26 feet to a point (18) with coordinates N145548.05, E376160.32; thence running south 26 degrees 29 minutes 48.1 seconds west 686.83 feet to a point (19) with coordinates N144933.37, E375853.90; thence running south 73 degrees 11 minutes 42.9 seconds west 1,429.51 feet to end at a point (20) with coordinates N144520.08, E374485.44.

SEC. 118. None of the funds made available to the Corps of Engineers by this Act may be used for the removal or associated

mitigation of Federal Energy Regulatory Commission Project number 2342.

SEC. 119. None of the funds made available by this Act may be used for the study of the Missouri River Projects authorized in section 108 of the Energy and Water Development and Related Agencies Appropriations Act, 2009 (division C of Public Law 111–8).

SEC. 120. None of the funds made available in this Act may be used to continue the study conducted by the Army Corps of Engineers pursuant to section 5018(a)(1) of the Water Resources Development Act of 2007.

TITLE II

DEPARTMENT OF THE INTERIOR

CENTRAL UTAH PROJECT

CENTRAL UTAH PROJECT COMPLETION ACCOUNT

For carrying out activities authorized by the Central Utah Project Completion Act, $27,154,000, to remain available until expended, of which $2,000,000 shall be deposited into the Utah Reclamation Mitigation and Conservation Account for use by the Utah Reclamation Mitigation and Conservation Commission. In addition, for necessary expenses incurred in carrying out related responsibilities of the Secretary of the Interior, $1,550,000. For fiscal year 2012, the Commission may use an amount not to exceed $1,500,000 for administrative expenses.

BUREAU OF RECLAMATION

The following appropriations shall be expended to execute authorized functions of the Bureau of Reclamation:

WATER AND RELATED RESOURCES

(INCLUDING TRANSFERS OF FUNDS)

For management, development, and restoration of water and related natural resources and for related activities, including the operation, maintenance, and rehabilitation of reclamation and other facilities, participation in fulfilling related Federal responsibilities to Native Americans, and related grants to, and cooperative and other agreements with, State and local governments, federally recognized Indian tribes, and others, $895,000,000, to remain available until expended, of which $10,698,000 shall be available for transfer to the Upper Colorado River Basin Fund and $6,136,000 shall be available for transfer to the Lower Colorado River Basin Development Fund; of which such amounts as may be necessary may be advanced to the Colorado River Dam Fund: *Provided,* That such transfers may be increased or decreased within the overall appropriation under this heading: *Provided further*, That of the total appropriated, the amount for program activities that can be financed by the Reclamation Fund or the Bureau of Reclamation special fee account established by 16 U.S.C. 460l–6a(i) shall be derived from that Fund or account: *Provided further*, That funds contributed under 43 U.S.C. 395 are available until expended for

the purposes for which contributed: *Provided further*, That funds advanced under 43 U.S.C. 397a shall be credited to this account and are available until expended for the same purposes as the sums appropriated under this heading: *Provided further*, That of the amounts provided herein, funds may be used for high priority projects which shall be carried out by the Youth Conservation Corps, as authorized by 16 U.S.C. 1706.

CENTRAL VALLEY PROJECT RESTORATION FUND

For carrying out the programs, projects, plans, habitat restoration, improvement, and acquisition provisions of the Central Valley Project Improvement Act, $53,068,000, to be derived from such sums as may be collected in the Central Valley Project Restoration Fund pursuant to sections 3407(d), 3404(c)(3), and 3405(f) of Public Law 102–575, to remain available until expended: *Provided*, That the Bureau of Reclamation is directed to assess and collect the full amount of the additional mitigation and restoration payments authorized by section 3407(d) of Public Law 102–575: *Provided further*, That none of the funds made available under this heading may be used for the acquisition or leasing of water for in-stream purposes if the water is already committed to in-stream purposes by a court adopted decree or order.

CALIFORNIA BAY-DELTA RESTORATION

(INCLUDING TRANSFERS OF FUNDS)

For carrying out activities authorized by the Water Supply, Reliability, and Environmental Improvement Act, consistent with plans to be approved by the Secretary of the Interior, $39,651,000, to remain available until expended, of which such amounts as may be necessary to carry out such activities may be transferred to appropriate accounts of other participating Federal agencies to carry out authorized purposes: *Provided*, That funds appropriated herein may be used for the Federal share of the costs of CALFED Program management: *Provided further*, That the use of any funds provided to the California Bay-Delta Authority for program-wide management and oversight activities shall be subject to the approval of the Secretary of the Interior: *Provided further*, That CALFED implementation shall be carried out in a balanced manner with clear performance measures demonstrating concurrent progress in achieving the goals and objectives of the Program.

POLICY AND ADMINISTRATION

For necessary expenses of policy, administration, and related functions in the Office of the Commissioner, the Denver office, and offices in the five regions of the Bureau of Reclamation, to remain available until September 30, 2013, $60,000,000, to be derived from the Reclamation Fund and be nonreimbursable as provided in 43 U.S.C. 377: *Provided*, That no part of any other appropriation in this Act shall be available for activities or functions budgeted as policy and administration expenses.

ADMINISTRATIVE PROVISION

Appropriations for the Bureau of Reclamation shall be available for purchase of not to exceed five passenger motor vehicles, which are for replacement only.

GENERAL PROVISIONS—DEPARTMENT OF THE INTERIOR

SEC. 201. (a) None of the funds provided in title II of this Act for Water and Related Resources, or provided by previous appropriations Acts to the agencies or entities funded in title II of this Act for Water and Related Resources that remain available for obligation or expenditure in fiscal year 2012, shall be available for obligation or expenditure through a reprogramming of funds that—

(1) initiates or creates a new program, project, or activity;

(2) eliminates a program, project, or activity;

(3) increases funds for any program, project, or activity for which funds have been denied or restricted by this Act, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate;

(4) restarts or resumes any program, project or activity for which funds are not provided in this Act, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate;

(5) transfers funds in excess of the following limits, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate:

(A) 15 percent for any program, project or activity for which $2,000,000 or more is available at the beginning of the fiscal year; or

(B) $300,000 for any program, project or activity for which less than $2,000,000 is available at the beginning of the fiscal year;

(6) transfers more than $500,000 from either the Facilities Operation, Maintenance, and Rehabilitation category or the Resources Management and Development category to any program, project, or activity in the other category, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate; or

(7) transfers, where necessary to discharge legal obligations of the Bureau of Reclamation, more than $5,000,000 to provide adequate funds for settled contractor claims, increased contractor earnings due to accelerated rates of operations, and real estate deficiency judgments, unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate.

(b) Subsection (a)(5) shall not apply to any transfer of funds within the Facilities Operation, Maintenance, and Rehabilitation category.

Definition.

(c) For purposes of this section, the term "transfer" means any movement of funds into or out of a program, project, or activity.

Reports. Deadlines.

(d) The Bureau of Reclamation shall submit reports on a quarterly basis to the Committees on Appropriations of the House of Representatives and the Senate detailing all the funds reprogrammed between programs, projects, activities, or categories of funding. The first quarterly report shall be submitted not later than 60 days after the date of enactment of this Act.

SEC. 202. (a) None of the funds appropriated or otherwise made available by this Act may be used to determine the final point of discharge for the interceptor drain for the San Luis Unit until development by the Secretary of the Interior and the State of California of a plan, which shall conform to the water quality standards of the State of California as approved by the Administrator of the Environmental Protection Agency, to minimize any detrimental effect of the San Luis drainage waters. California. Plan.

(b) The costs of the Kesterson Reservoir Cleanup Program and the costs of the San Joaquin Valley Drainage Program shall be classified by the Secretary of the Interior as reimbursable or nonreimbursable and collected until fully repaid pursuant to the "Cleanup Program-Alternative Repayment Plan" and the "SJVDP-Alternative Repayment Plan" described in the report entitled "Repayment Report, Kesterson Reservoir Cleanup Program and San Joaquin Valley Drainage Program, February 1995", prepared by the Department of the Interior, Bureau of Reclamation. Any future obligations of funds by the United States relating to, or providing for, drainage service or drainage studies for the San Luis Unit shall be fully reimbursable by San Luis Unit beneficiaries of such service or studies pursuant to Federal reclamation law.

SEC. 203. Section 529(b)(3) of Public Law 106–541, as amended by section 115 of Public Law 109–103, is further amended by striking "$20,000,000" and inserting "$30,000,000" in lieu thereof. 16 USC 450hh.

SEC. 204. Section 8 of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) is amended—

(1) in subsection (a), in the first sentence, by striking "2011" and inserting "2013"; and

(2) in subsection (b), by striking "$25,000,000 for fiscal years 1997 through 2011" and inserting "$3,000,000 for each of fiscal years 2012 through 2013".

SEC. 205. The Federal policy for addressing California's water supply and environmental issues related to the Bay-Delta shall be consistent with State law, including the co-equal goals of providing a more reliable water supply for the State of California and protecting, restoring, and enhancing the Delta ecosystem. The Secretary of the Interior, the Secretary of Commerce, the Army Corps of Engineers and the Environmental Protection Agency Administrator shall jointly coordinate the efforts of the relevant agencies and work with the State of California and other stakeholders to complete and issue the Bay Delta Conservation Plan Final Environmental Impact Statement no later than February 15, 2013. Nothing herein modifies existing requirements of Federal law. Deadline.

SEC. 206. The Secretary of the Interior may participate in non-Federal groundwater banking programs to increase the operational flexibility, reliability, and efficient use of water in the State of California, and this participation may include making payment for the storage of Central Valley Project water supplies, the purchase of stored water, the purchase of shares or an interest in ground banking facilities, or the use of Central Valley Project water as a medium of payment for groundwater banking services: *Provided*, That the Secretary of the Interior shall participate in groundwater banking programs only to the extent allowed under State law and consistent with water rights applicable to the Central Valley Project: *Provided further,* That any water user to which banked water is delivered shall pay for such water in the same

manner provided by that water user's then-current Central Valley Project water service, repayment, or water rights settlement contract at the rate provided by the then-current Central-Valley Project Irrigation or Municipal and Industrial Rate Setting Policies; and: *Provided further,* That in implementing this section, the Secretary of the Interior shall comply with applicable environmental laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) Nothing herein shall alter or limit the Secretary's existing authority to use groundwater banking to meet existing fish and wildlife obligations.

SEC. 207. (a) Subject to compliance with all applicable Federal and State laws, a transfer of irrigation water among Central Valley Project contractors from the Friant, San Felipe, West San Joaquin, and Delta divisions, and a transfer from a long-term Friant Division water service or repayment contractor to a temporary or prior temporary service contractors within the place of use in existence on the date of the transfer, as identified in the Bureau of Reclamation water rights permits for the Friant Division, shall be considered to meet the conditions described in subparagraphs (A) and (I) of section 3405(a)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102–575; 106 Stat. 4709).

(b) The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service and the Commissioner of the Bureau of Reclamation shall initiate and complete, on the most expedited basis practicable, programmatic environmental compliance so as to facilitate voluntary water transfers within the Central Valley Project, consistent with all applicable Federal and State law.

Deadlines.
Reports.

(c) Not later than 180 days after the date of enactment of this Act and each of the 4 years thereafter, the Commissioner of the Bureau of Reclamation shall submit to the committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate a report that describes the status of efforts to help facilitate and improve the water transfers within the Central Valley Project and water transfers between the Central Valley Project and other water projects in the State of California; evaluates potential effects of this Act on Federal programs, Indian tribes, Central Valley Project operations, the environment, groundwater aquifers, refuges, and communities; and provides recommendations on ways to facilitate and improve the process for these transfers.

SEC. 208. (a) PERMITTED USES.—Section 2507(b) of the Farm Security and Rural Investment Act of 2002 (43 U.S.C. 2211 note; Public Law 107–171) is amended—

(1) in the matter preceding paragraph (1), by striking "In any case in which there are willing sellers" and inserting "For the benefit of at-risk natural desert terminal lakes and associated riparian and watershed resources, in any case in which there are willing sellers or willing participants";

(2) in paragraph (2), by striking "in the Walker River" and all that follows through "119 Stat. 2268)"; and

(3) in paragraph (3), by striking "in the Walker River Basin".

(b) WALKER BASIN RESTORATION PROGRAM.—Section 208(b) of the Energy and Water Development and Related Agencies Appropriations Act, 2010 (Public Law 111–85; 123 Stat. 2858) is amended—

(1) in paragraph (1)(B)(iv), by striking "exercise water rights" and inserting "manage land, water appurtenant to the land, and related interests"; and

(2) in paragraph (2)(A), by striking "The amount made available under subsection (a)(1) shall be provided to the National Fish and Wildlife Foundation" and inserting "Any amount made available to the National Fish and Wildlife Foundation under subsection (a) shall be provided".

TITLE III

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY EFFICIENCY AND RENEWABLE ENERGY

(INCLUDING RESCISSION OF FUNDS)

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for energy efficiency and renewable energy activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, $1,825,000,000, to remain available until expended: *Provided*, That $165,000,000 shall be available until September 30, 2013 for program direction: *Provided further,* That for the purposes of allocating weatherization assistance funds appropriated by this Act to States and tribes, the Secretary of Energy may waive the allocation formula established pursuant to section 414(a) of the Energy Conservation and Production Act (42 U.S.C. 6864(a)): *Provided further,* That of the unobligated balances available under this heading, $9,909,000 are hereby rescinded: *Provided further,* That no amounts may be rescinded from amounts that were designated by the Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

ELECTRICITY DELIVERY AND ENERGY RELIABILITY

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for electricity delivery and energy reliability activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, $139,500,000, to remain available until expended: *Provided*, That $27,010,000 shall be available until September 30, 2013 for program direction.

NUCLEAR ENERGY

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for nuclear energy activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not more than 10 buses, all for replacement only, $768,663,000, to remain available until expended: *Provided*, That $91,000,000 shall be available until September 30, 2013 for program direction.

FOSSIL ENERGY RESEARCH AND DEVELOPMENT

(INCLUDING RESCISSION OF FUNDS)

For necessary expenses in carrying out fossil energy research and development activities, under the authority of the Department of Energy Organization Act (Public Law 95–91), including the acquisition of interest, including defeasible and equitable interests in any real property or any facility or for plant or facility acquisition or expansion, and for conducting inquiries, technological investigations and research concerning the extraction, processing, use, and disposal of mineral substances without objectionable social and environmental costs (30 U.S.C. 3, 1602, and 1603), $534,000,000, to remain available until expended: *Provided*, That $120,000,000 shall be available until September 30, 2013 for program direction: *Provided further,* That for all programs funded under Fossil Energy appropriations in this Act or any other Act, the Secretary may vest fee title or other property interests acquired under projects in any entity, including the United States: *Provided further,* That of prior-year balances, $187,000,000 are hereby rescinded: *Provided further,* That no rescission made by the previous proviso shall apply to any amount previously appropriated in Public Law 111–5 or designated by the Congress as an emergency requirement pursuant to a concurrent resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

NAVAL PETROLEUM AND OIL SHALE RESERVES

For expenses necessary to carry out naval petroleum and oil shale reserve activities, $14,909,000, to remain available until expended: *Provided*, That, notwithstanding any other provision of law, unobligated funds remaining from prior years shall be available for all naval petroleum and oil shale reserve activities.

STRATEGIC PETROLEUM RESERVE

For necessary expenses for Strategic Petroleum Reserve facility development and operations and program management activities pursuant to the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6201 et seq.), $192,704,000, to remain available until expended.

SPR PETROLEUM ACCOUNT

(INCLUDING RESCISSION OF FUNDS)

Of the amounts deposited in the SPR Petroleum Account established under section 167 of the Energy Policy and Conservation Act (42 U.S.C. 6247) in fiscal year 2011 which remain available for obligation under that section, $500,000,000 are hereby permanently rescinded.

NORTHEAST HOME HEATING OIL RESERVE

(INCLUDING RESCISSION OF FUNDS)

For necessary expenses for Northeast Home Heating Oil Reserve storage, operation, and management activities pursuant to the Energy Policy and Conservation Act, $10,119,000, to remain available until expended: *Provided*, That amounts net of the purchase of 1 million barrels of petroleum distillates in fiscal year 2012; costs related to transportation, delivery, and storage; and sales of petroleum distillate from the Reserve under section 182 of the Energy Policy and Conservation Act (42 U.S.C. 6250a) are hereby permanently rescinded: *Provided further*, That notwithstanding section 181 of the Energy Policy and Conservation Act (42 U.S.C. 6250), for fiscal year 2012 and hereafter, the Reserve shall contain no more than 1 million barrels of petroleum distillate.

42 USC 6250f.

ENERGY INFORMATION ADMINISTRATION

For necessary expenses in carrying out the activities of the Energy Information Administration, $105,000,000, to remain available until expended.

NON-DEFENSE ENVIRONMENTAL CLEANUP

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for non-defense environmental cleanup activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, $235,721,000, to remain available until expended.

URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND

For necessary expenses in carrying out uranium enrichment facility decontamination and decommissioning, remedial actions, and other activities of title II of the Atomic Energy Act of 1954, and title X, subtitle A, of the Energy Policy Act of 1992, $472,930,000, to be derived from the Uranium Enrichment Decontamination and Decommissioning Fund, to remain available until expended.

SCIENCE

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and

other expenses necessary for science activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or facility or for plant or facility acquisition, construction, or expansion, and purchase of not more than 49 passenger motor vehicles for replacement only, including one ambulance and one bus, $4,889,000,000, to remain available until expended: *Provided*, That $185,000,000 shall be available until September 30, 2013 for program direction.

ADVANCED RESEARCH PROJECTS AGENCY—ENERGY

For necessary expenses in carrying out the activities authorized by section 5012 of the America COMPETES Act (Public Law 110–69), as amended, $275,000,000: *Provided*, That $20,000,000 shall be available until September 30, 2013 for program direction.

TITLE 17 INNOVATIVE TECHNOLOGY LOAN GUARANTEE PROGRAM

Such sums as are derived from amounts received from borrowers pursuant to section 1702(b)(2) of the Energy Policy Act of 2005 under this heading in prior Acts, shall be collected in accordance with section 502(7) of the Congressional Budget Act of 1974: *Provided*, That for necessary administrative expenses to carry out this Loan Guarantee program, $38,000,000, is appropriated, to remain available until expended: *Provided further,* That $38,000,000 of the fees collected pursuant to section 1702(h) of the Energy Policy Act of 2005 shall be credited as offsetting collections to this account to cover administrative expenses and shall remain available until expended, so as to result in a final fiscal year 2012 appropriation from the general fund estimated at not more than $0: *Provided further,* That fees collected under section 1702(h) in excess of the amount appropriated for administrative expenses shall not be available until appropriated.

ADVANCED TECHNOLOGY VEHICLES MANUFACTURING LOAN PROGRAM

For administrative expenses in carrying out the Advanced Technology Vehicles Manufacturing Loan Program, $6,000,000, to remain available until expended.

DEPARTMENTAL ADMINISTRATION

For salaries and expenses of the Department of Energy necessary for departmental administration in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the hire of passenger motor vehicles and official reception and representation expenses not to exceed $30,000, $237,623,000, to remain available until September 30, 2013, plus such additional amounts as necessary to cover increases in the estimated amount of cost of work for others notwithstanding the provisions of the Anti-Deficiency Act (31 U.S.C. 1511 et seq.): *Provided*, That such increases in cost of work are offset by revenue increases of the same or greater amount, to remain available until expended: *Provided further*, That moneys received by the Department for miscellaneous revenues estimated to total $111,623,000 in fiscal year 2012 may be retained and used for operating expenses

within this account, and may remain available until expended, as authorized by section 201 of Public Law 95–238, notwithstanding the provisions of 31 U.S.C. 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of miscellaneous revenues received during 2012, and any related appropriated receipt account balances remaining from prior years' miscellaneous revenues, so as to result in a final fiscal year 2012 appropriation from the general fund estimated at not more than $126,000,000.

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $42,000,000, to remain available until expended.

ATOMIC ENERGY DEFENSE ACTIVITIES

NATIONAL NUCLEAR SECURITY ADMINISTRATION

WEAPONS ACTIVITIES

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for atomic energy defense weapons activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, the purchase of not to exceed one ambulance and one aircraft; $7,233,997,000, to remain available until expended: *Provided*, That of such amount not more than $89,425,000 may be made available for the B–61 Life Extension Program until the Administrator of the National Nuclear Security Administration submits to the Committees on Appropriations of the House of Representatives and the Senate a final report on the Phase 6.2a design definition and cost study. Reports.

DEFENSE NUCLEAR NONPROLIFERATION

(INCLUDING RESCISSION OF FUNDS)

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other incidental expenses necessary for defense nuclear nonproliferation activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not to exceed one passenger motor vehicle for replacement only, $2,324,303,000, to remain available until expended: *Provided,* That of the unobligated balances available under this heading, $21,000,000 are hereby rescinded: *Provided further*, That no amounts may be rescinded from amounts that were designated by the Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

NAVAL REACTORS

For Department of Energy expenses necessary for naval reactors activities to carry out the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition (by purchase, condemnation, construction, or otherwise) of real property, plant, and capital equipment, facilities, and facility expansion, $1,080,000,000, to remain available until expended: *Provided*, That $40,000,000 shall be available until September 30, 2013 for program direction.

OFFICE OF THE ADMINISTRATOR

For necessary expenses of the Office of the Administrator in the National Nuclear Security Administration, including official reception and representation expenses not to exceed $12,000, $410,000,000, to remain available until September 30, 2013.

ENVIRONMENTAL AND OTHER DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL CLEANUP

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses necessary for atomic energy defense environmental cleanup activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not to exceed one ambulance and one fire truck for replacement only, $5,023,000,000, to remain available until expended: *Provided*, That $321,628,000 shall be available until September 30, 2013 for program direction.

OTHER DEFENSE ACTIVITIES

For Department of Energy expenses, including the purchase, construction, and acquisition of plant and capital equipment and other expenses, necessary for atomic energy defense, other defense activities, and classified activities, in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, and the purchase of not to exceed 10 passenger motor vehicles for replacement only, $823,364,000: *Provided*, That $114,086,000 shall be available until September 30, 2013 for program direction.

POWER MARKETING ADMINISTRATIONS

BONNEVILLE POWER ADMINISTRATION FUND

Expenditures from the Bonneville Power Administration Fund, established pursuant to Public Law 93–454, are approved for the Kootenai River Native Fish Conservation Aquaculture Program, Lolo Creek Permanent Weir Facility, and Improving Anadromous Fish production on the Warm Springs Reservation, and, in addition, for official reception and representation expenses in an amount

not to exceed $7,000. During fiscal year 2012, no new direct loan obligations may be made.

OPERATION AND MAINTENANCE, SOUTHEASTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, including transmission wheeling and ancillary services pursuant to section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the southeastern power area, $8,428,000, to remain available until expended: *Provided*, That notwithstanding 31 U.S.C. 3302 and section 5 of the Flood Control Act of 1944, up to $8,428,000 collected by the Southeastern Power Administration from the sale of power and related services shall be credited to this account as discretionary offsetting collections, to remain available until expended for the sole purpose of funding the annual expenses of the Southeastern Power Administration: *Provided further*, That the sum herein appropriated for annual expenses shall be reduced as collections are received during the fiscal year so as to result in a final fiscal year 2012 appropriation estimated at not more than $0: *Provided further*, That, notwithstanding 31 U.S.C. 3302, up to $100,162,000 collected by the Southeastern Power Administration pursuant to the Flood Control Act of 1944 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures: *Provided further*, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred (excluding purchase power and wheeling expenses).

OPERATION AND MAINTENANCE, SOUTHWESTERN POWER ADMINISTRATION

For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, for construction and acquisition of transmission lines, substations and appurtenant facilities, and for administrative expenses, including official reception and representation expenses in an amount not to exceed $1,500 in carrying out section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the Southwestern Power Administration, $45,010,000, to remain available until expended: *Provided*, That notwithstanding 31 U.S.C. 3302 and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), up to $33,118,000 collected by the Southwestern Power Administration from the sale of power and related services shall be credited to this account as discretionary offsetting collections, to remain available until expended, for the sole purpose of funding the annual expenses of the Southwestern Power Administration: *Provided further*, That the sum herein appropriated for annual expenses shall be reduced as collections are received during the fiscal year so as to result in a final fiscal year 2012 appropriation estimated at not more than $11,892,000: *Provided further*, That, notwithstanding 31 U.S.C. 3302, up to $40,000,000 collected by the Southwestern Power Administration pursuant to the Flood Control Act of 1944 to recover purchase power and wheeling expenses shall

be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures: *Provided further*, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred (excluding purchase power and wheeling expenses).

CONSTRUCTION, REHABILITATION, OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. 7152), and other related activities including conservation and renewable resources programs as authorized, including official reception and representation expenses in an amount not to exceed $1,500; $285,900,000, to remain available until expended, of which $278,856,000 shall be derived from the Department of the Interior Reclamation Fund: *Provided*, That notwithstanding 31 U.S.C. 3302, section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), and section 1 of the Interior Department Appropriation Act, 1939 (43 U.S.C. 392a), up to $189,932,000 collected by the Western Area Power Administration from the sale of power and related services shall be credited to this account as discretionary offsetting collections, to remain available until expended, for the sole purpose of funding the annual expenses of the Western Area Power Administration: *Provided further*, That the sum herein appropriated for annual expenses shall be reduced as collections are received during the fiscal year so as to result in a final fiscal year 2012 appropriation estimated at not more than $95,968,000, of which $88,924,000 is derived from the Reclamation Fund: *Provided further*, That of the amount herein appropriated, not more than $3,375,000 is for deposit into the Utah Reclamation Mitigation and Conservation Account pursuant to title IV of the Reclamation Projects Authorization and Adjustment Act of 1992: *Provided further*, That notwithstanding 31 U.S.C. 3302, up to $306,541,000 collected by the Western Area Power Administration pursuant to the Flood Control Act of 1944 and the Reclamation Project Act of 1939 to recover purchase power and wheeling expenses shall be credited to this account as offsetting collections, to remain available until expended for the sole purpose of making purchase power and wheeling expenditures: *Provided further*, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred (excluding purchase power and wheeling expenses).

FALCON AND AMISTAD OPERATING AND MAINTENANCE FUND

For operation, maintenance, and emergency costs for the hydroelectric facilities at the Falcon and Amistad Dams, $4,169,000, to remain available until expended, and to be derived from the Falcon and Amistad Operating and Maintenance Fund of the Western Area Power Administration, as provided in section 2 of the Act of June 18, 1954 (68 Stat. 255) as amended: *Provided*, That notwithstanding the provisions of that Act and of 31 U.S.C. 3302, up to $3,949,000 collected by the Western Area Power Administration from the sale of power and related services from the Falcon and Amistad Dams shall be credited to this account as discretionary offsetting collections, to remain available until

expended for the sole purpose of funding the annual expenses of the hydroelectric facilities of these Dams and associated Western Area Power Administration activities: *Provided further*, That the sum herein appropriated for annual expenses shall be reduced as collections are received during the fiscal year so as to result in a final fiscal year 2012 appropriation estimated at not more than $220,000: *Provided further*, That for purposes of this appropriation, annual expenses means expenditures that are generally recovered in the same year that they are incurred.

FEDERAL ENERGY REGULATORY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Energy Regulatory Commission to carry out the provisions of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including services as authorized by 5 U.S.C. 3109, the hire of passenger motor vehicles, and official reception and representation expenses not to exceed $3,000, $304,600,000, to remain available until expended: *Provided*, That notwithstanding any other provision of law, not to exceed $304,600,000 of revenues from fees and annual charges, and other services and collections in fiscal year 2012 shall be retained and used for necessary expenses in this account, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as revenues are received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation from the general fund estimated at not more than $0.

42 USC 7171 note.

GENERAL PROVISIONS—DEPARTMENT OF ENERGY

(INCLUDING RESCISSION AND TRANSFER OF FUNDS)

SEC. 301. (a) No appropriation, funds, or authority made available by this title for the Department of Energy shall be used to initiate or resume any program, project, or activity or to prepare or initiate Requests For Proposals or similar arrangements (including Requests for Quotations, Requests for Information, and Funding Opportunity Announcements) for a program, project, or activity if the program, project, or activity has not been funded by Congress.

(b) The Department of Energy may not, with respect to any program, project, or activity that uses budget authority made available in this title under the heading "Department of Energy—Energy Programs", enter into a multi-year contract, award a multi-year grant, or enter into a multi-year cooperative agreement unless the contract, grant, or cooperative agreement includes a clause conditioning the Federal Government's obligation on the availability of future-year budget authority and the Secretary notifies the Committees on Appropriations of the House of Representatives and the Senate at least 14 days in advance.

Contracts. Grants. Notification. Deadline.

(c) Except as provided in this section, the amounts made available by this title shall be expended as authorized by law for the projects and activities specified in the "Conference" column in the "Department of Energy" table included under the heading "Title III—Department of Energy" in the joint explanatory statement accompanying this Act.

Notification. Deadline.

(d) The amounts made available by this title may be reprogrammed for any program, project, or activity, and the Department shall notify the Committees on Appropriations of the House of Representatives and the Senate at least 30 days prior to the use of any proposed reprogramming which would cause any program, project, or activity funding level to increase or decrease by more than $5,000,000 or 10 percent, whichever is less, during the time period covered by this Act.

(e) Notwithstanding subsection (c), none of the funds provided in this title shall be available for obligation or expenditure through a reprogramming of funds that—

(1) creates, initiates, or eliminates a program, project, or activity;

(2) increases funds or personnel for any program, project, or activity for which funds are denied or restricted by this Act; or

(3) reduces funds that are directed to be used for a specific program, project, or activity by this Act.

Waiver authority.

(f)(1) The Secretary of Energy may waive any requirement or restriction in this section that applies to the use of funds made available for the Department of Energy if compliance with such requirement or restriction would pose a substantial risk to human health, the environment, welfare, or national security.

Notification. Deadline.

(2) The Secretary of Energy shall notify the Committees on Appropriations of any waiver under paragraph (1) as soon as practicable, but not later than 3 days after the date of the activity to which a requirement or restriction would otherwise have applied. Such notice shall include an explanation of the substantial risk under paragraph (1) that permitted such waiver.

SEC. 302. The unexpended balances of prior appropriations provided for activities in this Act may be available to the same appropriation accounts for such activities established pursuant to this title. Available balances may be merged with funds in the applicable established accounts and thereafter may be accounted for as one fund for the same time period as originally enacted.

SEC. 303. Funds appropriated by this or any other Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2012 until the enactment of the Intelligence Authorization Act for fiscal year 2012.

42 USC 7279a.

SEC. 304. (a) SUBMISSION TO CONGRESS.—The Secretary of Energy shall submit to Congress each year, at the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, United States Code, a future-years energy program reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years energy program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years. A future-years energy program shall be included in the fiscal year 2014 budget submission to Congress and every fiscal year thereafter.

(b) ELEMENTS.—Each future-years energy program shall contain the following:

(1) The estimated expenditures and proposed appropriations necessary to support programs, projects, and activities of the Secretary of Energy during the 5-fiscal year period covered by the program, expressed in a level of detail comparable

to that contained in the budget submitted by the President to Congress under section 1105 of title 31, United States Code.

(2) The estimated expenditures and proposed appropriations shaped by high-level, prioritized program and budgetary guidance that is consistent with the administration's policies and out year budget projections and reviewed by the Department of Energy's (DOE) senior leadership to ensure that the future-years energy program is consistent and congruent with previously established program and budgetary guidance.

(3) A description of the anticipated workload requirements for each DOE national laboratory during the 5-fiscal year period.

(c) CONSISTENCY IN BUDGETING.—

(1) The Secretary of Energy shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary of Energy in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31, United States Code, for any fiscal year, as shown in the future-years energy program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the administration included pursuant to paragraph (5) of section 1105(a) of such title in the budget submitted to Congress under that section for any fiscal year.

SEC. 305. Section 1702 of the Energy Policy Act of 2005 (42 U.S.C. 16512) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) SPECIFIC APPROPRIATION OR CONTRIBUTION.—

"(1) IN GENERAL.—No guarantee shall be made unless—

"(A) an appropriation for the cost of the guarantee has been made;

"(B) the Secretary has received from the borrower a payment in full for the cost of the guarantee and deposited the payment into the Treasury; or

"(C) a combination of one or more appropriations under subparagraph (A) and one or more payments from the borrower under subparagraph (B) has been made that is sufficient to cover the cost of the guarantee.".

50 USC 2743a.

SEC. 306. Plant or construction projects for which amounts are made available under this and subsequent appropriation Acts with a current estimated cost of less than $10,000,000 are considered for purposes of section 4703 of Public Law 107–314 as a plant project for which the approved total estimated cost does not exceed the minor construction threshold and for purposes of section 4704 of Public Law 107–314 as a construction project with a current estimated cost of less than a minor construction threshold.

SEC. 307. In section 839b(h)(10)(B) of title 16, United States Code, strike "$1,000,000" and insert "$2,500,000".

SEC. 308. None of the funds made available in this title shall be used for the construction of facilities classified as high-hazard nuclear facilities under 10 CFR Part 830 unless independent oversight is conducted by the Office of Health, Safety, and Security to ensure the project is in compliance with nuclear safety requirements.

SEC. 309. Of the amounts appropriated in this title, $73,300,000 are hereby rescinded, to reflect savings from the contractor pay freeze instituted by the Department. The Department shall allocate the rescission among the appropriations made in this title.

SEC. 310. None of the funds made available in this title may be used to approve critical decision-2 or critical decision-3 under Department of Energy Order 413.3B, or any successive departmental guidance, for construction projects where the total project cost exceeds $100,000,000, until a separate independent cost estimate has been developed for the project for that critical decision.

Grants. Contracts. Notification. Deadline.

SEC. 311. None of the funds made available in this title may be used to make a grant allocation, discretionary grant award, discretionary contract award, or Other Transaction Agreement, or to issue a letter of intent, totaling in excess of $1,000,000, or to announce publicly the intention to make such an allocation, award, or Agreement, or to issue such a letter, including a contract covered by the Federal Acquisition Regulation, unless the Secretary of Energy notifies the Committees on Appropriations of the Senate and the House of Representatives at least 3 full business days in advance of making such an allocation, award, or Agreement, or issuing such a letter: *Provided*, That if the Secretary of Energy determines that compliance with this section would pose a substantial risk to human life, health, or safety, an allocation, award, or Agreement may be made, or a letter may be issued, without advance notification, and the Secretary shall notify the Committees on Appropriations of the Senate and the House of Representatives not later than 5 full business days after the date on which such an allocation, award, or Agreement is made or letter issued: *Provided further,* That the notification shall include the recipient of the award, the amount of the award, the fiscal year for which the funds for the award were appropriated, and the account and program from which the funds are being drawn, the title of the award, and a brief description of the activity for which the award is made.

Determination. Notification. Deadline.

Determination. Uranium.

SEC. 312. (a) Any determination (including a determination made prior to the date of enactment of this Act) by the Secretary pursuant to section 3112(d)(2)(B) of the USEC Privatization Act (110 Stat. 1321–335), as amended, that the sale or transfer of uranium will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry shall be valid for not more than 2 calendar years subsequent to such determination.

Deadline. Notification.

(b) Not less than 30 days prior to the transfer, sale, barter, distribution, or other provision of uranium in any form for the purpose of accelerating cleanup at a Federal site, the Secretary shall notify the House and Senate Committees on Appropriations of the following:

(1) the amount of uranium to be transferred, sold, bartered, distributed, or otherwise provided;

(2) an estimate by the Secretary of the gross market value of the uranium on the expected date of the transfer, sale, barter, distribution, or other provision of the uranium;

(3) the expected date of transfer, sale, barter, distribution, or other provision of the uranium;

(4) the recipient of the uranium; and

(5) the value of the services the Secretary expects to receive in exchange for the uranium, including any reductions to the gross value of the uranium by the recipient.

Deadline. Inventory plan.

(c) Not later than June 30, 2012, the Secretary shall submit to the House and Senate Committees on Appropriations a revised excess uranium inventory management plan for fiscal years 2013 through 2018.

Deadline. Reports.

(d) Not later than December 31, 2011 the Secretary shall submit to the House and Senate Committees on Appropriations a report evaluating the economic feasibility of re-enriching depleted uranium located at Federal sites.

SEC. 313. None of the funds made available by this Act may be used to pay the salaries of Department of Energy employees to carry out section 407 of division A of the American Recovery and Reinvestment Act of 2009.

SEC. 314. (a) The Secretary of Energy may openly compete and issue an award to allow a third party, on a fee-for-service basis, to operate and maintain a metering station of the Strategic Petroleum Reserve that is underutilized (as defined in section 102–75.50 of title 41, Code of Federal Regulations (or successor regulations)) and related equipment.

Deadline. Certification.

(b) Not later than 30 days before the issuance of such award, the Secretary of Energy shall certify to the Committees on Appropriations of the House of Representatives and the Senate that the award will not reduce the reliability or accessibility of the Strategic Petroleum Reserve, raise costs of oil in the local market, or negatively impact the supply of oil to current users.

(c) Funds collected under subsection (a) shall be deposited in the general fund of the Treasury.

SEC. 315. None of the funds made available in this Act may be used—

(1) to implement or enforce section 430.32(x) of title 10, Code of Federal Regulations; or

(2) to implement or enforce the standards established by the tables contained in section 325(i)(1)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6295(i)(1)(B)) with respect to BPAR incandescent reflector lamps, BR incandescent reflector lamps, and ER incandescent reflector lamps.

Grants. Certification.

SEC. 316. Recipients of grants awarded by the Department in excess of $1,000,000 shall certify that they will, by the end of the fiscal year, upgrade the efficiency of their facilities by replacing any lighting that does not meet or exceed the energy efficiency standard for incandescent light bulbs set forth in section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295).

TITLE IV

INDEPENDENT AGENCIES

APPALACHIAN REGIONAL COMMISSION

For expenses necessary to carry out the programs authorized by the Appalachian Regional Development Act of 1965, as amended, for necessary expenses for the Federal Co-Chairman and the Alternate on the Appalachian Regional Commission, for payment of the Federal share of the administrative expenses of the Commission, including services as authorized by 5 U.S.C. 3109, and hire of passenger motor vehicles, $68,263,000, to remain available until expended.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SALARIES AND EXPENSES

For necessary expenses of the Defense Nuclear Facilities Safety Board in carrying out activities authorized by the Atomic Energy Act of 1954, as amended by Public Law 100–456, section 1441, $29,130,000, to remain available until September 30, 2013: *Provided*, That within 90 days of enactment of this Act, the Defense Nuclear Facilities Safety Board shall enter into an agreement for inspector general services with the Office of Inspector General for the Nuclear Regulatory Commission for fiscal years 2012 and 2013: *Provided further,* That at the expiration of such agreement, the Defense Nuclear Facilities Safety Board shall procure inspector general services annually thereafter.

Deadline.
Contracts.
42 USC 2286j.

Contracts.

DELTA REGIONAL AUTHORITY

SALARIES AND EXPENSES

For necessary expenses of the Delta Regional Authority and to carry out its activities, as authorized by the Delta Regional Authority Act of 2000, as amended, notwithstanding sections 382C(b)(2), 382F(d), 382M, and 382N of said Act, $11,677,000, to remain available until expended.

DENALI COMMISSION

For expenses of the Denali Commission including the purchase, construction, and acquisition of plant and capital equipment as necessary and other expenses, $10,679,000, to remain available until expended, notwithstanding the limitations contained in section 306(g) of the Denali Commission Act of 1998: *Provided*, That funds shall be available for construction projects in an amount not to exceed 80 percent of total project cost for distressed communities, as defined by section 307 of the Denali Commission Act of 1998 (division C, title III, Public Law 105–277), as amended by section 701 of appendix D, title VII, Public Law 106–113 (113 Stat. 1501A–280), and an amount not to exceed 50 percent for non-distressed communities.

NORTHERN BORDER REGIONAL COMMISSION

For necessary expenses of the Northern Border Regional Commission in carrying out activities authorized by subtitle V of title 40, United States Code, $1,497,000, to remain available until expended: *Provided*, That such amounts shall be available for administrative expenses, notwithstanding section 15751(b) of title 40, United States Code.

SOUTHEAST CRESCENT REGIONAL COMMISSION

For necessary expenses of the Southeast Crescent Regional Commission in carrying out activities authorized by subtitle V of title 40, United States Code, $250,000, to remain available until expended.

NUCLEAR REGULATORY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $25,000), $1,027,240,000, to remain available until expended: *Provided*, That of the amount appropriated herein, not more than $9,000,000 may be made available for salaries and other support costs for the Office of the Commission: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $899,726,000 in fiscal year 2012 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation estimated at not more than $127,514,000: *Provided further,* That of the amounts appropriated under this heading, $10,000,000 shall be for university research and development in areas relevant to their respective organization's mission, and $5,000,000 shall be for a Nuclear Science and Engineering Grant Program that will support multiyear projects that do not align with programmatic missions but are critical to maintaining the discipline of nuclear science and engineering.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $10,860,000, to remain available until September 30, 2013: *Provided*, That revenues from licensing fees, inspection services, and other services and collections estimated at $9,774,000 in fiscal year 2012 shall be retained and be available until expended, for necessary salaries and expenses in this account, notwithstanding section 3302 of title 31, United States Code: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation estimated at not more than $1,086,000.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

SALARIES AND EXPENSES

For necessary expenses of the Nuclear Waste Technical Review Board, as authorized by Public Law 100–203, section 5051, $3,400,000 to be derived from the Nuclear Waste Fund, and to remain available until expended.

OFFICE OF THE FEDERAL COORDINATOR FOR ALASKA NATURAL GAS TRANSPORTATION PROJECTS

For necessary expenses for the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects pursuant to the Alaska Natural Gas Pipeline Act of 2004, $1,000,000.

GENERAL PROVISIONS—INDEPENDENT AGENCIES

SEC. 401. (a) None of the funds provided in this title for "Nuclear Regulatory Commission—Salaries and Expenses" shall be available for obligation or expenditure through a reprogramming of funds that—

(1) increases funds or personnel for any program, project, or activity for which funds are denied or restricted by this Act; or

(2) reduces funds that are directed to be used for a specific program, project, or activity by this Act.

(b) The Chairman of the Nuclear Regulatory Commission may not terminate any program, project, or activity without the approval of a majority vote of the Commissioners of the Nuclear Regulatory Commission approving such action.

Waiver authority. Certification.

(c) The Nuclear Regulatory Commission may waive the restriction on reprogramming under subsection (a) on a case-by-case basis by certifying to the Committees on Appropriations of the House of Representatives and the Senate that such action is required to address national security or imminent risks to public safety. Each such waiver certification shall include a letter from the Chairman of the Commission that a majority of Commissioners of the Nuclear Regulatory Commission have voted and approved the reprogramming waiver certification.

SEC. 402. The Nuclear Regulatory Commission shall require reactor licensees to re-evaluate the seismic, tsunami, flooding, and other external hazards at their sites against current applicable Commission requirements and guidance for such licenses as expeditiously as possible, and thereafter when appropriate, as determined by the Commission, and require each licensee to respond to the Commission that the design basis for each reactor meets the requirements of its license, current applicable Commission requirements and guidance for such license. Based upon the evaluations conducted pursuant to this section and other information it deems relevant, the Commission shall require licensees to update the design basis for each reactor, if necessary.

TITLE V

GENERAL PROVISIONS

Lobbying.

SEC. 501. None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.

SEC. 502. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in this Act or any other appropriation Act.

SEC. 503. None of the funds made available under this Act may be expended for any new hire by any Federal agency funded in this Act that is not verified through the E-Verify Program as described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

Corporations. Criminal violations. Determination.

SEC. 504. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent, and made a determination that this further action is not necessary to protect the interests of the Government.

Corporations. Tax liability. Determination.

SEC. 505. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

SEC. 506. None of the funds made available by this Act may be used in contravention of Executive Order No. 12898 of February 11, 1994 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations").

This division may be cited as the "Energy and Water Development and Related Agencies Appropriations Act, 2012".

Financial Services and General Government Appropriations Act, 2012.
Department of the Treasury Appropriations Act, 2012.

DIVISION C—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2012

TITLE I

DEPARTMENT OF THE TREASURY

DEPARTMENTAL OFFICES

SALARIES AND EXPENSES

For necessary expenses of the Departmental Offices including operation and maintenance of the Treasury Building and Annex; hire of passenger motor vehicles; maintenance, repairs, and improvements of, and purchase of commercial insurance policies for, real properties leased or owned overseas, when necessary for the performance of official business; terrorism and financial intelligence activities; executive direction program activities; international affairs and economic policy activities; domestic finance and tax policy activities; and Treasury-wide management policies and programs activities, $308,388,000: *Provided*, That of the amount appropriated under this heading, $100,000,000 is for the Office of Terrorism and Financial Intelligence, of which not to exceed $26,608,000 is available for administrative expenses: *Provided further,* That of the amount appropriated under this heading, not to exceed $3,000,000, to remain available until September 30, 2013, is for information technology modernization requirements; not to exceed $350,000 is for official reception and representation expenses; and not to exceed $258,000 is for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Secretary of the Treasury and to be accounted for solely on his certificate: *Provided further*, That of the amount appropriated under this heading, $6,787,000, to remain available until September 30, 2013, is for the Treasury-wide Financial Statement Audit and Internal Control Program: *Provided further*, That of the amount appropriated under this heading, $500,000, to remain available until September 30, 2013, is for secure space requirements: *Provided further*, That of the amount appropriated under this heading, up to $3,400,000, to remain available until September 30, 2014, is to develop and implement programs within the Office of Critical Infrastructure Protection and Compliance Policy, including entering into cooperative agreements: *Provided further,* That notwithstanding any other provision of law, of the amount appropriated under this heading, up to $1,000,000 may be contributed to the Organization for Economic Cooperation and Development for the Department's participation in programs related to global tax administration.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $29,641,000, including hire of passenger motor vehicles; of which not to exceed $100,000 shall be available for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Inspector General of the Treasury; and of which

not to exceed $2,500 shall be available for official reception and representation expenses.

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Treasury Inspector General for Tax Administration in carrying out the Inspector General Act of 1978, including purchase (not to exceed 150 for replacement only for police-type use) and hire of passenger motor vehicles (31 U.S.C. 1343(b)); services authorized by 5 U.S.C. 3109, at such rates as may be determined by the Inspector General for Tax Administration; $151,696,000, of which not to exceed $500,000 shall be available for unforeseen emergencies of a confidential nature, to be allocated and expended under the direction of the Inspector General for Tax Administration; and of which not to exceed $1,500 shall be available for official reception and representation expenses.

SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM

SALARIES AND EXPENSES

For necessary expenses of the Office of the Special Inspector General in carrying out the provisions of the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), $41,800,000.

FINANCIAL CRIMES ENFORCEMENT NETWORK

SALARIES AND EXPENSES

For necessary expenses of the Financial Crimes Enforcement Network, including hire of passenger motor vehicles; travel and training expenses, including for course development, of non-Federal and foreign government personnel to attend meetings and training concerned with domestic and foreign financial intelligence activities, law enforcement, and financial regulation; not to exceed $14,000 for official reception and representation expenses; and for assistance to Federal law enforcement agencies, with or without reimbursement, $110,788,000, of which not to exceed $34,335,000 shall remain available until September 30, 2014: *Provided*, That funds appropriated in this account may be used to procure personal services contracts.

TREASURY FORFEITURE FUND

(RESCISSION)

Of the unobligated balances available under this heading, $950,000,000 are rescinded.

FINANCIAL MANAGEMENT SERVICE

SALARIES AND EXPENSES

For necessary expenses of the Financial Management Service, $217,805,000, of which not to exceed $4,210,000 shall remain available until September 30, 2014, for information systems modernization initiatives; and of which not to exceed $2,500 shall be available for official reception and representation expenses.

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

SALARIES AND EXPENSES

For necessary expenses of carrying out section 1111 of the Homeland Security Act of 2002, including hire of passenger motor vehicles, $99,878,000; of which not to exceed $6,000 for official reception and representation expenses; not to exceed $50,000 for cooperative research and development programs for laboratory services; and provision of laboratory assistance to State and local agencies with or without reimbursement: *Provided*, That of the amount appropriated under this heading, $2,000,000 shall be for the costs of special law enforcement agents to target tobacco smuggling and other criminal diversion activities.

UNITED STATES MINT

UNITED STATES MINT PUBLIC ENTERPRISE FUND

Pursuant to section 5136 of title 31, United States Code, the United States Mint is provided funding through the United States Mint Public Enterprise Fund for costs associated with the production of circulating coins, numismatic coins, and protective services, including both operating expenses and capital investments. The aggregate amount of new liabilities and obligations incurred during fiscal year 2012 under such section 5136 for circulating coinage and protective service capital investments of the United States Mint shall not exceed $20,000,000.

BUREAU OF THE PUBLIC DEBT

ADMINISTERING THE PUBLIC DEBT

For necessary expenses connected with any public-debt issues of the United States, $173,635,000, of which not to exceed $2,500 shall be available for official reception and representation expenses, and of which not to exceed $10,000,000 shall remain available until September 30, 2014 to reduce improper payments: *Provided*, That the sum appropriated herein from the general fund for fiscal year 2012 shall be reduced by not more than $8,000,000 as definitive security issue fees and Legacy Treasury Direct Investor Account Maintenance fees are collected, so as to result in a final fiscal year 2012 appropriation from the general fund estimated at $165,635,000. In addition, $165,000 to be derived from the Oil Spill Liability Trust Fund to reimburse the Bureau for administrative and personnel expenses for financial management of the Fund, as authorized by section 1012 of Public Law 101–380.

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND
PROGRAM ACCOUNT

To carry out the Community Development Banking and Financial Institutions Act of 1994 (Public Law 103–325), including services authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for ES–3, notwithstanding section 4707(e) of title 12, United States Code with regard to Small and/or Emerging Community Development Financial Institutions Assistance awards, $221,000,000, to remain available until September 30, 2013; of which $12,000,000, notwithstanding section 4707(e) of title 12, United States Code, shall be for financial assistance, technical assistance, training and outreach programs, designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers; of which, notwithstanding section 108(d) of such Act, up to $22,000,000 shall be for a Healthy Food Financing Initiative to provide grants and loans to community development financial institutions for the purpose of offering affordable financing and technical assistance to expand the availability of healthy food options in distressed communities; of which $18,000,000 shall be for the Bank Enterprise Awards program; and of which up to $22,965,000 may be used for administrative expenses, including administration of the New Markets Tax Credit; of which up to $10,315,000 may be used for the cost of direct loans; and of which up to $250,000 may be used for administrative expenses to carry out the direct loan program: *Provided,* That the cost of direct loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $25,000,000: *Provided further,* That of the funds awarded under this heading, not less than 10 percent shall be used for projects that serve populations living in persistent poverty counties (where such term is defined as any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990, 2000, and 2010 decennial censuses).

INTERNAL REVENUE SERVICE

TAXPAYER SERVICES

For necessary expenses of the Internal Revenue Service to provide taxpayer services, including pre-filing assistance and education, filing and account services, taxpayer advocacy services, and other services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, $2,239,703,000, of which not less than $5,600,000 shall be for the Tax Counseling for the Elderly Program, of which not less than $9,750,000 shall be available for low-income taxpayer clinic grants, of which not less than $12,000,000, to remain available until September 30, 2013, shall be available for a Community Volunteer Income Tax Assistance matching grants program for tax return preparation assistance, of which not less than $205,000,000 shall be available for operating

expenses of the Taxpayer Advocate Service, and of which $15,481,000 shall be for expenses necessary to implement the tax credit in title II of division A of the Trade Act of 2002 (Public Law 107–210).

ENFORCEMENT

For necessary expenses for tax enforcement activities of the Internal Revenue Service to determine and collect owed taxes, to provide legal and litigation support, to conduct criminal investigations, to enforce criminal statutes related to violations of internal revenue laws and other financial crimes, to purchase (for police-type use, not to exceed 850) and hire passenger motor vehicles (31 U.S.C. 1343(b)), and to provide other services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner, $5,299,367,000, of which not less than $60,257,000 shall be for the Interagency Crime and Drug Enforcement program.

OPERATIONS SUPPORT

For necessary expenses of the Internal Revenue Service to support taxpayer services and enforcement programs, including rent payments; facilities services; printing; postage; physical security; headquarters and other IRS-wide administration activities; research and statistics of income; telecommunications; information technology development, enhancement, operations, maintenance, and security; the hire of passenger motor vehicles (31 U.S.C. 1343(b)); and other services as authorized by 5 U.S.C. 3109, at such rates as may be determined by the Commissioner; $3,947,416,000, of which up to $250,000,000 shall remain available until September 30, 2013, for information technology support; of which up to $65,000,000 shall remain available until expended for acquisition of real property, equipment, construction and renovation of facilities; of which not to exceed $1,000,000 shall remain available until September 30, 2014, for research; of which not less than $2,000,000 shall be for the Internal Revenue Service Oversight Board; of which not to exceed $25,000 shall be for official reception and representation expenses: *Provided*, That not later than 14 days after the end of each quarter of each fiscal year, the Internal Revenue Service shall submit a report to the House and Senate Committees on Appropriations and the Comptroller General of the United States detailing the cost and schedule performance for its major information technology investments, including the purpose and life-cycle stages of the investments; the reasons for any cost and schedule variances; the risks of such investments and strategies the Internal Revenue Service is using to mitigate such risks; and the expected developmental milestones to be achieved and costs to be incurred in the next quarter: *Provided further,* That the Internal Revenue Service shall include, in its budget justification for fiscal year 2013, a summary of cost and schedule performance information for its major information technology systems.

Deadlines.
Reports.
26 USC 7801 note.

BUSINESS SYSTEMS MODERNIZATION

For necessary expenses of the Internal Revenue Service's business systems modernization program, $330,210,000, to remain available until September 30, 2014, for the capital asset acquisition of information technology systems, including management and

related contractual costs of said acquisitions, including related Internal Revenue Service labor costs, and contractual costs associated with operations authorized by 5 U.S.C. 3109: *Provided*, That not later than 14 days after the end of each quarter of each fiscal year, the Internal Revenue Service shall submit a report to the House and Senate Committees on Appropriations and the Comptroller General of the United States detailing the cost and schedule performance for CADE2 and Modernized e-File information technology investments, including the purposes and life-cycle stages of the investments; the reasons for any cost and schedule variances; the risks of such investments and the strategies the Internal Revenue Service is using to mitigate such risks; and the expected developmental milestones to be achieved and costs to be incurred in the next quarter.

Deadline. Reports. 26 USC 7801 note.

ADMINISTRATIVE PROVISIONS—INTERNAL REVENUE SERVICE

(INCLUDING TRANSFER OF FUNDS)

SEC. 101. Not to exceed 5 percent of any appropriation made available in this Act to the Internal Revenue Service or not to exceed 3 percent of appropriations under the heading "Enforcement" may be transferred to any other Internal Revenue Service appropriation upon the advance approval of the Committees on Appropriations.

SEC. 102. The Internal Revenue Service shall maintain a training program to ensure that Internal Revenue Service employees are trained in taxpayers' rights, in dealing courteously with taxpayers, and in cross-cultural relations.

SEC. 103. The Internal Revenue Service shall institute and enforce policies and procedures that will safeguard the confidentiality of taxpayer information and protect taxpayers against identity theft.

Confidentiality. Identity theft.

SEC. 104. Funds made available by this or any other Act to the Internal Revenue Service shall be available for improved facilities and increased staffing to provide sufficient and effective 1–800 help line service for taxpayers. The Commissioner shall continue to make the improvement of the Internal Revenue Service 1–800 help line service a priority and allocate resources necessary to increase phone lines and staff to improve the Internal Revenue Service 1–800 help line service.

ADMINISTRATIVE PROVISIONS—DEPARTMENT OF THE TREASURY

(INCLUDING TRANSFERS OF FUNDS)

SEC. 105. Appropriations to the Department of the Treasury in this Act shall be available for uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901), including maintenance, repairs, and cleaning; purchase of insurance for official motor vehicles operated in foreign countries; purchase of motor vehicles without regard to the general purchase price limitations for vehicles purchased and used overseas for the current fiscal year; entering into contracts with the Department of State for the furnishing of health and medical services to employees and their dependents serving in foreign countries; and services authorized by 5 U.S.C. 3109.

SEC. 106. Not to exceed 2 percent of any appropriations in this Act made available to the Departmental Offices—Salaries and Expenses, Office of Inspector General, Special Inspector General for the Troubled Asset Relief Program, Financial Management Service, Alcohol and Tobacco Tax and Trade Bureau, Financial Crimes Enforcement Network, and Bureau of the Public Debt, may be transferred between such appropriations upon the advance approval of the Committees on Appropriations: *Provided*, That no transfer may increase or decrease any such appropriation by more than 2 percent.

SEC. 107. Not to exceed 2 percent of any appropriation made available in this Act to the Internal Revenue Service may be transferred to the Treasury Inspector General for Tax Administration's appropriation upon the advance approval of the Committees on Appropriations: *Provided*, That no transfer may increase or decrease any such appropriation by more than 2 percent.

Certification.

SEC. 108. Of the funds available for the purchase of law enforcement vehicles, no funds may be obligated until the Secretary of the Treasury certifies that the purchase by the respective Treasury bureau is consistent with departmental vehicle management principles: *Provided*, That the Secretary may delegate this authority to the Assistant Secretary for Management.

Delegation authority.

SEC. 109. None of the funds appropriated in this Act or otherwise available to the Department of the Treasury or the Bureau of Engraving and Printing may be used to redesign the $1 Federal Reserve note.

SEC. 110. The Secretary of the Treasury may transfer funds from Financial Management Service, Salaries and Expenses to the Debt Collection Fund as necessary to cover the costs of debt collection: *Provided*, That such amounts shall be reimbursed to such salaries and expenses account from debt collections received in the Debt Collection Fund.

SEC. 111. Section 122(g)(1) of Public Law 105–119 (5 U.S.C. 3104 note), is further amended by striking "12 years" and inserting "14 years".

SEC. 112. None of the funds appropriated or otherwise made available by this or any other Act may be used by the United States Mint to construct or operate any museum without the explicit approval of the Committees on Appropriations of the House of Representatives and the Senate, the House Committee on Financial Services, and the Senate Committee on Banking, Housing, and Urban Affairs.

SEC. 113. None of the funds appropriated or otherwise made available by this or any other Act or source to the Department of the Treasury, the Bureau of Engraving and Printing, and the United States Mint, individually or collectively, may be used to consolidate any or all functions of the Bureau of Engraving and Printing and the United States Mint without the explicit approval of the House Committee on Financial Services; the Senate Committee on Banking, Housing, and Urban Affairs; and the Committees on Appropriations of the House of Representatives and the Senate.

SEC. 114. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for the Department of the Treasury's intelligence or intelligence related activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during

fiscal year 2012 until the enactment of the Intelligence Authorization Act for Fiscal Year 2012.

SEC. 115. Not to exceed $5,000 shall be made available from the Bureau of Engraving and Printing's Industrial Revolving Fund for necessary official reception and representation expenses.

SEC. 116. Section 5114(c) of title 31, United States Code (relating to engraving and printing currency and security documents), is amended by striking "for a period of not more than 4 years".

SEC. 117. In the current fiscal year and each fiscal year hereafter, any person who forwards to the Bureau of Engraving and Printing a mutilated paper currency claim equal to or exceeding $10,000 for redemption will be required to provide the Bureau their taxpayer identification number. 31 USC 5120 note.

SEC. 118. Section 5318(g)(2)(A) of title 31, United States Code, is amended—

(1) by striking clause (i) and inserting the following:

"(i) neither the financial institution, director, officer, employee, or agent of such institution (whether or not any such person is still employed by the institution), nor any other current or former director, officer, or employee of, or contractor for, the financial institution or other reporting person, may notify any person involved in the transaction that the transaction has been reported; and"; and

(2) in clause (ii)—

(A) by striking "no officer or employee of" and inserting "no current or former officer or employee of or contractor for"; and

(B) by inserting "or for" before "any State".

SEC. 119. Section 5319 of title 31, United States Code (relating to availability of reports), is amended by inserting after "title 5" the following: ", and may not be disclosed under any State, local, tribal, or territorial 'freedom of information', 'open government', or similar law".

SEC. 120. Section 5331(a) of title 31, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following: "(1)(A) who is engaged in a trade or business, and";

(2) by redesignating paragraph (2) as subparagraph (B);

(3) in subparagraph (B), as so redesignated, by adding "or" at the end; and

(4) by inserting after subparagraph (B), as so redesignated, the following new paragraph:

"(2) who is required to file a report under section 6050I(g) of the Internal Revenue Code of 1986,".

SEC. 121. The Secretary of the Treasury shall submit a Capital Investment Plan to the Committees on Appropriations of the Senate and the House of Representatives not later than 30 days following the submission of the annual budget for the Administration submitted by the President: *Provided,* That such Capital Investment Plan shall include capital investment spending from all accounts within the Department of the Treasury, including but not limited to the Department-wide Systems and Capital Investment Programs account, the Working Capital Fund account, and the Treasury Forfeiture Fund account: *Provided further,* That such Capital Investment Plan shall include expenditures occurring in previous fiscal Plans. Deadline.

years for each capital investment project that has not been fully completed.

This title may be cited as the "Department of the Treasury Appropriations Act, 2012".

Executive Office of the President Appropriations Act, 2012.

TITLE II

EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

COMPENSATION OF THE PRESIDENT

For compensation of the President, including an expense allowance at the rate of $50,000 per annum as authorized by 3 U.S.C. 102, $450,000: *Provided*, That none of the funds made available for official expenses shall be expended for any other purpose and any unused amount shall revert to the Treasury pursuant to 31 U.S.C. 1552.

THE WHITE HOUSE

SALARIES AND EXPENSES

For necessary expenses for the White House as authorized by law, including not to exceed $3,850,000 for services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 105; subsistence expenses as authorized by 3 U.S.C. 105, which shall be expended and accounted for as provided in that section; hire of passenger motor vehicles, newspapers, periodicals, and travel (not to exceed $100,000 to be expended and accounted for as provided by 3 U.S.C. 103); and not to exceed $19,000 for official entertainment expenses, to be available for allocation within the Executive Office of the President; and for necessary expenses of the Office of Policy Development, including services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, $56,974,000.

EXECUTIVE RESIDENCE AT THE WHITE HOUSE

OPERATING EXPENSES

For the care, maintenance, repair and alteration, refurnishing, improvement, heating, and lighting, including electric power and fixtures, of the Executive Residence at the White House and official entertainment expenses of the President, $13,425,000, to be expended and accounted for as provided by 3 U.S.C. 105, 109, 110, and 112–114.

REIMBURSABLE EXPENSES

For the reimbursable expenses of the Executive Residence at the White House, such sums as may be necessary: *Provided*, That all reimbursable operating expenses of the Executive Residence shall be made in accordance with the provisions of this paragraph: *Provided further*, That, notwithstanding any other provision of law, such amount for reimbursable operating expenses shall be the exclusive authority of the Executive Residence to incur obligations and to receive offsetting collections, for such expenses: *Provided further*, That the Executive Residence shall require each person sponsoring

a reimbursable political event to pay in advance an amount equal to the estimated cost of the event, and all such advance payments shall be credited to this account and remain available until expended: *Provided further*, That the Executive Residence shall require the national committee of the political party of the President to maintain on deposit $25,000, to be separately accounted for and available for expenses relating to reimbursable political events sponsored by such committee during such fiscal year: *Provided further*, That the Executive Residence shall ensure that a written notice of any amount owed for a reimbursable operating expense under this paragraph is submitted to the person owing such amount within 60 days after such expense is incurred, and that such amount is collected within 30 days after the submission of such notice: *Provided further*, That the Executive Residence shall charge interest and assess penalties and other charges on any such amount that is not reimbursed within such 30 days, in accordance with the interest and penalty provisions applicable to an outstanding debt on a United States Government claim under 31 U.S.C. 3717: *Provided further*, That each such amount that is reimbursed, and any accompanying interest and charges, shall be deposited in the Treasury as miscellaneous receipts: *Provided further*, That the Executive Residence shall prepare and submit to the Committees on Appropriations, by not later than 90 days after the end of the fiscal year covered by this Act, a report setting forth the reimbursable operating expenses of the Executive Residence during the preceding fiscal year, including the total amount of such expenses, the amount of such total that consists of reimbursable official and ceremonial events, the amount of such total that consists of reimbursable political events, and the portion of each such amount that has been reimbursed as of the date of the report: *Provided further*, That the Executive Residence shall maintain a system for the tracking of expenses related to reimbursable events within the Executive Residence that includes a standard for the classification of any such expense as political or nonpolitical: *Provided further*, That no provision of this paragraph may be construed to exempt the Executive Residence from any other applicable requirement of subchapter I or II of chapter 37 of title 31, United States Code.

Notice.
Deadlines.

Interest.
Penalties.
Deadline.

Deadline.
Reports.

Records.

WHITE HOUSE REPAIR AND RESTORATION

For the repair, alteration, and improvement of the Executive Residence at the White House, $750,000, to remain available until expended, for required maintenance, resolution of safety and health issues, and continued preventative maintenance.

COUNCIL OF ECONOMIC ADVISERS

SALARIES AND EXPENSES

For necessary expenses of the Council of Economic Advisers in carrying out its functions under the Employment Act of 1946 (15 U.S.C. 1021 et seq.), $4,192,000.

NATIONAL SECURITY COUNCIL AND HOMELAND SECURITY COUNCIL

SALARIES AND EXPENSES

For necessary expenses of the National Security Council and the Homeland Security Council, including services as authorized by 5 U.S.C. 3109, $13,048,000.

OFFICE OF ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Office of Administration, including services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 107, and hire of passenger motor vehicles, $112,952,000, of which $10,403,000 shall remain available until expended for continued modernization of the information technology infrastructure within the Executive Office of the President.

OFFICE OF MANAGEMENT AND BUDGET

SALARIES AND EXPENSES

For necessary expenses of the Office of Management and Budget, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109 and to carry out the provisions of chapter 35 of title 44, United States Code, $89,456,000, of which not to exceed $3,000 shall be available for official representation expenses: *Provided*, That none of the funds appropriated in this Act for the Office of Management and Budget may be used for the purpose of reviewing any agricultural marketing orders or any activities or regulations under the provisions of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 et seq.): *Provided further*, That none of the funds made available for the Office of Management and Budget by this Act may be expended for the altering of the transcript of actual testimony of witnesses, except for testimony of officials of the Office of Management and Budget, before the Committees on Appropriations or their subcommittees: *Provided further*, That none of the funds provided in this or prior Acts shall be used, directly or indirectly, by the Office of Management and Budget, for evaluating or determining if water resource project or study reports submitted by the Chief of Engineers acting through the Secretary of the Army are in compliance with all applicable laws, regulations, and requirements relevant to the Civil Works water resource planning process: *Provided further*, That the Office of Management and Budget shall have not more than 60 days in which to perform budgetary policy reviews of water resource matters on which the Chief of Engineers has reported: *Provided further*, That the Director of the Office of Management and Budget shall notify the appropriate authorizing and appropriating committees when the 60-day review is initiated: *Provided further*, That if water resource reports have not been transmitted to the appropriate authorizing and appropriating committees within 15 days after the end of the Office of Management and Budget review period based on the notification from the Director, Congress shall assume Office of Management and Budget concurrence with the report and act accordingly.

Time period.
Policy review.

Notification.

Deadline.

OFFICE OF NATIONAL DRUG CONTROL POLICY

SALARIES AND EXPENSES

For necessary expenses of the Office of National Drug Control Policy; for research activities pursuant to the Office of National Drug Control Policy Reauthorization Act of 2006 (Public Law 109–469); not to exceed $10,000 for official reception and representation expenses; and for participation in joint projects or in the provision of services on matters of mutual interest with nonprofit, research, or public organizations or agencies, with or without reimbursement, $24,500,000: *Provided*, That the Office is authorized to accept, hold, administer, and utilize gifts, both real and personal, public and private, without fiscal year limitation, for the purpose of aiding or facilitating the work of the Office.

21 USC 1702 note.

FEDERAL DRUG CONTROL PROGRAMS

HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Office of National Drug Control Policy's High Intensity Drug Trafficking Areas Program, $238,522,000, to remain available until September 30, 2013, for drug control activities consistent with the approved strategy for each of the designated High Intensity Drug Trafficking Areas ("HIDTAs"), of which not less than 51 percent shall be transferred to State and local entities for drug control activities and shall be obligated not later than 120 days after enactment of this Act: *Provided*, That up to 49 percent may be transferred to Federal agencies and departments in amounts determined by the Director of the Office of National Drug Control Policy, of which up to $2,700,000 may be used for auditing services and associated activities (including up to $500,000 to ensure the continued operation and maintenance of the Performance Management System): *Provided further,* That, notwithstanding the requirements of Public Law 106–58, any unexpended funds obligated prior to fiscal year 2010 may be used for any other approved activities of that HIDTA, subject to reprogramming requirements: *Provided further*, That each HIDTA designated as of September 30, 2011, shall be funded at not less than the fiscal year 2011 base level, unless the Director submits to the Committees on Appropriations of the House of Representatives and the Senate justification for changes to those levels based on clearly articulated priorities and published Office of National Drug Control Policy performance measures of effectiveness: *Provided further*, That the Director shall notify the Committees on Appropriations of the initial allocation of fiscal year 2012 funding among HIDTAs not later than 45 days after enactment of this Act, and shall notify the Committees of planned uses of discretionary HIDTA funding, as determined in consultation with the HIDTA Directors, not later than 90 days after enactment of this Act.

Deadline.

Funding justification.

Notifications. Deadlines.

OTHER FEDERAL DRUG CONTROL PROGRAMS

(INCLUDING TRANSFERS OF FUNDS)

For other drug control activities authorized by the Office of National Drug Control Policy Reauthorization Act of 2006 (Public Law 109–469), $105,550,000, to remain available until expended, which shall be available as follows: $92,000,000 for the Drug-Free Communities Program, of which $2,000,000 shall be made available as directed by section 4 of Public Law 107–82, as amended by Public Law 109–469 (21 U.S.C. 1521 note); $1,400,000 for drug court training and technical assistance; $9,000,000 for anti-doping activities; $1,900,000 for the United States membership dues to the World Anti-Doping Agency; and $1,250,000 shall be made available as directed by section 1105 of Public Law 109–469.

INTEGRATED, EFFICIENT AND EFFECTIVE USES OF INFORMATION TECHNOLOGY

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the furtherance of integrated, efficient and effective uses of information technology in the Federal Government, $5,000,000, to remain available until expended: *Provided*, That the Director of the Office of Management and Budget may transfer these funds to one or more other agencies to carry out projects to meet these purposes: *Provided further*, That the Director of the Office of Management and Budget shall submit quarterly reports to the Committees on Appropriations of the House and the Senate identifying the savings achieved by the Office of Management and Budget's government-wide information technology reform efforts: *Provided further*, That such report shall include savings identified by fiscal year, agency and appropriation.

Deadlines.
Reports.

UNANTICIPATED NEEDS

For expenses necessary to enable the President to meet unanticipated needs, in furtherance of the national interest, security, or defense which may arise at home or abroad during the current fiscal year, as authorized by 3 U.S.C. 108, $988,000, to remain available until September 30, 2013.

SPECIAL ASSISTANCE TO THE PRESIDENT

SALARIES AND EXPENSES

For necessary expenses to enable the Vice President to provide assistance to the President in connection with specially assigned functions; services as authorized by 5 U.S.C. 3109 and 3 U.S.C. 106, including subsistence expenses as authorized by 3 U.S.C. 106, which shall be expended and accounted for as provided in that section; and hire of passenger motor vehicles, $4,328,000.

OFFICIAL RESIDENCE OF THE VICE PRESIDENT

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For the care, operation, refurnishing, improvement, and to the extent not otherwise provided for, heating and lighting, including electric power and fixtures, of the official residence of the Vice President; the hire of passenger motor vehicles; and not to exceed $90,000 for official entertainment expenses of the Vice President, to be accounted for solely on his certificate, $307,000: *Provided*, That advances or repayments or transfers from this appropriation may be made to any department or agency for expenses of carrying out such activities.

ADMINISTRATIVE PROVISIONS—EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE PRESIDENT

(INCLUDING TRANSFERS OF FUNDS AND RESCISSIONS)

Time period. Notification.

SEC. 201. From funds made available in this Act under the headings "The White House", "Executive Residence at the White House", "White House Repair and Restoration", "Council of Economic Advisers", "National Security Council and Homeland Security Council", "Office of Administration", "Special Assistance to the President", and "Official Residence of the Vice President", the Director of the Office of Management and Budget (or such other officer as the President may designate in writing), may, 15 days after giving notice to the Committees on Appropriations of the House of Representatives and the Senate, transfer not to exceed 10 percent of any such appropriation to any other such appropriation, to be merged with and available for the same time and for the same purposes as the appropriation to which transferred: *Provided*, That the amount of an appropriation shall not be increased by more than 50 percent by such transfers: *Provided further*, That no amount shall be transferred from "Special Assistance to the President" or "Official Residence of the Vice President" without the approval of the Vice President.

Reports.

SEC. 202. The Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House and the Senate a report on the implementation of Executive Order No. 13563 (76 Fed. Reg. 3821; relating to Improving Regulation and Regulatory Review) by April 2, 2012. The report shall include information on—

(a) increasing public participation in the rulemaking process and reducing uncertainty;

(b) improving coordination across Federal agencies to eliminate redundant, inconsistent, and overlapping regulations; and

(c) identifying existing regulations that have been reviewed and determined to be outmoded, ineffective, or excessively burdensome.

Deadline. Reports.

SEC. 203. Within 120 days after the date of enactment of this section, the Director of the Office of Management and Budget shall submit a report to the Committees on Appropriations of the House and the Senate on the costs of implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203). Such report shall include—

(1) the estimated mandatory and discretionary obligations of funds through fiscal year 2014, by Federal agency and by fiscal year, including—

(A) the estimated obligations by cost inputs such as rent, information technology, contracts, and personnel;

(B) the methodology and data sources used to calculate such estimated obligations; and

(C) the specific section of such Act that requires the obligation of funds; and

(2) the estimated receipts through fiscal year 2014 from assessments, user fees, and other fees by the Federal agency making the collections, by fiscal year, including—

(A) the methodology and data sources used to calculate such estimated collections; and

(B) the specific section of such Act that authorizes the collection of funds.

Deadlines. Reports.

SEC. 204. The Director of the Office of National Drug Control Policy shall submit to the Committees on Appropriations of the House of Representatives and the Senate not later than 60 days after the date of enactment of this Act, and prior to the initial obligation of more than 20 percent of the funds appropriated in any account under the heading "Office of National Drug Control Policy", a detailed narrative and financial plan on the proposed uses of all funds under the account by program, project, and activity: *Provided*, That the reports required by this section shall be updated and submitted to the Committees on Appropriations every 6 months and shall include information detailing how the estimates and assumptions contained in previous reports have changed: *Provided further*, That any new projects and changes in funding of ongoing projects shall be subject to the prior approval of the Committees on Appropriations.

SEC. 205. Not to exceed 2 percent of any appropriations in this Act made available to the Office of National Drug Control Policy may be transferred between appropriated programs upon the advance approval of the Committees on Appropriations: *Provided*, That no transfer may increase or decrease any such appropriation by more than 3 percent.

SEC. 206. Not to exceed $1,000,000 of any appropriations in this Act made available to the Office of National Drug Control Policy may be reprogrammed within a program, project, or activity upon the advance approval of the Committees on Appropriations.

SEC. 207. From the unobligated balances of prior year appropriations made available for the Counterdrug Technology Assessment Center, $5,244,639 are rescinded.

SEC. 208. From the unobligated balances of prior year appropriations made available for Other Federal Drug Control Programs, $359,958 for a chronic users study and $5,723,403 for the National Anti-Drug Youth Media Campaign are rescinded.

SEC. 209. Of the unobligated balances available under the heading "Executive Office of the President and Funds Appropriated to the President—Partnership Fund for Program Integrity Innovation" in title II of division C of the Consolidated Appropriations Act, 2010 (Public Law 111–117), $10,000,000 are rescinded. In addition to the amounts made available under such heading in this Act, $10,000,000 are appropriated, to remain available until September 30, 2013.

This title may be cited as the "Executive Office of the President Appropriations Act, 2012".

Judiciary Appropriations Act, 2012.

TITLE III

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

SALARIES AND EXPENSES

For expenses necessary for the operation of the Supreme Court, as required by law, excluding care of the building and grounds, including purchase or hire, driving, maintenance, and operation of an automobile for the Chief Justice, not to exceed $10,000 for the purpose of transporting Associate Justices, and hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; not to exceed $10,000 for official reception and representation expenses; and for miscellaneous expenses, to be expended as the Chief Justice may approve, $74,819,000, of which $2,000,000 shall remain available until expended.

CARE OF THE BUILDING AND GROUNDS

For such expenditures as may be necessary to enable the Architect of the Capitol to carry out the duties imposed upon the Architect by 40 U.S.C. 6111 and 6112, $8,159,000, to remain available until expended.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SALARIES AND EXPENSES

For salaries of the chief judge, judges, and other officers and employees, and for necessary expenses of the court, as authorized by law, $32,511,000.

UNITED STATES COURT OF INTERNATIONAL TRADE

SALARIES AND EXPENSES

For salaries of the chief judge and eight judges, salaries of the officers and employees of the court, services, and necessary expenses of the court, as authorized by law, $21,447,000.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For the salaries of circuit and district judges (including judges of the territorial courts of the United States), justices and judges retired from office or from regular active service, judges of the United States Court of Federal Claims, bankruptcy judges, magistrate judges, and all other officers and employees of the Federal Judiciary not otherwise specifically provided for, necessary expenses of the courts, and the purchase, rental, repair, and cleaning of uniforms for Probation and Pretrial Services Office staff, as authorized by law, $5,015,000,000 (including the purchase of firearms

and ammunition); of which not to exceed $27,817,000 shall remain available until expended for space alteration projects and for furniture and furnishings related to new space alteration and construction projects.

In addition, for expenses of the United States Court of Federal Claims associated with processing cases under the National Childhood Vaccine Injury Act of 1986 (Public Law 99–660), not to exceed $5,000,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

DEFENDER SERVICES

For the operation of Federal Defender organizations; the compensation and reimbursement of expenses of attorneys appointed to represent persons under 18 U.S.C. 3006A and 3599, and for the compensation and reimbursement of expenses of persons furnishing investigative, expert, and other services for such representations as authorized by law; the compensation (in accordance with the maximums under 18 U.S.C. 3006A) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel; the compensation and reimbursement of expenses of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. 1875(d)(1); the compensation and reimbursement of expenses of attorneys appointed under 18 U.S.C. 983(b)(1) in connection with certain judicial civil forfeiture proceedings; the compensation and reimbursement of travel expenses of guardians ad litem appointed under 18 U.S.C. 4100(b); and for necessary training and general administrative expenses, $1,031,000,000, to remain available until expended.

FEES OF JURORS AND COMMISSIONERS

For fees and expenses of jurors as authorized by 28 U.S.C. 1871 and 1876; compensation of jury commissioners as authorized by 28 U.S.C. 1863; and compensation of commissioners appointed in condemnation cases pursuant to rule 71.1(h) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix Rule 71.1(h)), $51,908,000, to remain available until expended: *Provided*, That the compensation of land commissioners shall not exceed the daily equivalent of the highest rate payable under 5 U.S.C. 5332.

COURT SECURITY

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses, not otherwise provided for, incident to the provision of protective guard services for United States courthouses and other facilities housing Federal court operations, and the procurement, installation, and maintenance of security systems and equipment for United States courthouses and other facilities housing Federal court operations, including building ingress-egress control, inspection of mail and packages, directed security patrols, perimeter security, basic security services provided by the Federal Protective Service, and other similar activities as authorized by section 1010 of the Judicial Improvement and Access to Justice Act (Public Law 100–702), $500,000,000, of which not

to exceed $15,000,000 shall remain available until expended, to be expended directly or transferred to the United States Marshals Service, which shall be responsible for administering the Judicial Facility Security Program consistent with standards or guidelines agreed to by the Director of the Administrative Office of the United States Courts and the Attorney General.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

SALARIES AND EXPENSES

For necessary expenses of the Administrative Office of the United States Courts as authorized by law, including travel as authorized by 31 U.S.C. 1345, hire of a passenger motor vehicle as authorized by 31 U.S.C. 1343(b), advertising and rent in the District of Columbia and elsewhere, $82,909,000, of which not to exceed $8,500 is authorized for official reception and representation expenses.

FEDERAL JUDICIAL CENTER

SALARIES AND EXPENSES

For necessary expenses of the Federal Judicial Center, as authorized by Public Law 90–219, $27,000,000; of which $1,800,000 shall remain available through September 30, 2013, to provide education and training to Federal court personnel; and of which not to exceed $1,500 is authorized for official reception and representation expenses.

JUDICIAL RETIREMENT FUNDS

PAYMENT TO JUDICIARY TRUST FUNDS

For payment to the Judicial Officers' Retirement Fund, as authorized by 28 U.S.C. 377(o), $86,968,000; to the Judicial Survivors' Annuities Fund, as authorized by 28 U.S.C. 376(c), $12,600,000; and to the United States Court of Federal Claims Judges' Retirement Fund, as authorized by 28 U.S.C. 178(l), $4,200,000.

UNITED STATES SENTENCING COMMISSION

SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, $16,500,000, of which not to exceed $1,000 is authorized for official reception and representation expenses.

ADMINISTRATIVE PROVISIONS—THE JUDICIARY

(INCLUDING TRANSFER OF FUNDS)

SEC. 301. Appropriations and authorizations made in this title which are available for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

SEC. 302. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Judiciary in this Act

may be transferred between such appropriations, but no such appropriation, except "Courts of Appeals, District Courts, and Other Judicial Services, Defender Services" and "Courts of Appeals, District Courts, and Other Judicial Services, Fees of Jurors and Commissioners", shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this section shall be treated as a reprogramming of funds under sections 604 and 608 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in section 608.

SEC. 303. Notwithstanding any other provision of law, the salaries and expenses appropriation for "Courts of Appeals, District Courts, and Other Judicial Services" shall be available for official reception and representation expenses of the Judicial Conference of the United States: *Provided*, That such available funds shall not exceed $11,000 and shall be administered by the Director of the Administrative Office of the United States Courts in the capacity as Secretary of the Judicial Conference.

Applicability.

SEC. 304. Section 3314(a) of title 40, United States Code, shall be applied by substituting "Federal" for "executive" each place it appears.

Security services.

SEC. 305. In accordance with 28 U.S.C. 561–569, and notwithstanding any other provision of law, the United States Marshals Service shall provide, for such courthouses as its Director may designate in consultation with the Director of the Administrative Office of the United States Courts, for purposes of a pilot program, the security services that 40 U.S.C. 1315 authorizes the Department of Homeland Security to provide, except for the services specified in 40 U.S.C. 1315(b)(2)(E). For building-specific security services at these courthouses, the Director of the Administrative Office of the United States Courts shall reimburse the United States Marshals Service rather than the Department of Homeland Security.

Reimbursement.

SEC. 306. Section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 28 U.S.C. 133 note), is amended—

(1) in the third sentence (relating to the District of Kansas), by striking "20 years" and inserting "21 years"; and

(2) in the seventh sentence (related to the District of Hawaii), by striking "17 years" and inserting "18 years".

This title may be cited as the "Judiciary Appropriations Act, 2012".

District of Columbia Appropriations Act, 2012.

TITLE IV

DISTRICT OF COLUMBIA

FEDERAL FUNDS

FEDERAL PAYMENT FOR RESIDENT TUITION SUPPORT

For a Federal payment to the District of Columbia, to be deposited into a dedicated account, for a nationwide program to be administered by the Mayor, for District of Columbia resident tuition support, $30,000,000, to remain available until expended: *Provided*, That such funds, including any interest accrued thereon, may be used on behalf of eligible District of Columbia residents to pay an amount based upon the difference between in-State and out-of-State tuition at public institutions of higher education, or

to pay up to $2,500 each year at eligible private institutions of higher education: *Provided further*, That the awarding of such funds may be prioritized on the basis of a resident's academic merit, the income and need of eligible students and such other factors as may be authorized: *Provided further*, That the District of Columbia government shall maintain a dedicated account for the Resident Tuition Support Program that shall consist of the Federal funds appropriated to the Program in this Act and any subsequent appropriations, any unobligated balances from prior fiscal years, and any interest earned in this or any fiscal year: *Provided further*, That the account shall be under the control of the District of Columbia Chief Financial Officer, who shall use those funds solely for the purposes of carrying out the Resident Tuition Support Program: *Provided further*, That the Office of the Chief Financial Officer shall provide a quarterly financial report to the Committees on Appropriations of the House of Representatives and the Senate for these funds showing, by object class, the expenditures made and the purpose therefor.

Accounts.

Deadlines.
Reports.

FEDERAL PAYMENT FOR EMERGENCY PLANNING AND SECURITY COSTS IN THE DISTRICT OF COLUMBIA

For a Federal payment of necessary expenses, as determined by the Mayor of the District of Columbia in written consultation with the elected county or city officials of surrounding jurisdictions, $14,900,000, to remain available until expended and in addition any funds that remain available from prior year appropriations under this heading for the District of Columbia Government, for the costs of providing public safety at events related to the presence of the national capital in the District of Columbia, including support requested by the Director of the United States Secret Service Division in carrying out protective duties under the direction of the Secretary of Homeland Security, and for the costs of providing support to respond to immediate and specific terrorist threats or attacks in the District of Columbia or surrounding jurisdictions.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA COURTS

For salaries and expenses for the District of Columbia Courts, $232,841,000 to be allocated as follows: for the District of Columbia Court of Appeals, $12,830,000, of which not to exceed $2,500 is for official reception and representation expenses; for the District of Columbia Superior Court, $114,209,000, of which not to exceed $2,500 is for official reception and representation expenses; for the District of Columbia Court System, $66,712,000, of which not to exceed $2,500 is for official reception and representation expenses; and $39,090,000, to remain available until September 30, 2013, for capital improvements for District of Columbia courthouse facilities: *Provided*, That funds made available for capital improvements shall be expended consistent with the District of Columbia Courts master plan study and building evaluation report: *Provided further*, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies: *Provided further*, That 30 days after providing written notice to the Committees on Appropriations of the House of Representatives and the Senate, the

Time period.
Notification.

District of Columbia Courts may reallocate not more than $3,000,000 of the funds provided under this heading among the items and entities funded under this heading but no such allocation shall be increased by more than 10 percent.

FEDERAL PAYMENT FOR DEFENDER SERVICES IN DISTRICT OF COLUMBIA COURTS

(INCLUDING TRANSFER OF FUNDS)

For payments authorized under section 11–2604 and section 11–2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act), payments for counsel appointed in proceedings in the Family Court of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Official Code, or pursuant to contractual agreements to provide guardian ad litem representation, training, technical assistance, and such other services as are necessary to improve the quality of guardian ad litem representation, payments for counsel appointed in adoption proceedings under chapter 3 of title 16, D.C. Official Code, and payments authorized under section 21–2060, D.C. Official Code (relating to services provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986), $55,000,000, to remain available until expended: *Provided,* That funds provided under this heading shall be administered by the Joint Committee on Judicial Administration in the District of Columbia: *Provided further*, That notwithstanding any other provision of law, this appropriation shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for expenses of other Federal agencies: *Provided further,* That not more than $10,000,000 of the funds provided in this account may be transferred to, and merged with, funds made available under the heading "Federal Payment to the District of Columbia Courts" for District of Columbia courthouse facilities.

FEDERAL PAYMENT TO THE COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

For salaries and expenses, including the transfer and hire of motor vehicles, of the Court Services and Offender Supervision Agency for the District of Columbia, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997, $212,983,000, of which not to exceed $2,000 is for official reception and representation expenses related to Community Supervision and Pretrial Services Agency programs; of which not to exceed $25,000 is for dues and assessments relating to the implementation of the Court Services and Offender Supervision Agency Interstate Supervision Act of 2002; of which $1,000,000 shall remain available until September 30, 2014 for relocation of the Pretrial Services Agency drug testing laboratory; of which $153,548,000 shall be for necessary expenses of Community Supervision and Sex Offender Registration, to include expenses relating to the supervision of adults subject to protection orders or the provision of services for or related to such persons; of which $59,435,000 shall be available to the Pretrial Services Agency: *Provided*, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by

the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies: *Provided further*, That not less than $1,500,000 shall be available for re-entrant housing in the District of Columbia: *Provided further*, That the Director is authorized to accept and use gifts in the form of in-kind contributions of space and hospitality to support offender and defendant programs, and equipment and vocational training services to educate and train offenders and defendants: *Provided further*, That the Director shall keep accurate and detailed records of the acceptance and use of any gift or donation under the previous proviso, and shall make such records available for audit and public inspection: *Provided further*, That the Court Services and Offender Supervision Agency Director is authorized to accept and use reimbursement from the District of Columbia Government for space and services provided on a cost reimbursable basis.

Records. Public information.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA PUBLIC DEFENDER SERVICE

For salaries and expenses, including the transfer and hire of motor vehicles, of the District of Columbia Public Defender Service, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997, $37,241,000: *Provided*, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of Federal agencies.

FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

For a Federal payment to the District of Columbia Water and Sewer Authority, $15,000,000, to remain available until expended, to continue implementation of the Combined Sewer Overflow Long-Term Plan: *Provided*, That the District of Columbia Water and Sewer Authority provides a 100 percent match for this payment.

FEDERAL PAYMENT TO THE CRIMINAL JUSTICE COORDINATING COUNCIL

For a Federal payment to the Criminal Justice Coordinating Council, $1,800,000, to remain available until expended, to support initiatives related to the coordination of Federal and local criminal justice resources in the District of Columbia.

FEDERAL PAYMENT FOR JUDICIAL COMMISSIONS

For a Federal payment, to remain available until September 30, 2013, to the Commission on Judicial Disabilities and Tenure, $295,000, and for the Judicial Nomination Commission, $205,000.

FEDERAL PAYMENT FOR SCHOOL IMPROVEMENT

For a Federal payment for a school improvement program in the District of Columbia, $60,000,000, to remain available until expended, for payments authorized under the Scholarship for Opportunity and Results Act (division C of Public Law 112–10).

FEDERAL PAYMENT FOR THE DISTRICT OF COLUMBIA NATIONAL GUARD

For a Federal payment to the District of Columbia National Guard, $375,000, to remain available until expended for the Major General David F. Wherley, Jr. District of Columbia National Guard Retention and College Access Program.

FEDERAL PAYMENT FOR TESTING AND TREATMENT OF HIV/AIDS

For a Federal payment to the District of Columbia for the testing of individuals for, and the treatment of individuals with, human immunodeficiency virus and acquired immunodeficiency syndrome in the District of Columbia, $5,000,000.

DISTRICT OF COLUMBIA FUNDS

The following amounts are appropriated for the District of Columbia for the current fiscal year out of the General Fund of the District of Columbia ("General Fund"), except as otherwise specifically provided: *Provided*, That notwithstanding any other provision of law, except as provided in section 450A of the District of Columbia Home Rule Act, (114 Stat. 2440; D.C. Official Code, section 1–204.50a) and provisions of this Act, the total amount appropriated in this Act for operating expenses for the District of Columbia for fiscal year 2012 under this heading shall not exceed the lesser of the sum of the total revenues of the District of Columbia for such fiscal year or $10,916,966,000 (of which $6,208,646,000 shall be from local funds, (including $526,594,000 from dedicated taxes), $1,015,449,000 shall be from Federal grant funds, $1,499,115,000 from Medicaid payments, $2,040,504,000 shall be from other funds, and $25,677,000 shall be from private funds, and $127,575,000 shall be from funds previously appropriated in this Act as Federal payments: *Provided further,* That of the local funds, such amounts as may be necessary may be derived from the District's General Fund balance: *Provided further*, That of these funds the District's intra-District authority shall be $619,632,000: in addition, for capital construction projects, an increase of $4,007,501,000, of which $2,934,011,000 shall be from local funds, $223,858,000 from the District of Columbia Highway Trust Fund, $33,140,000 from the Local Transportation Fund, $816,492,000 from Federal grant funds, and a rescission of $2,849,882,000 of which $1,796,345,000 shall be from local funds, $749,426,000 from Federal grant funds, $252,694,000 from the District of Columbia Highway Trust Fund, and $51,416,000 from the Local Transportation Fund appropriated under this heading in prior fiscal years, for a net amount of $1,157,619,000, to remain available until expended: *Provided further,* That the amounts provided under this heading are to be available, allocated, and expended as proposed under title III of the Fiscal Year 2012 Budget Request Act of 2011, at the rate set forth under "District of Columbia Funds Division of Expenses" as included in the Fiscal Year 2012 Proposed Budget and Financial Plan submitted to the Congress by the District of Columbia: *Provided further*, That this amount may be increased by proceeds of one-time transactions, which are expended for emergency or unanticipated operating or capital needs: *Provided further*, That such increases shall be approved by enactment of local District law and shall comply with all reserve requirements contained in the District of Columbia Home Rule Act: *Provided further*, That

Rescission.

the Chief Financial Officer of the District of Columbia shall take such steps as are necessary to assure that the District of Columbia meets these requirements, including the apportioning by the Chief Financial Officer of the appropriations and funds made available to the District during fiscal year 2012, except that the Chief Financial Officer may not reprogram for operating expenses any funds derived from bonds, notes, or other obligations issued for capital projects.

This title may be cited as the "District of Columbia Appropriations Act, 2012".

TITLE V

INDEPENDENT AGENCIES

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SALARIES AND EXPENSES

For necessary expenses of the Administrative Conference of the United States, authorized by 5 U.S.C. 591 et seq., $2,900,000, to remain available until September 30, 2013, of which not to exceed $1,000 is for official reception and representation expenses.

CHRISTOPHER COLUMBUS FELLOWSHIP FOUNDATION

SALARIES AND EXPENSES

For payment to the Christopher Columbus Fellowship Foundation, established by section 423 of Public Law 102–281, $450,000, to remain available until expended.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable under 5 U.S.C. 5376, purchase of nominal awards to recognize non-Federal officials' contributions to Commission activities, and not to exceed $4,000 for official reception and representation expenses, $114,500,000, of which $500,000 shall remain available until September 30, 2013, to implement the Virginia Graeme Baker Pool and Spa Safety Act grant program as provided by section 1405 of Public Law 110–140 (15 U.S.C. 8004).

ADMINISTRATIVE PROVISIONS—CONSUMER PRODUCT SAFETY COMMISSION

SEC. 501. Section 4(g) of the Consumer Product Safety Act (15 U.S.C. 2053(g)) is amended by adding at the end the following:

"(5) The Chairman may provide to officers and employees of the Commission who are appointed or assigned by the Commission to serve abroad (as defined in section 102 of the Foreign Service Act of 1980 (22 U.S.C. 3902)) travel benefits similar to those authorized for members of the Foreign Service

of the United Service under chapter 9 of such Act (22 U.S.C. 4081 et seq.).".

SEC. 502. (a) EXTENSION OF GRANT PROGRAM.—Section 1405(e) of the Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. 8004(e)) is amended by striking "2011" and inserting "2012".

(b) NEW SWIMMING POOLS.—Section 1405(b) of the Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. 8004 (b)) is amended by inserting "constructed after the date that is 6 months after the date of enactment of the Financial Services and General Government Appropriations Act, 2012" after "swimming pools".

Deadline. Reports.

SEC. 503. Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an analysis of the potential safety risks associated with new and emerging consumer products, including chemicals and other materials used in their manufacture, taking into account the ability and authority of the Consumer Product Safety Commission—

(1) to identify, assess, and address such risks in a timely manner; and

(2) to keep abreast of the effects of new and emerging consumer products on public health and safety.

Deadline. Reports.

SEC. 504. Not later than 150 days after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an analysis of—

(1) the extent to which manufacturers comply with voluntary industry standards for consumer products, particularly with respect to inexpensive, imported products;

(2) whether there are consequences for such manufacturers for failing to comply with such standards;

(3) whether the Consumer Product Safety Commission has the authority and the ability to require compliance with such standards; and

(4) whether there are patterns of non-compliance with such standards among certain types of products or certain types of manufacturers.

ELECTION ASSISTANCE COMMISSION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the Help America Vote Act of 2002 (Public Law 107–252), $11,500,000, of which $2,750,000 shall be transferred to the National Institute of Standards and Technology for election reform activities authorized under the Help America Vote Act of 2002, and of which $1,250,000 shall be for the Office of Inspector General.

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Communications Commission, as authorized by law, including uniforms and allowances therefor, as authorized by 5 U.S.C. 5901–5902; not to exceed $4,000 for official reception and representation expenses; purchase and hire of motor vehicles; special counsel fees; and services as

authorized by 5 U.S.C. 3109, $339,844,000: *Provided*, That $339,844,000 of offsetting collections shall be assessed and collected pursuant to section 9 of title I of the Communications Act of 1934, shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced as such offsetting collections are received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation estimated at $0: *Provided further*, That any offsetting collections received in excess of $339,844,000 in fiscal year 2012 shall not be available for obligation: *Provided further*, That remaining offsetting collections from prior years collected in excess of the amount specified for collection in each such year and otherwise becoming available on October 1, 2011, shall not be available for obligation: *Provided further*, That notwithstanding 47 U.S.C. 309(j)(8)(B), proceeds from the use of a competitive bidding system that may be retained and made available for obligation shall not exceed $85,000,000 for fiscal year 2012: *Provided further,* That of the amount appropriated under this heading, not less than $9,750,000 shall be for the salaries and expenses of the Office of Inspector General.

ADMINISTRATIVE PROVISIONS—FEDERAL COMMUNICATIONS COMMISSION

SEC. 510. Section 302 of the Universal Service Antideficiency Temporary Suspension Act is amended by striking "December 31, 2011", each place it appears and inserting "December 31, 2013". 118 Stat. 3998.

SEC. 511. None of the funds appropriated by this Act may be used by the Federal Communications Commission to modify, amend, or change its rules or regulations for universal service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments.

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $45,261,000, to be derived from the Deposit Insurance Fund or, only when appropriate, the FSLIC Resolution Fund.

FEDERAL ELECTION COMMISSION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the Federal Election Campaign Act of 1971, $66,367,000, of which not to exceed $5,000 shall be available for reception and representation expenses.

FEDERAL LABOR RELATIONS AUTHORITY

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Federal Labor Relations Authority, pursuant to Reorganization Plan Numbered 2 of 1978, and the Civil Service Reform Act of 1978, including services authorized by 5 U.S.C. 3109, and including hire of experts and consultants, hire of passenger motor vehicles, and including official reception and representation expenses (not to exceed $1,500) and rental of conference rooms in the District of Columbia and elsewhere, $24,723,000: *Provided*, That public members of the Federal Service Impasses Panel may be paid travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons employed intermittently in the Government service, and compensation as authorized by 5 U.S.C. 3109: *Provided further*, That notwithstanding 31 U.S.C. 3302, funds received from fees charged to non-Federal participants at labor-management relations conferences shall be credited to and merged with this account, to be available without further appropriation for the costs of carrying out these conferences.

FEDERAL TRADE COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed $2,000 for official reception and representation expenses, $311,563,000, to remain available until expended: *Provided*, That not to exceed $300,000 shall be available for use to contract with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718: *Provided further*, That, notwithstanding any other provision of law, not to exceed $108,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a), regardless of the year of collection, shall be retained and used for necessary expenses in this appropriation: *Provided further*, That, notwithstanding any other provision of law, not to exceed $21,000,000 in offsetting collections derived from fees sufficient to implement and enforce the Telemarketing Sales Rule, promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.), shall be credited to this account, and be retained and used for necessary expenses in this appropriation: *Provided further*, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 2012, so as to result in a final fiscal year 2012 appropriation from the general fund estimated at not more than $182,563,000: *Provided further*, That none of the funds made available to the Federal Trade Commission may be used to implement subsection (e)(2)(B) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).

GENERAL SERVICES ADMINISTRATION

REAL PROPERTY ACTIVITIES

FEDERAL BUILDINGS FUND

LIMITATIONS ON AVAILABILITY OF REVENUE

Amounts in the Fund, including revenues and collections deposited into the Fund shall be available for necessary expenses of real property management and related activities not otherwise provided for, including operation, maintenance, and protection of federally owned and leased buildings; rental of buildings in the District of Columbia; restoration of leased premises; moving governmental agencies (including space adjustments and telecommunications relocation expenses) in connection with the assignment, allocation and transfer of space; contractual services incident to cleaning or servicing buildings, and moving; repair and alteration of federally owned buildings including grounds, approaches and appurtenances; care and safeguarding of sites; maintenance, preservation, demolition, and equipment; acquisition of buildings and sites by purchase, condemnation, or as otherwise authorized by law; acquisition of options to purchase buildings and sites; conversion and extension of federally owned buildings; preliminary planning and design of projects by contract or otherwise; construction of new buildings (including equipment for such buildings); and payment of principal, interest, and any other obligations for public buildings acquired by installment purchase and purchase contract; in the aggregate amount of $8,017,967,000, of which: (1) $50,000,000 shall remain available until expended for construction and acquisition (including funds for sites and expenses, and associated design and construction services): *Provided*, That the General Services Administration shall submit a detailed plan, by project, regarding the use of funds to the Committees on Appropriations of the House of Representatives and the Senate within 30 days of enactment of this section and will provide notification to the Committees within 15 days prior to any changes regarding the use of these funds; (2) $280,000,000 shall remain available until expended for repairs and alterations, which includes associated design and construction services, of which $260,000,000 is for Basic Repairs and Alterations and $20,000,000 is for a Judiciary Capital Security program: *Provided further*, That funds made available in this or any previous Act in the Federal Buildings Fund for Repairs and Alterations shall, for prospectus projects, be limited to the amount identified for each project, except each project in this or any previous Act may be increased by an amount not to exceed 10 percent unless advance approval is obtained from the Committees on Appropriations of a greater amount: *Provided further*, That additional projects for which prospectuses have been fully approved may be funded under this category only if advance approval is obtained from the Committees on Appropriations: *Provided further*, That the amounts provided in this or any prior Act for "Repairs and Alterations" may be used to fund costs associated with implementing security improvements to buildings necessary to meet the minimum standards for security in accordance with current law and in compliance with the reprogramming guidelines of the appropriate Committees of the House and Senate: *Provided further*, That the difference

Plans.
Deadlines.
Notification.

Advance approval.

Advance approval.

between the funds appropriated and expended on any projects in this or any prior Act, under the heading "Repairs and Alterations", may be transferred to Basic Repairs and Alterations or used to fund authorized increases in prospectus projects: *Provided further*, That all funds for repairs and alterations prospectus projects shall expire on September 30, 2013 and remain in the Federal Buildings Fund except funds for projects as to which funds for design or other funds have been obligated in whole or in part prior to such date: *Provided further*, That the amount provided in this or any prior Act for Basic Repairs and Alterations may be used to pay claims against the Government arising from any projects under the heading "Repairs and Alterations" or used to fund authorized increases in prospectus projects; (3) $126,801,000 for installment acquisition payments including payments on purchase contracts which shall remain available until expended; (4) $5,210,198,000 for rental of space which shall remain available until expended; and (5) $2,350,968,000 for building operations which shall remain available until expended: *Provided further*, That funds available to the General Services Administration shall not be available for expenses of any construction, repair, alteration and acquisition project for which a prospectus, if required by 40 U.S.C. 3307(a), has not been approved, except that necessary funds may be expended for each project for required expenses for the development of a proposed prospectus: *Provided further*, That funds available in the Federal Buildings Fund may be expended for emergency repairs when advance approval is obtained from the Committees on Appropriations: *Provided further*, That amounts necessary to provide reimbursable special services to other agencies under 40 U.S.C. 592(b)(2) and amounts to provide such reimbursable fencing, lighting, guard booths, and other facilities on private or other property not in Government ownership or control as may be appropriate to enable the United States Secret Service to perform its protective functions pursuant to 18 U.S.C. 3056, shall be available from such revenues and collections: *Provided further*, That revenues and collections and any other sums accruing to this Fund during fiscal year 2012, excluding reimbursements under 40 U.S.C. 592(b)(2) in excess of the aggregate new obligational authority authorized for Real Property Activities of the Federal Buildings Fund in this Act shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

Expiration date.

GENERAL ACTIVITIES

GOVERNMENT-WIDE POLICY

For expenses authorized by law, not otherwise provided for, for Government-wide policy and evaluation activities associated with the management of real and personal property assets and certain administrative services; Government-wide policy support responsibilities relating to acquisition, telecommunications, information technology management, and related technology activities; and services as authorized by 5 U.S.C. 3109; $61,115,000.

OPERATING EXPENSES

For expenses authorized by law, not otherwise provided for, for Government-wide activities associated with utilization and donation of surplus personal property; disposal of real property; agency-

wide policy direction, management, and communications; the Civilian Board of Contract Appeals; services as authorized by 5 U.S.C. 3109; and not to exceed $7,500 for official reception and representation expenses; $69,500,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General and service authorized by 5 U.S.C. 3109, $58,000,000: *Provided*, That not to exceed $15,000 shall be available for payment for information and detection of fraud against the Government, including payment for recovery of stolen Government property: *Provided further*, That not to exceed $2,500 shall be available for awards to employees of other Federal agencies and private citizens in recognition of efforts and initiatives resulting in enhanced Office of Inspector General effectiveness.

ELECTRONIC GOVERNMENT FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses in support of interagency projects that enable the Federal Government to expand its ability to conduct activities electronically, through the development and implementation of innovative uses of the Internet and other electronic methods, $12,400,000, to remain available until expended: *Provided,* That these funds may be transferred to Federal agencies to carry out the purpose of the Fund: *Provided further,* That this transfer authority shall be in addition to any other transfer authority provided in this Act: *Provided further,* That such transfers may not be made until 10 days after a proposed spending plan and explanation for each project to be undertaken has been submitted to the Committees on Appropriations of the House of Representatives and the Senate.

Time period.
Spending plan.
Project explanation.

ALLOWANCES AND OFFICE STAFF FOR FORMER PRESIDENTS

For carrying out the provisions of the Act of August 25, 1958 (3 U.S.C. 102 note), and Public Law 95–138, $3,671,000.

FEDERAL CITIZEN SERVICES FUND

For necessary expenses of the Office of Citizen Services and Innovative Technologies, including services authorized by 5 U.S.C. 3109, $34,100,000, to be deposited into the Federal Citizen Services Fund: *Provided,* That the appropriations, revenues, and collections deposited into the Fund shall be available for necessary expenses of Federal Citizen Services activities in the aggregate amount not to exceed $90,000,000. Appropriations, revenues, and collections accruing to this Fund during fiscal year 2012 in excess of such amount shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

ADMINISTRATIVE PROVISIONS—GENERAL SERVICES ADMINISTRATION

(INCLUDING TRANSFERS OF FUNDS AND RESCISSION)

SEC. 520. Funds available to the General Services Administration shall be available for the hire of passenger motor vehicles.

SEC. 521. Funds in the Federal Buildings Fund made available for fiscal year 2012 for Federal Buildings Fund activities may be transferred between such activities only to the extent necessary to meet program requirements: *Provided*, That any proposed transfers shall be approved in advance to the Committees on Appropriations of the House of Representatives and the Senate.

Advance approval.

SEC. 522. Except as otherwise provided in this title, funds made available by this Act shall be used to transmit a fiscal year 2013 request for United States Courthouse construction only if the request: (1) meets the design guide standards for construction as established and approved by the General Services Administration, the Judicial Conference of the United States, and the Office of Management and Budget; (2) reflects the priorities of the Judicial Conference of the United States as set out in its approved 5-year construction plan; and (3) includes a standardized courtroom utilization study of each facility to be constructed, replaced, or expanded.

SEC. 523. None of the funds provided in this Act may be used to increase the amount of occupiable square feet, provide cleaning services, security enhancements, or any other service usually provided through the Federal Buildings Fund, to any agency that does not pay the rate per square foot assessment for space and services as determined by the General Services Administration in consideration of the Public Buildings Amendments Act of 1972 (Public Law 92–313).

SEC. 524. From funds made available under the heading "Federal Buildings Fund, Limitations on Availability of Revenue", claims against the Government of less than $250,000 arising from direct construction projects and acquisition of buildings may be liquidated from savings effected in other construction projects with prior notification to the Committees on Appropriations of the House of Representatives and the Senate.

Contracts. Determination. Explanatory statement.

SEC. 525. In any case in which the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate adopt a resolution granting lease authority pursuant to a prospectus transmitted to Congress by the Administrator of the General Services Administration under 40 U.S.C. 3307, the Administrator shall ensure that the delineated area of procurement is identical to the delineated area included in the prospectus for all lease agreements, except that, if the Administrator determines that the delineated area of the procurement should not be identical to the delineated area included in the prospectus, the Administrator shall provide an explanatory statement to each of such committees and the Committees on Appropriations of the House of Representatives and the Senate prior to exercising any lease authority provided in the resolution.

SEC. 526. Section 1703 of title 41 U.S.C. is amended in paragraph (i)(6) by:

(1) deleting "for training"; and

(2) deleting "paragraph (2)" and inserting in lieu thereof "subparagraphs (A) and (C) to (J) of section 1122(a)(5) of this title".

SEC. 527. Of the amounts made available under the heading "Policy and Operations" for the maintenance, protection, and disposal of the U.S. Coast Guard Service Center at Governor's Island, New York and the Lorton Correctional Facility in Lorton, Virginia in prior years whether appropriated directly to the General Services Administration (GSA) or to any other agency of the Government and received by GSA for such purpose, $4,600,000 are rescinded.

SEC. 528. Within 120 days of enactment, the General Services Administration shall submit a detailed report to the Committees on Appropriations of the House of Representatives and the Senate that describes each program, project, or activity that is funded by appropriations to General Services Administration but is not under the control or direction, in statute or in practice, of the Administrator of General Services.

Deadline. Reports.

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

SALARIES AND EXPENSES

For payment to the Harry S Truman Scholarship Foundation Trust Fund, established by section 10 of Public Law 93–642, $748,000, to remain available until expended.

MERIT SYSTEMS PROTECTION BOARD

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out functions of the Merit Systems Protection Board pursuant to Reorganization Plan Numbered 2 of 1978, the Civil Service Reform Act of 1978, and the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note), including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, direct procurement of survey printing, and not to exceed $2,000 for official reception and representation expenses, $40,258,000, to remain available until September 30, 2013, together with not to exceed $2,345,000, to remain available until September 30, 2013, for administrative expenses to adjudicate retirement appeals to be transferred from the Civil Service Retirement and Disability Fund in amounts determined by the Merit Systems Protection Board.

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

MORRIS K. UDALL AND STEWART L. UDALL TRUST FUND

For payment to the Morris K. Udall and Stewart L. Udall Trust Fund, pursuant to the Morris K. Udall and Stewart L. Udall Foundation Act (20 U.S.C. 5601 et seq.), $2,200,000, to remain available until expended, of which, notwithstanding sections 8 and 9 of such Act: (1) up to $50,000 shall be used to conduct financial audits pursuant to the Accountability of Tax Dollars Act of 2002 (Public Law 107–289); and (2) up to $1,000,000 shall be available

to carry out the activities authorized by section 6(7) of Public Law 102–259 (20 U.S.C. 5604(7)).

ENVIRONMENTAL DISPUTE RESOLUTION FUND

For payment to the Environmental Dispute Resolution Fund to carry out activities authorized in the Environmental Policy and Conflict Resolution Act of 1998, $3,792,000, to remain available until expended.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses in connection with the administration of the National Archives and Records Administration (including the Information Security Oversight Office) and archived Federal records and related activities, as provided by law, and for expenses necessary for the review and declassification of documents and the activities of the Public Interest Declassification Board, and for necessary expenses in connection with the operations and maintenance of the electronic records archives to include all direct project costs associated with research, program management, and corrective and adaptive software maintenance, and for the hire of passenger motor vehicles, and for uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901 et seq.), including maintenance, repairs, and cleaning, $373,300,000: *Provided*, That all remaining balances appropriated in prior fiscal years under the heading "Electronic Records Archives" shall be transferred to this account.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Reform Act of 2008, Public Law 110–409, 122 Stat. 4302–16 (2008), and the Inspector General Act of 1978 (5 U.S.C. App.), and for the hire of passenger motor vehicles, $4,100,000.

REPAIRS AND RESTORATION

For the repair, alteration, and improvement of archives facilities, and to provide adequate storage for holdings, $9,100,000, to remain available until expended: *Provided,* That from amounts made available for the Military Personnel Records Center requirement study under this heading in Public Law 108–199, the remaining unobligated balances shall be available to implement the National Archives and Records Administration Capital Improvement Plan: *Provided further*, That from amounts made available under this heading in Public Law 111–8 for construction costs and related services for building the addition to the John F. Kennedy Presidential Library and Museum and other necessary expenses, including renovating the Library as needed in constructing the addition, the remaining unobligated balances shall be available to implement the National Archives and Records Administration Capital Improvement Plan.

NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION

GRANTS PROGRAM

For necessary expenses for allocations and grants for historical publications and records as authorized by 44 U.S.C. 2504, $5,000,000, to remain available until expended.

NATIONAL CREDIT UNION ADMINISTRATION

CENTRAL LIQUIDITY FACILITY

During fiscal year 2012, gross obligations of the Central Liquidity Facility for the principal amount of new direct loans to member credit unions, as authorized by 12 U.S.C. 1795 et seq., shall be the amount authorized by section 307(a)(4)(A) of the Federal Credit Union Act (12 U.S.C. 1795f(a)(4)(A)): *Provided*, That administrative expenses of the Central Liquidity Facility in fiscal year 2012 shall not exceed $1,250,000.

COMMUNITY DEVELOPMENT REVOLVING LOAN FUND

For the Community Development Revolving Loan Fund program as authorized by 42 U.S.C. 9812, 9822 and 9910, $1,247,000 shall be available until September 30, 2013, for technical assistance to low-income designated credit unions.

OFFICE OF GOVERNMENT ETHICS

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Government Ethics pursuant to the Ethics in Government Act of 1978, and the Ethics Reform Act of 1989, including services as authorized by 5 U.S.C. 3109, rental of conference rooms in the District of Columbia and elsewhere, hire of passenger motor vehicles, and not to exceed $1,500 for official reception and representation expenses, $13,664,000.

OFFICE OF PERSONNEL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF TRUST FUNDS)

For necessary expenses to carry out functions of the Office of Personnel Management (OPM) pursuant to Reorganization Plan Numbered 2 of 1978 and the Civil Service Reform Act of 1978, including services as authorized by 5 U.S.C. 3109; medical examinations performed for veterans by private physicians on a fee basis; rental of conference rooms in the District of Columbia and elsewhere; hire of passenger motor vehicles; not to exceed $2,500 for official reception and representation expenses; advances for reimbursements to applicable funds of OPM and the Federal Bureau of Investigation for expenses incurred under Executive Order No. 10422 of January 9, 1953, as amended; and payment of per diem and/or subsistence allowances to employees where Voting Rights Act activities require an employee to remain overnight at his or

her post of duty, $97,774,000, of which $6,004,000 shall remain available until expended for the Enterprise Human Resources Integration project, of which $642,000 may be for strengthening the capacity and capabilities of the acquisition workforce (as defined by the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 4001 et seq.)), including the recruitment, hiring, training, and retention of such workforce and information technology in support of acquisition workforce effectiveness or for management solutions to improve acquisition management, and of which $1,416,000 shall remain available until expended for the Human Resources Line of Business project; and in addition $112,516,000 for administrative expenses, to be transferred from the appropriate trust funds of OPM without regard to other statutes, including direct procurement of printed materials, for the retirement and insurance programs: *Provided,* That the provisions of this appropriation shall not affect the authority to use applicable trust funds as provided by sections 8348(a)(1)(B), and 9004(f)(2)(A) of title 5, United States Code: *Provided further*, That no part of this appropriation shall be available for salaries and expenses of the Legal Examining Unit of OPM established pursuant to Executive Order No. 9358 of July 1, 1943, or any successor unit of like purpose: *Provided further*, That the President's Commission on White House Fellows, established by Executive Order No. 11183 of October 3, 1964, may, during fiscal year 2012, accept donations of money, property, and personal services: *Provided further*, That such donations, including those from prior years, may be used for the development of publicity materials to provide information about the White House Fellows, except that no such donations shall be accepted for travel or reimbursement of travel expenses, or for the salaries of employees of such Commission.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF TRUST FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, including services as authorized by 5 U.S.C. 3109, hire of passenger motor vehicles, $3,142,000, and in addition, not to exceed $21,174,000 for administrative expenses to audit, investigate, and provide other oversight of the Office of Personnel Management's retirement and insurance programs, to be transferred from the appropriate trust funds of the Office of Personnel Management, as determined by the Inspector General: *Provided*, That the Inspector General is authorized to rent conference rooms in the District of Columbia and elsewhere.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEES HEALTH BENEFITS

For payment of Government contributions with respect to retired employees, as authorized by chapter 89 of title 5, United States Code, and the Retired Federal Employees Health Benefits Act (74 Stat. 849), such sums as may be necessary.

GOVERNMENT PAYMENT FOR ANNUITANTS, EMPLOYEE LIFE INSURANCE

For payment of Government contributions with respect to employees retiring after December 31, 1989, as required by chapter 87 of title 5, United States Code, such sums as may be necessary.

PAYMENT TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND

For financing the unfunded liability of new and increased annuity benefits becoming effective on or after October 20, 1969, as authorized by 5 U.S.C. 8348, and annuities under special Acts to be credited to the Civil Service Retirement and Disability Fund, such sums as may be necessary: *Provided*, That annuities authorized by the Act of May 29, 1944, and the Act of August 19, 1950 (33 U.S.C. 771–775), may hereafter be paid out of the Civil Service Retirement and Disability Fund.

33 USC 776.

OFFICE OF SPECIAL COUNSEL

SALARIES AND EXPENSES

For necessary expenses to carry out functions of the Office of Special Counsel pursuant to Reorganization Plan Numbered 2 of 1978, the Civil Service Reform Act of 1978 (Public Law 95–454), the Whistleblower Protection Act of 1989 (Public Law 101–12), Public Law 107–304, and the Uniformed Services Employment and Reemployment Rights Act of 1994 (Public Law 103–353), including services as authorized by 5 U.S.C. 3109, payment of fees and expenses for witnesses, rental of conference rooms in the District of Columbia and elsewhere, and hire of passenger motor vehicles; $18,972,000.

POSTAL REGULATORY COMMISSION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Postal Regulatory Commission in carrying out the provisions of the Postal Accountability and Enhancement Act (Public Law 109–435), $14,304,000, to be derived by transfer from the Postal Service Fund and expended as authorized by section 603(a) of such Act.

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

SALARIES AND EXPENSES

For necessary expenses of the Privacy and Civil Liberties Oversight Board, as authorized by section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (5 U.S.C. 601 note), $900,000, to remain available until September 30, 2013.

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

SALARIES AND EXPENSES

For necessary expenses of the Recovery Accountability and Transparency Board to carry out the provisions of title XV of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5), and to develop and test information technology resources and oversight mechanisms to enhance transparency of and detect and remediate waste, fraud, and abuse in Federal spending, $28,350,000, to remain available until September 30, 2013.

SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

For necessary expenses for the Securities and Exchange Commission, including services as authorized by 5 U.S.C. 3109, the rental of space (to include multiple year leases) in the District of Columbia and elsewhere, and not to exceed $3,500 for official reception and representation expenses, $1,321,000,000, to remain available until expended; of which not less than $6,795,000 shall be for the Office of Inspector General; of which not to exceed $45,000 shall be available for a permanent secretariat for the International Organization of Securities Commissions; and of which not to exceed $100,000 shall be available for expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, members of their delegations and staffs to exchange views concerning securities matters, such expenses to include necessary logistic and administrative expenses and the expenses of Commission staff and foreign invitees in attendance including: (1) incidental expenses such as meals; (2) travel and transportation; and (3) related lodging or subsistence: *Provided,* That fees and charges authorized by section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) shall be credited to this account as offsetting collections: *Provided further*, That not to exceed $1,321,000,000 of such offsetting collections shall be available until expended for necessary expenses of this account: *Provided further*, That the total amount appropriated under this heading from the general fund for fiscal year 2012 shall be reduced as such offsetting fees are received so as to result in a final total fiscal year 2012 appropriation from the general fund estimated at not more than $0.

SELECTIVE SERVICE SYSTEM

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by 5 U.S.C. 4101–4118 for civilian employees; purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed $750 for official reception and representation expenses; $23,984,000: *Provided*, That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever the President

President. Exemption authority.

deems such action to be necessary in the interest of national defense: *Provided further*, That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States.

Military induction.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the Small Business Administration as authorized by Public Law 108–447, including hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344, and not to exceed $3,500 for official reception and representation expenses, $417,348,000: *Provided*, That the Administrator is authorized to charge fees to cover the cost of publications developed by the Small Business Administration, and certain loan program activities, including fees authorized by section 5(b) of the Small Business Act: *Provided further*, That, notwithstanding 31 U.S.C. 3302, revenues received from all such activities shall be credited to this account, to remain available until expended, for carrying out these purposes without further appropriations: *Provided further,* That the Small Business Administration may accept gifts in an amount not to exceed $4,000,000 and may co-sponsor activities, each in accordance with section 132(a) of division K of Public Law 108–447, during fiscal year 2012: *Provided further*, That $112,500,000 shall be available to fund grants for performance in fiscal year 2012 or fiscal year 2013 as authorized by section 21 of the Small Business Act, to remain available until September 30, 2013: *Provided further*, That $20,000,000 shall remain available until September 30, 2013 for marketing, management, and technical assistance under section 7(m) of the Small Business Act (15 U.S.C. 636(m)(4)) by intermediaries that make microloans under the microloan program: *Provided further,* That $7,100,000 shall be available for the Loan Modernization and Accounting System, to be available until September 30, 2013: *Provided further*, That $2,000,000 shall be for the Federal and State Technology Partnership Program under section 34 of the Small Business Act (15 U.S.C. 657d).

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $16,267,000.

OFFICE OF ADVOCACY

For necessary expenses of the Office of Advocacy in carrying out the provisions of title II of Public Law 94–305 (15 U.S.C. 634a et seq.) and the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), $9,120,000, to remain available until expended.

BUSINESS LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $3,678,000, to remain available until expended, and for the cost of guaranteed loans as authorized

by section 7(a) of the Small Business Act (Public Law 85–536) and section 503 of the Small Business Investment Act of 1958 (Public Law 85–699), $207,100,000, to remain available until expended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That subject to section 502 of the Congressional Budget Act of 1974, during fiscal year 2012 commitments to guarantee loans under section 503 of the Small Business Investment Act of 1958 shall not exceed $7,500,000,000: *Provided further*, That during fiscal year 2012 commitments for general business loans authorized under section 7(a) of the Small Business Act shall not exceed $17,500,000,000 for a combination of amortizing term loans and the aggregated maximum line of credit provided by revolving loans: *Provided further*, That during fiscal year 2012 commitments to guarantee loans for debentures under section 303(b) of the Small Business Investment Act of 1958 shall not exceed $3,000,000,000: *Provided further*, That during fiscal year 2012, guarantees of trust certificates authorized by section 5(g) of the Small Business Act shall not exceed a principal amount of $12,000,000,000. In addition, for administrative expenses to carry out the direct and guaranteed loan programs, $147,958,000, which may be transferred to and merged with the appropriations for Salaries and Expenses.

DISASTER LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For administrative expenses to carry out the direct loan program authorized by section 7(b) of the Small Business Act, $117,300,000, to be available until expended, of which $1,000,000 is for the Office of Inspector General of the Small Business Administration for audits and reviews of disaster loans and the disaster loan programs and shall be transferred to and merged with the appropriations for the Office of Inspector General; of which $110,300,000 is for direct administrative expenses of loan making and servicing to carry out the direct loan program, which may be transferred to and merged with the appropriations for Salaries and Expenses; and of which $6,000,000 is for indirect administrative expenses for the direct loan program, which may be transferred to and merged with the appropriations for Salaries and Expenses.

ADMINISTRATIVE PROVISIONS—SMALL BUSINESS ADMINISTRATION

(INCLUDING TRANSFER OF FUNDS)

SEC. 530. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Small Business Administration in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this paragraph shall be treated as a reprogramming of funds under section 608 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 531. Section 7(d)(5)(D) of the Small Business Act (15 U.S.C. 636(d)(5)(D)) is amended by striking "three years" and inserting "7 years".

SEC. 532. Beginning in fiscal year 2013 and each fiscal year thereafter, the budget request for the Small Business Administration shall provide a detailed justification of any proposed changes from the enacted level by individual appropriation. The detailed justification shall include at a minimum a description of each credit and non-credit program including amount of funding and costs by appropriation account and fiscal year. For activities funded in multiple appropriations, the budget justification shall specify the amount included in each enacted appropriation, the amount proposed in the budget year and a justification for any proposed changes.

Effective date.
Budget justification.
15 USC 633a.

UNITED STATES POSTAL SERVICE

PAYMENT TO THE POSTAL SERVICE FUND

For payment to the Postal Service Fund for revenue forgone on free and reduced rate mail, pursuant to subsections (c) and (d) of section 2401 of title 39, United States Code, $78,153,000, which shall not be available for obligation until October 1, 2012: *Provided*, That mail for overseas voting and mail for the blind shall continue to be free: *Provided further*, That 6-day delivery and rural delivery of mail shall continue at not less than the 1983 level: *Provided further*, That none of the funds made available to the Postal Service by this Act shall be used to implement any rule, regulation, or policy of charging any officer or employee of any State or local child support enforcement agency, or any individual participating in a State or local program of child support enforcement, a fee for information requested or provided concerning an address of a postal customer: *Provided further*, That none of the funds provided in this Act shall be used to consolidate or close small rural and other small post offices in fiscal year 2012.

Overseas voting.
Blind persons.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $241,468,000, to be derived by transfer from the Postal Service Fund and expended as authorized by section 603(b)(3) of the Postal Accountability and Enhancement Act (Public Law 109–435).

UNITED STATES TAX COURT

SALARIES AND EXPENSES

For necessary expenses, including contract reporting and other services as authorized by 5 U.S.C. 3109, $51,079,000: *Provided*, That travel expenses of the judges shall be paid upon the written certificate of the judge.

TITLE VI

GENERAL PROVISIONS—THIS ACT

(INCLUDING RESCISSIONS)

SEC. 601. None of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings funded in this Act.

SEC. 602. None of the funds appropriated in this Act shall remain available for obligation beyond the current fiscal year, nor may any be transferred to other appropriations, unless expressly so provided herein.

Contracts.

SEC. 603. The expenditure of any appropriation under this Act for any consulting service through procurement contract pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 604. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

SEC. 605. None of the funds made available by this Act shall be available for any activity or for paying the salary of any Government employee where funding an activity or paying a salary to a Government employee would result in a decision, determination, rule, regulation, or policy that would prohibit the enforcement of section 307 of the Tariff Act of 1930 (19 U.S.C. 1307).

SEC. 606. No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with the Buy American Act (41 U.S.C. 10a–10c).

SEC. 607. No funds appropriated or otherwise made available under this Act shall be made available to any person or entity that has been convicted of violating the Buy American Act (41 U.S.C. 10a–10c).

SEC. 608. Except as otherwise provided in this Act, none of the funds provided in this Act, provided by previous appropriations Acts to the agencies or entities funded in this Act that remain available for obligation or expenditure in fiscal year 2012, or provided from any accounts in the Treasury derived by the collection of fees and available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that: (1) creates a new program; (2) eliminates a program, project, or activity; (3) increases funds or personnel for any program, project, or activity for which funds have been denied or restricted by the Congress; (4) proposes to use funds directed for a specific activity by the Committee on Appropriations of either the House of Representatives or the Senate for a different purpose; (5) augments existing programs, projects, or activities in excess of $5,000,000 or 10 percent, whichever is less; (6) reduces existing programs, projects, or activities by $5,000,000 or 10 percent, whichever is less; or (7) creates or reorganizes offices, programs, or

activities unless prior approval is received from the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That prior to any significant reorganization or restructuring of offices, programs, or activities, each agency or entity funded in this Act shall consult with the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That not later than 60 days after the date of enactment of this Act, each agency funded by this Act shall submit a report to the Committees on Appropriations of the House of Representatives and the Senate to establish the baseline for application of reprogramming and transfer authorities for the current fiscal year: *Provided further*, That at a minimum the report shall include: (1) a table for each appropriation with a separate column to display the President's budget request, adjustments made by Congress, adjustments due to enacted rescissions, if appropriate, and the fiscal year enacted level; (2) a delineation in the table for each appropriation both by object class and program, project, and activity as detailed in the budget appendix for the respective appropriation; and (3) an identification of items of special congressional interest: *Provided further*, That the amount appropriated or limited for salaries and expenses for an agency shall be reduced by $100,000 per day for each day after the required date that the report has not been submitted to the Congress.

Consultation.

Deadline. Reports.

Reports.

Fines.

SEC. 609. Except as otherwise specifically provided by law, not to exceed 50 percent of unobligated balances remaining available at the end of fiscal year 2012 from appropriations made available for salaries and expenses for fiscal year 2012 in this Act, shall remain available through September 30, 2013, for each such account for the purposes authorized: *Provided*, That a request shall be submitted to the Committees on Appropriations of the House of Representatives and the Senate for approval prior to the expenditure of such funds: *Provided further*, That these requests shall be made in compliance with reprogramming guidelines.

Expenditure request.

SEC. 610. None of the funds made available in this Act may be used by the Executive Office of the President to request from the Federal Bureau of Investigation any official background investigation report on any individual, except when—

Background reports.

(1) such individual has given his or her express written consent for such request not more than 6 months prior to the date of such request and during the same presidential administration; or

(2) such request is required due to extraordinary circumstances involving national security.

SEC. 611. The cost accounting standards promulgated under chapter 15 of title 41, United States Code shall not apply with respect to a contract under the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.

SEC. 612. For the purpose of resolving litigation and implementing any settlement agreements regarding the nonforeign area cost-of-living allowance program, the Office of Personnel Management may accept and utilize (without regard to any restriction on unanticipated travel expenses imposed in an Appropriations Act) funds made available to the Office of Personnel Management pursuant to court approval.

SEC. 613. No funds appropriated by this Act shall be available to pay for an abortion, or the administrative expenses in connection

Abortion.

with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions.

Abortion.

SEC. 614. The provision of section 613 shall not apply where the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.

SEC. 615. In order to promote Government access to commercial information technology, the restriction on purchasing nondomestic articles, materials, and supplies set forth in chapter 83 of title 41, United States Code (popularly known as the Buy American Act), shall not apply to the acquisition by the Federal Government of information technology (as defined in section 11101 of title 40, United States Code), that is a commercial item (as defined in section 103 of title 41, United States Code).

SEC. 616. Notwithstanding section 1353 of title 31, United States Code, no officer or employee of any regulatory agency or commission funded by this Act may accept on behalf of that agency, nor may such agency or commission accept, payment or reimbursement from a non-Federal entity for travel, subsistence, or related expenses for the purpose of enabling an officer or employee to attend and participate in any meeting or similar function relating to the official duties of the officer or employee when the entity offering payment or reimbursement is a person or entity subject to regulation by such agency or commission, or represents a person or entity subject to regulation by such agency or commission, unless the person or entity is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

SEC. 617. The Public Company Accounting Oversight Board shall have authority to obligate funds for the scholarship program established by section 109(c)(2) of the Sarbanes-Oxley Act of 2002 (Public Law 107–204) in an aggregate amount not exceeding the amount of funds collected by the Board as of December 31, 2011, including accrued interest, as a result of the assessment of monetary penalties. Funds available for obligation in fiscal year 2012 shall remain available until expended.

SEC. 618. From the unobligated balances of prior year appropriations made available for the Privacy and Civil Liberties Oversight Board, $998,000 are rescinded.

SEC. 619. Section 1107 of title 31, United States Code, is amended by adding to the end thereof the following: "The President shall transmit promptly to Congress without change, proposed deficiency and supplemental appropriations submitted to the President by the legislative branch and the judicial branch.".

SEC. 620. Notwithstanding section 708 of this Act, funds made available to the Commodity Futures Trading Commission and the Securities and Exchange Commission by this or any other Act may be used for the interagency funding and sponsorship of a joint advisory committee to advise on emerging regulatory issues.

Time period.
31 USC 5112 note.

SEC. 621. For purposes of Public Law 109–285, the period described in section 5134(f)(1)(B) of title 31, United States Code, shall be treated as a 2-year, 9-month period.

SEC. 622. The Help America Vote Act of 2002 (Public Law 107–252) is amended by—

(1) inserting in section 255(b) (42 U.S.C. 15405) "posted on the Commission's website with a notice" after "cause to have the plan";

(2) inserting in section 253(d) (42 U.S.C. 15403) "notice of" prior to "the State plan";

(3) inserting in section 254(a)(11) (42 U.S.C. 15404) "notice of" prior to "the change"; and

(4) inserting in section 254(a)(11)(C) (42 U.S.C. 15404) "notice of" prior to "the change".

SEC. 623. From the unobligated balances available in the Securities and Exchange Commission Reserve Fund established by section 991 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203), $25,000,000 are rescinded.

Deadlines. Reports.

SEC. 624. The Department of the Treasury, the Executive Office of the President, the Judiciary, the Federal Communications Commission, the Federal Trade Commission, the General Services Administration, the National Archives and Records Administration, the Securities and Exchange Commission, and the Small Business Administration shall provide the Committees on Appropriations of the House and the Senate a quarterly accounting of the cumulative balances of any unobligated funds that were received by such agency during any previous fiscal year.

Contracts. Consultation.

SEC. 625. (a)(1) Notwithstanding any other provision of law, an Executive agency covered by this Act otherwise authorized to enter into contracts for either leases or the construction or alteration of real property for office, meeting, storage, or other space must consult with the General Services Administration before issuing a solicitation for offers of new leases or construction contracts, and in the case of succeeding leases, before entering into negotiations with the current lessor.

(2) Any such agency with authority to enter into an emergency lease may do so during any period declared by the President to require emergency leasing authority with respect to such agency.

Definition.

(b) For purposes of this section, the term "Executive agency covered by this Act" means any Executive agency provided funds by this Act, but does not include the General Services Administration or the United States Postal Service.

SEC. 626. None of the funds made available in this Act may be used by the Federal Trade Commission to complete the draft report entitled "Interagency Working Group on Food Marketed to Children: Preliminary Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts" unless the Interagency Working Group on Food Marketed to Children complies with Executive Order No. 13563.

SEC. 627. None of the funds made available by this Act may be used to pay the salaries and expenses for the following positions:

(1) Director, White House Office of Health Reform.

(2) Assistant to the President for Energy and Climate Change.

(3) Senior Advisor to the Secretary of the Treasury assigned to the Presidential Task Force on the Auto Industry and Senior Counselor for Manufacturing Policy.

(4) White House Director of Urban Affairs.

Global Positioning System.

SEC. 628. None of the funds made available in this Act may be used by the Federal Communications Commission to remove the conditions imposed on commercial terrestrial operations in the Order and Authorization adopted by the Commission on January 26, 2011 (DA 11–133), or otherwise permit such operations, until the Commission has resolved concerns of potential widespread

harmful interference by such commercial terrestrial operations to commercially available Global Positioning System devices.

SEC. 629. None of the funds made available by this Act may be expended for any new hire by any Federal agency funded in this Act that is not verified through the E-Verify Program established under section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

Corporations. Tax liability.

SEC. 630. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation with respect to which any unpaid Federal tax liability has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

Corporations. Criminal violation.

SEC. 631. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted or had an officer or agent of such corporation acting on behalf of the corporation convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent and made a determination that this further action is not necessary to protect the interests of the Government.

SEC. 632. Section 8909a(d)(3)(A)(v) of title 5, United States Code, is amended by striking the date specified in such section and inserting "August 1, 2012".

TITLE VII

GENERAL PROVISIONS—GOVERNMENT-WIDE

DEPARTMENTS, AGENCIES, AND CORPORATIONS

Drug-free workplaces.

SEC. 701. No department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act for fiscal year 2012 shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act (21 U.S.C. 802)) by the officers and employees of such department, agency, or instrumentality.

31 USC 1343 note.

SEC. 702. Unless otherwise specifically provided, the maximum amount allowable during the current fiscal year in accordance with subsection 1343(c) of title 31, United States Code, for the purchase of any passenger motor vehicle (exclusive of buses, ambulances, law enforcement, and undercover surveillance vehicles), is hereby fixed at $13,197 except station wagons for which the maximum shall be $13,631: *Provided*, That these limits may be exceeded

by not to exceed $3,700 for police-type vehicles, and by not to exceed $4,000 for special heavy-duty vehicles: *Provided further*, That the limits set forth in this section may not be exceeded by more than 5 percent for electric or hybrid vehicles purchased for demonstration under the provisions of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976: *Provided further*, That the limits set forth in this section may be exceeded by the incremental cost of clean alternative fuels vehicles acquired pursuant to Public Law 101–549 over the cost of comparable conventionally fueled vehicles: *Provided further*, That the limits set forth in this section shall not apply to any vehicle that is a commercial item and which operates on emerging motor vehicle technology, including but not limited to electric, plug-in hybrid electric, and hydrogen fuel cell vehicles.

SEC. 703. Appropriations of the executive departments and independent establishments for the current fiscal year available for expenses of travel, or for the expenses of the activity concerned, are hereby made available for quarters allowances and cost-of-living allowances, in accordance with 5 U.S.C. 5922–5924.

5 USC 3101 note.

SEC. 704. Unless otherwise specified during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States unless such person: (1) is a citizen of the United States; (2) is a person who is lawfully admitted for permanent residence and is seeking citizenship as outlined in 8 U.S.C. 1324b(a)(3)(B); (3) is a person who is admitted as a refugee under 8 U.S.C. 1157 or is granted asylum under 8 U.S.C. 1158 and has filed a declaration of intention to become a lawful permanent resident and then a citizen when eligible; or (4) is a person who owes allegiance to the United States: *Provided*, That for purposes of this section, affidavits signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his or her status are being complied with: *Provided further,* That for purposes of subsections (2) and (3) such affidavits shall be submitted prior to employment and updated thereafter as necessary: *Provided further*, That any person making a false affidavit shall be guilty of a felony, and upon conviction, shall be fined no more than $4,000 or imprisoned for not more than 1 year, or both: *Provided further*, That the above penal clause shall be in addition to, and not in substitution for, any other provisions of existing law: *Provided further*, That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government: *Provided further*, That this section shall not apply to any person who is an officer or employee of the Government of the United States on the date of enactment of this Act, or to international broadcasters employed by the Broadcasting Board of Governors, or to temporary employment of translators, or to temporary employment in the field service (not to exceed 60 days) as a result of emergencies: *Provided further*, That this section does not apply to the employment as Wildland firefighters for not more than 120 days of nonresident aliens employed by the Department of the Interior or the USDA Forest Service pursuant to an agreement with another country.

Affidavit.

Penalties.

Time period.

SEC. 705. Appropriations available to any department or agency during the current fiscal year for necessary expenses, including maintenance or operating expenses, shall also be available for payment to the General Services Administration for charges for space and services and those expenses of renovation and alteration of buildings and facilities which constitute public improvements performed in accordance with the Public Buildings Act of 1959 (73 Stat. 479), the Public Buildings Amendments of 1972 (86 Stat. 216), or other applicable law.

SEC. 706. In addition to funds provided in this or any other Act, all Federal agencies are authorized to receive and use funds resulting from the sale of materials, including Federal records disposed of pursuant to a records schedule recovered through recycling or waste prevention programs. Such funds shall be available until expended for the following purposes:

(1) Acquisition, waste reduction and prevention, and recycling programs as described in Executive Order No. 13423 (January 24, 2007), including any such programs adopted prior to the effective date of the Executive order.

(2) Other Federal agency environmental management programs, including, but not limited to, the development and implementation of hazardous waste management and pollution prevention programs.

(3) Other employee programs as authorized by law or as deemed appropriate by the head of the Federal agency.

Applicability.

SEC. 707. Funds made available by this or any other Act for administrative expenses in the current fiscal year of the corporations and agencies subject to chapter 91 of title 31, United States Code, shall be available, in addition to objects for which such funds are otherwise available, for rent in the District of Columbia; services in accordance with 5 U.S.C. 3109; and the objects specified under this head, all the provisions of which shall be applicable to the expenditure of such funds unless otherwise specified in the Act by which they are made available: *Provided*, That in the event any functions budgeted as administrative expenses are subsequently transferred to or paid from other funds, the limitations on administrative expenses shall be correspondingly reduced.

SEC. 708. No part of any appropriation contained in this or any other Act shall be available for interagency financing of boards (except Federal Executive Boards), commissions, councils, committees, or similar groups (whether or not they are interagency entities) which do not have a prior and specific statutory approval to receive financial support from more than one agency or instrumentality.

SEC. 709. None of the funds made available pursuant to the provisions of this Act shall be used to implement, administer, or enforce any regulation which has been disapproved pursuant to a joint resolution duly adopted in accordance with the applicable law of the United States.

Notification.

SEC. 710. During the period in which the head of any department or agency, or any other officer or civilian employee of the Federal Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of $5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is transmitted to the Committees on Appropriations of the House of Representatives and

the Senate. For the purposes of this section, the term "office" shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual. Definition.

SEC. 711. Notwithstanding section 31 U.S.C. 1346, or section 708 of this Act, funds made available for the current fiscal year by this or any other Act shall be available for the interagency funding of national security and emergency preparedness telecommunications initiatives which benefit multiple Federal departments, agencies, or entities, as provided by Executive Order No. 12472 (April 3, 1984).

SEC. 712. (a) None of the funds appropriated by this or any other Act may be obligated or expended by any Federal department, agency, or other instrumentality for the salaries or expenses of any employee appointed to a position of a confidential or policy-determining character excepted from the competitive service pursuant to 5 U.S.C. 3302, without a certification to the Office of Personnel Management from the head of the Federal department, agency, or other instrumentality employing the Schedule C appointee that the Schedule C position was not created solely or primarily in order to detail the employee to the White House.

(b) The provisions of this section shall not apply to Federal employees or members of the armed forces detailed to or from—

(1) the Central Intelligence Agency;

(2) the National Security Agency;

(3) the Defense Intelligence Agency;

(4) the National Geospatial-Intelligence Agency;

(5) the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

(6) the Bureau of Intelligence and Research of the Department of State;

(7) any agency, office, or unit of the Army, Navy, Air Force, or Marine Corps, the Department of Homeland Security, the Federal Bureau of Investigation or the Drug Enforcement Administration of the Department of Justice, the Department of Transportation, the Department of the Treasury, or the Department of Energy performing intelligence functions; or

(8) the Director of National Intelligence or the Office of the Director of National Intelligence.

SEC. 713. No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who—

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance or efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

SEC. 714. (a) None of the funds made available in this or any other Act may be obligated or expended for any employee training that—

(1) does not meet identified needs for knowledge, skills, and abilities bearing directly upon the performance of official duties;

(2) contains elements likely to induce high levels of emotional response or psychological stress in some participants;

(3) does not require prior employee notification of the content and methods to be used in the training and written end of course evaluation;

(4) contains any methods or content associated with religious or quasi-religious belief systems or "new age" belief systems as defined in Equal Employment Opportunity Commission Notice N–915.022, dated September 2, 1988; or

(5) is offensive to, or designed to change, participants' personal values or lifestyle outside the workplace.

(b) Nothing in this section shall prohibit, restrict, or otherwise preclude an agency from conducting training bearing directly upon the performance of official duties.

SEC. 715. (a) No funds appropriated in this or any other Act may be used to implement or enforce the agreements in Standard Forms 312 and 4414 of the Government or any other nondisclosure policy, form, or agreement if such policy, form, or agreement does not contain the following provisions: "These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act of 1989 (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling.": *Provided*, That notwithstanding the preceding provision of this section, a nondisclosure policy form or agreement that is to be executed by

Nondisclosure agreement.

a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

Effective date.

(b) Effective 180 days after enactment of this Act, subsection (a) is amended by—

(1) striking "Executive Order No. 12958" and inserting "Executive Order No. 13526 (75 Fed. Reg. 707), or any successor thereto";

(2) after "the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents);" inserting "sections 7(c) and 8H of the Inspector General Act of 1978 (5 U.S.C. App.) (relating to disclosures to an inspector general, the inspectors general of the Intelligence Community, and Congress); section 103H(g)(3) of the National Security Act of 1947 (50 U.S.C. 403–3h(g)(3) (relating to disclosures to the inspector general of the Intelligence Community); sections 17(d)(5) and 17(e)(3) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(5) and 403q(e)(3)) (relating to disclosures to the Inspector General of the Central Intelligence Agency and Congress);"; and

(3) after "Subversive Activities" inserting "Control".

(c) A nondisclosure agreement entered into before the effective date of the amendment in subsection (b) may continue to be implemented and enforced after that effective date if it complies with the requirements of subsection (a) that were in effect prior to the effective date of the amendment in subsection (b).

Lobbying.

SEC. 716. No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

SEC. 717. None of the funds appropriated by this or any other Act may be used by an agency to provide a Federal employee's home address to any labor organization except when the employee has authorized such disclosure or when such disclosure has been ordered by a court of competent jurisdiction.

SEC. 718. None of the funds made available in this Act or any other Act may be used to provide any non-public information such as mailing or telephone lists to any person or any organization outside of the Federal Government without the approval of the Committees on Appropriations of the House of Representatives and the Senate.

SEC. 719. No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by

private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.

Definition.

SEC. 720. (a) In this section, the term "agency"—

(1) means an Executive agency, as defined under 5 U.S.C. 105; and

(2) includes a military department, as defined under section 102 of such title, the Postal Service, and the Postal Regulatory Commission.

(b) Unless authorized in accordance with law or regulations to use such time for other purposes, an employee of an agency shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of such employee's time in the performance of official duties.

SEC. 721. Notwithstanding 31 U.S.C. 1346 and section 708 of this Act, funds made available for the current fiscal year by this or any other Act to any department or agency, which is a member of the Federal Accounting Standards Advisory Board (FASAB), shall be available to finance an appropriate share of FASAB administrative costs.

(TRANSFER OF FUNDS)

SEC. 722. Notwithstanding 31 U.S.C. 1346 and section 708 of this Act, the head of each Executive department and agency is hereby authorized to transfer to or reimburse "General Services Administration, Government-wide Policy" with the approval of the Director of the Office of Management and Budget, funds made available for the current fiscal year by this or any other Act, including rebates from charge card and other contracts: *Provided*, That these funds shall be administered by the Administrator of General Services to support Government-wide and other multi-agency financial, information technology, procurement, and other management innovations, initiatives, and activities, as approved by the Director of the Office of Management and Budget, in consultation with the appropriate interagency and multi-agency groups designated by the Director (including the President's Management Council for overall management improvement initiatives, the Chief Financial Officers Council for financial management initiatives, the Chief Information Officers Council for information technology initiatives, the Chief Human Capital Officers Council for human capital initiatives, the Chief Acquisition Officers Council for procurement initiatives, and the Performance Improvement Council for performance improvement initiatives): *Provided further*, That the total funds transferred or reimbursed shall not exceed $17,000,000 for Government-Wide innovations, initiatives, and activities: *Provided further*, That the funds transferred to or for reimbursement of "General Services Administration, Government-wide Policy" during fiscal year 2012 shall remain available for obligation through September 30, 2013: *Provided further*, That such transfers or reimbursements may only be made after 15 days following notification of the Committees on Appropriations by the Director of the Office of Management and Budget.

Time period.
Notification.

Breastfeeding.

SEC. 723. Notwithstanding any other provision of law, a woman may breastfeed her child at any location in a Federal building

or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

SEC. 724. Notwithstanding 31 U.S.C. 1346, or section 708 of this Act, funds made available for the current fiscal year by this or any other Act shall be available for the interagency funding of specific projects, workshops, studies, and similar efforts to carry out the purposes of the National Science and Technology Council (authorized by Executive Order No. 12881), which benefit multiple Federal departments, agencies, or entities: *Provided*, That the Office of Management and Budget shall provide a report describing the budget of and resources connected with the National Science and Technology Council to the Committees on Appropriations, the House Committee on Science and Technology, and the Senate Committee on Commerce, Science, and Transportation 90 days after enactment of this Act.

Reports. Deadline.

SEC. 725. Any request for proposals, solicitation, grant application, form, notification, press release, or other publications involving the distribution of Federal funds shall indicate the agency providing the funds, the Catalog of Federal Domestic Assistance Number, as applicable, and the amount provided: *Provided*, That this provision shall apply to direct payments, formula funds, and grants received by a State receiving Federal funds.

Applicability.

SEC. 726. (a) PROHIBITION OF FEDERAL AGENCY MONITORING OF INDIVIDUALS' INTERNET USE.—None of the funds made available in this or any other Act may be used by any Federal agency—

(1) to collect, review, or create any aggregation of data, derived from any means, that includes any personally identifiable information relating to an individual's access to or use of any Federal Government Internet site of the agency; or

(2) to enter into any agreement with a third party (including another government agency) to collect, review, or obtain any aggregation of data, derived from any means, that includes any personally identifiable information relating to an individual's access to or use of any nongovernmental Internet site.

(b) EXCEPTIONS.—The limitations established in subsection (a) shall not apply to—

(1) any record of aggregate data that does not identify particular persons;

(2) any voluntary submission of personally identifiable information;

(3) any action taken for law enforcement, regulatory, or supervisory purposes, in accordance with applicable law; or

(4) any action described in subsection (a)(1) that is a system security action taken by the operator of an Internet site and is necessarily incident to providing the Internet site services or to protecting the rights or property of the provider of the Internet site.

(c) DEFINITIONS.—For the purposes of this section:

(1) The term "regulatory" means agency actions to implement, interpret or enforce authorities provided in law.

(2) The term "supervisory" means examinations of the agency's supervised institutions, including assessing safety and soundness, overall financial condition, management practices and policies and compliance with applicable standards as provided in law.

Contracts.
Contraceptives.

SEC. 727. (a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.

(b) Nothing in this section shall apply to a contract with—

(1) any of the following religious plans:

(A) Personal Care's HMO; and

(B) OSF HealthPlans, Inc.; and

(2) any existing or future plan, if the carrier for the plan objects to such coverage on the basis of religious beliefs.

(c) In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual to discrimination on the basis that the individual refuses to prescribe or otherwise provide for contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions.

Abortion.

(d) Nothing in this section shall be construed to require coverage of abortion or abortion-related services.

Sports.
Drugs and drug abuse.

SEC. 728. The United States is committed to ensuring the health of its Olympic, Pan American, and Paralympic athletes, and supports the strict adherence to anti-doping in sport through testing, adjudication, education, and research as performed by nationally recognized oversight authorities.

SEC. 729. Notwithstanding any other provision of law, funds appropriated for official travel by Federal departments and agencies may be used by such departments and agencies, if consistent with Office of Management and Budget Circular A–126 regarding official travel for Government personnel, to participate in the fractional aircraft ownership pilot program.

SEC. 730. Notwithstanding any other provision of law, none of the funds appropriated or made available under this Act or any other appropriations Act may be used to implement or enforce restrictions or limitations on the Coast Guard Congressional Fellowship Program, or to implement the proposed regulations of the Office of Personnel Management to add sections 300.311 through 300.316 to part 300 of title 5 of the Code of Federal Regulations, published in the Federal Register, volume 68, number 174, on September 9, 2003 (relating to the detail of executive branch employees to the legislative branch).

SEC. 731. Notwithstanding any other provision of law, no executive branch agency shall purchase, construct, and/or lease any additional facilities, except within or contiguous to existing locations, to be used for the purpose of conducting Federal law enforcement training without the advance approval of the Committees on Appropriations of the House of Representatives and the Senate, except that the Federal Law Enforcement Training Center is authorized to obtain the temporary use of additional facilities by lease, contract, or other agreement for training which cannot be accommodated in existing Center facilities.

Time period.
Reports.

SEC. 732. (a) For fiscal year 2012, no funds shall be available for transfers or reimbursements to the E-Government initiatives sponsored by the Office of Management and Budget prior to 15 days following submission of a report to the Committees on Appropriations of the House of Representatives and the Senate by the Director of the Office of Management and Budget and receipt of approval to transfer funds by the Committees on Appropriations of the House of Representatives and the Senate.

(b) The report in subsection (a) and other required justification materials shall include at a minimum—

(1) a description of each initiative including but not limited to its objectives, benefits, development status, risks, cost effectiveness (including estimated net costs or savings to the government), and the estimated date of full operational capability;

(2) the total development cost of each initiative by fiscal year including costs to date, the estimated costs to complete its development to full operational capability, and estimated annual operations and maintenance costs; and

(3) the sources and distribution of funding by fiscal year and by agency and bureau for each initiative including agency contributions to date and estimated future contributions by agency.

(c) No funds shall be available for obligation or expenditure for new E-Government initiatives without the explicit approval of the Committees on Appropriations of the House of Representatives and the Senate.

Study.

SEC. 733. None of the funds appropriated or otherwise made available by this or any other Act may be used to begin or announce a study or public-private competition regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A–76 or any other administrative regulation, directive, or policy.

News story.

SEC. 734. Unless otherwise authorized by existing law, none of the funds provided in this Act or any other Act may be used by an executive branch agency to produce any prepackaged news story intended for broadcast or distribution in the United States, unless the story includes a clear notification within the text or audio of the prepackaged news story that the prepackaged news story was prepared or funded by that executive branch agency.

SEC. 735. None of the funds made available in this Act may be used in contravention of section 552a of title 5, United States Code (popularly known as the Privacy Act) and regulations implementing that section.

Evaluation.
Travel cards.
5 USC 5701 note.

SEC. 736. Each executive department and agency shall evaluate the creditworthiness of an individual before issuing the individual a government travel charge card. Such evaluations for individually billed travel charge cards shall include an assessment of the individual's consumer report from a consumer reporting agency as those terms are defined in section 603 of the Fair Credit Reporting Act (Public Law 91–508): *Provided*, That the department or agency may not issue a government travel charge card to an individual that either lacks a credit history or is found to have an unsatisfactory credit history as a result of this evaluation: *Provided further*, That this restriction shall not preclude issuance of a restricted-use charge, debit, or stored value card made in accordance with agency procedures to: (1) an individual with an unsatisfactory credit history where such card is used to pay travel expenses and the agency determines there is no suitable alternative payment mechanism available before issuing the card; or (2) an individual who lacks a credit history. Each executive department and agency shall establish guidelines and procedures for disciplinary actions to be taken against agency personnel for improper, fraudulent, or abusive use of government charge cards, which shall include appropriate disciplinary actions for use of charge cards for purposes, and at

Guidelines.
Procedures.

establishments, that are inconsistent with the official business of the Department or agency or with applicable standards of conduct.

SEC. 737. (a) DEFINITIONS.—For purposes of this section the following definitions apply:

(1) GREAT LAKES.—The terms "Great Lakes" and "Great Lakes State" have the same meanings as such terms have in section 506 of the Water Resources Development Act of 2000 (42 U.S.C. 1962d–22).

(2) GREAT LAKES RESTORATION ACTIVITIES.—The term "Great Lakes restoration activities" means any Federal or State activity primarily or entirely within the Great Lakes watershed that seeks to improve the overall health of the Great Lakes ecosystem.

Certification.

(b) REPORT.—Not later than 45 days after submission of the budget of the President to Congress, the Director of the Office of Management and Budget, in coordination with the Governor of each Great Lakes State and the Great Lakes Interagency Task Force, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report, certified by the Secretary of each agency that has budget authority for Great Lakes restoration activities, containing—

(1) an interagency budget crosscut report that—

(A) displays the budget proposed, including any planned interagency or intra-agency transfer, for each of the Federal agencies that carries out Great Lakes restoration activities in the upcoming fiscal year, separately reporting the amount of funding to be provided under existing laws pertaining to the Great Lakes ecosystem; and

(B) identifies all expenditures since fiscal year 2004 by the Federal Government and State governments for Great Lakes restoration activities;

(2) a detailed accounting of all funds received and obligated by all Federal agencies and, to the extent available, State agencies using Federal funds, for Great Lakes restoration activities during the current and previous fiscal years;

(3) a budget for the proposed projects (including a description of the project, authorization level, and project status) to be carried out in the upcoming fiscal year with the Federal portion of funds for activities; and

(4) a listing of all projects to be undertaken in the upcoming fiscal year with the Federal portion of funds for activities.

Contracts.

SEC. 738. (a) IN GENERAL.—None of the funds appropriated or otherwise made available by this or any other Act may be used for any Federal Government contract with any foreign incorporated entity which is treated as an inverted domestic corporation under section 835(b) of the Homeland Security Act of 2002 (6 U.S.C. 395(b)) or any subsidiary of such an entity.

(b) WAIVERS.—

Determination.

(1) IN GENERAL.—Any Secretary shall waive subsection (a) with respect to any Federal Government contract under the authority of such Secretary if the Secretary determines that the waiver is required in the interest of national security.

(2) REPORT TO CONGRESS.—Any Secretary issuing a waiver under paragraph (1) shall report such issuance to Congress.

(c) EXCEPTION.—This section shall not apply to any Federal Government contract entered into before the date of the enactment of this Act, or to any task order issued pursuant to such contract.

SEC. 739. None of the funds made available by this or any other Act may be used to implement, administer, enforce, or apply the rule entitled "Competitive Area" published by the Office of Personnel Management in the Federal Register on April 15, 2008 (73 Fed. Reg. 20180 et seq.).

SEC. 740. Section 743 of the Consolidated Appropriations Act, 2010 (Public Law 111–117; 31 U.S.C. 501 note) is amended in subsection (a)(3), by inserting after "exercise of an option" the following: ", and task orders issued under any such contract,".

SEC. 741. During fiscal year 2012, for each employee who—

(1) retires under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code, or

(2) retires under any other provision of subchapter III of chapter 83 or chapter 84 of such title 5 and receives a payment as an incentive to separate, the separating agency shall remit to the Civil Service Retirement and Disability Fund an amount equal to the Office of Personnel Management's average unit cost of processing a retirement claim for the preceding fiscal year. Such amounts shall be available until expended to the Office of Personnel Management and shall be deemed to be an administrative expense under section 8348(a)(1)(B) of title 5, United States Code.

SEC. 742. Except as expressly provided otherwise, any reference to "this Act" contained in any title other than title IV or VIII shall not apply to such title IV or VIII.

Election disclosure.

SEC. 743. (a) None of the funds made available in this or any other Act may be used to recommend or require any entity submitting an offer for a Federal contract to disclose any of the following information as a condition of submitting the offer:

(1) Any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the entity, its officers or directors, or any of its affiliates or subsidiaries to a candidate for election for Federal office or to a political committee, or that is otherwise made with respect to any election for Federal office.

(2) Any disbursement of funds (other than a payment described in paragraph (1)) made by the entity, its officers or directors, or any of its affiliates or subsidiaries to any person with the intent or the reasonable expectation that the person will use the funds to make a payment described in paragraph (1).

(b) In this section, each of the terms "contribution", "expenditure", "independent expenditure", "electioneering communication", "candidate", "election", and "Federal office" has the meaning given such term in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.).

SEC. 744. Notwithstanding any other provision of law, until September 30, 2013, of the amounts made available for information technology investments under the heading "Independent Agencies, Commodity Futures Trading Commission" in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (division A of Public Law 112–55), the Chairman of the Commodity Futures Trading Commission may

Notification.

transfer not to exceed $10,000,000 under such heading for salaries and expenses of such Commission: *Provided,* That any transfer pursuant to this section shall be subject to the notification procedures set forth in section 730 of such Act with respect to a reprogramming of funds and shall not be available for obligation or expenditure except in compliance with such procedures.

TITLE VIII

GENERAL PROVISIONS—DISTRICT OF COLUMBIA

(INCLUDING TRANSFER OF FUNDS)

SEC. 801. There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government.

Lobbying.

SEC. 802. None of the Federal funds provided in this Act shall be used for publicity or propaganda purposes or implementation of any policy including boycott designed to support or defeat legislation pending before Congress or any State legislature.

Notification.
Time period.

SEC. 803. (a) None of the Federal funds provided under this Act to the agencies funded by this Act, both Federal and District government agencies, that remain available for obligation or expenditure in fiscal year 2012, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditures for an agency through a reprogramming of funds which—

(1) creates new programs;

(2) eliminates a program, project, or responsibility center;

(3) establishes or changes allocations specifically denied, limited or increased under this Act;

(4) increases funds or personnel by any means for any program, project, or responsibility center for which funds have been denied or restricted;

(5) re-establishes any program or project previously deferred through reprogramming;

(6) augments any existing program, project, or responsibility center through a reprogramming of funds in excess of $3,000,000 or 10 percent, whichever is less; or

(7) increases by 20 percent or more personnel assigned to a specific program, project or responsibility center,

unless the Committees on Appropriations of the House of Representatives and the Senate are notified in writing 15 days in advance of the reprogramming.

(b) The District of Columbia government is authorized to approve and execute reprogramming and transfer requests of local funds under this title through November 1, 2012.

SEC. 804. None of the Federal funds provided in this Act may be used by the District of Columbia to provide for salaries, expenses, or other costs associated with the offices of United States Senator or United States Representative under section 4(d) of the District of Columbia Statehood Constitutional Convention Initiatives of 1979 (D.C. Law 3–171; D.C. Official Code, sec. 1–123).

SEC. 805. Except as otherwise provided in this section, none of the funds made available by this Act or by any other Act may be used to provide any officer or employee of the District of Columbia with an official vehicle unless the officer or employee uses the vehicle only in the performance of the officer's or employee's official duties. For purposes of this section, the term "official duties" does not include travel between the officer's or employee's residence and workplace, except in the case of—

(1) an officer or employee of the Metropolitan Police Department who resides in the District of Columbia or a District of Columbia government employee as may otherwise be designated by the Chief of the Department;

(2) at the discretion of the Fire Chief, an officer or employee of the District of Columbia Fire and Emergency Medical Services Department who resides in the District of Columbia and is on call 24 hours a day or is otherwise designated by the Fire Chief;

(3) at the discretion of the Director of the Department of Corrections, an officer or employee of the District of Columbia Department of Corrections who resides in the District of Columbia and is on call 24 hours a day or is otherwise designated by the Director;

(4) the Mayor of the District of Columbia; and

(5) the Chairman of the Council of the District of Columbia.

Voting rights.

SEC. 806. (a) None of the Federal funds contained in this Act may be used by the District of Columbia Attorney General or any other officer or entity of the District government to provide assistance for any petition drive or civil action which seeks to require Congress to provide for voting representation in Congress for the District of Columbia.

(b) Nothing in this section bars the District of Columbia Attorney General from reviewing or commenting on briefs in private lawsuits, or from consulting with officials of the District government regarding such lawsuits.

Needle distribution.

SEC. 807. None of the Federal funds contained in this Act may be used to distribute any needle or syringe for the purpose of preventing the spread of blood borne pathogens in any location that has been determined by the local public health or local law enforcement authorities to be inappropriate for such distribution.

Contraceptives. Conscience exceptions.

SEC. 808. Nothing in this Act may be construed to prevent the Council or Mayor of the District of Columbia from addressing the issue of the provision of contraceptive coverage by health insurance plans, but it is the intent of Congress that any legislation enacted on such issue should include a "conscience clause" which provides exceptions for religious beliefs and moral convictions.

Deadline. Reports.

SEC. 809. Hereafter, as part of the submission of the annual budget justification, the Mayor of the District of Columbia shall submit to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a report addressing—

(1) crime, including the homicide rate, implementation of community policing, and the number of police officers on local beats;

(2) access to substance and alcohol abuse treatment, including the number of treatment slots, the number of people

served, the number of people on waiting lists, and the effectiveness of treatment programs, the retention rates in treatment programs, and the recidivism/re-arrest rates for treatment participants;

(3) education, including access to special education services and student achievement to be provided in consultation with the District of Columbia Public Schools, repeated grade rates, high school graduation rates, and post-secondary education attendance rates;

(4) improvement in basic District services, including rat control and abatement; and

(5) application for and management of Federal grants, including the number and type of grants for which the District was eligible but failed to apply and the number and type of grants awarded to the District but for which the District failed to spend the amounts received.

Penalties. Drugs and drug abuse.

SEC. 810. None of the Federal funds contained in this Act may be used to enact or carry out any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any tetrahydrocannabinols derivative.

Abortion.

SEC. 811. None of the funds appropriated under this Act shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.

Deadline. Operating budget.

SEC. 812. (a) No later than 30 calendar days after the date of the enactment of this Act, the Chief Financial Officer for the District of Columbia shall submit to the appropriate committees of Congress, the Mayor, and the Council of the District of Columbia, a revised appropriated funds operating budget in the format of the budget that the District of Columbia government submitted pursuant to section 442 of the District of Columbia Home Rule Act (D.C. Official Code, sec. 1–204.42), for all agencies of the District of Columbia government for fiscal year 2012 that is in the total amount of the approved appropriation and that realigns all budgeted data for personal services and other-than-personal services, respectively, with anticipated actual expenditures.

Applicability. Certification.

(b) This section shall apply only to an agency for which the Chief Financial Officer for the District of Columbia certifies that a reallocation is required to address unanticipated changes in program requirements.

Deadline. Operating budget.

SEC. 813. No later than 30 calendar days after the date of the enactment of this Act, the Chief Financial Officer for the District of Columbia shall submit to the appropriate committees of Congress, the Mayor, and the Council for the District of Columbia, a revised appropriated funds operating budget for the District of Columbia Public Schools that aligns schools budgets to actual enrollment. The revised appropriated funds budget shall be in the format of the budget that the District of Columbia government submitted pursuant to section 442 of the District of Columbia Home Rule Act (D.C. Official Code, Sec. 1–204.42).

SEC. 814. Amounts appropriated in this Act as operating funds may be transferred to the District of Columbia's enterprise and capital funds and such amounts, once transferred, shall retain appropriation authority consistent with the provisions of this Act.

SEC. 815. Notwithstanding any other laws, for this and succeeding fiscal years, the Director of the District of Columbia Public Defender Service shall, to the extent the Director considers appropriate, provide representation for and hold harmless, or provide liability insurance for, any person who is an employee, member of the Board of Trustees, or officer of the District of Columbia Public Defender Service for money damages arising out of any claim, proceeding, or case at law relating to the furnishing of representational services or management services or related services while acting within the scope of that person's office or employment, including, but not limited to such claims, proceedings, or cases at law involving employment actions, injury, loss of liberty, property damage, loss of property, or personal injury, or death arising from malpractice or negligence of any such officer or employee.

SEC. 816. Section 346 of the District of Columbia Appropriations Act, 2005 (Public Law 108–335) is amended— 118 Stat. 1352.

(1) in the title, by striking "BIENNIAL";

(2) in subsection (a), by striking "Biennial management" and inserting "Management";

(3) in subsection (a), by striking "States." and inserting "States every five years."; and

(4) in subsection (b)(6), by striking "2" and inserting "5".

SEC. 817. Except as expressly provided otherwise, any reference to "this Act" contained in this title or in title IV shall be treated as referring only to the provisions of this title or of title IV.

This division may be cited as the "Financial Services and General Government Appropriations Act, 2012".

DIVISION D—DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2012

Department of Homeland Security Appropriations Act, 2012.

TITLE I

DEPARTMENTAL MANAGEMENT AND OPERATIONS

OFFICE OF THE SECRETARY AND EXECUTIVE MANAGEMENT

For necessary expenses of the Office of the Secretary of Homeland Security, as authorized by section 102 of the Homeland Security Act of 2002 (6 U.S.C. 112), and executive management of the Department of Homeland Security, as authorized by law, $133,159,000: *Provided*, That not to exceed $51,000 shall be for official reception and representation expenses, of which $17,000 shall be made available to the Office of Policy for Visa Waiver Program negotiations in Washington, DC, and for other international activities: *Provided further,* That all official costs associated with the use of government aircraft by Department of Homeland Security personnel to support official travel of the Secretary and the Deputy Secretary shall be paid from amounts made available for the Immediate Office of the Secretary and the Immediate Office of the Deputy Secretary: *Provided further,* That of the total amount made available under this heading, $1,800,000 shall remain available until March 30, 2012, for the Office of Counternarcotics Enforcement, of which up to $1,800,000 may, notwithstanding section 503 of this Act, be transferred to the Office of Policy: *Provided further,* That amounts transferred pursuant to the preceding proviso shall remain available until September 30, 2012: *Provided further,* Deadline. Expenditure plan.

That the Assistant Secretary for Policy shall submit to the Committees on Appropriations of the Senate and the House of Representatives not later than March 30, 2012, an expenditure plan for the Office of Policy which includes a detailed description of any funds transferred to the Office for counternarcotics enforcement and activities related to risk management and analysis: *Provided further,* That $30,000,000 shall not be available for obligation until the Secretary of Homeland Security submits to the Committees on Appropriations of the Senate and the House of Representatives a comprehensive plan for implementation of the biometric air exit system, as mandated in Public Law 110–53, including the estimated costs of implementation.

Comprehensive plan.

OFFICE OF THE UNDER SECRETARY FOR MANAGEMENT

For necessary expenses of the Office of the Under Secretary for Management, as authorized by sections 701 through 705 of the Homeland Security Act of 2002 (6 U.S.C. 341 through 345), $235,587,000, of which not to exceed $2,500 shall be for official reception and representation expenses: *Provided*, That of the total amount made available under this heading, $5,000,000 shall remain available until September 30, 2016, solely for the alteration and improvement of facilities, tenant improvements, and relocation costs to consolidate Department headquarters operations at the Nebraska Avenue Complex; and $14,172,000 shall remain available until September 30, 2014, for the Human Resources Information Technology program: *Provided further,* That the Under Secretary for Management shall, pursuant to the requirements contained in the joint statement of managers accompanying this Act, provide to the Committees on Appropriations of the Senate and the House of Representatives a Comprehensive Acquisition Status Report with the President's budget for fiscal year 2013 as submitted under section 1105(a) of title 31, United States Code, and quarterly updates to such report not later than 30 days after the completion of each quarter.

Reports. Deadlines.

OFFICE OF THE CHIEF FINANCIAL OFFICER

For necessary expenses of the Office of the Chief Financial Officer, as authorized by section 103 of the Homeland Security Act of 2002 (6 U.S.C. 113), $50,860,000.

OFFICE OF THE CHIEF INFORMATION OFFICER

For necessary expenses of the Office of the Chief Information Officer, as authorized by section 103 of the Homeland Security Act of 2002 (6 U.S.C. 113), and Department-wide technology investments, $257,300,000; of which $105,500,000 shall be available for salaries and expenses; and of which $151,800,000, to remain available until September 30, 2014, shall be available for development and acquisition of information technology equipment, software, services, and related activities for the Department of Homeland Security: *Provided*, That the Department of Homeland Security Chief Information Officer shall submit to the Committees on Appropriations of the Senate and the House of Representatives, at the time that the President's budget is submitted each year under section 1105(a) of title 31, United States Code, a multi-year investment and management plan, to include each of fiscal years 2012 through

Deadline. Plans.

2015, for all information technology acquisition projects funded under this heading or funded by multiple components of the Department of Homeland Security through reimbursable agreements, that includes—

(1) the proposed appropriations included for each project and activity tied to mission requirements, program management capabilities, performance levels, and specific capabilities and services to be delivered;

(2) the total estimated cost and projected timeline of completion for all multi-year enhancements, modernizations, and new capabilities that are proposed in such budget or underway;

(3) a detailed accounting of operations and maintenance and contractor services costs; and

(4) a current acquisition program baseline for each project, that—

(A) notes and explains any deviations in cost, performance parameters, schedule, or estimated date of completion from the original acquisition program baseline;

(B) aligns the acquisition programs covered by the baseline to mission requirements by defining existing capabilities, identifying known capability gaps between such existing capabilities and stated mission requirements, and explaining how each increment will address such known capability gaps; and

(C) defines life-cycle costs for such programs.

ANALYSIS AND OPERATIONS

For necessary expenses for intelligence analysis and operations coordination activities, as authorized by title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.), $338,068,000; of which not to exceed $4,250 shall be for official reception and representation expenses; and of which $141,521,000 shall remain available until September 30, 2013.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978 (5 U.S.C. App.), $117,000,000, of which not to exceed $300,000 may be used for certain confidential operational expenses, including the payment of informants, to be expended at the direction of the Inspector General.

TITLE II

SECURITY, ENFORCEMENT, AND INVESTIGATIONS

U.S. CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

For necessary expenses for enforcement of laws relating to border security, immigration, customs, agricultural inspections and regulatory activities related to plant and animal imports, and transportation of unaccompanied minor aliens; purchase and lease of up to 7,500 (6,500 for replacement only) police-type vehicles;

and contracting with individuals for personal services abroad; $8,680,118,000; of which $3,274,000 shall be derived from the Harbor Maintenance Trust Fund for administrative expenses related to the collection of the Harbor Maintenance Fee pursuant to section 9505(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 9505(c)(3)) and notwithstanding section 1511(e)(1) of the Homeland Security Act of 2002 (6 U.S.C. 551(e)(1)); of which not to exceed $38,250 shall be for official reception and representation expenses; of which not less than $287,901,000 shall be for Air and Marine Operations; of which such sums as become available in the Customs User Fee Account, except sums subject to section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)), shall be derived from that account; of which not to exceed $150,000 shall be available for payment for rental space in connection with preclearance operations; of which not to exceed $1,000,000 shall be for awards of compensation to informants, to be accounted for solely under the certificate of the Secretary of Homeland Security: *Provided,* That for fiscal year 2012, the overtime limitation prescribed in section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) shall be $35,000; and notwithstanding any other provision of law, none of the funds appropriated by this Act may be available to compensate any employee of U.S. Customs and Border Protection for overtime, from whatever source, in an amount that exceeds such limitation, except in individual cases determined by the Secretary of Homeland Security, or the designee of the Secretary, to be necessary for national security purposes, to prevent excessive costs, or in cases of immigration emergencies: *Provided further,* That the Border Patrol shall maintain an active duty presence of not less than 21,370 full-time equivalent agents protecting the borders of the United States in the fiscal year: *Provided further,* That the Commissioner of U.S. Customs and Border Protection shall submit to the Committees on Appropriations of the Senate and the House of Representatives, with the congressional budget justification, a multi-year investment and management plan, to include each fiscal year starting with the current fiscal year and the 3 subsequent fiscal years, for inspection and detection technology supporting operations under this heading, including all non-intrusive inspection and radiation detection technology, that provides—

Plans. Deadline.

(1) the funding level for all inspection and detection technology equipment by source;

(2) the inventory of inspection and detection technology equipment by type and age;

(3) the proposed appropriations for procurement of inspection and detection technology equipment by type, including quantity, for deployment, and for operations and maintenance;

(4) projected funding levels for procurement of inspection and detection technology equipment by type, including quantity, for deployment, and for operations and maintenance for each of the 3 subsequent fiscal years; and

(5) a current acquisition program baseline that—

(A) aligns the acquisition of each technology to mission requirements by defining existing capabilities of comparable legacy technology assets, identifying known capability gaps between such existing capabilities and stated mission requirements, and explaining how the acquisition of each technology will address such known capability gaps;

(B) defines life-cycle costs for each technology, including all associated costs of major acquisitions systems infrastructure and transition to operations, delineated by purpose and fiscal year for the projected service life of the technology; and

(C) includes a phase-out and decommissioning schedule delineated by fiscal year for existing legacy technology assets that each technology is intended to replace or recapitalize.

AUTOMATION MODERNIZATION

For expenses for U.S. Customs and Border Protection automated systems, $334,275,000, to remain available until September 30, 2014, of which not less than $140,000,000 shall be for the development of the Automated Commercial Environment: *Provided*, That of the total amount made available under this heading, $25,000,000 may not be obligated for the Automated Commercial Environment program until the Commissioner of U.S. Customs and Border Protection submits to the Committees on Appropriations of the Senate and the House of Representatives, not later than 60 days after the date of enactment of this Act, an expenditure plan for the Automated Commercial Environment program including results to date, plans for the program, and a list of projects with associated funding from prior appropriations and provided by this Act.

Deadline.
Expenditure plan.
Project list.

BORDER SECURITY FENCING, INFRASTRUCTURE, AND TECHNOLOGY

For expenses for border security fencing, infrastructure, and technology, $400,000,000, to remain available until September 30, 2014: *Provided,* That of the total amount made available under this heading, $60,000,000 shall not be obligated until the Committees on Appropriations of the Senate and the House of Representatives receive a detailed plan for expenditure, prepared by the Commissioner of U.S. Customs and Border Protection, and submitted not later than 90 days after the date of enactment of this Act, for a program to establish and maintain a security barrier along the borders of the United States of fencing and vehicle barriers, where practicable, and of other forms of tactical infrastructure and technology: *Provided further*, That the Commissioner of U.S. Customs and Border Protection shall submit to the Committees on Appropriations of the Senate and the House of Representatives, at the time that the President's budget is submitted each year under section 1105(a) of title 31, United States Code, a multi-year investment and management plan for the Border Security Fencing, Infrastructure, and Technology account, that includes for each tactical infrastructure and technology deployment—

Expenditure plan.
Deadline.

Deadline.
Plans.

(1) the funding level in that budget and projected funding levels for each of the next 3 fiscal years, including a description of the purpose of such funds;

(2) the deployment plan, by border segment, that aligns each deployment to mission requirements by defining existing capabilities, identifying known capability gaps between such existing capabilities and stated mission requirements related to achieving operational control, and explaining how each tactical infrastructure or technology deployment will address such known capability gaps; and

(3) a current acquisition program baseline that—

(A) notes and explains any deviations in cost, performance parameters, schedule, or estimated date of completion from the most recent acquisition program baseline approved by the Department of Homeland Security Acquisition Review Board;

(B) includes a phase-out and life-cycle recapitalization schedule delineated by fiscal year for existing and new tactical infrastructure and technology deployments that each deployment is intended to replace or recapitalize; and

(C) includes qualitative performance metrics that assess the effectiveness of new and existing tactical infrastructure and technology deployments and inform the next multi-year investment and management plan related to achieving operational control of the Northern and Southwest borders of the United States.

AIR AND MARINE INTERDICTION, OPERATIONS, MAINTENANCE, AND PROCUREMENT

For necessary expenses for the operations, maintenance, and procurement of marine vessels, aircraft, unmanned aircraft systems, and other related equipment of the air and marine program, including operational training and mission-related travel, the operations of which include the following: the interdiction of narcotics and other goods; the provision of support to Federal, State, and local agencies in the enforcement or administration of laws enforced by the Department of Homeland Security; and, at the discretion of the Secretary of Homeland Security, the provision of assistance to Federal, State, and local agencies in other law enforcement and emergency humanitarian efforts, $503,966,000, to remain available until September 30, 2014: *Provided*, That no aircraft or other related equipment, with the exception of aircraft that are one of a kind and have been identified as excess to U.S. Customs and Border Protection requirements and aircraft that have been damaged beyond repair, shall be transferred to any other Federal agency, department, or office outside of the Department of Homeland Security during fiscal year 2012 without the prior approval of the Committees on Appropriations of the Senate and the House of Representatives: *Provided further*, That the Secretary of Homeland Security shall report to the Committees on Appropriations of the Senate and the House of Representatives, not later than 90 days after the date of enactment of this Act, on the update to the 5-year strategic plan for the air and marine program directed in conference report 109–241 accompanying Public Law 109–90 that addresses missions, structure, operations, equipment, facilities, and resources including deployment and command and control requirements, and includes a recapitalization plan with milestones and funding, and a detailed staffing plan with associated costs to achieve full staffing to meet all mission requirements.

Reports. Deadline.

CONSTRUCTION AND FACILITIES MANAGEMENT

For necessary expenses to plan, acquire, construct, renovate, equip, furnish, operate, manage, and maintain buildings, facilities, and related infrastructure necessary for the administration and enforcement of the laws relating to customs, immigration, and

border security, $236,596,000, to remain available until September 30, 2016: *Provided,* That for fiscal year 2012 and thereafter, the annual budget submission of U.S. Customs and Border Protection for "Construction and Facilities Management" shall, in consultation with the General Services Administration, include a detailed 5-year plan for all Federal land border port of entry projects with a yearly update of total projected future funding needs delineated by land port of entry: *Provided further*, That the Commissioner of U.S. Customs and Border Protection shall submit to the Committees on Appropriations of the Senate and the House of Representatives, at the time that the President's budget is submitted each year under section 1105(a) of title 31, United States Code, an inventory of the real property of U.S. Customs and Border Protection and a plan for each activity and project proposed for funding under this heading that includes the full cost by fiscal year of each activity and project proposed and underway in fiscal year 2013.

Plans.
Deadline.
6 USC 214 note.

Deadline.
Inventory.
Plans.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

SALARIES AND EXPENSES

For necessary expenses for enforcement of immigration and customs laws, detention and removals, and investigations, including overseas vetted units operations; and purchase and lease of up to 3,790 (2,350 for replacement only) police-type vehicles; $5,528,874,000; of which not to exceed $10,000,000 shall be available until expended for conducting special operations under section 3131 of the Customs Enforcement Act of 1986 (19 U.S.C. 2081); of which not to exceed $12,750 shall be for official reception and representation expenses; of which not to exceed $2,000,000 shall be for awards of compensation to informants, to be accounted for solely under the certificate of the Secretary of Homeland Security; of which not less than $305,000 shall be for promotion of public awareness of the child pornography tipline and activities to counter child exploitation; of which not less than $5,400,000 shall be used to facilitate agreements consistent with section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)); and of which not to exceed $11,216,000 shall be available to fund or reimburse other Federal agencies for the costs associated with the care, maintenance, and repatriation of smuggled aliens unlawfully present in the United States: *Provided,* That none of the funds made available under this heading shall be available to compensate any employee for overtime in an annual amount in excess of $35,000, except that the Secretary of Homeland Security, or the designee of the Secretary, may waive that amount as necessary for national security purposes and in cases of immigration emergencies: *Provided further,* That of the total amount provided, $15,770,000 shall be for activities to enforce laws against forced child labor, of which not to exceed $6,000,000 shall remain available until expended: *Provided further,* That of the total amount available, not less than $1,600,000,000 shall be available to identify aliens convicted of a crime who may be deportable, and to remove them from the United States once they are judged deportable, of which $189,064,000 shall remain available until September 30, 2013: *Provided further,* That the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement shall report to

Waiver authority.

Reports.
Deadlines.

the Committees on Appropriations of the Senate and the House of Representatives, not later than 45 days after the end of each quarter of the fiscal year, on progress in implementing the preceding proviso and the funds obligated during that quarter to make such progress: *Provided further,* That the Secretary of Homeland Security shall prioritize the identification and removal of aliens convicted of a crime by the severity of that crime: *Provided further,* That funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30, 2012: *Provided further,* That of the total amount provided, not less than $2,750,843,000 is for detention and removal operations, including transportation of unaccompanied minor aliens: *Provided further,* That of the total amount provided, $10,300,000 shall remain available until September 30, 2013, for the Visa Security Program: *Provided further,* That none of the funds provided under this heading may be used to continue a delegation of law enforcement authority authorized under section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) if the Department of Homeland Security Inspector General determines that the terms of the agreement governing the delegation of authority have been violated: *Provided further,* That none of the funds provided under this heading may be used to continue any contract for the provision of detention services if the two most recent overall performance evaluations received by the contracted facility are less than "adequate" or the equivalent median score in any subsequent performance evaluation system: *Provided further,* That nothing under this heading shall prevent U.S. Immigration and Customs Enforcement from exercising those authorities provided under immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) during priority operations pertaining to aliens convicted of a crime.

Aliens.

Detention beds.

Determination.

Contracts.

AUTOMATION MODERNIZATION

For expenses of immigration and customs enforcement automated systems, $21,710,000, to remain available until September 30, 2016.

TRANSPORTATION SECURITY ADMINISTRATION

AVIATION SECURITY

For necessary expenses of the Transportation Security Administration related to providing civil aviation security services pursuant to the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 597; 49 U.S.C. 40101 note), $5,253,956,000, to remain available until September 30, 2013, of which not to exceed $8,500 shall be for official reception and representation expenses: *Provided,* That of the total amount made available under this heading, not to exceed $4,167,631,000 shall be for screening operations, of which $543,103,000 shall be available for explosives detection systems; $204,768,000 shall be for checkpoint support; and not to exceed $1,086,325,000 shall be for aviation security direction and enforcement: *Provided further,* That of the amount made available in the preceding proviso for explosives detection systems, $222,738,000 shall be available for the purchase and installation of these systems, of which not less than 10 percent shall be available for the purchase and installation of certified explosives detection systems at medium-

and small-sized airports: *Provided further,* That any award to deploy explosives detection systems shall be based on risk, the airport's current reliance on other screening solutions, lobby congestion resulting in increased security concerns, high injury rates, airport readiness, and increased cost effectiveness: *Provided further,* That security service fees authorized under section 44940 of title 49, United States Code, shall be credited to this appropriation as offsetting collections and shall be available only for aviation security: *Provided further,* That the sum appropriated under this heading from the general fund shall be reduced on a dollar-for-dollar basis as such offsetting collections are received during fiscal year 2012 so as to result in a final fiscal year appropriation from the general fund estimated at not more than $3,223,956,000: *Provided further,* That any security service fees collected in excess of the amount made available under this heading shall become available during fiscal year 2013: *Provided further,* That notwithstanding section 44923 of title 49, United States Code, for fiscal year 2012, any funds in the Aviation Security Capital Fund established by section 44923(h) of title 49, United States Code, may be used for the procurement and installation of explosives detection systems or for the issuance of other transaction agreements for the purpose of funding projects described in section 44923(a): *Provided further*, That none of the funds made available in this Act may be used for any recruiting or hiring of personnel into the Transportation Security Administration that would cause the agency to exceed a staffing level of 46,000 full-time equivalent screeners: *Provided further*, That the preceding proviso shall not apply to personnel hired as part-time employees: *Provided further*, That not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a detailed report on—

Explosives detection systems.

Fees.

Deadline. Reports.

(1) the Department of Homeland Security efforts and resources being devoted to develop more advanced integrated passenger screening technologies for the most effective security of passengers and baggage at the lowest possible operating and acquisition costs;

(2) how the Transportation Security Administration is deploying its existing passenger and baggage screener workforce in the most cost effective manner; and

(3) labor savings from the deployment of improved technologies for passenger and baggage screening and how those savings are being used to offset security costs or reinvested to address security vulnerabilities:

Provided further, That Members of the United States House of Representatives and United States Senate, including the leadership; the heads of Federal agencies and commissions, including the Secretary, Deputy Secretary, Under Secretaries, and Assistant Secretaries of the Department of Homeland Security; the United States Attorney General, Deputy Attorney General, Assistant Attorneys General, and the United States Attorneys; and senior members of the Executive Office of the President, including the Director of the Office of Management and Budget, shall not be exempt from Federal passenger and baggage screening.

SURFACE TRANSPORTATION SECURITY

For necessary expenses of the Transportation Security Administration related to surface transportation security activities, $134,748,000, to remain available until September 30, 2013.

TRANSPORTATION THREAT ASSESSMENT AND CREDENTIALING

For necessary expenses for the development and implementation of screening programs of the Office of Transportation Threat Assessment and Credentialing, $163,954,000, to remain available until September 30, 2013.

TRANSPORTATION SECURITY SUPPORT

For necessary expenses of the Transportation Security Administration related to transportation security support and intelligence pursuant to the Aviation and Transportation Security Act (Public Law 107–71; 115 Stat. 597; 49 U.S.C. 40101 note), $1,031,926,000, to remain available until September 30, 2013: *Provided,* That of the funds appropriated under this heading, $20,000,000 may not be obligated for headquarters administration until the Administrator of the Transportation Security Administration submits to the Committees on Appropriations of the Senate and the House of Representatives detailed expenditure plans for air cargo security, checkpoint support, and explosives detection systems refurbishment, procurement, and installations on an airport-by-airport basis for fiscal year 2012: *Provided further,* That these plans shall be submitted not later than 60 days after the date of enactment of this Act.

Expenditure plans.

Deadline.

FEDERAL AIR MARSHALS

For necessary expenses of the Federal Air Marshals, $966,115,000.

COAST GUARD

OPERATING EXPENSES

For necessary expenses for the operation and maintenance of the Coast Guard, not otherwise provided for; purchase or lease of not to exceed 25 passenger motor vehicles, which shall be for replacement only; purchase or lease of small boats for contingent and emergent requirements (at a unit cost of no more than $700,000) and repairs and service-life replacements, not to exceed a total of $31,000,000; purchase or lease of boats necessary for overseas deployments and activities; minor shore construction projects not exceeding $1,000,000 in total cost at any location; payments pursuant to section 156 of Public Law 97–377 (42 U.S.C. 402 note; 96 Stat. 1920); and recreation and welfare; $7,051,054,000, of which $598,000,000 shall be for defense-related activities, of which $258,000,000 is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985; of which $24,500,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C.

2712(a)(5)); and of which not to exceed $17,000 shall be for official reception and representation expenses: *Provided*, That none of the funds made available by this Act shall be for expenses incurred for recreational vessels under section 12114 of title 46, United States Code, except to the extent fees are collected from owners of yachts and credited to this appropriation: *Provided further*, That the Coast Guard shall comply with the requirements of section 527 of the National Defense Authorization Act for Fiscal Year 2004 (10 U.S.C. 4331 note) with respect to the Coast Guard Academy: *Provided further*, That of the funds provided under this heading, $75,000,000 shall be withheld from obligation for Coast Guard Headquarters Directorates until a revised future-years capital investment plan for fiscal years 2013 through 2017, as specified under the heading Coast Guard "Acquisition, Construction, and Improvements" of this Act is submitted to the Committees on Appropriations of the Senate and the House of Representatives*: Provided further,* That funds made available under this heading for Overseas Contingency Operations/Global War on Terrorism may be allocated by program, project, and activity, notwithstanding section 503 of this Act.

Compliance.

Investment plan.

ENVIRONMENTAL COMPLIANCE AND RESTORATION

For necessary expenses to carry out the environmental compliance and restoration functions of the Coast Guard under chapter 19 of title 14, United States Code, $13,500,000, to remain available until September 30, 2016.

RESERVE TRAINING

For necessary expenses of the Coast Guard Reserve, as authorized by law; operations and maintenance of the Coast Guard reserve program; personnel and training costs; and equipment and services; $134,278,000.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For necessary expenses of acquisition, construction, renovation, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto; and maintenance, rehabilitation, lease and operation of facilities and equipment; as authorized by law; $1,403,924,000, of which $20,000,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)); of which $20,000,000 shall remain available until September 30, 2016, for military family housing, of which not more than $14,000,000 shall be derived from the Coast Guard Housing Fund, established pursuant to 14 U.S.C. 687; of which $642,000,000 shall be available until September 30, 2016, to acquire, effect major repairs to, renovate, or improve vessels, small boats, and related equipment; of which $289,900,000 shall be available until September 30, 2016, to acquire, effect major repairs to, renovate, or improve aircraft or increase aviation capability; of which $161,140,000 shall be available until September 30, 2016, for other acquisition programs; of which $180,692,000 shall be available until September 30, 2016, for shore facilities and aids to navigation, including waterfront facilities at Navy installations used by the Coast Guard; of which $110,192,000 shall be available for

Contracts.

personnel compensation and benefits and related costs: *Provided,* That the funds provided by this Act shall be immediately available and allotted to contract for long lead time materials, components, and designs for the sixth National Security Cutter notwithstanding the availability of funds for production costs or post-production costs: *Provided further,* That the Secretary of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives, at the time that the President's budget is submitted each year under section 1105(a) of title 31, United States Code, a future-years capital investment plan for the Coast Guard that identifies for each requested capital asset—

Deadline.
Investment plan.
14 USC 663 note.

(1) the proposed appropriations included in that budget;

(2) the total estimated cost of completion, including and clearly delineating the costs of associated major acquisition systems infrastructure and transition to operations;

(3) projected funding levels for each fiscal year for the next 5 fiscal years or until acquisition program baseline or project completion, whichever is earlier;

(4) an estimated completion date at the projected funding levels; and

(5) a current acquisition program baseline for each capital asset, as applicable, that—

(A) includes the total acquisition cost of each asset, subdivided by fiscal year and including a detailed description of the purpose of the proposed funding levels for each fiscal year, including for each fiscal year funds requested for design, pre-acquisition activities, production, structural modifications, missionization, post-delivery, and transition to operations costs;

(B) includes a detailed project schedule through completion, subdivided by fiscal year, that details—

(i) quantities planned for each fiscal year; and

(ii) major acquisition and project events, including development of operational requirements, contracting actions, design reviews, production, delivery, test and evaluation, and transition to operations, including necessary training, shore infrastructure, and logistics;

(C) notes and explains any deviations in cost, performance parameters, schedule, or estimated date of completion from the original acquisition program baseline and the most recent baseline approved by the Department of Homeland Security's Acquisition Review Board, if applicable;

(D) aligns the acquisition of each asset to mission requirements by defining existing capabilities of comparable legacy assets, identifying known capability gaps between such existing capabilities and stated mission requirements, and explaining how the acquisition of each asset will address such known capability gaps;

(E) defines life-cycle costs for each asset and the date of the estimate on which such costs are based, including all associated costs of major acquisitions systems infrastructure and transition to operations, delineated by purpose and fiscal year for the projected service life of the asset;

(F) includes the earned value management system summary schedule performance index and cost performance index for each asset, if applicable; and

(G) includes a phase-out and decommissioning schedule delineated by fiscal year for each existing legacy asset that each asset is intended to replace or recapitalize:

Provided further, That the Secretary of Homeland Security shall ensure that amounts specified in the future-years capital investment plan are consistent, to the maximum extent practicable, with proposed appropriations necessary to support the programs, projects, and activities of the Coast Guard in the President's budget as submitted under section 1105(a) of title 31, United States Code, for that fiscal year: *Provided further,* That any inconsistencies between the capital investment plan and proposed appropriations shall be identified and justified: *Provided further,* That subsections (a) and (b) of section 6402 of Public Law 110–28 shall apply with respect to the amounts made available under this heading.

Applicability.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

For necessary expenses for applied scientific research, development, test, and evaluation; and for maintenance, rehabilitation, lease, and operation of facilities and equipment; as authorized by law; $27,779,000, to remain available until September 30, 2016, of which $500,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)): *Provided,* That there may be credited to and used for the purposes of this appropriation funds received from State and local governments, other public authorities, private sources, and foreign countries for expenses incurred for research, development, testing, and evaluation.

RETIRED PAY

For retired pay, including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose, payments under the Retired Serviceman's Family Protection and Survivor Benefits Plans, payment for career status bonuses, concurrent receipts and combat-related special compensation under the National Defense Authorization Act, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $1,440,157,000, to remain available until expended.

UNITED STATES SECRET SERVICE

SALARIES AND EXPENSES

For necessary expenses of the United States Secret Service, including purchase of not to exceed 652 vehicles for police-type use for replacement only; hire of passenger motor vehicles; purchase of motorcycles made in the United States; hire of aircraft; services of expert witnesses at such rates as may be determined by the Director of the Secret Service; rental of buildings in the District of Columbia, and fencing, lighting, guard booths, and other facilities on private or other property not in Government ownership or control, as may be necessary to perform protective functions; payment of per diem or subsistence allowances to employees in cases in which a protective assignment on the actual day or days of the visit of a protectee requires an employee to work 16 hours per day or to remain overnight at a post of duty; conduct of and

participation in firearms matches; presentation of awards; travel of United States Secret Service employees on protective missions without regard to the limitations on such expenditures in this or any other Act if approval is obtained in advance from the Committees on Appropriations of the Senate and the House of Representatives; research and development; grants to conduct behavioral research in support of protective research and operations; and payment in advance for commercial accommodations as may be necessary to perform protective functions; $1,661,237,000, of which not to exceed $21,250 shall be for official reception and representation expenses; of which not to exceed $100,000 shall be to provide technical assistance and equipment to foreign law enforcement organizations in counterfeit investigations; of which $2,366,000 shall be for forensic and related support of investigations of missing and exploited children; and of which $6,000,000 shall be for a grant for activities related to investigations of missing and exploited children and shall remain available until September 30, 2013: *Provided*, That up to $18,000,000 for protective travel shall remain available until September 30, 2013: *Provided further*, That up to $19,307,000 for National Special Security Events shall remain available until September 30, 2013: *Provided further*, That the United States Secret Service is authorized to obligate funds in anticipation of reimbursements from Federal agencies and entities, as defined in section 105 of title 5, United States Code, for personnel receiving training sponsored by the James J. Rowley Training Center, except that total obligations at the end of the fiscal year shall not exceed total budgetary resources available under this heading at the end of the fiscal year: *Provided further*, That none of the funds made available under this heading shall be available to compensate any employee for overtime in an annual amount in excess of $35,000, except that the Secretary of Homeland Security, or the designee of the Secretary, may waive that amount as necessary for national security purposes: *Provided further*, That none of the funds made available to the United States Secret Service by this Act or by previous appropriations Acts may be made available for the protection of the head of a Federal agency other than the Secretary of Homeland Security: *Provided further*, That the Director of the United States Secret Service may enter into an agreement to provide such protection on a fully reimbursable basis: *Provided further*, That of the total amount made available under this heading, $43,843,000, to remain available until September 30, 2014, is for information integration and technology transformation: *Provided further*, That $20,000,000 made available in the preceding proviso shall not be obligated to purchase or install information technology equipment until the Department of Homeland Security Chief Information Officer submits a report to the Committees on Appropriations of the Senate and the House of Representatives certifying that all plans for integration and transformation are consistent with Department of Homeland Security data center migration and enterprise architecture requirements: *Provided further*, That none of the funds made available to the United States Secret Service by this Act or by previous appropriations Acts may be obligated for the purpose of opening a new permanent domestic or overseas office or location unless the Committees on Appropriations of the Senate and the House of Representatives are notified 15 days in advance of such obligation.

Waiver authority.

Reports.
Certification.

Notification.
Deadline.

ACQUISITION, CONSTRUCTION, IMPROVEMENTS, AND RELATED EXPENSES

For necessary expenses for acquisition, construction, repair, alteration, and improvement of facilities, $5,380,000, to remain available until September 30, 2016.

TITLE III

PROTECTION, PREPAREDNESS, RESPONSE, AND RECOVERY

NATIONAL PROTECTION AND PROGRAMS DIRECTORATE

MANAGEMENT AND ADMINISTRATION

For salaries and expenses of the Office of the Under Secretary for the National Protection and Programs Directorate, support for operations, information technology, and the Office of Risk Management and Analysis, $50,695,000: *Provided,* That not to exceed $4,250 shall be for official reception and representation expenses: *Provided further,* That, subject to section 503 of this Act, the Secretary of Homeland Security may transfer up to $4,241,000 to the Office of Policy under the heading Departmental Management and Operations "Office of the Secretary and Executive Management" for activities related to risk management and analysis: *Provided further,* That in the preceding proviso notification shall take place not later than 90 days after the date of enactment of this Act: *Provided further,* That any funds not transferred pursuant to the penultimate proviso shall be available solely to close out the Office of Risk Management and Analysis not later than September 30, 2012, and shall not be available for further transfer or reprogramming pursuant to section 503 of this Act.

Notification. Deadline.

Deadline.

INFRASTRUCTURE PROTECTION AND INFORMATION SECURITY

For necessary expenses for infrastructure protection and information security programs and activities, as authorized by title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.), $888,243,000, of which $200,000,000 shall remain available until September 30, 2013: *Provided,* That the Under Secretary for the National Protection and Programs Directorate shall submit a plan for expenditure for the National Cyber Security Division and the Office of Infrastructure Protection, to the Committees on Appropriations of the Senate and the House of Representatives, not later than 90 days after the date of enactment of this Act.

Expenditure plan. Deadline.

FEDERAL PROTECTIVE SERVICE

The revenues and collections of security fees credited to this account shall be available until expended for necessary expenses related to the protection of federally owned and leased buildings and for the operations of the Federal Protective Service: *Provided,* That the Secretary of Homeland Security and the Director of the Office of Management and Budget shall certify in writing to the Committees on Appropriations of the Senate and the House of Representatives not later than December 31, 2011, that the operations of the Federal Protective Service will be fully funded in fiscal year 2012 through revenues and collection of security fees,

Certification. Deadline.

and shall adjust the fees to ensure fee collections are sufficient to ensure that the Federal Protective Service maintains not fewer than 1,371 full-time equivalent staff and 1,007 full-time equivalent Police Officers, Inspectors, Area Commanders, and Special Agents who, while working, are directly engaged on a daily basis protecting and enforcing laws at Federal buildings (referred to as "in-service field staff"): *Provided further*, That an expenditure plan for fiscal year 2012 shall be provided to the Committees on Appropriations of the Senate and the House of Representatives not later than 60 days after the date of enactment of this Act: *Provided further,* That the Director of the Federal Protective Service shall include with the submission of the President's fiscal year 2013 budget a strategic human capital plan that aligns fee collections to personnel requirements based on a current threat assessment.

Expenditure plan. Deadline.

Strategic plan.

UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY

For necessary expenses for the United States Visitor and Immigrant Status Indicator Technology program, as authorized by section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), $306,802,000, of which $9,400,000 is for development of a comprehensive plan for implementation of biometric air exit and improvements to biographic entry-exit capabilities: *Provided*, That of the total amount made available under this heading, $194,295,000 is to remain available until September 30, 2014: *Provided further*, That of the total amount provided, $50,000,000 may not be obligated for the United States Visitor and Immigrant Status Indicator Technology program until the Secretary of Homeland Security submits to the Committees on Appropriations of the Senate and the House of Representatives at the time that the President's budget is submitted each year under section 1105(a) of title 31, United States Code, a multi-year investment and management plan, to include each fiscal year starting with the current fiscal year, and the following 3 fiscal years, for the United States Visitor and Immigrant Status Indicator Technology program that includes—

Deadline. Plans.

(1) the proposed appropriations for each activity tied to mission requirements and outcomes, program management capabilities, performance levels, and specific capabilities and services to be delivered, noting any deviations in cost or performance from the prior fiscal year expenditure or investment and management plan;

(2) the total estimated cost, projected funding by fiscal year, and projected timeline of completion for all enhancements, modernizations, and new capabilities proposed in such budget and underway, including and clearly delineating associated efforts and funds requested by other agencies within the Department of Homeland Security and in the Federal Government, and detailing any deviations in cost, performance, schedule, or estimated date of completion provided in the prior fiscal year expenditure or investment and management plan; and

(3) a detailed accounting of operations and maintenance, contractor services, and program costs associated with the management of identity services.

OFFICE OF HEALTH AFFAIRS

For necessary expenses of the Office of Health Affairs, $167,449,000; of which $29,671,000 is for salaries and expenses and $90,164,000 is for BioWatch operations: *Provided,* That $47,614,000 shall remain available until September 30, 2013, for biosurveillance, BioWatch Generation 3, chemical defense, medical and health planning and coordination, and workforce health protection: *Provided further*, That not to exceed $2,500 shall be for official reception and representation expenses: *Provided further*, That the Assistant Secretary for the Office of Health Affairs shall submit an expenditure plan for fiscal year 2012 to the Committees on Appropriations of the Senate and the House of Representatives not later than 60 days after the date of enactment of this Act.

Expenditure plan. Deadline.

FEDERAL EMERGENCY MANAGEMENT AGENCY

SALARIES AND EXPENSES

For necessary expenses of the Federal Emergency Management Agency, $895,350,000, including activities authorized by the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Cerro Grande Fire Assistance Act of 2000 (division C, title I, 114 Stat. 583), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), the Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.), sections 107 and 303 of the National Security Act of 1947 (50 U.S.C. 404, 405), Reorganization Plan No. 3 of 1978 (5 U.S.C. App.), the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.), and the Post-Katrina Emergency Management Reform Act of 2006 (Public Law 109–295; 120 Stat. 1394): *Provided,* That not to exceed $2,500 shall be for official reception and representation expenses: *Provided further,* That the Administrator of the Federal Emergency Management Agency may reprogram funds made available under this heading between programs, projects, and activities prior to April 16, 2012, notwithstanding section 503 of this Act: *Provided further,* That $1,400,000 of the funds available for the Office of the Administrator of the Federal Emergency Management Agency shall not be available for obligation until the Administrator of the Federal Emergency Management Agency submits to the Committees on Appropriations of the Senate and the House of Representatives the National Preparedness Report required by Public Law 109–295 and a comprehensive plan to implement a system to measure the effectiveness of grants to State and local communities in fiscal year 2012: *Provided further,* That for purposes of planning, coordination, execution, and decision making related to mass evacuation during a disaster, the Governors of the State of West Virginia and the Commonwealth of Pennsylvania, or their designees, shall be incorporated into efforts to integrate the activities of Federal, State, and local governments in the National Capital Region, as defined in section 882 of the Homeland Security Act of 2002 (Public Law 107–296): *Provided further,* That of the total amount made available under this heading, $41,250,000 shall be for the Urban Search and Rescue Response System, of which not to exceed $1,600,000 may be made available for administrative costs; $5,493,000 shall be for the Office of National Capital Region Coordination; not to exceed $12,000,000 shall remain available until

Reports. Comprehensive plan.

Disaster evacuation. West Virginia. Pennsylvania.

September 30, 2013, for capital improvements at the Mount Weather Emergency Operations Center; and not less than $13,662,000 shall be for expenses related to modernization of automated systems: *Provided further,* That the Administrator of the Federal Emergency Management Agency, in consultation with the Department of Homeland Security Chief Information Officer, shall submit to the Committees on Appropriations of the Senate and the House of Representatives a strategic plan, not later than 180 days after the date of enactment of this Act, for the funds specified in the preceding proviso related to modernization of automated systems, that includes—

Strategic plan. Deadline.

(1) a comprehensive plan to automate and modernize information systems to resolve current inefficiencies, integrate data, and aid in better performance of executing the Agency-wide mission;

(2) a description of the appropriations for each project and activity tied to mission requirements and outcomes, program management capabilities, performance levels, and specific capabilities and services to be delivered;

(3) the total estimated cost and projected timeline of completion for all multi-year enhancements, modernizations, and new capabilities proposed and underway covering a period of no less than 3 years;

(4) a detailed accounting of operations and maintenance and contractor services costs; and

(5) the current or planned acquisition programs including—

(A) how the programs align to mission requirements by defining existing capabilities, identifying known capability gaps between such existing capabilities and stated mission requirements, and explaining how each increment will address a known capability gap;

(B) how programs provide quantifiable information that aids in understanding national emergency management capabilities;

(C) how programs ensure information sharing among homeland security partners; and

(D) life-cycle costs for all acquisitions.

STATE AND LOCAL PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For grants, contracts, cooperative agreements, and other activities, $1,349,681,000, which shall be distributed, according to threat, vulnerability, and consequence, at the discretion of the Secretary of Homeland Security based on the following authorities:

(1) The State Homeland Security Grant Program under section 2004 of the Homeland Security Act of 2002 (6 U.S.C. 605): *Provided,* That notwithstanding subsection (c)(4) of such section 2004, for fiscal year 2012, the Commonwealth of Puerto Rico shall make available to local and tribal governments amounts provided to the Commonwealth of Puerto Rico under this paragraph in accordance with subsection (c)(1) of such section 2004.

Puerto Rico.

(2) The Urban Area Security Initiative under section 2003 of the Homeland Security Act of 2002 (6 U.S.C. 604).

(3) The Metropolitan Medical Response System under section 635 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 723).

(4) The Citizen Corps Program.

(5) Public Transportation Security Assistance and Railroad Security Assistance, under sections 1406 and 1513 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1135 and 1163), including Amtrak security: *Provided,* That such public transportation security assistance shall be provided directly to public transportation agencies.

Security assistance.

(6) Over-the-Road Bus Security Assistance under section 1532 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1182).

(7) Port Security Grants in accordance with 46 U.S.C. 70107.

(8) The Driver's License Security Grants Program in accordance with section 204 of the REAL ID Act of 2005 (49 U.S.C. 30301 note).

(9) The Interoperable Emergency Communications Grant Program under section 1809 of the Homeland Security Act of 2002 (6 U.S.C. 579).

(10) Emergency Operations Centers under section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196c).

(11) Buffer Zone Protection Program Grants.

(12) Organizations (as described under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax section 501(a) of such code) determined by the Secretary to be at high risk of a terrorist attack:

Provided, That of the amount provided under this heading, $50,000,000 shall be for Operation Stonegarden and no less than $100,000,000 shall be for areas at the highest threat of a terrorist attack: *Provided further,* That $231,681,000 shall be for training, exercises, technical assistance, and other programs, of which $155,500,000 shall be for training of State, local, and tribal emergency response providers: *Provided further,* That for grants under paragraphs (1) through (12), applications for grants shall be made available to eligible applicants not later than 60 days after the date of enactment of this Act, that eligible applicants shall submit applications not later than 80 days after the grant announcement, and the Administrator of the Federal Emergency Management Agency shall act within 65 days after the receipt of an application: *Provided further,* That notwithstanding section 2008(a)(11) of the Homeland Security Act of 2002 (6 U.S.C. 609(a)(11)), or any other provision of law, a grantee may use not more than 5 percent of the amount of a grant made available under this heading for expenses directly related to administration of the grant: *Provided further,* That 6.8 percent of the amounts provided under this heading shall be transferred to the Federal Emergency Management Agency "Salaries and Expenses" account for program administration: *Provided further,* That for grants under paragraphs (1) and (2), the installation of communication towers is not considered construction of a building or other physical facility: *Provided further,* That grantees shall provide reports on their use of funds, as determined necessary by the Secretary of Homeland Security: *Provided further,* That in fiscal year 2012: (a) the Center for Domestic Preparedness may provide training to emergency response providers

Grants.
Deadlines.

Reports.
Determination.

from the Federal Government, foreign governments, or private entities, if the Center for Domestic Preparedness is reimbursed for the cost of such training, and any reimbursement under this subsection shall be credited to the account from which the expenditure being reimbursed was made and shall be available, without fiscal year limitation, for the purposes for which amounts in the account may be expended; (b) the head of the Center for Domestic Preparedness shall ensure that any training provided under (a) does not interfere with the primary mission of the Center to train state and local emergency response providers; and (c) subject to (b), nothing in (a) prohibits the Center for Domestic Preparedness from providing training to employees of the Federal Emergency Management Agency in existing chemical, biological, radiological, nuclear, explosives, mass casualty, and medical surge courses pursuant to 5 U.S.C. 4103 without reimbursement for the cost of such training.

FIREFIGHTER ASSISTANCE GRANTS

For necessary expenses for programs authorized by the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.), $675,000,000, to remain available until September 30, 2013, of which $337,500,000 shall be available to carry out section 33 of that Act (15 U.S.C. 2229) and $337,500,000 shall be available to carry out section 34 of that Act (15 U.S.C. 2229a): *Provided,* That not to exceed 5 percent of the amount available under this heading shall be available for program administration.

EMERGENCY MANAGEMENT PERFORMANCE GRANTS

For necessary expenses for emergency management performance grants, as authorized by the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), and Reorganization Plan No. 3 of 1978 (5 U.S.C. App.), $350,000,000: *Provided,* That total administrative costs shall not exceed 3 percent of the total amount appropriated under this heading.

RADIOLOGICAL EMERGENCY PREPAREDNESS PROGRAM

The aggregate charges assessed during fiscal year 2012, as authorized in title III of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (42 U.S.C. 5196e), shall not be less than 100 percent of the amounts anticipated by the Department of Homeland Security necessary for its radiological emergency preparedness program for the next fiscal year: *Provided*, That the methodology for assessment and collection of fees shall be fair and equitable and shall reflect costs of providing such services, including administrative costs of collecting such fees: *Provided further*, That fees received under this heading shall be deposited in this account as offsetting collections and will become available for authorized purposes on October 1, 2012, and remain available until expended.

Fees.

Effective date.

UNITED STATES FIRE ADMINISTRATION

For necessary expenses of the United States Fire Administration and for other purposes, as authorized by the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) and the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.), $44,038,000.

DISASTER RELIEF FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), $700,000,000, to remain available until expended, of which $24,000,000 shall be transferred to the Department of Homeland Security Office of Inspector General for audits and investigations related to disasters: *Provided,* That the Administrator of the Federal Emergency Management Agency shall submit an expenditure plan to the Committees on Appropriations of the Senate and the House of Representatives detailing the use of the funds made available in this or any other Act for disaster readiness and support not later than 60 days after the date of enactment of this Act: *Provided further,* That the Administrator of the Federal Emergency Management Agency shall submit to such Committees a quarterly report detailing obligations against the expenditure plan and a justification for any changes from the initial plan: *Provided further,* That the matter under this heading in title III of division E of Public Law 110–161 is amended by striking the fourth proviso: *Provided further,* That the Administrator of the Federal Emergency Management Agency shall submit to the Committees on Appropriations of the Senate and the House of Representatives the following reports, including a specific description of the methodology and the source data used in developing such reports:

Expenditure plan. Deadline.

Deadlines. Reports.

42 USC 5208. Reports.

(1) an estimate of the following amounts shall be submitted for the budget year at the time that the President's budget is submitted each year under section 1105(a) of title 31, United States Code:

(A) the unobligated balance of funds to be carried over from the prior fiscal year to the budget year;

(B) the unobligated balance of funds to be carried over from the budget year to the budget year plus 1;

(C) the amount of obligations for non-catastrophic events for the budget year;

(D) the amount of obligations for the budget year for catastrophic events delineated by event and by State;

(E) the total amount that has been previously obligated or will be required for catastrophic events delineated by event and by State for all prior years, the current year, the budget year, the budget year plus 1, the budget year plus 2, and the budget year plus 3 and beyond;

(F) the amount of previously obligated funds that will be recovered for the budget year;

(G) the amount that will be required for obligations for emergencies, as described in section 102(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1)), major disasters, as described in section

102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), fire management assistance grants, as described in section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5187), surge activities, and disaster readiness and support activities;

(H) the amount required for activities not covered under section 251(b)(2)(D)(iii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)(iii); Public Law 99–177);

Deadlines.

(2) an estimate or actual amounts, if available, of the following for the current fiscal year shall be submitted not later than the fifth day of each month beginning with the first full month after the date of enactment of this Act:

(A) a summary of the amount of appropriations made available by source, the transfers executed, the previously allocated funds recovered, and the commitments, allocations, and obligations made;

(B) a table of disaster relief activity delineated by month, including—

(i) the beginning and ending balances;

(ii) the total obligations to include amounts obligated for fire assistance, emergencies, surge, and disaster support activities;

(iii) the obligations for catastrophic events delineated by event and by State; and

(iv) the amount of previously obligated funds that are recovered;

(C) a summary of allocations, obligations, and expenditures for catastrophic events delineated by event; and

(D) the date on which funds appropriated will be exhausted.

DISASTER ASSISTANCE DIRECT LOAN PROGRAM ACCOUNT

For activities under section 319 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5162), $295,000 is for the cost of direct loans: *Provided,* That gross obligations for the principal amount of direct loans shall not exceed $25,000,000: *Provided further,* That the cost of modifying such loans shall be as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a).

FLOOD HAZARD MAPPING AND RISK ANALYSIS PROGRAM

For necessary expenses, including administrative costs, under section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101), $97,712,000, and such additional sums as may be provided by State and local governments or other political subdivisions for cost-shared mapping activities under section 1360(f)(2) of such Act (42 U.S.C. 4101(f)(2)), to remain available until expended.

NATIONAL FLOOD INSURANCE FUND

For activities under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) and the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.), $171,000,000, which shall be derived from offsetting collections assessed and collected under

section 1308(d) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(d)); of which not to exceed $22,000,000 shall be available for salaries and expenses associated with flood mitigation and flood insurance operations; and not less than $149,000,000 shall be available for flood plain management and flood mapping, which shall remain available until September 30, 2013: *Provided,* That any additional fees collected pursuant to section 1308(d) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(d)) shall be credited as an offsetting collection to this account, to be available for flood plain management and flood mapping: *Provided further,* That in fiscal year 2012, no funds shall be available from the National Flood Insurance Fund under section 1310 of that Act (42 U.S.C. 4017) in excess of:

(1) $132,000,000 for operating expenses;

(2) $1,007,571,000 for commissions and taxes of agents;

(3) such sums as are necessary for interest on Treasury borrowings; and

(4) $60,000,000, which shall remain available until expended for flood mitigation actions; of which not less than $10,000,000 is for severe repetitive loss properties under section 1361A of the National Flood Insurance Act of 1968 (42 U.S.C. 4102a); of which $10,000,000 shall be for repetitive insurance claims properties under section 1323 of the National Flood Insurance Act of 1968 (42 U.S.C. 4030); and of which $40,000,000 shall be for flood mitigation assistance under section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c), notwithstanding subparagraphs (B) and (C) of subsection (b)(3) and subsection (f) of section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) and notwithstanding subsection (a)(7) of section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017):

Provided further, That the amounts collected under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) and section 1366(i) of the National Flood Insurance Act of 1968 shall be deposited in the National Flood Insurance Fund to supplement other amounts specified as available for section 1366 of the National Insurance Act of 1968, notwithstanding subsection (f)(8) of such section 102 (42 U.S.C. 4012a(f)(8) and subsection 1366(i) and paragraphs (2) and (3) of section 1367(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(i), 4104d(b)(2)–(3)): *Provided further,* That total administrative costs shall not exceed 4 percent of the total appropriation.

NATIONAL PREDISASTER MITIGATION FUND

For the predisaster mitigation grant program under section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133), $35,500,000, to remain available until expended: *Provided,* That the total administrative costs associated with such grants shall not exceed $3,000,000 of the total amount made available under this heading.

EMERGENCY FOOD AND SHELTER

To carry out the emergency food and shelter program pursuant to title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.), $120,000,000, to remain available until

expended: *Provided*, That total administrative costs shall not exceed 3.5 percent of the total amount made available under this heading.

TITLE IV

RESEARCH AND DEVELOPMENT, TRAINING, AND SERVICES

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES

For necessary expenses for citizenship and immigration services, $102,424,000 for the E-Verify Program, as described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), to assist United States employers with maintaining a legal workforce: *Provided,* That notwithstanding any other provision of law, funds otherwise made available to United States Citizenship and Immigration Services may be used to acquire, operate, equip, and dispose of up to 5 vehicles, for replacement only, for areas where the Administrator of General Services does not provide vehicles for lease: *Provided further,* That the Director of United States Citizenship and Immigration Services may authorize employees who are assigned to those areas to use such vehicles to travel between the employees' residences and places of employment.

FEDERAL LAW ENFORCEMENT TRAINING CENTER

SALARIES AND EXPENSES

For necessary expenses of the Federal Law Enforcement Training Center, including materials and support costs of Federal law enforcement basic training; the purchase of not to exceed 117 vehicles for police-type use and hire of passenger motor vehicles; expenses for student athletic and related activities; the conduct of and participation in firearms matches and presentation of awards; public awareness and enhancement of community support of law enforcement training; room and board for student interns; a flat monthly reimbursement to employees authorized to use personal mobile phones for official duties; and services as authorized by section 3109 of title 5, United States Code; $238,957,000; of which up to $48,978,000 shall remain available until September 30, 2013, for materials and support costs of Federal law enforcement basic training; of which $300,000 shall remain available until expended to be distributed to Federal law enforcement agencies for expenses incurred participating in training accreditation; and of which not to exceed $10,200 shall be for official reception and representation expenses: *Provided,* That the Center is authorized to obligate funds in anticipation of reimbursements from agencies receiving training sponsored by the Center, except that total obligations at the end of the fiscal year shall not exceed total budgetary resources available at the end of the fiscal year: *Provided further,* That section 1202(a) of Public Law 107–206 (42 U.S.C. 3771 note), as amended by Public Law 111–83 (123 Stat. 2166), is further amended by striking "December 31, 2012" and inserting "December 31, 2014": *Provided further,* That the Director of the Federal Law Enforcement Training Center shall schedule basic or advanced law enforcement training, or both, at all four training facilities under the control of the Federal Law Enforcement Training Center to ensure that such training facilities are operated at the highest

capacity throughout the fiscal year: *Provided further,* That the Federal Law Enforcement Training Accreditation Board, including representatives from the Federal law enforcement community and non-Federal accreditation experts involved in law enforcement training, shall lead the Federal law enforcement training accreditation process to continue the implementation of measuring and assessing the quality and effectiveness of Federal law enforcement training programs, facilities, and instructors.

ACQUISITIONS, CONSTRUCTION, IMPROVEMENTS, AND RELATED EXPENSES

For acquisition of necessary additional real property and facilities, construction, and ongoing maintenance, facility improvements, and related expenses of the Federal Law Enforcement Training Center, $32,456,000, to remain available until September 30, 2016: *Provided,* That the Center is authorized to accept reimbursement to this appropriation from government agencies requesting the construction of special use facilities.

SCIENCE AND TECHNOLOGY

MANAGEMENT AND ADMINISTRATION

For salaries and expenses of the Office of the Under Secretary for Science and Technology and for management and administration of programs and activities, as authorized by title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.), $135,000,000: *Provided,* That not to exceed $8,500 shall be for official reception and representation expenses.

RESEARCH, DEVELOPMENT, ACQUISITION, AND OPERATIONS

For necessary expenses for science and technology research, including advanced research projects, development, test and evaluation, acquisition, and operations as authorized by title III of the Homeland Security Act of 2002 (6 U.S.C. 181 et seq.), and the purchase or lease of not to exceed 5 vehicles, $533,000,000, of which $356,500,000, to remain available until September 30, 2014; and of which $176,500,000, to remain available until September 30, 2016, solely for operation and construction of laboratory facilities.

DOMESTIC NUCLEAR DETECTION OFFICE

MANAGEMENT AND ADMINISTRATION

For salaries and expenses of the Domestic Nuclear Detection Office, as authorized by title XIX of the Homeland Security Act of 2002 (6 U.S.C. 591 et seq.), for management and administration of programs and activities, $38,000,000: *Provided,* That not to exceed $2,500 shall be for official reception and representation expenses: *Provided further,* That not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the

Deadline.
Strategic plan.

Senate and the House of Representatives a strategic plan of investments necessary to implement the Department of Homeland Security's responsibilities under the domestic component of the global nuclear detection architecture that shall:

(1) define each Departmental entity's roles and responsibilities in support of the domestic detection architecture, including any existing or planned programs to pre-screen cargo or conveyances overseas;

(2) identify and describe the specific investments being made by Departmental organizations in fiscal year 2012, and planned for fiscal year 2013, to support the domestic architecture and the security of sea, land, and air pathways into the United States;

(3) describe the investments necessary to close known vulnerabilities and gaps, including associated costs and timeframes, and estimates of feasibility and cost effectiveness; and

(4) explain how the Department's research and development funding is furthering the implementation of the domestic nuclear detection architecture, including specific investments planned for each of fiscal years 2012 and 2013.

RESEARCH, DEVELOPMENT, AND OPERATIONS

For necessary expenses for radiological and nuclear research, development, testing, evaluation, and operations, $215,000,000, to remain available until September 30, 2014.

SYSTEMS ACQUISITION

For expenses for the Domestic Nuclear Detection Office acquisition and deployment of radiological detection systems in accordance with the global nuclear detection architecture, $37,000,000, to remain available until September 30, 2014.

TITLE V

GENERAL PROVISIONS

SEC. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 502. Subject to the requirements of section 503 of this Act, the unexpended balances of prior appropriations provided for activities in this Act may be transferred to appropriation accounts for such activities established pursuant to this Act, may be merged with funds in the applicable established accounts, and thereafter may be accounted for as one fund for the same time period as originally enacted.

Notifications. Deadlines.

SEC. 503. (a) None of the funds provided by this Act, provided by previous appropriations Acts to the agencies in or transferred to the Department of Homeland Security that remain available for obligation or expenditure in fiscal year 2012, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that:

(1) creates a new program, project, or activity;

(2) eliminates a program, project, office, or activity;

(3) increases funds for any program, project, or activity for which funds have been denied or restricted by the Congress;

(4) proposes to use funds directed for a specific activity by either of the Committees on Appropriations of the Senate or the House of Representatives for a different purpose; or

(5) contracts out any function or activity for which funding levels were requested for Federal full-time equivalents in the object classification tables contained in the fiscal year 2012 Budget Appendix for the Department of Homeland Security, as modified by the joint explanatory statement accompanying this Act, unless the Committees on Appropriations of the Senate and the House of Representatives are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided by this Act, provided by previous appropriations Acts to the agencies in or transferred to the Department of Homeland Security that remain available for obligation or expenditure in fiscal year 2012, or provided from any accounts in the Treasury of the United States derived by the collection of fees or proceeds available to the agencies funded by this Act, shall be available for obligation or expenditure for programs, projects, or activities through a reprogramming of funds in excess of $5,000,000 or 10 percent, whichever is less, that:

(1) augments existing programs, projects, or activities;

(2) reduces by 10 percent funding for any existing program, project, or activity, or reduces the numbers of personnel by 10 percent as approved by the Congress; or

(3) results from any general savings from a reduction in personnel that would result in a change in existing programs, projects, or activities as approved by the Congress, unless the Committees on Appropriations of the Senate and the House of Representatives are notified 15 days in advance of such reprogramming of funds.

(c) Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Homeland Security by this Act or provided by previous appropriations Acts may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by such transfers: *Provided,* That any transfer under this section shall be treated as a reprogramming of funds under subsection (b) and shall not be available for obligation unless the Committees on Appropriations of the Senate and the House of Representatives are notified 15 days in advance of such transfer.

(d) Notwithstanding subsections (a), (b), and (c) of this section, no funds shall be reprogrammed within or transferred between appropriations after June 30, except in extraordinary circumstances that imminently threaten the safety of human life or the protection of property.

Applicability.

(e) The notification thresholds and procedures set forth in this section shall apply to any use of deobligated balances of funds provided in previous Department of Homeland Security Appropriations Acts.

SEC. 504. The Department of Homeland Security Working Capital Fund, established pursuant to section 403 of Public Law 103–356 (31 U.S.C. 501 note), shall continue operations as a permanent working capital fund for fiscal year 2012: *Provided*, That none of the funds appropriated or otherwise made available to the Department of Homeland Security may be used to make payments to

the Working Capital Fund, except for the activities and amounts allowed in the President's fiscal year 2012 budget: *Provided further*, That funds provided to the Working Capital Fund shall be available for obligation until expended to carry out the purposes of the Working Capital Fund: *Provided further*, That all departmental components shall be charged only for direct usage of each Working Capital Fund service: *Provided further*, That funds provided to the Working Capital Fund shall be used only for purposes consistent with the contributing component: *Provided further*, That the Working Capital Fund shall be paid in advance or reimbursed at rates which will return the full cost of each service: *Provided further*, That the Working Capital Fund shall be subject to the requirements of section 503 of this Act.

SEC. 505. Except as otherwise specifically provided by law, not to exceed 50 percent of unobligated balances remaining available at the end of fiscal year 2012 from appropriations for salaries and expenses for fiscal year 2012 in this Act shall remain available through September 30, 2013, in the account and for the purposes for which the appropriations were provided: *Provided*, That prior to the obligation of such funds, a request shall be submitted to the Committees on Appropriations of the Senate and the House of Representatives for approval in accordance with section 503 of this Act.

Approval request.

SEC. 506. Funds made available by this Act for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2012 until the enactment of an Act authorizing intelligence activities for fiscal year 2012.

Grants.
Contracts.
Notifications.
Deadlines.

SEC. 507. (a) Except as provided in subsections (b) and (c), none of the funds made available by this Act may be used to—

(1) make or award a grant allocation, grant, contract, other transaction agreement, task or delivery order on a Department of Homeland Security multiple award contract, or to issue a letter of intent totaling in excess of $1,000,000;

(2) award a task or delivery order requiring an obligation of funds in an amount greater than $10,000,000 from multi-year Department of Homeland Security funds or a task or delivery order that would cause cumulative obligations of multi-year funds in a single account to exceed 50 percent of the total amount appropriated; or

(3) announce publicly the intention to make or award items under paragraph (1) or (2), including a contract covered by the Federal Acquisition Regulation.

Waiver authority.

(b) The Secretary of Homeland Security may waive the prohibition under subsection (a) if the Secretary notifies the Committees on Appropriations of the Senate and the House of Representatives at least 3 full business days in advance of making an award or issuing a letter as described in that subsection.

(c) If the Secretary of Homeland Security determines that compliance with this section would pose a substantial risk to human life, health, or safety, an award may be made without notification, and the Secretary shall notify the Committees on Appropriations of the Senate and the House of Representatives not later than 5 full business days after such an award is made or letter issued.

(d) A notification under this section—

(1) may not involve funds that are not available for obligation; and

(2) shall include the amount of the award, the fiscal year for which the funds for the award were appropriated, and the account from which the funds are being drawn.

(e) The Administrator of the Federal Emergency Management Agency shall brief the Committees on Appropriations of the Senate and the House of Representatives 5 full business days in advance of announcing publicly the intention of making an award under "State and Local Programs". Briefing.

SEC. 508. Notwithstanding any other provision of law, no agency shall purchase, construct, or lease any additional facilities, except within or contiguous to existing locations, to be used for the purpose of conducting Federal law enforcement training without the advance approval of the Committees on Appropriations of the Senate and the House of Representatives, except that the Federal Law Enforcement Training Center is authorized to obtain the temporary use of additional facilities by lease, contract, or other agreement for training that cannot be accommodated in existing Center facilities. Contracts.

SEC. 509. None of the funds appropriated or otherwise made available by this Act may be used for expenses for any construction, repair, alteration, or acquisition project for which a prospectus otherwise required under chapter 33 of title 40, United States Code, has not been approved, except that necessary funds may be expended for each project for required expenses for the development of a proposed prospectus.

SEC. 510. Sections 520, 522, and 530, of the Department of Homeland Security Appropriations Act, 2008 (division E of Public Law 110–161; 121 Stat. 2073 and 2074) shall apply with respect to funds made available in this Act in the same manner as such sections applied to funds made available in that Act. Applicability.

SEC. 511. None of the funds made available in this Act may be used in contravention of the applicable provisions of the Buy American Act (41 U.S.C. 10a et seq.).

SEC. 512. None of the funds made available in this Act may be used by any person other than the Privacy Officer appointed under subsection (a) of section 222 of the Homeland Security Act of 2002 (6 U.S.C. 142(a)) to alter, direct that changes be made to, delay, or prohibit the transmission to Congress of any report prepared under paragraph (6) of such subsection.

SEC. 513. None of the funds made available in this Act may be used to amend the oath of allegiance required by section 337 of the Immigration and Nationality Act (8 U.S.C. 1448).

SEC. 514. Within 45 days after the end of each month, the Chief Financial Officer of the Department of Homeland Security shall submit to the Committees on Appropriations of the Senate and the House of Representatives a monthly budget and staffing report for that month that includes total obligations, on-board versus funded full-time equivalent staffing levels, and the number of contract employees for each office of the Department. Deadlines. Budget. Reports.

SEC. 515. None of the funds appropriated by this Act may be used to process or approve a competition under Office of Management and Budget Circular A–76 for services provided as of June 1, 2004, by employees (including employees serving on a temporary or term basis) of United States Citizenship and Immigration Services of the Department of Homeland Security who are known as of that date as Immigration Information Officers, Contact Representatives, or Investigative Assistants.

Notification.

SEC. 516. Except as provided in section 44945 of title 49, United States Code, funds appropriated or transferred to Transportation Security Administration "Aviation Security", "Administration", and "Transportation Security Support" for fiscal years 2004 and 2005 that are recovered or deobligated shall be available only for the procurement or installation of explosives detection systems, air cargo, baggage, and checkpoint screening systems, subject to notification: *Provided,* That quarterly reports shall be submitted to the Committees on Appropriations of the Senate and the House of Representatives on any funds that are recovered or deobligated.

Deadlines.
Reports.

SEC. 517. Any funds appropriated to Coast Guard "Acquisition, Construction, and Improvements" for fiscal years 2002, 2003, 2004, 2005, and 2006 for the 110–123 foot patrol boat conversion that are recovered, collected, or otherwise received as the result of negotiation, mediation, or litigation, shall be available until expended for the Fast Response Cutter program.

SEC. 518. Section 532(a) of Public Law 109–295 (120 Stat. 1384) is amended by striking "2011" and inserting "2012".

Classified information.

SEC. 519. The functions of the Federal Law Enforcement Training Center instructor staff shall be classified as inherently governmental for the purpose of the Federal Activities Inventory Reform Act of 1998 (31 U.S.C. 501 note).

Grants.
Contracts.

SEC. 520. (a) Except as provided in subsection (b), none of the funds appropriated in this or any other Act to the "Office of the Secretary and Executive Management", the "Office of the Under Secretary for Management", or the "Office of the Chief Financial Officer", may be obligated for a grant or contract funded under such headings by any means other than full and open competition.

(b) Subsection (a) does not apply to obligation of funds for a contract awarded—

(1) by a means that is required by a Federal statute, including obligation for a purchase made under a mandated preferential program, including the AbilityOne Program, that is authorized under the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.);

(2) pursuant to the Small Business Act (15 U.S.C. 631 et seq.);

(3) in an amount less than the simplified acquisition threshold described under section 302A(a) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252a(a)); or

(4) by another Federal agency using funds provided through an interagency agreement.

Waiver authority.

(c)(1) Subject to paragraph (2), the Secretary of Homeland Security may waive the application of this section for the award of a contract in the interest of national security or if failure to do so would pose a substantial risk to human health or welfare.

Deadline.
Notification.

(2) Not later than 5 days after the date on which the Secretary of Homeland Security issues a waiver under this subsection, the Secretary shall submit notification of that waiver to the Committees on Appropriations of the Senate and the House of Representatives, including a description of the applicable contract to which the waiver applies and an explanation of why the waiver authority was used: *Provided*, That the Secretary may not delegate the authority to grant such a waiver.

(d) In addition to the requirements established by subsections (a), (b), and (c) of this section, the Inspector General of the Department of Homeland Security shall review departmental contracts awarded through means other than a full and open competition to assess departmental compliance with applicable laws and regulations: *Provided*, That the Inspector General shall review selected contracts awarded in the previous fiscal year through means other than a full and open competition: *Provided further*, That in selecting which contracts to review, the Inspector General shall consider the cost and complexity of the goods and services to be provided under the contract, the criticality of the contract to fulfilling Department missions, past performance problems on similar contracts or by the selected vendor, complaints received about the award process or contractor performance, and such other factors as the Inspector General deems relevant: *Provided further*, That the Inspector General shall report the results of the reviews to the Committees on Appropriations of the Senate and the House of Representatives no later than February 6, 2012.

Reviews.

Reports.
Deadline.

SEC. 521. None of the funds provided by this or previous appropriations Acts shall be used to fund any position designated as a Principal Federal Official (or the successor thereto) for any Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) declared disasters or emergencies unless—

Deadlines.

(1) The responsibilities of the Principal Federal Official do not include operational functions related to incident management, including coordination of operations, and are consistent with the requirements of subsection 509(c) and subsections 503(c)(3) and (c)(4)(A) of the Homeland Security Act of 2002 (6 U.S.C. 319(c) and 313(c)(3) and (c)(4)(A)) and section 302 of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5143);

(2) Not later than 10 business days after the latter of the date on which the Secretary of Homeland Security appoints the Principal Federal Official and the date on which the President issues a declaration under section 401 or section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5191, respectively), the Secretary of Homeland Security shall submit a notification of the appointment of the Principal Federal Official and a description of the responsibilities of such Official and how such responsibilities are consistent with paragraph (1) to the Committees on Appropriations of the Senate and the House of Representatives, the Transportation and Infrastructure Committee of the House of Representatives, and the Homeland Security and Governmental Affairs Committee of the Senate; and

Notification.

(3) Not later than 60 days after the date of enactment of this Act, the Secretary shall provide a report specifying timeframes and milestones regarding the update of operations, planning and policy documents, and training and exercise protocols, to ensure consistency with paragraph (1) of this section.

Reports.

SEC. 522. None of the funds made available in this or any other Act for fiscal years 2012 and thereafter may be used to enforce section 4025(1) of Public Law 108–458 unless the Administrator of the Transportation Security Administration reverses the determination of July 19, 2007, that butane lighters are not a significant threat to civil aviation security.

Butane lighters.

SEC. 523. None of the funds provided or otherwise made available in this Act shall be available to carry out section 872 of the Homeland Security Act of 2002 (6 U.S.C. 452).

SEC. 524. Funds made available in this Act may be used to alter operations within the Civil Engineering Program of the Coast Guard nationwide, including civil engineering units, facilities design and construction centers, maintenance and logistics commands, and the Coast Guard Academy, except that none of the funds provided in this Act may be used to reduce operations within any Civil Engineering Unit unless specifically authorized by a statute enacted after the date of enactment of this Act.

SEC. 525. None of the funds made available in this Act may be used by United States Citizenship and Immigration Services to grant an immigration benefit unless the results of background checks required by law to be completed prior to the granting of the benefit have been received by United States Citizenship and Immigration Services, and the results do not preclude the granting of the benefit.

Equine.
6 USC 453c.

SEC. 526. None of the funds made available in this or any other Act for fiscal year 2012 and thereafter may be used to destroy or put out to pasture any horse or other equine belonging to any component or agency of the Department of Homeland Security that has become unfit for service, unless the trainer or handler is first given the option to take possession of the equine through an adoption program that has safeguards against slaughter and inhumane treatment.

SEC. 527. Section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) is amended—

(1) in subsection (a), by striking "Until September 30, 2011," and inserting "Until September 30, 2012,";

(2) by striking subsection (b);

(3) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(4) in subsection (c)(1) (as redesignated by paragraph (3) of this section), by striking "September 30, 2011," and inserting "September 30, 2012,".

Contracts.
Fees.

SEC. 528. The Secretary of Homeland Security shall require that all contracts of the Department of Homeland Security that provide award fees link such fees to successful acquisition outcomes (which outcomes shall be specified in terms of cost, schedule, and performance).

SEC. 529. Notwithstanding any other provision of law, none of the funds provided in this or any other Act shall be used to approve a waiver of the navigation and vessel-inspection laws pursuant to 46 U.S.C. 501(b) for the transportation of crude oil distributed from the Strategic Petroleum Reserve until the Secretary of Homeland Security, after consultation with the Secretaries of the Departments of Energy and Transportation and representatives from the United States flag maritime industry, takes adequate measures to ensure the use of United States flag vessels: *Provided,* That the Secretary shall notify the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives within 48 hours of any request for waivers of navigation and vessel-inspection laws pursuant to 46 U.S.C. 501(b).

Notification.
Deadline.

SEC. 530. None of the funds made available to the Office of the Secretary and Executive Management under this Act may be expended for any new hires by the Department of Homeland Security that are not verified through the E-Verify Program as described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

SEC. 531. None of the funds in this Act shall be used to reduce the United States Coast Guard's Operations Systems Center mission or its government-employed or contract staff levels.

Drugs and drug abuse. Canada.

SEC. 532. None of the funds made available in this Act for U.S. Customs and Border Protection may be used to prevent an individual not in the business of importing a prescription drug (within the meaning of section 801(g) of the Federal Food, Drug, and Cosmetic Act) from importing a prescription drug from Canada that complies with the Federal Food, Drug, and Cosmetic Act: *Provided*, That this section shall apply only to individuals transporting on their person a personal-use quantity of the prescription drug, not to exceed a 90-day supply: *Provided further*, That the prescription drug may not be—

Applicability.

(1) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); or

(2) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262).

SEC. 533. None of the funds appropriated by this Act may be used to conduct, or to implement the results of, a competition under Office of Management and Budget Circular A–76 for activities performed with respect to the Coast Guard National Vessel Documentation Center.

Notification.

SEC. 534. The Secretary of Homeland Security, in consultation with the Secretary of the Treasury, shall notify the Committees on Appropriations of the Senate and the House of Representatives of any proposed transfers of funds available under section 9703.1 (g)(4)(B) of title 31, United States Code (as added by Public Law 102–393) from the Department of the Treasury Forfeiture Fund to any agency within the Department of Homeland Security: *Provided,* That none of the funds identified for such a transfer may be obligated until the Committees on Appropriations of the Senate and the House of Representatives approve the proposed transfers.

National identification card.

SEC. 535. None of the funds made available in this Act may be used for planning, testing, piloting, or developing a national identification card.

Determination. Certification.

SEC. 536. If the Administrator of the Transportation Security Administration determines that an airport does not need to participate in the E-Verify Program as described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), the Administrator shall certify to the Committees on Appropriations of the Senate and the House of Representatives that no security risks will result from such non-participation.

Deadline. President. Web posting. Reports.

SEC. 537. (a) Notwithstanding any other provision of this Act, except as provided in subsection (b), and 30 days after the date on which the President determines whether to declare a major disaster because of an event and any appeal is completed, the Administrator shall publish on the Web site of the Federal Emergency Management Agency a report regarding that decision that shall summarize damage assessment information used to determine whether to declare a major disaster.

(b) The Administrator may redact from a report under subsection (a) any data that the Administrator determines would compromise national security.

Definitions.

(c) In this section—

(1) the term "Administrator" means the Administrator of the Federal Emergency Management Agency; and

(2) the term "major disaster" has the meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

Determination. New York. Real property. 6 USC 190 note.

SEC. 538. (a) Notwithstanding any other provision of law during fiscal year 2012 or any subsequent fiscal year, if the Secretary of Homeland Security determines that the National Bio- and Agro-defense Facility should be located at a site other than Plum Island, New York, the Secretary shall ensure that the Administrator of General Services sells through public sale all real and related personal property and transportation assets which support Plum Island operations, subject to such terms and conditions as may be necessary to protect Government interests and meet program requirements.

(b) The proceeds of such sale described in subsection (a) shall be deposited as offsetting collections into the Department of Homeland Security Science and Technology "Research, Development, Acquisition, and Operations" account and, subject to appropriation, shall be available until expended, for site acquisition, construction, and costs related to the construction of the National Bio- and Agro-defense Facility, including the costs associated with the sale, including due diligence requirements, necessary environmental remediation at Plum Island, and reimbursement of expenses incurred by the General Services Administration.

SEC. 539. Any official that is required by this Act to report or to certify to the Committees on Appropriations of the Senate and the House of Representatives may not delegate such authority to perform that act unless specifically authorized herein.

SEC. 540. Section 550(b) of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 6 U.S.C. 121 note), as amended by section 550 of the Department of Homeland Security Appropriations Act, 2010 (Public Law 111–83), is further amended by striking "on October 4, 2011" and inserting "on October 4, 2012".

Khalid Sheikh Mohammed. Detainees.

SEC. 541. None of the funds appropriated or otherwise made available in this or any other Act may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions Khalid Sheikh Mohammed or any other detainee who—

(1) is not a United States citizen or a member of the Armed Forces of the United States; and

(2) is or was held on or after June 24, 2009, at the United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.

SEC. 542. None of the funds made available in this Act may be used for first-class travel by the employees of agencies funded by this Act in contravention of sections 301–10.122 through 301.10–124 of title 41, Code of Federal Regulations.

SEC. 543. None of the funds made available in this Act may be used to propose or effect a disciplinary or adverse action, with respect to any Department of Homeland Security employee who engages regularly with the public in the performance of his or

her official duties solely because that employee elects to utilize protective equipment or measures, including but not limited to surgical masks, N95 respirators, gloves, or hand-sanitizers, where use of such equipment or measures is in accord with Department of Homeland Security policy, and Centers for Disease Control and Prevention and Office of Personnel Management guidance.

SEC. 544. None of the funds made available in this Act may be used to employ workers described in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)).

Privacy.

SEC. 545. (a) Any company that collects or retains personal information directly from any individual who participates in the Registered Traveler program of the Transportation Security Administration shall safeguard and dispose of such information in accordance with the requirements in—

(1) the National Institute for Standards and Technology Special Publication 800–30, entitled "Risk Management Guide for Information Technology Systems";

(2) the National Institute for Standards and Technology Special Publication 800–53, Revision 3, entitled "Recommended Security Controls for Federal Information Systems and Organizations,"; and

(3) any supplemental standards established by the Administrator of the Transportation Security Administration (referred to in this section as the "Administrator").

(b) The airport authority or air carrier operator that sponsors the company under the Registered Traveler program shall be known as the Sponsoring Entity.

Deadline.
Certification.

(c) The Administrator shall require any company covered by subsection (a) to provide, not later than 30 days after the date of enactment of this Act, to the Sponsoring Entity written certification that the procedures used by the company to safeguard and dispose of information are in compliance with the requirements under subsection (a). Such certification shall include a description of the procedures used by the company to comply with such requirements.

6 USC 124j note.

SEC. 546. For fiscal year 2012 and thereafter, for purposes of section 210C of the Homeland Security Act of 2002 (6 U.S.C. 124j), a rural area shall also include any area that is located in a metropolitan statistical area and a county, borough, parish, or area under the jurisdiction of an Indian tribe with a population of not more than 50,000.

Contracts.

SEC. 547. Notwithstanding any other provision of this Act, none of the funds appropriated or otherwise made available by this Act may be used to pay award or incentive fees for contractor performance that has been judged to be below satisfactory performance or performance that does not meet the basic requirements of a contract.

Deadline.
Reports.

SEC. 548. (a) Not later than 180 days after the date of enactment of this Act, the Administrator of the Transportation Security Administration shall submit to the Committees on Appropriations of the Senate and the House of Representatives, a report that either—

(1) certifies that the requirement for screening all air cargo on passenger aircraft by the deadline under section 44901(g) of title 49, United States Code, has been met; or

(2) includes a strategy to comply with the requirements under title 44901(g) of title 49, United States Code, including—

(A) a plan to meet the requirement under section 44901(g) of title 49, United States Code, to screen 100 percent of air cargo transported on passenger aircraft arriving in the United States in foreign air transportation (as that term is defined in section 40102 of that title); and

(B) specification of—

(i) the percentage of such air cargo that is being screened; and

(ii) the schedule for achieving screening of 100 percent of such air cargo.

Reports. Deadline. Certification.

(b) The Administrator shall continue to submit reports described in subsection (a)(2) every 180 days thereafter until the Administrator certifies that the Transportation Security Administration has achieved screening of 100 percent of such air cargo.

SEC. 549. In developing any process to screen aviation passengers and crews for transportation or national security purposes, the Secretary of Homeland Security shall ensure that all such processes take into consideration such passengers' and crews' privacy and civil liberties consistent with applicable laws, regulations, and guidance.

Design plan. Assessments.

SEC. 550. (a) None of the funds made available in this Act may be obligated for construction of the National Bio- and Agro-defense Facility until the Department of Homeland Security—

(1) completes 50 percent of design planning for the National Bio- and Agro-defense Facility;

(2) submits to the Committees on Appropriations of the Senate and the House of Representatives a revised site-specific biosafety and biosecurity mitigation risk assessment that describes how to significantly reduce risks of conducting essential research and diagnostic testing at the National Bio- and Agro-defense Facility and addresses shortcomings identified in the National Academy of Sciences' evaluation of the initial site-specific biosafety and biosecurity mitigation risk assessment; and

(3) submits to the Committees on Appropriations of the Senate and the House of Representatives the results of the National Academy of Sciences' review of the risk assessment as described in subsection (c).

(b) The revised site-specific biosafety and biosecurity mitigation risk assessment required by subsection (a) shall—

(1) include a quantitative risk assessment for foot-and-mouth disease virus, in particular epidemiological and economic impact modeling to determine the overall risk of operating the facility for its expected 50-year life span, taking into account strategies to mitigate risk of foot-and-mouth disease virus release from the laboratory and ensure safe operations at the approved National Bio- and Agro-defense Facility site;

(2) address the impact of surveillance, response, and mitigation plans (developed in consultation with local, State, and Federal authorities and appropriate stakeholders) if a release occurs, to detect and control the spread of disease; and

(3) include overall risks of the most dangerous pathogens the Department of Homeland Security expects to hold in the National Bio- and Agro-defense Facility's biosafety level 4 facility, and effectiveness of mitigation strategies to reduce those risks.

(c) The Department of Homeland Security shall enter into a contract with the National Academy of Sciences to evaluate the adequacy and validity of the risk assessment required by subsection (a). The National Academy of Sciences shall submit a report on such evaluation within four months after the date the Department of Homeland Security concludes its risk assessment.

Contracts.

Reports.
Deadline.

SEC. 551. (a) Notwithstanding section 1356(n) of title 8, United States Code, of the funds deposited into the Immigration Examinations Fee Account, $10,000,000 shall be available to United States Citizenship and Immigration Services in fiscal year 2012 for the purpose of providing an immigrant integration grants program.

Grants.

(b) None of the funds made available to United States Citizenship and Immigration Services for grants for immigrant integration may be used to provide services to aliens who have not been lawfully admitted for permanent residence.

SEC. 552. For an additional amount for necessary expenses for reimbursement of the actual costs to State and local governments for providing emergency management, public safety, and security at events, as determined by the Administrator of the Federal Emergency Management Agency, related to the presence of a National Special Security Event, $7,500,000, to remain available until September 30, 2013.

SEC. 553. Notwithstanding the 10 percent limitation contained in section 503(c) of this Act, the Secretary of Homeland Security may transfer to the fund established by 8 U.S.C. 1101 note, up to $20,000,000 from appropriations available to the Department of Homeland Security: *Provided,* That the Secretary shall notify the Committees on Appropriations of the Senate and the House of Representatives 5 days in advance of such transfer.

Notification.
Deadline.

SEC. 554. The administrative law judge annuitants participating in the Senior Administrative Law Judge Program managed by the Director of the Office of Personnel Management under section 3323 of title 5, United States Code, shall be available on a temporary re-employment basis to conduct arbitrations of disputes as part of the arbitration panel established by the President under section 601 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 164).

Arbitrations.

SEC. 555. None of the funds appropriated or otherwise made available by this Act may be used by the Department of Homeland Security to enter into any federal contract unless such contract is entered into in accordance with the requirements of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) or Chapter 137 of title 10, United States Code, and the Federal Acquisition Regulation, unless such contract is otherwise authorized by statute to be entered into without regard to the above referenced statutes.

Contracts.

SEC. 556. (a) For an additional amount for data center migration, $70,000,000.

(b) Funds made available in subsection (a) for data center migration may be transferred by the Secretary of Homeland Security between appropriations for the same purpose, notwithstanding section 503 of this Act.

(c) No transfer described in subsection (b) shall occur until 15 days after the Committees on Appropriations of the Senate and the House of Representatives are notified of such transfer.

Deadline.
Notification.

SEC. 557. For fiscal year 2012 and thereafter, U.S. Customs and Border Protection's Advanced Training Center is authorized

6 USC 464.

to charge fees for any service and/or thing of value it provides to Federal Government or non-government entities or individuals, so long as the fees charged do not exceed the full costs associated with the service or thing of value provided: *Provided*, That notwithstanding 31 U.S.C. 3302(b), fees collected by the Advanced Training Center are to be deposited into a separate account entitled "Advanced Training Center Revolving Fund", and be available, without further appropriations, for necessary expenses of the Advanced Training Center program, and are to remain available until expended.

123 Stat. 2180.

SEC. 558. Section 559(e) of Public Law 111–83 is amended—

(a) in the matter preceding the first proviso, by striking "law, sell" and inserting "law, hereafter sell"; and

(b) in the first proviso—

(1) by striking "shall be deposited" and inserting "shall hereafter be deposited"; and

(2) by striking "subject to appropriation," and inserting "without further appropriations,".

Detention facilities. Real property.

SEC. 559. Notwithstanding any other provision of law, should the Secretary of Homeland Security determine that specific U.S. Immigration and Customs Enforcement Service Processing Centers or other U.S. Immigration and Customs Enforcement owned detention facilities no longer meet the mission need, the Secretary is authorized to dispose of individual Service Processing Centers or other U.S. Immigration and Customs Enforcement owned detention facilities by directing the Administrator of General Services to sell all real and related personal property which support Service Processing Centers or other U.S. Immigration and Customs Enforcement owned detention facilities, subject to such terms and conditions as necessary to protect Government interests and meet program requirements: *Provided*, That the proceeds, net of the costs of sale incurred by the General Services Administration and U.S. Immigration and Customs Enforcement, shall be deposited as offsetting collections into a separate account that shall be available, subject to appropriation, until expended for other real property capital asset needs of existing U.S. Immigration and Customs Enforcement assets, excluding daily operations and maintenance costs, as the Secretary deems appropriate: *Provided further*, That any sale or collocation of federally owned detention facilities shall not result in the maintenance of fewer than 34,000 detention beds: *Provided further*, That the Committees on Appropriations of the Senate and the House of Representatives shall be notified 15 days prior to the announcement of any proposed sale or collocation.

Notification. Deadline.

SEC. 560. For an additional amount for the "Office of the Under Secretary for Management", $55,979,000, to remain available until expended, for necessary expenses to plan, acquire, construct, renovate, remediate, equip, furnish, and occupy buildings and facilities for the consolidation of department headquarters at St. Elizabeths and associated mission support consolidation: *Provided,* That the Committees on Appropriations of the Senate and the House of Representatives shall receive an expenditure plan not later than 90 days after the date of enactment of this Act detailing the allocation of these funds.

Expenditure plan. Deadline.

SEC. 561. None of the funds made available by this Act may be used to enforce the requirements in—

(1) section 34(a)(1)(A) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(a)(1)(A));

(2) section 34(a)(1)(B) of such Act;
(3) section 34(c)(1) of such Act;
(4) section 34(c)(2) of such Act;
(5) section 34(c)(4)(A) of such Act; and
(6) section 34(a)(1)(E) of such Act.

Firefighters. Waivers.

SEC. 562. Notwithstanding the requirement under section 34(a)(1)(A) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a(a)(1)(A)) that grants must be used to increase the number of firefighters in fire departments, the Secretary of Homeland Security, in making grants under section 34 of such Act using the funds appropriated for fiscal year 2011, shall grant waivers from the requirements of subsections (a)(1)(B), (c)(1), (c)(2), and (c)(4)(A) of such section: *Provided,* That section 34(a)(1)(E) of such Act shall not apply with respect to funds appropriated for fiscal year 2011 for grants under section 34 of such Act: *Provided further,* That the Secretary of Homeland Security, in making grants under section 34 of such Act, shall ensure that funds appropriated for fiscal year 2011 are made available for the hiring, rehiring, or retention of firefighters.

33 USC 2712 note.

SEC. 563. For fiscal year 2012 and thereafter, notwithstanding section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)) and 31 U.S.C. 3302, in the event that a spill of national significance occurs, any payment of amounts from the Oil Spill Liability Trust Fund pursuant to section 1012(a)(1) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(1)) for the removal costs incurred by the Coast Guard for such spill, shall be credited directly to the accounts of the Coast Guard current at the time such removal costs were incurred or when reimbursement is received: *Provided,* That such amounts shall be merged with and, without further appropriations, made available for the same time period and the same purpose as the appropriation to which it is credited.

SEC. 564. (a) CIVIL PENALTIES FOR CIRCUMVENTING SECURITY SCREENING.—Section 46301(a)(5)(A)(i) of title 49, United States Code, is amended—

(1) by striking "or chapter 449" and inserting "chapter 449"; and

(2) by inserting ", or section 46314(a)" after "44909)".

(b) CRIMINAL PENALTIES FOR CIRCUMVENTING SECURITY SCREENING.—Section 46314(b)(2) of title 49, United States Code, is amended by inserting "with intent to evade security procedures or restrictions or" after "of this section".

(c) NOTICE OF PENALTIES.—Section 46314 of title 49, United States Code, is amended by adding at the end the following new subsection:

"(c) NOTICE OF PENALTIES.—

"(1) IN GENERAL.—Each operator of an airport in the United States that is required to establish an air transportation security program pursuant to section 44903(c) shall ensure that signs that meet such requirements as the Secretary of Homeland Security may prescribe providing notice of the penalties imposed under section 46301(a)(5)(A)(i) and subsection (b) of this section are displayed near all screening locations, all locations where passengers exit the sterile area, and such other locations at the airport as the Secretary of Homeland Security determines appropriate.

"(2) EFFECT OF SIGNS ON PENALTIES.—An individual shall be subject to a penalty imposed under section 46301(a)(5)(A)(i)

or subsection (b) of this section without regard to whether signs are displayed at an airport as required by paragraph (1).".

Disaster Assistance Recoupment Fairness Act of 2011.

SEC. 565. (a) SHORT TITLE.—This section may be cited as the "Disaster Assistance Recoupment Fairness Act of 2011".

(b) DEBTS SINCE 2005.—

(1) DEFINITION.—In this section, the term "covered assistance" means assistance provided—

(A) under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174); and

(B) in relation to a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) during the period beginning on August 28, 2005, and ending on December 31, 2010.

(2) WAIVER AUTHORITY.—The Administrator of the Federal Emergency Management Agency—

(A) subject to subparagraph (B) and paragraph (3), may waive a debt owed to the United States related to covered assistance provided to an individual or household if—

(i) the covered assistance was distributed based on an error by the Federal Emergency Management Agency;

(ii) there was no fault on behalf of the debtor; and

(iii) the collection of the debt would be against equity and good conscience; and

(B) may not waive a debt under subparagraph (A) if the debt involves fraud, the presentation of a false claim, or misrepresentation by the debtor or any party having an interest in the claim.

(3) PRESUMPTION OF REPAYMENT.—In determining whether to waive a debt under paragraph (2), the Administrator of the Federal Emergency Management Agency shall presume that, if the adjusted gross income (as defined under section 62 of the Internal Revenue Code of 1986) of the household of the debtor for the last taxable year ending in or with the calendar year preceding the date on which the income is determined exceeds $90,000, the debtor should be required to make at least a partial payment on the debt.

(4) REPORTING.—Not later than 3 months after the date of enactment of this Act, and every 3 months thereafter until the date that is 18 months after the date of enactment of this Act, the Inspector General of the Department of Homeland Security shall submit a report that assesses the cost-effectiveness of the efforts of the Federal Emergency Management Agency to recoup improper payments under the Individuals and Household Program under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174) to—

(A) the Committee on Homeland Security and Governmental Affairs and the Subcommittee on Homeland Security of the Committee on Appropriations of the Senate; and

(B) the Committee on Homeland Security, the Committee on Transportation and Infrastructure, and the Subcommittee on Homeland Security of the Committee on Appropriations of the House of Representatives.

SEC. 566. (a) Notwithstanding section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and subject to subsection (b), recipients of Small Business Administration Disaster loans for disaster-related damage to their homes may be eligible for reimbursement at the discretion of the state, under Section 404 of that Act, for documented and eligible mitigation work performed on their home.

(b) LIMITATIONS.— Applicability.

(1) Any reimbursement provided to or on behalf of a homeowner pursuant to subsection (a) shall not exceed the amount of the disaster loan that may be used and was used for disaster mitigation activities; and

(2) Subsection (a) shall only apply if the disaster loan and assistance provided under section 404 were made available in response to the same disaster declaration.

(3) Shall be applicable only to disasters declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) during the period beginning on August 28, 2005 and ending on August 28, 2006.

(c) If a state chooses to use funds under section 404 to reimburse homeowners as provided in subsection (a), it shall make payments in the following order:

(1) First, to the Small Business Administration on behalf of the eligible homeowner for the purpose of reducing, but not below zero, the homeowner's outstanding debt obligation to the Small Business Administration for the disaster loan; and

(2) Second, any remaining reimbursement shall be paid directly to the homeowner.

SEC. 567. None of the funds made available under this Act or any prior appropriations Act may be provided to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, or allied organizations. ACORN.

SEC. 568. The Commissioner of U.S. Customs and Border Protection and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement each shall submit to the Committees on Appropriations of the Senate and the House of Representatives with the congressional budget justification, a multi-year investment and management plan, to include each year starting with the current fiscal year and the 3 subsequent fiscal years, for their respective Offices of Information Technology to include for that office— Plans. Deadlines.

(1) the funding level by source for all funds to be executed;

(2) the funding included for each project and activity tied to mission requirements, program management capabilities, performance levels, and specific capabilities and services to be delivered;

(3) the total estimated cost and projected timeline of completion for all multi-year enhancements, modernizations, and new capabilities proposed in the current fiscal year or underway; and

(4) a detailed accounting of operation and maintenance costs.

SEC. 569. The Secretary of Homeland Security shall ensure enforcement of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))).

(RESCISSIONS)

SEC. 570. Of the funds transferred to the Department of Homeland Security when it was created in 2003, the following funds are hereby rescinded from the following accounts and programs in the specified amounts:

(1) $2,577,000 from Coast Guard "Acquisition, Construction, and Improvements";

(2) $5,355,296 from U.S. Immigration and Customs Enforcement "Salaries and Expenses";

(3) $99,012 from U.S. Immigration and Customs Enforcement "Violent Crime Reduction Programs";

(4) $3,332,541 from U.S. Customs and Border Protection "Salaries and Expenses";

(5) $3,121,248 from Department of Homeland Security "Office for Domestic Preparedness";

(6) $678,213 from Federal Emergency Management Agency "National Predisaster Mitigation Fund";

(7) $5,201,000 from "Working Capital Fund";

(8) $95,998 from "Counterterrorism Fund";

(9) $41,091 from U.S. Customs and Border Protection "Violent Crime Reduction Fund"; and

(10) $153,095 from U.S. Immigration and Customs Enforcement "Violent Crime Reduction Trust Fund".

(RESCISSIONS)

SEC. 571. The following unobligated balances made available to the Department of Homeland Security pursuant to section 505 of Department of Homeland Security Appropriations Act, 2011 (Public Law 112–10; 125 Stat. 147) are rescinded:

(1) $178,783 from "Analysis and Operations";

(2) $1,619,907 from U.S. Customs and Border Protection "Salaries and Expenses";

(3) $296,022 from Transportation Security Administration "Federal Air Marshals";

(4) $37,800,412 from Coast Guard "Operating Expenses";

(5) $879,153 from Coast Guard "Acquisition, Construction, and Improvements";

(6) $1,104,347 from United States Secret Service "Salaries and Expenses";

(7) $97,046 from National Protection and Programs Directorate "Management and Administration";

(8) $78,764 from National Protection and Programs Directorate "Infrastructure Protection and Information Security";

(9) $117,133 from Office of Health Affairs "Salaries and Expenses";

(10) $1,301,581 from "United States Citizenship and Immigration Services";

(11) $369,032 from Federal Law Enforcement Training Center "Salaries and Expenses";

(12) $279,098 from Science and Technology "Management and Administration";

(13) $1,072,938 from Domestic Nuclear Detection Office "Management and Administration"; and

(14) $216,744 from Federal Emergency Management Agency "Management and Administration".

(RESCISSIONS)

SEC. 572. Of the funds appropriated to the Department of Homeland Security, the following unobligated balances are hereby rescinded from the following accounts and programs in the specified amounts:

(1) $10,000,000 from U.S. Immigration and Customs Enforcement "Salaries and Expenses";

(2) $10,000,000 from U.S. Immigration and Customs Enforcement "Automation Modernization";

(3) $5,000,000 from U.S. Customs and Border Protection "Automation Modernization": *Provided*, That no funds shall be rescinded from prior year appropriations provided for the TECS modernization program;

(4) $71,300,000 from Transportation Security Administration "Aviation Security" account 70x0550;

(5) $7,000,000 from U.S. Customs and Border Protection "Border Security Fencing, Infrastructure, and Technology";

(6) $2,427,336 from Coast Guard "Acquisition, Construction, and Improvements";

(7) $5,000,000 from the "Office of the Chief Information Officer" related to Emerge2; and

(8) $27,400,000 from National Protection and Programs Directorate "United States Visitor and Immigrant Indicator Technology".

SEC. 573. Sections 1309(a) and 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a) and 4026) are each amended by striking "September 30, 2011" and inserting "the earlier of the date of the enactment into law of an Act that specifically amends the date specified in this section or May 31, 2012".

This division may be cited as the "Department of Homeland Security Appropriations Act, 2012".

DIVISION E—DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012.

TITLE I

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

MANAGEMENT OF LANDS AND RESOURCES

For necessary expenses for protection, use, improvement, development, disposal, cadastral surveying, classification, acquisition of easements and other interests in lands, and performance of other functions, including maintenance of facilities, as authorized by law, in the management of lands and their resources under the jurisdiction of the Bureau of Land Management, including the

general administration of the Bureau, and assessment of mineral potential of public lands pursuant to Public Law 96–487 (16 U.S.C. 3150(a)), $961,900,000, to remain available until expended; of which $3,000,000 shall be available in fiscal year 2012 subject to a match by at least an equal amount by the National Fish and Wildlife Foundation for cost-shared projects supporting conservation of Bureau lands; and such funds shall be advanced to the Foundation as a lump-sum grant without regard to when expenses are incurred.

In addition, $32,500,000 is for the processing of applications for permit to drill and related use authorizations, to remain available until expended, to be reduced by amounts collected by the Bureau and credited to this appropriation that shall be derived from $6,500 per new application for permit to drill that the Bureau shall collect upon submission of each new application, and in addition, $39,696,000 is for Mining Law Administration program operations, including the cost of administering the mining claim fee program; to remain available until expended, to be reduced by amounts collected by the Bureau and credited to this appropriation from mining claim maintenance fees and location fees that are hereby authorized for fiscal year 2012 so as to result in a final appropriation estimated at not more than $961,900,000, and $2,000,000, to remain available until expended, from communication site rental fees established by the Bureau for the cost of administering communication site activities.

CONSTRUCTION

For construction of buildings, recreation facilities, roads, trails, and appurtenant facilities, $3,576,000, to remain available until expended.

LAND ACQUISITION

For expenses necessary to carry out sections 205, 206, and 318(d) of Public Law 94–579, including administrative expenses and acquisition of lands or waters, or interests therein, $22,380,000, to be derived from the Land and Water Conservation Fund and to remain available until expended.

OREGON AND CALIFORNIA GRANT LANDS

For expenses necessary for management, protection, and development of resources and for construction, operation, and maintenance of access roads, reforestation, and other improvements on the revested Oregon and California Railroad grant lands, on other Federal lands in the Oregon and California land-grant counties of Oregon, and on adjacent rights-of-way; and acquisition of lands or interests therein, including existing connecting roads on or adjacent to such grant lands; $112,043,000, to remain available until expended: *Provided*, That 25 percent of the aggregate of all receipts during the current fiscal year from the revested Oregon and California Railroad grant lands is hereby made a charge against the Oregon and California land-grant fund and shall be transferred to the General Fund in the Treasury in accordance with the second paragraph of subsection (b) of title II of the Act of August 28, 1937 (50 Stat. 876).

RANGE IMPROVEMENTS

For rehabilitation, protection, and acquisition of lands and interests therein, and improvement of Federal rangelands pursuant to section 401 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), notwithstanding any other Act, sums equal to 50 percent of all moneys received during the prior fiscal year under sections 3 and 15 of the Taylor Grazing Act (43 U.S.C. 315 et seq.) and the amount designated for range improvements from grazing fees and mineral leasing receipts from Bankhead-Jones lands transferred to the Department of the Interior pursuant to law, but not less than $10,000,000, to remain available until expended: *Provided*, That not to exceed $600,000 shall be available for administrative expenses.

SERVICE CHARGES, DEPOSITS, AND FORFEITURES

For administrative expenses and other costs related to processing application documents and other authorizations for use and disposal of public lands and resources, for costs of providing copies of official public land documents, for monitoring construction, operation, and termination of facilities in conjunction with use authorizations, and for rehabilitation of damaged property, such amounts as may be collected under Public Law 94–579, as amended, and Public Law 93–153, to remain available until expended: *Provided*, That, notwithstanding any provision to the contrary of section 305(a) of Public Law 94–579 (43 U.S.C. 1735(a)), any moneys that have been or will be received pursuant to that section, whether as a result of forfeiture, compromise, or settlement, if not appropriate for refund pursuant to section 305(c) of that Act (43 U.S.C. 1735(c)), shall be available and may be expended under the authority of this Act by the Secretary to improve, protect, or rehabilitate any public lands administered through the Bureau of Land Management which have been damaged by the action of a resource developer, purchaser, permittee, or any unauthorized person, without regard to whether all moneys collected from each such action are used on the exact lands damaged which led to the action: *Provided further*, That any such moneys that are in excess of amounts needed to repair damage to the exact land for which funds were collected may be used to repair other damaged public lands.

43 USC 1735 note.

MISCELLANEOUS TRUST FUNDS

In addition to amounts authorized to be expended under existing laws, there is hereby appropriated such amounts as may be contributed under section 307 of the Act of October 21, 1976 (43 U.S.C. 1701), and such amounts as may be advanced for administrative costs, surveys, appraisals, and costs of making conveyances of omitted lands under section 211(b) of that Act, to remain available until expended.

ADMINISTRATIVE PROVISIONS

The Bureau of Land Management may carry out the operations funded under this Act by direct expenditure, contracts, grants, cooperative agreements and reimbursable agreements with public and private entities, including with States. Appropriations for the

Bureau shall be available for purchase, erection, and dismantlement of temporary structures, and alteration and maintenance of necessary buildings and appurtenant facilities to which the United States has title; up to $100,000 for payments, at the discretion of the Secretary, for information or evidence concerning violations of laws administered by the Bureau; miscellaneous and emergency expenses of enforcement activities authorized or approved by the Secretary and to be accounted for solely on the Secretary's certificate, not to exceed $10,000: *Provided*, That notwithstanding Public Law 90–620 (44 U.S.C. 501), the Bureau may, under cooperative cost-sharing and partnership arrangements authorized by law, procure printing services from cooperators in connection with jointly produced publications for which the cooperators share the cost of printing either in cash or in services, and the Bureau determines the cooperator is capable of meeting accepted quality standards: *Provided further*, That projects to be funded pursuant to a written commitment by a State government to provide an identified amount of money in support of the project may be carried out by the Bureau on a reimbursable basis. Appropriations herein made shall not be available for the destruction of healthy, unadopted, wild horses and burros in the care of the Bureau or its contractors or for the sale of wild horses and burros that results in their destruction for processing into commercial products.

Wild horses.
Burros.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

For necessary expenses of the United States Fish and Wildlife Service, as authorized by law, and for scientific and economic studies, general administration, and for the performance of other authorized functions related to such resources, $1,228,142,000, to remain available until September 30, 2013 except as otherwise provided herein: *Provided,* That not to exceed $20,902,000 shall be used for implementing subsections (a), (b), (c), and (e) of section 4 of the Endangered Species Act, as amended, (except for processing petitions, developing and issuing proposed and final regulations, and taking any other steps to implement actions described in subsection (c)(2)(A), (c)(2)(B)(i), or (c)(2)(B)(ii)), of which not to exceed $7,472,000 shall be used for any activity regarding the designation of critical habitat, pursuant to subsection (a)(3), excluding litigation support, for species listed pursuant to subsection (a)(1) prior to October 1, 2010; of which not to exceed $1,500,000 shall be used for any activity regarding petitions to list species that are indigenous to the United States pursuant to subsections (b)(3)(A) and (b)(3)(B); and, of which not to exceed $1,500,000 shall be used for implementing subsections (a), (b), (c), and (e) of section 4 of the Endangered Species Act, as amended, for species that are not indigenous to the United States: *Provided further,* That, in fiscal year 2012 and hereafter of the amount available for law enforcement, up to $400,000, to remain available until expended, may at the discretion of the Secretary be used for payment for information, rewards, or evidence concerning violations of laws administered by the Service, and miscellaneous and emergency expenses of enforcement activity, authorized or approved by the Secretary and to be accounted for solely on the Secretary's certificate: *Provided further,* That in fiscal year 2012 and hereafter,

16 USC 742*l*–1.

16 USC 754e.

of the amount provided for environmental contaminants, up to $1,000,000 may remain available until expended for contaminant sample analyses.

CONSTRUCTION

For construction, improvement, acquisition, or removal of buildings and other facilities required in the conservation, management, investigation, protection, and utilization of fish and wildlife resources, and the acquisition of lands and interests therein; $23,088,000, to remain available until expended.

LAND ACQUISITION

For expenses necessary to carry out the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–4 through 11), including administrative expenses, and for acquisition of land or waters, or interest therein, in accordance with statutory authority applicable to the United States Fish and Wildlife Service, $54,720,000, to be derived from the Land and Water Conservation Fund and to remain available until expended, of which, notwithstanding 16 U.S.C. 460l–9, not more than $5,000,000 shall be for land conservation partnerships authorized by the Highlands Conservation Act of 2004, including not to exceed $160,000 for administrative expenses: *Provided*, That none of the funds appropriated for specific land acquisition projects may be used to pay for any administrative overhead, planning or other management costs.

COOPERATIVE ENDANGERED SPECIES CONSERVATION FUND

For expenses necessary to carry out section 6 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), $47,757,000, to remain available until expended, of which $22,757,000 is to be derived from the Cooperative Endangered Species Conservation Fund; and of which $25,000,000 is to be derived from the Land and Water Conservation Fund.

NATIONAL WILDLIFE REFUGE FUND

For expenses necessary to implement the Act of October 17, 1978 (16 U.S.C. 715s), $13,980,000.

NORTH AMERICAN WETLANDS CONSERVATION FUND

For expenses necessary to carry out the provisions of the North American Wetlands Conservation Act, as amended (16 U.S.C. 4401 et seq.), $35,554,000, to remain available until expended.

NEOTROPICAL MIGRATORY BIRD CONSERVATION

For expenses necessary to carry out the Neotropical Migratory Bird Conservation Act, as amended, (16 U.S.C. 6101 et seq.), $3,792,000, to remain available until expended.

MULTINATIONAL SPECIES CONSERVATION FUND

For expenses necessary to carry out the African Elephant Conservation Act (16 U.S.C. 4201 et seq.), the Asian Elephant Conservation Act of 1997 (16 U.S.C. 4261 et seq.), the Rhinoceros and

Tiger Conservation Act of 1994 (16 U.S.C. 5301 et seq.), the Great Ape Conservation Act of 2000 (16 U.S.C. 6301 et seq.), and the Marine Turtle Conservation Act of 2004 (16 U.S.C. 6601 et seq.), $9,481,000, to remain available until expended.

STATE AND TRIBAL WILDLIFE GRANTS

For wildlife conservation grants to States and to the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and Indian tribes under the provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished, $61,421,000, to remain available until expended: *Provided*, That of the amount provided herein, $4,275,000 is for a competitive grant program for Indian tribes not subject to the remaining provisions of this appropriation: *Provided further*, That $5,741,000 is for a competitive grant program for States, territories, and other jurisdictions with approved plans, not subject to the remaining provisions of this appropriation: *Provided further*, That the Secretary shall, after deducting $10,016,000 and administrative expenses, apportion the amount provided herein in the following manner: (1) to the District of Columbia and to the Commonwealth of Puerto Rico, each a sum equal to not more than one-half of 1 percent thereof; and (2) to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, each a sum equal to not more than one-fourth of 1 percent thereof: *Provided further*, That the Secretary shall apportion the remaining amount in the following manner: (1) one-third of which is based on the ratio to which the land area of such State bears to the total land area of all such States; and (2) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States: *Provided further*, That the amounts apportioned under this paragraph shall be adjusted equitably so that no State shall be apportioned a sum which is less than 1 percent of the amount available for apportionment under this paragraph for any fiscal year or more than 5 percent of such amount: *Provided further*, That the Federal share of planning grants shall not exceed 75 percent of the total costs of such projects and the Federal share of implementation grants shall not exceed 65 percent of the total costs of such projects: *Provided further*, That the non-Federal share of such projects may not be derived from Federal grant programs: *Provided further*, That any amount apportioned in 2012 to any State, territory, or other jurisdiction that remains unobligated as of September 30, 2013, shall be reapportioned, together with funds appropriated in 2014, in the manner provided herein.

ADMINISTRATIVE PROVISIONS

The United States Fish and Wildlife Service may carry out the operations of Service programs by direct expenditure, contracts, grants, cooperative agreements and reimbursable agreements with public and private entities. Appropriations and funds available to the United States Fish and Wildlife Service shall be available for repair of damage to public roads within and adjacent to reservation areas caused by operations of the Service; options for the

purchase of land at not to exceed $1 for each option; facilities incident to such public recreational uses on conservation areas as are consistent with their primary purpose; and the maintenance and improvement of aquaria, buildings, and other facilities under the jurisdiction of the Service and to which the United States has title, and which are used pursuant to law in connection with management, and investigation of fish and wildlife resources: *Provided*, That notwithstanding 44 U.S.C. 501, the Service may, under cooperative cost sharing and partnership arrangements authorized by law, procure printing services from cooperators in connection with jointly produced publications for which the cooperators share at least one-half the cost of printing either in cash or services and the Service determines the cooperator is capable of meeting accepted quality standards: *Provided further*, That the Service may accept donated aircraft as replacements for existing aircraft.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

For expenses necessary for the management, operation, and maintenance of areas and facilities administered by the National Park Service and for the general administration of the National Park Service, $2,240,152,000, of which $9,832,000 for planning and interagency coordination in support of Everglades restoration and $97,883,000 for maintenance, repair, or rehabilitation projects for constructed assets, operation of the National Park Service automated facility management software system, and comprehensive facility condition assessments shall remain available until September 30, 2013.

NATIONAL RECREATION AND PRESERVATION

For expenses necessary to carry out recreation programs, natural programs, cultural programs, heritage partnership programs, environmental compliance and review, international park affairs, and grant administration, not otherwise provided for, $59,975,000: *Provided,* That section 502(c) of the Chesapeake Bay Initiative Act of 1998 (16 U.S.C. 461 note; Public Law 105–312) is amended by striking "2011" and inserting "2013".

HISTORIC PRESERVATION FUND

For expenses necessary in carrying out the National Historic Preservation Act (16 U.S.C. 470), and the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104–333), $56,000,000, to be derived from the Historic Preservation Fund and to remain available until September 30, 2013.

CONSTRUCTION

(INCLUDING RESCISSION OF FUNDS)

For construction, improvements, repair, or replacement of physical facilities, including modifications authorized by section 104 of the Everglades National Park Protection and Expansion Act of 1989 (16 U.S.C. 410r–8), $159,621,000, to remain available until expended: *Provided*, That notwithstanding any other provision of

law, a single procurement for the project to repair damage to the Washington Monument may be issued that includes the full scope of the project, so long as the solicitation and contract shall contain the clause "availability of appropriated funds" found in CFR section 52.232.18 of title 48.

From funds previously made available under this heading, $4,000,000 are rescinded.

LAND AND WATER CONSERVATION FUND

(RESCISSION)

16 USC 460*l*–10a note.

The contract authority provided for fiscal year 2012 by 16 U.S.C. 460l–10a is rescinded.

LAND ACQUISITION AND STATE ASSISTANCE

For expenses necessary to carry out the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460l–4 through 11), including administrative expenses, and for acquisition of lands or waters, or interest therein, in accordance with the statutory authority applicable to the National Park Service, $102,060,000, to be derived from the Land and Water Conservation Fund and to remain available until expended, of which $45,000,000 is for the State assistance program and of which $9,000,000 shall be for the American Battlefield Protection Program grants as authorized by section 7301 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11).

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

In addition to other uses set forth in section 407(d) of Public Law 105–391, franchise fees credited to a sub-account shall be available for expenditure by the Secretary, without further appropriation, for use at any unit within the National Park System to extinguish or reduce liability for Possessory Interest or leasehold surrender interest. Such funds may only be used for this purpose to the extent that the benefitting unit anticipated franchise fee receipts over the term of the contract at that unit exceed the amount of funds used to extinguish or reduce liability. Franchise fees at the benefitting unit shall be credited to the sub-account of the originating unit over a period not to exceed the term of a single contract at the benefitting unit, in the amount of funds so expended to extinguish or reduce liability.

For the costs of administration of the Land and Water Conservation Fund grants authorized by section 105(a)(2)(B) of the Gulf of Mexico Energy Security Act of 2006 (Public Law 109–432), the National Park Service may retain up to 3 percent of the amounts which are authorized to be disbursed under such section, such retained amounts to remain available until expended.

National Park Service funds may be transferred to the Federal Highway Administration (FHWA), Department of Transportation, for purposes authorized under 23 U.S.C. 204. Transfers may include a reasonable amount for FHWA administrative support costs.

UNITED STATES GEOLOGICAL SURVEY

SURVEYS, INVESTIGATIONS, AND RESEARCH

For expenses necessary for the United States Geological Survey to perform surveys, investigations, and research covering topography, geology, hydrology, biology, and the mineral and water resources of the United States, its territories and possessions, and other areas as authorized by 43 U.S.C. 31, 1332, and 1340; classify lands as to their mineral and water resources; give engineering supervision to power permittees and Federal Energy Regulatory Commission licensees; administer the minerals exploration program (30 U.S.C. 641); conduct inquiries into the economic conditions affecting mining and materials processing industries (30 U.S.C. 3, 21a, and 1603; 50 U.S.C. 98g(1)) and related purposes as authorized by law; and to publish and disseminate data relative to the foregoing activities; $1,069,744,000, to remain available until September 30, 2013; of which $51,569,700 shall remain available until expended for satellite operations; and of which $7,292,000 shall be available until expended for deferred maintenance and capital improvement projects that exceed $100,000 in cost: *Provided*, That none of the funds provided for the ecosystem research activity shall be used to conduct new surveys on private property, unless specifically authorized in writing by the property owner: *Provided further*, That no part of this appropriation shall be used to pay more than one-half the cost of topographic mapping or water resources data collection and investigations carried on in cooperation with States and municipalities.

43 USC 50.

ADMINISTRATIVE PROVISIONS

From within the amount appropriated for activities of the United States Geological Survey such sums as are necessary shall be available for reimbursement to the General Services Administration for security guard services; contracting for the furnishing of topographic maps and for the making of geophysical or other specialized surveys when it is administratively determined that such procedures are in the public interest; construction and maintenance of necessary buildings and appurtenant facilities; acquisition of lands for gauging stations and observation wells; expenses of the United States National Committee on Geology; and payment of compensation and expenses of persons on the rolls of the Survey duly appointed to represent the United States in the negotiation and administration of interstate compacts: *Provided*, That activities funded by appropriations herein made may be accomplished through the use of contracts, grants, or cooperative agreements as defined in section 6302 of title 31, United States Code: *Provided further*, That the United States Geological Survey may enter into contracts or cooperative agreements directly with individuals or indirectly with institutions or nonprofit organizations, without regard to 41 U.S.C. 5, for the temporary or intermittent services of students or recent graduates, who shall be considered employees for the purpose of chapters 57 and 81 of title 5, United States Code, relating to compensation for travel and work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, but shall not be considered to be Federal employees for any other purposes.

BUREAU OF OCEAN ENERGY MANAGEMENT

OCEAN ENERGY MANAGEMENT

For expenses necessary for granting leases, easements, rights-of-way and agreements for use for oil and gas, other minerals, energy, and marine-related purposes on the Outer Continental Shelf and approving operations related thereto, as authorized by law; for environmental studies, as authorized by law; for implementing other laws to the extent provided by Presidential or Secretarial delegation; and for matching grants or cooperative agreements, $59,792,000, to remain available until September 30, 2013; and an amount not to exceed $101,082,000, to be credited to this appropriation and to remain available until expended, from additions to receipts resulting from increases to rates in effect on August 5, 1993, that are collected and disbursed by the Secretary, and from cost recovery fees from activities conducted by the Bureau of Ocean Energy Management pursuant to the Outer Continental Shelf Lands Act, including studies, assessments, analysis, and miscellaneous administrative activities: *Provided,* That notwithstanding 31 U.S.C. 3302, in fiscal year 2012, such amounts as are assessed under 31 U.S.C. 9701 shall be collected and credited to this account and shall be available until expended for necessary expenses: *Provided further,* That to the extent $101,082,000 in addition to receipts are not realized from the sources of receipts stated above, the amount needed to reach $101,082,000 shall be credited to this appropriation from receipts resulting from rental rates for Outer Continental Shelf leases in effect before August 5, 1993: *Provided further,* That for fiscal year 2012 and each fiscal year thereafter, the term "qualified Outer Continental Shelf revenues", as defined in section 102(9)(A) of the Gulf of Mexico Energy Security Act, division C of Public Law 109–432, shall include only the portion or rental revenues that would have been collected by the Secretary at the rental rates in effect before August 5, 1993: *Provided further,* That not to exceed $3,000 shall be available for reasonable expenses related to promoting volunteer beach and marine cleanup activities.

43 USC 1331 note.

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT

OFFSHORE SAFETY AND ENVIRONMENTAL ENFORCEMENT

For expenses necessary for the regulation of operations related to leases, easements, rights-of-way and agreements for use for oil and gas, other minerals, energy, and marine-related purposes on the Outer Continental Shelf, as authorized by law; for enforcing and implementing laws and regulations as authorized by law and to the extent provided by Presidential or Secretarial delegation; and for matching grants or cooperative agreements, $61,473,000, to remain available until September 30, 2013; and an amount not to exceed $59,081,000 to be credited to this appropriation and to remain available until expended, from additions to receipts resulting from increases to rates in effect on August 5, 1993, that are collected and disbursed by the Secretary, from cost recovery fees from activities conducted by the Bureau of Safety and Environmental Enforcement pursuant to the Outer Continental Shelf Lands Act, including studies, assessments, analysis, and miscellaneous administrative activities: *Provided,* That notwithstanding 31 U.S.C.

3302, in fiscal year 2012, such amounts as are assessed under 31 U.S.C. 9701 shall be collected and credited to this account and shall be available until expended for necessary expenses: *Provided further,* That to the extent $59,081,000 in addition to receipts are not realized from the sources of receipts stated above, the amount needed to reach $59,081,000 shall be credited to this appropriation from receipts resulting from rental rates for Outer Continental Shelf leases in effect before August 5, 1993: *Provided further,* That for fiscal year 2012 and each fiscal year thereafter, the term "qualified Outer Continental Shelf revenues", as defined in section 102(9)(A) of the Gulf of Mexico Energy Security Act, division C of Public Law 109–432, shall include only the portion of rental revenues that would have been collected by the Secretary at the rental rates in effect before August 5, 1993.

43 USC 1331 note.

For an additional amount, $62,000,000, to remain available until expended, which shall be derived from non-refundable inspection fees collected in fiscal year 2012, as provided in this Act: *Provided,* That to the extent that such amounts are not realized from such fees, the amount needed to reach $62,000,000 shall be credited to this appropriation from receipts resulting from rental rates for Outer Continental Shelf leases in effect before August 5, 1993: *Provided further,* That to the extent that amounts realized from such fees exceed $62,000,000, the amounts realized in excess of $62,000,000 shall be credited to this appropriation and remain available until expended: *Provided further,* That for fiscal year 2012, not less than 50 percent of the inspection fees collected by the Bureau of Safety and Environmental Enforcement will be used to fund personnel and mission-related costs to expand capacity and expedite the orderly development, subject to environmental safeguards, of the Outer Continental Shelf pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), including the review of applications for permits to drill.

OIL SPILL RESEARCH

For necessary expenses to carry out title I, section 1016, title IV, sections 4202 and 4303, title VII, and title VIII, section 8201 of the Oil Pollution Act of 1990, $14,923,000, which shall be derived from the Oil Spill Liability Trust Fund, to remain available until expended.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

REGULATION AND TECHNOLOGY

For necessary expenses to carry out the provisions of the Surface Mining Control and Reclamation Act of 1977, Public Law 95–87, as amended, $122,950,000, to remain available until September 30, 2013: *Provided*, That appropriations for the Office of Surface Mining Reclamation and Enforcement may provide for the travel and per diem expenses of State and tribal personnel attending Office of Surface Mining Reclamation and Enforcement sponsored training: *Provided further*, That, in fiscal year 2012, up to $40,000 collected by the Office of Surface Mining from permit fees pursuant to section 507 of Public Law 95–87 (30 U.S.C. 1257) shall be credited to this account as discretionary offsetting collections, to remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced as collections are received

30 USC 1211 note.

30 USC 1257 note.

during the fiscal year so as to result in a final fiscal year 2012 appropriation estimated at not more than $122,910,000: *Provided further*, That, in subsequent fiscal years, all amounts collected by the Office of Surface Mining from permit fees pursuant to section 507 of Public Law 95–87 (30 U.S.C. 1257) shall be credited to this account as discretionary offsetting collections, to remain available until expended.

ABANDONED MINE RECLAMATION FUND

For necessary expenses to carry out title IV of the Surface Mining Control and Reclamation Act of 1977, Public Law 95–87, as amended, $27,443,000, to be derived from receipts of the Abandoned Mine Reclamation Fund and to remain available until expended: *Provided,* That pursuant to Public Law 97–365, the Department of the Interior is authorized to use up to 20 percent from the recovery of the delinquent debt owed to the United States Government to pay for contracts to collect these debts: *Provided further,* That funds made available under title IV of Public Law 95–87 may be used for any required non-Federal share of the cost of projects funded by the Federal Government for the purpose of environmental restoration related to treatment or abatement of acid mine drainage from abandoned mines: *Provided further*, That such projects must be consistent with the purposes and priorities of the Surface Mining Control and Reclamation Act: *Provided further,* That amounts provided under this heading may be used for the travel and per diem expenses of State and tribal personnel attending Office of Surface Mining Reclamation and Enforcement sponsored training.

ADMINISTRATIVE PROVISION

With funds available for the Technical Innovation and Professional Services program in this Act, the Secretary may transfer title for computer hardware, software and other technical equipment to State and tribal regulatory and reclamation programs.

BUREAU OF INDIAN AFFAIRS AND BUREAU OF INDIAN EDUCATION

OPERATION OF INDIAN PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for the operation of Indian programs, as authorized by law, including the Snyder Act of November 2, 1921 (25 U.S.C. 13), the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450 et seq.), as amended, the Education Amendments of 1978 (25 U.S.C. 2001–2019), and the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.), as amended, $2,371,532,000, to remain available until September 30, 2013 except as otherwise provided herein; of which not to exceed $8,500 may be for official reception and representation expenses; of which not to exceed $74,911,000 shall be for welfare assistance payments: *Provided*, That in cases of designated Federal disasters, the Secretary may exceed such cap, from the amounts provided herein, to provide for disaster relief to Indian communities

affected by the disaster; of which, notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, not to exceed $219,560,000 shall be available for payments for contract support costs associated with ongoing contracts, grants, compacts, or annual funding agreements entered into with the Bureau prior to or during fiscal year 2012, as authorized by such Act, except that tribes and tribal organizations may use their tribal priority allocations for unmet contract support costs of ongoing contracts, grants, or compacts, or annual funding agreements and for unmet welfare assistance costs; of which not to exceed $590,484,000 for school operations costs of Bureau-funded schools and other education programs shall become available on July 1, 2012, and shall remain available until September 30, 2013; and of which not to exceed $48,049,000 shall remain available until expended for housing improvement, road maintenance, attorney fees, litigation support, the Indian Self-Determination Fund, land records improvement, and the Navajo-Hopi Settlement Program: *Provided further*, That notwithstanding any other provision of law, including but not limited to the Indian Self-Determination Act of 1975, as amended, and 25 U.S.C. 2008, not to exceed $46,327,000 within and only from such amounts made available for school operations shall be available for administrative cost grants associated with ongoing grants entered into with the Bureau prior to or during fiscal year 2011 for the operation of Bureau-funded schools, and up to $500,000 within and only from such amounts made available for administrative cost grants shall be available for the transitional costs of initial administrative cost grants to grantees that assume operation on or after July 1, 2011, of Bureau-funded schools: *Provided further*, That any forestry funds allocated to a tribe which remain unobligated as of September 30, 2013, may be transferred during fiscal year 2014 to an Indian forest land assistance account established for the benefit of the holder of the funds within the holder's trust fund account: *Provided further*, That any such unobligated balances not so transferred shall expire on September 30, 2014: *Provided further*, That in order to enhance the safety of Bureau field employees, the Bureau may use funds to purchase uniforms or other identifying articles of clothing for personnel.

Expiration date.

CONSTRUCTION

(INCLUDING TRANSFER OF FUNDS)

For construction, repair, improvement, and maintenance of irrigation and power systems, buildings, utilities, and other facilities, including architectural and engineering services by contract; acquisition of lands, and interests in lands; and preparation of lands for farming, and for construction of the Navajo Indian Irrigation Project pursuant to Public Law 87–483, $123,828,000, to remain available until expended: *Provided,* That such amounts as may be available for the construction of the Navajo Indian Irrigation Project may be transferred to the Bureau of Reclamation: *Provided further,* That not to exceed 6 percent of contract authority available to the Bureau of Indian Affairs from the Federal Highway Trust Fund may be used to cover the road program management costs of the Bureau: *Provided further,* That any funds provided for the Safety of Dams program pursuant to 25 U.S.C. 13 shall be made

available on a nonreimbursable basis: *Provided further,* That for fiscal year 2012, in implementing new construction or facilities improvement and repair project grants in excess of $100,000 that are provided to grant schools under Public Law 100–297, as amended, the Secretary of the Interior shall use the Administrative and Audit Requirements and Cost Principles for Assistance Programs contained in 43 CFR part 12 as the regulatory requirements: *Provided further,* That such grants shall not be subject to section 12.61 of 43 CFR; the Secretary and the grantee shall negotiate and determine a schedule of payments for the work to be performed: *Provided further,* That in considering grant applications, the Secretary shall consider whether such grantee would be deficient in assuring that the construction projects conform to applicable building standards and codes and Federal, tribal, or State health and safety standards as required by 25 U.S.C. 2005(b), with respect to organizational and financial management capabilities: *Provided further,* That if the Secretary declines a grant application, the Secretary shall follow the requirements contained in 25 U.S.C. 2504(f): *Provided further,* That any disputes between the Secretary and any grantee concerning a grant shall be subject to the disputes provision in 25 U.S.C. 2507(e): *Provided further,* That in order to ensure timely completion of construction projects, the Secretary may assume control of a project and all funds related to the project, if, within 18 months of the date of enactment of this Act, any grantee receiving funds appropriated in this Act or in any prior Act, has not completed the planning and design phase of the project and commenced construction: *Provided further,* That this appropriation may be reimbursed from the Office of the Special Trustee for American Indians appropriation for the appropriate share of construction costs for space expansion needed in agency offices to meet trust reform implementation.

Grants. Negotiation.

INDIAN LAND AND WATER CLAIM SETTLEMENTS AND MISCELLANEOUS PAYMENTS TO INDIANS

For payments and necessary administrative expenses for implementation of Indian land and water claim settlements pursuant to Public Laws 99–264, 100–580, 101–618, 108–447, and 111–11, and for implementation of other land and water rights settlements, $32,855,000, to remain available until expended.

INDIAN GUARANTEED LOAN PROGRAM ACCOUNT

For the cost of guaranteed loans and insured loans, $7,114,000, of which $964,000 is for administrative expenses, as authorized by the Indian Financing Act of 1974, as amended: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed or insured, not to exceed $73,365,796.

ADMINISTRATIVE PROVISIONS

The Bureau of Indian Affairs may carry out the operation of Indian programs by direct expenditure, contracts, cooperative agreements, compacts, and grants, either directly or in cooperation with States and other organizations.

Notwithstanding 25 U.S.C. 15, the Bureau of Indian Affairs may contract for services in support of the management, operation, and maintenance of the Power Division of the San Carlos Irrigation Project.

Appropriations for the Bureau of Indian Affairs (except the Revolving Fund for Loans Liquidating Account, Indian Loan Guaranty and Insurance Fund Liquidating Account, Indian Guaranteed Loan Financing Account, Indian Direct Loan Financing Account, and the Indian Guaranteed Loan Program account) shall be available for expenses of exhibits.

Notwithstanding any other provision of law, no funds available to the Bureau of Indian Affairs for central office oversight and Executive Direction and Administrative Services (except executive direction and administrative services funding for Tribal Priority Allocations, regional offices, and facilities operations and maintenance) shall be available for contracts, grants, compacts, or cooperative agreements with the Bureau of Indian Affairs under the provisions of the Indian Self-Determination Act or the Tribal Self-Governance Act of 1994 (Public Law 103–413).

In the event any tribe returns appropriations made available by this Act to the Bureau of Indian Affairs, this action shall not diminish the Federal Government's trust responsibility to that tribe, or the government-to-government relationship between the United States and that tribe, or that tribe's ability to access future appropriations.

Alaska.

Notwithstanding any other provision of law, no funds available to the Bureau, other than the amounts provided herein for assistance to public schools under 25 U.S.C. 452 et seq., shall be available to support the operation of any elementary or secondary school in the State of Alaska.

Appropriations made available in this or any other Act for schools funded by the Bureau shall be available only to the schools in the Bureau school system as of September 1, 1996. No funds available to the Bureau shall be used to support expanded grades for any school or dormitory beyond the grade structure in place or approved by the Secretary of the Interior at each school in the Bureau school system as of October 1, 1995, except that any school or school program that was closed and removed from the Bureau school system between 1951 and 1972, and its respective tribe's relationship with the Federal Government was terminated, shall be reinstated to the Bureau system and supported at a level based on its grade structure and average student enrollment for the 2009–2010, 2010–2011 and 2011–2012 school years. Funds made available under this Act may not be used to establish a charter school at a Bureau-funded school (as that term is defined in section 1141 of the Education Amendments of 1978 (25 U.S.C. 2021)), except that a charter school that is in existence on the date of the enactment of this Act and that has operated at a Bureau-funded school before September 1, 1999, may continue to operate during that period, but only if the charter school pays to the Bureau a pro rata share of funds to reimburse the Bureau for the use of the real and personal property (including buses and vans), the funds of the charter school are kept separate and apart from Bureau funds, and the Bureau does not assume any obligation for charter school programs of the State in which the school is located if the charter school loses such funding. Employees of Bureau-funded schools sharing a campus with a charter school

Charter schools.

and performing functions related to the charter school's operation and employees of a charter school shall not be treated as Federal employees for purposes of chapter 171 of title 28, United States Code.

Notwithstanding any other provision of law, including section 113 of title I of appendix C of Public Law 106–113, if in fiscal year 2003 or 2004 a grantee received indirect and administrative costs pursuant to a distribution formula based on section 5(f) of Public Law 101–301, the Secretary shall continue to distribute indirect and administrative cost funds to such grantee using the section 5(f) distribution formula.

DEPARTMENTAL OFFICES

OFFICE OF THE SECRETARY

DEPARTMENTAL OPERATIONS

For necessary expenses for management of the Department of the Interior, including the collection and disbursement of royalties, fees, and other mineral revenue proceeds, as authorized by law, $262,317,000, to remain available until September 30, 2013; of which not to exceed $15,000 may be for official reception and representation expenses; and of which up to $1,000,000 shall be available for workers compensation payments and unemployment compensation payments associated with the orderly closure of the United States Bureau of Mines; and of which $12,712,000 for the Office of Valuation Services is to be derived from the Land and Water Conservation Fund and shall remain available until expended; and of which $38,300,000 shall remain available until expended for the purpose of mineral revenue management activities: *Provided*, That, for fiscal year 2012, up to $400,000 of the payments authorized by the Act of October 20, 1976, as amended (31 U.S.C. 6901–6907) may be retained for administrative expenses of the Payments in Lieu of Taxes Program: *Provided further*, That no payment shall be made pursuant to that Act to otherwise eligible units of local government if the computed amount of the payment is less than $100: *Provided further*, That notwithstanding any other provision of law, $15,000 under this heading shall be available for refunds of overpayments in connection with certain Indian leases in which the Secretary concurred with the claimed refund due, to pay amounts owed to Indian allottees or tribes, or to correct prior unrecoverable erroneous payments: *Provided further*, That, notwithstanding the provisions of section 35(b) of the Mineral Leasing Act, as amended (30 U.S.C. 191(b)), the Secretary shall deduct 2 percent from the amount payable to each State in fiscal year 2012 and deposit the amount deducted to miscellaneous receipts of the Treasury.

INSULAR AFFAIRS

ASSISTANCE TO TERRITORIES

For expenses necessary for assistance to territories under the jurisdiction of the Department of the Interior and other jurisdictions identified in section 104(e) of Public Law 108–188, $87,997,000, of which: (1) $78,517,000 shall remain available until expended for territorial assistance, including general technical assistance,

maintenance assistance, disaster assistance, insular management controls, coral reef initiative activities, and brown tree snake control and research; grants to the judiciary in American Samoa for compensation and expenses, as authorized by law (48 U.S.C. 1661(c)); grants to the Government of American Samoa, in addition to current local revenues, for construction and support of governmental functions; grants to the Government of the Virgin Islands as authorized by law; grants to the Government of Guam, as authorized by law; and grants to the Government of the Northern Mariana Islands as authorized by law (Public Law 94–241; 90 Stat. 272); and (2) $9,480,000 shall be available until September 30, 2013 for salaries and expenses of the Office of Insular Affairs: *Provided*, That all financial transactions of the territorial and local governments herein provided for, including such transactions of all agencies or instrumentalities established or used by such governments, may be audited by the Government Accountability Office, at its discretion, in accordance with chapter 35 of title 31, United States Code: *Provided further*, That Northern Mariana Islands Covenant grant funding shall be provided according to those terms of the Agreement of the Special Representatives on Future United States Financial Assistance for the Northern Mariana Islands approved by Public Law 104–134: *Provided further*, That the funds for the program of operations and maintenance improvement are appropriated to institutionalize routine operations and maintenance improvement of capital infrastructure with territorial participation and cost sharing to be determined by the Secretary based on the grantee's commitment to timely maintenance of its capital assets: *Provided further*, That any appropriation for disaster assistance under this heading in this Act or previous appropriations Acts may be used as non-Federal matching funds for the purpose of hazard mitigation grants provided pursuant to section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c).

48 USC 1469b.

COMPACT OF FREE ASSOCIATION

For grants and necessary expenses, $3,318,000, to remain available until expended, as provided for in sections 221(a)(2) and 233 of the Compact of Free Association for the Republic of Palau; and section 221(a)(2) of the Compacts of Free Association for the Government of the Republic of the Marshall Islands and the Federated States of Micronesia, as authorized by Public Law 99–658 and Public Law 108–188.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

At the request of the Governor of Guam, the Secretary may transfer discretionary funds or mandatory funds provided under section 104(e) of Public Law 108–188 and Public Law 104–134, that are allocated for Guam, to the Secretary of Agriculture for the subsidy cost of direct or guaranteed loans, plus not to exceed three percent of the amount of the subsidy transferred for the cost of loan administration, for the purposes authorized by the Rural Electrification Act of 1936 and section 306(a)(1) of the Consolidated Farm and Rural Development Act for construction and repair projects in Guam, and such funds shall remain available until expended: *Provided*, That such costs, including the cost of modifying

such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That such loans or loan guarantees may be made without regard to the population of the area, credit elsewhere requirements, and restrictions on the types of eligible entities under the Rural Electrification Act of 1936 and section 306(a)(1) of the Consolidated Farm and Rural Development Act: *Provided further*, That any funds transferred to the Secretary of Agriculture shall be in addition to funds otherwise made available to make or guarantee loans under such authorities.

OFFICE OF THE SOLICITOR

SALARIES AND EXPENSES

For necessary expenses of the Office of the Solicitor, $66,296,000.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

For necessary expenses of the Office of Inspector General, $49,471,000.

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

FEDERAL TRUST PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For the operation of trust programs for Indians by direct expenditure, contracts, cooperative agreements, compacts, and grants, $152,319,000, to remain available until expended, of which not to exceed $31,171,000 from this or any other Act, shall be available for historical accounting: *Provided*, That funds for trust management improvements and litigation support may, as needed, be transferred to or merged with the Bureau of Indian Affairs, "Operation of Indian Programs" account; the Office of the Solicitor, "Salaries and Expenses" account; and the Office of the Secretary, "Salaries and Expenses" account: *Provided further*, That funds made available through contracts or grants obligated during fiscal year 2012, as authorized by the Indian Self-Determination Act of 1975 (25 U.S.C. 450 et seq.), shall remain available until expended by the contractor or grantee: *Provided further*, That, notwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim, including any claim in litigation pending on the date of the enactment of this Act, concerning losses to or mismanagement of trust funds, until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss: *Provided further*, That, notwithstanding any other provision of law, the Secretary shall not be required to provide a quarterly statement of performance for any Indian trust account that has not had activity for at least 18 months and has a balance of $15 or less: *Provided further*, That the Secretary shall issue an annual account statement and maintain a record of any such accounts and shall permit the balance in each such account to be withdrawn upon the express written request of the account

Deadline. Account statement. Records.

holder: *Provided further*, That not to exceed $50,000 is available for the Secretary to make payments to correct administrative errors of either disbursements from or deposits to Individual Indian Money or Tribal accounts after September 30, 2002: *Provided further*, That erroneous payments that are recovered shall be credited to and remain available in this account for this purpose.

DEPARTMENT-WIDE PROGRAMS

WILDLAND FIRE MANAGEMENT

(INCLUDING TRANSFERS AND RESCISSION OF FUNDS)

For necessary expenses for fire preparedness, suppression operations, fire science and research, emergency rehabilitation, hazardous fuels reduction, and rural fire assistance by the Department of the Interior, $566,495,000, to remain available until expended, of which not to exceed $6,137,000 shall be for the renovation or construction of fire facilities: *Provided*, That such funds are also available for repayment of advances to other appropriation accounts from which funds were previously transferred for such purposes: *Provided further*, That persons hired pursuant to 43 U.S.C. 1469 may be furnished subsistence and lodging without cost from funds available from this appropriation: *Provided further*, That notwithstanding 42 U.S.C. 1856d, sums received by a bureau or office of the Department of the Interior for fire protection rendered pursuant to 42 U.S.C. 1856 et seq., protection of United States property, may be credited to the appropriation from which funds were expended to provide that protection, and are available without fiscal year limitation: *Provided further*, That using the amounts designated under this title of this Act, the Secretary of the Interior may enter into procurement contracts, grants, or cooperative agreements, for hazardous fuels reduction activities, and for training and monitoring associated with such hazardous fuels reduction activities, on Federal land, or on adjacent non-Federal land for activities that benefit resources on Federal land: *Provided further*, That the costs of implementing any cooperative agreement between the Federal Government and any non-Federal entity may be shared, as mutually agreed on by the affected parties: *Provided further*, That notwithstanding requirements of the Competition in Contracting Act, the Secretary, for purposes of hazardous fuels reduction activities, may obtain maximum practicable competition among: (1) local private, nonprofit, or cooperative entities; (2) Youth Conservation Corps crews, Public Lands Corps (Public Law 109–154), or related partnerships with State, local, or nonprofit youth groups; (3) small or micro-businesses; or (4) other entities that will hire or train locally a significant percentage, defined as 50 percent or more, of the project workforce to complete such contracts: *Provided further*, That in implementing this section, the Secretary shall develop written guidance to field units to ensure accountability and consistent application of the authorities provided herein: *Provided further*, That funds appropriated under this heading may be used to reimburse the United States Fish and Wildlife Service and the National Marine Fisheries Service for the costs of carrying out their responsibilities under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to consult and conference, as required

Guidance.

by section 7 of such Act, in connection with wildland fire management activities: *Provided further*, That the Secretary of the Interior may use wildland fire appropriations to enter into noncompetitive sole-source leases of real property with local governments, at or below fair market value, to construct capitalized improvements for fire facilities on such leased properties, including but not limited to fire guard stations, retardant stations, and other initial attack and fire support facilities, and to make advance payments for any such lease or for construction activity associated with the lease: *Provided further*, That the Secretary of the Interior and the Secretary of Agriculture may authorize the transfer of funds appropriated for wildland fire management, in an aggregate amount not to exceed $50,000,000, between the Departments when such transfers would facilitate and expedite wildland fire management programs and projects: *Provided further,* That funds provided for wildfire suppression shall be available for support of Federal emergency response actions: *Provided further,* That funds appropriated under this heading shall be available for assistance to or through the Department of State in connection with forest and rangeland research, technical information, and assistance in foreign countries, and, with the concurrence of the Secretary of State, shall be available to support forestry, wildland fire management, and related natural resource activities outside the United States and its territories and possessions, including technical assistance, education and training, and cooperation with United States and international organizations: *Provided further,* That before obligating any of the funds provided herein for wildland fire suppression, the Secretary of the Interior shall obligate all unobligated balances previously made available under this heading that, when appropriated, were designated by Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985 and notify the Committees on Appropriations of the House of Representatives and the Senate in writing of the imminent need to begin obligating funds provided herein for wildland fire suppression: *Provided further,* That of the funds made available under this heading for wildland fire suppression in fiscal year 2011, $82,000,000 are rescinded.

Notification.

FLAME WILDFIRE SUPPRESSION RESERVE FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for large fire suppression operations of the Department of the Interior and as a reserve fund for suppression and Federal emergency response activities, $92,000,000, to remain available until expended: *Provided,* That such amounts are available only for transfer to the "Wildland Fire Management" account and only following a declaration by the Secretary that either (1) a wildland fire suppression event meets certain previously established risk-based written criteria for significant complexity, severity, or threat posed by the fire or (2) funds in the "Wildland Fire Management" account will be exhausted within 30 days.

Declaration.

CENTRAL HAZARDOUS MATERIALS FUND

For necessary expenses of the Department of the Interior and any of its component offices and bureaus for the response action,

including associated activities, performed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.), $10,149,000, to remain available until expended.

NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION

NATURAL RESOURCE DAMAGE ASSESSMENT FUND

To conduct natural resource damage assessment and restoration activities by the Department of the Interior necessary to carry out the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), and Public Law 101–337, as amended (16 U.S.C. 19jj et seq.), $6,263,000, to remain available until expended.

WORKING CAPITAL FUND

For the acquisition of a departmental financial and business management system, information technology improvements of general benefit to the Department, strengthening the Department's acquisition workforce capacity and capabilities, and consolidation of facilities and operations throughout the Department, $62,019,000, to remain available until expended: *Provided*, That such funds shall be available for training, recruitment, retention, and hiring members of the acquisition workforce as defined by the Office of Federal Procurement Policy Act as amended (41 U.S.C. 401 et seq.): *Provided further*, That none of the funds appropriated in this Act or any other Act may be used to establish reserves in the Working Capital Fund account other than for accrued annual leave and depreciation of equipment without prior approval of the House of Representatives and Senate Committees on Appropriations: *Provided further*, That the Secretary may assess reasonable charges to State, local and tribal government employees for training services provided by the National Indian Program Training Center, other than training related to Public Law 93–638: *Provided further*, That the Secretary may lease or otherwise provide space and related facilities, equipment or professional services of the National Indian Program Training Center to State, local and tribal government employees or persons or organizations engaged in cultural, educational, or recreational activities (as defined in section 3306(a) of title 40, United States Code) at the prevailing rate for similar space, facilities, equipment, or services in the vicinity of the National Indian Program Training Center: *Provided further*, That all funds received pursuant to the two preceding provisos shall be credited to this account, shall be available until expended, and shall be used by the Secretary for necessary expenses of the National Indian Program Training Center.

ADMINISTRATIVE PROVISION

There is hereby authorized for acquisition from available resources within the Working Capital Fund, 15 aircraft, 10 of which shall be for replacement and which may be obtained by donation, purchase or through available excess surplus property: *Provided*, That existing aircraft being replaced may be sold, with proceeds

derived or trade-in value used to offset the purchase price for the replacement aircraft.

GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR

(INCLUDING TRANSFERS OF FUNDS)

EMERGENCY TRANSFER AUTHORITY—INTRA-BUREAU

SEC. 101. Appropriations made in this title shall be available for expenditure or transfer (within each bureau or office), with the approval of the Secretary, for the emergency reconstruction, replacement, or repair of aircraft, buildings, utilities, or other facilities or equipment damaged or destroyed by fire, flood, storm, or other unavoidable causes: *Provided*, That no funds shall be made available under this authority until funds specifically made available to the Department of the Interior for emergencies shall have been exhausted: *Provided further*, That all funds used pursuant to this section must be replenished by a supplemental appropriation which must be requested as promptly as possible.

EMERGENCY TRANSFER AUTHORITY—DEPARTMENT-WIDE

SEC. 102. The Secretary may authorize the expenditure or transfer of any no year appropriation in this title, in addition to the amounts included in the budget programs of the several agencies, for the suppression or emergency prevention of wildland fires on or threatening lands under the jurisdiction of the Department of the Interior; for the emergency rehabilitation of burned-over lands under its jurisdiction; for emergency actions related to potential or actual earthquakes, floods, volcanoes, storms, or other unavoidable causes; for contingency planning subsequent to actual oil spills; for response and natural resource damage assessment activities related to actual oil spills or releases of hazardous substances into the environment; for the prevention, suppression, and control of actual or potential grasshopper and Mormon cricket outbreaks on lands under the jurisdiction of the Secretary, pursuant to the authority in section 417(b) of Public Law 106–224 (7 U.S.C. 7717(b)); for emergency reclamation projects under section 410 of Public Law 95–87; and shall transfer, from any no year funds available to the Office of Surface Mining Reclamation and Enforcement, such funds as may be necessary to permit assumption of regulatory authority in the event a primacy State is not carrying out the regulatory provisions of the Surface Mining Act: *Provided*, That appropriations made in this title for wildland fire operations shall be available for the payment of obligations incurred during the preceding fiscal year, and for reimbursement to other Federal agencies for destruction of vehicles, aircraft, or other equipment in connection with their use for wildland fire operations, such reimbursement to be credited to appropriations currently available at the time of receipt thereof: *Provided further*, That for wildland fire operations, no funds shall be made available under this authority until the Secretary determines that funds appropriated for "wildland fire operations" and "FLAME Wildfire Suppression Reserve Fund" shall be exhausted within 30 days: *Provided further*, That all funds used pursuant to this section must be replenished by a supplemental appropriation which must be requested as promptly as possible: *Provided further*, That such replenishment

Determination.

funds shall be used to reimburse, on a pro rata basis, accounts from which emergency funds were transferred.

AUTHORIZED USE OF FUNDS

SEC. 103. Appropriations made to the Department of the Interior in this title shall be available for services as authorized by section 3109 of title 5, United States Code, when authorized by the Secretary, in total amount not to exceed $500,000; purchase and replacement of motor vehicles, including specially equipped law enforcement vehicles; hire, maintenance, and operation of aircraft; hire of passenger motor vehicles; purchase of reprints; payment for telephone service in private residences in the field, when authorized under regulations approved by the Secretary; and the payment of dues, when authorized by the Secretary, for library membership in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members.

AUTHORIZED USE OF FUNDS, INDIAN TRUST MANAGEMENT

SEC. 104. Appropriations made in this Act under the headings Bureau of Indian Affairs and Office of the Special Trustee for American Indians and any unobligated balances from prior appropriations Acts made under the same headings shall be available for expenditure or transfer for Indian trust management and reform activities. Total funding for historical accounting activities shall not exceed amounts specifically designated in this Act for such purpose.

REDISTRIBUTION OF FUNDS, BUREAU OF INDIAN AFFAIRS

SEC. 105. Notwithstanding any other provision of law, the Secretary of the Interior is authorized to redistribute any Tribal Priority Allocation funds, including tribal base funds, to alleviate tribal funding inequities by transferring funds to address identified, unmet needs, dual enrollment, overlapping service areas or inaccurate distribution methodologies. No tribe shall receive a reduction in Tribal Priority Allocation funds of more than 10 percent in fiscal year 2012. Under circumstances of dual enrollment, overlapping service areas or inaccurate distribution methodologies, the 10 percent limitation does not apply.

PAYMENT OF FEES

SEC. 106. The Secretary of the Interior may use discretionary funds to pay private attorney fees and costs for employees and former employees of the Department of the Interior reasonably incurred in connection with Cobell v. Salazar to the extent that such fees and costs are not paid by the Department of Justice or by private insurance. In no case shall the Secretary make payments under this section that would result in payment of hourly fees in excess of the highest hourly rate approved by the District Court for the District of Columbia for counsel in Cobell v. Salazar.

EVERGLADES ECOSYSTEM RESTORATION

16 USC 410i note.

SEC. 107. This and any subsequent fiscal year, the National Park Service is authorized to implement modifications to the Tamiami Trail as described in, and in accordance with, the preferred alternative identified in the final environmental impact statement noticed in the Federal Register on December 14, 2010, (75 Fed. Reg. 77896), relating to restoration efforts of the Everglades ecosystem.

ELLIS, GOVERNORS, AND LIBERTY ISLANDS

New York. New Jersey. Contracts.

SEC. 108. Notwithstanding any other provision of law, the Secretary of the Interior is authorized to acquire lands, waters, or interests therein including the use of all or part of any pier, dock, or landing within the State of New York and the State of New Jersey, for the purpose of operating and maintaining facilities in the support of transportation and accommodation of visitors to Ellis, Governors, and Liberty Islands, and of other program and administrative activities, by donation or with appropriated funds, including franchise fees (and other monetary consideration), or by exchange; and the Secretary is authorized to negotiate and enter into leases, subleases, concession contracts or other agreements for the use of such facilities on such terms and conditions as the Secretary may determine reasonable.

OUTER CONTINENTAL SHELF INSPECTION FEES

SEC. 109. (a) In fiscal year 2012, the Secretary shall collect a nonrefundable inspection fee, which shall be deposited in the "Ocean Energy Management" account, from the designated operator for facilities subject to inspection under 43 U.S.C. 1348(c).

(b) Annual fees shall be collected for facilities that are above the waterline, excluding drilling rigs, and are in place at the start of the fiscal year. Fees for fiscal year 2012 shall be:

(1) $10,500 for facilities with no wells, but with processing equipment or gathering lines;

(2) $17,000 for facilities with 1 to 10 wells, with any combination of active or inactive wells; and

(3) $31,500 for facilities with more than 10 wells, with any combination of active or inactive wells.

(c) Fees for drilling rigs shall be assessed for all inspections completed in fiscal year 2012. Fees for fiscal year 2012 shall be:

(1) $30,500 per inspection for rigs operating in water depths of 500 feet or more; and

(2) $16,700 per inspection for rigs operating in water depths of less than 500 feet.

Deadlines.

(d) The Secretary shall bill designated operators under subsection (b) within 60 days, with payment required within 30 days of billing. The Secretary shall bill designated operators under subsection (c) within 30 days of the end of the month in which the inspection occurred, with payment required within 30 days of billing.

OIL AND GAS LEASING INTERNET PROGRAM

SEC. 110. Notwithstanding section 17(b)(1)(A) of the Mineral Leasing Act (30 U.S.C. 226(b)(1)(A)), the Secretary of the Interior

shall have the authority to establish an oil and gas leasing Internet program, under which the Secretary may conduct lease sales through methods other than oral bidding.

INDIAN PROBATE JUDGES

SEC. 111. Section 108 of Public Law 109–54 (the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006) is amended by striking "in fiscal years 2006 through 2010, for the purpose of reducing the backlog of" and inserting "for fiscal year 2006 and each fiscal year thereafter, for the purpose of adjudicating". 25 USC 372–2.

BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT REORGANIZATION

SEC. 112. The Secretary of the Interior, in order to implement a reorganization of the Bureau of Ocean Energy Management, Regulation and Enforcement, may establish accounts and transfer funds among and between the offices and bureaus affected by the reorganization only in conformance with the reprogramming guidelines described in the report accompanying this Act.

AUTHORIZED USE OF INDIAN EDUCATION FUNDS

SEC. 113. Beginning July 1, 2008, any funds (including investments and interest earned, except for construction funds) held by a Public Law 100–297 grant or a Public Law 93–638 contract school shall, upon retrocession to or re-assumption by the Bureau of Indian Education, remain available to the Bureau of Indian Education for a period of 5 years from the date of retrocession or re-assumption for the benefit of the programs approved for the school on October 1, 1995. Effective date. Time period.

CONTRACTS AND AGREEMENTS FOR WILD HORSE AND BURRO HOLDING FACILITIES

SEC. 114. (a) Notwithstanding any other provision of this Act, the Secretary of the Interior may enter into multiyear cooperative agreements with nonprofit organizations and other appropriate entities, and may enter into multiyear contracts in accordance with the provisions of section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c) (except that the 5-year term restriction in subsection (d) shall not apply), for the long-term care and maintenance of excess wild free roaming horses and burros by such organizations or entities on private land. Such cooperative agreements and contracts may not exceed 10 years, subject to renewal at the discretion of the Secretary. 16 USC 1336 note.

(b) During fiscal year 2012 and subsequent fiscal years, in carrying out work involving cooperation with any State or political subdivision thereof, the Bureau of Land Management may record obligations against accounts receivable from any such entities.

BUREAU OF INDIAN EDUCATION OPERATED SCHOOLS

SEC. 115. (a)(1) Notwithstanding any other provision of law or Federal regulation, including section 586(c) of title 40, United States Code, the Director of the BIE, or the Director's designee, Contracts. 25 USC 2000 note.

is authorized to enter into agreements with public and private persons and entities that provide for such persons and entities to rent or lease the land or facilities of a Bureau-operated school for such periods of time as the school is Bureau operated, in exchange for a consideration (in the form of funds) that benefits the school, as determined by the head of the school.

(2) Funds received under paragraph (1) shall be retained by the school and used for school purposes otherwise authorized by law. Any funds received under paragraph (1) are hereby made available until expended for such purposes, notwithstanding section 3302 of title 31, United States Code.

(3) Nothing in this section shall be construed to allow for the diminishment of, or otherwise affect, the appropriation of funds to the budget accounts for the operation and maintenance of Bureau-operated schools. No funds shall be withheld from the distribution to the budget of any Bureau-operated school due to the receipt by the school of a benefit in accordance with this section.

(b) Notwithstanding any provision of title 5, United States Code, or any regulation promulgated under such title, education personnel who are under the direction and supervision of the Secretary of the Interior may participate in a fundraising activity for the benefit of a Bureau-operated school in an official capacity as part of their official duties. When participating in such an official capacity, the employee may use the employee's official title, position, and authority. Nothing in this subsection shall be construed to authorize participation in political activity (as such term is used in section 7324 of title 5, United States Code) otherwise prohibited by law.

Regulations. Deadline.

(c) The Secretary of the Interior shall promulgate regulations to carry out this section not later than 16 months after the date of the enactment of this Act. Such regulations shall include—

(1) standards for the appropriate use of Bureau-operated school lands and facilities by third parties under a rental or lease agreement;

(2) provisions for the establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a school in accordance with this section (including, in appropriate cases, the establishment and administration of trust funds);

(3) accountability standards to ensure ethical conduct; and

(4) provisions for monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use.

Applicability.

(d) Provisions of this section shall apply to fiscal years 2012 through 2014.

AUTHORIZED USE OF FUNDS

124 Stat. 2339.

SEC. 116. Section 3006 of Public Law 111–212 is amended by striking "For fiscal years 2010 and 2011" and inserting "For fiscal years 2010 through 2012".

MASS MARKING OF SALMONIDS

SEC. 117. The United States Fish and Wildlife Service shall, in carrying out its responsibilities to protect threatened and endangered species of salmon, implement a system of mass marking of salmonid stocks, intended for harvest, that are released from

federally operated or federally financed hatcheries including but not limited to fish releases of coho, chinook, and steelhead species. Marked fish must have a visible mark that can be readily identified by commercial and recreational fishers.

PROHIBITION ON USE OF FUNDS

SEC. 118. (a) Any proposed new use of the Arizona & California Railroad Company's Right of Way for conveyance of water shall not proceed unless the Secretary of the Interior certifies that the proposed new use is within the scope of the Right of Way. Certification.

(b) No funds appropriated or otherwise made available to the Department of the Interior may be used, in relation to any proposal to store water underground for the purpose of export, for approval of any right-of-way or similar authorization on the Mojave National Preserve or lands managed by the Needles Field Office of the Bureau of Land Management, or for carrying out any activities associated with such right-of-way or similar approval.

YUKON-CHARLEY NATIONAL PRESERVE

SEC. 119. None of the funds made available by this Act may be used by the Secretary of the Interior to implement or enforce regulations concerning boating within Yukon-Charley National Preserve, including waters subject to the jurisdiction of the United States, pursuant to section 3(h) of Public Law 91–383 (16 U.S.C. 1a–2(h)) or any other authority. This section does not affect the authority of the Coast Guard to regulate the use of waters subject to the jurisdiction of the United States within the Yukon-Charley National Preserve. Boating.

REPUBLIC OF PALAU

SEC. 120. (a) IN GENERAL.—Subject to subsection (c), the United States Government, through the Secretary of the Interior shall provide to the Government of Palau for fiscal year 2012 grants in amounts equal to the annual amounts specified in subsections (a), (c), and (d) of section 211 of the Compact of Free Association between the Government of the United States of America and the Government of Palau (48 U.S.C. 1931 note) (referred to in this section as the "Compact"). Grants.

(b) PROGRAMMATIC ASSISTANCE.—Subject to subsection (c), the United States shall provide programmatic assistance to the Republic of Palau for fiscal year 2012 in amounts equal to the amounts provided in subsections (a) and (b)(1) of section 221 of the Compact.

(c) LIMITATIONS ON ASSISTANCE.—

(1) IN GENERAL.—The grants and programmatic assistance provided under subsections (a) and (b) shall be provided to the same extent and in the same manner as the grants and assistance were provided in fiscal year 2009.

(2) TRUST FUND.—If the Government of Palau withdraws more than $5,000,000 from the trust fund established under section 211(f) of the Compact, amounts to be provided under subsections (a) and (b) shall be withheld from the Government of Palau.

HIRING AUTHORITIES

16 USC 1725a.

SEC. 121. (a) DIRECT HIRE AUTHORITY.—

(1) During fiscal year 2012 and thereafter, the Secretary of the Interior may appoint, without regard to the provisions of subchapter I of chapter 33 of title 5, United States Code, other than sections 3303 and 3328 of such title, a qualified candidate described in paragraph (1) directly to a position with a land managing agency of the Department of the Interior for which the candidate meets Office of Personnel Management qualification standards.

Applicability.

(2) Paragraph (1) applies with respect to a former resource assistant (as defined in section 203 of the Public Land Corps Act (16 U.S.C. 1722)) who—

(A) completed a rigorous undergraduate or graduate summer internship with a land managing agency, such as the National Park Service Business Plan Internship;

(B) successfully fulfilled the requirements of the internship program; and

(C) subsequently earned an undergraduate or graduate degree from an accredited institution of higher education.

Time period.

(3) The direct hire authority under this subsection may not be exercised with respect to a specific qualified candidate after the end of the two-year period beginning on the date on which the candidate completed the undergraduate or graduate degree, as the case may be.

(b) LOCAL HIRE AUTHORITY.—Section 1308 of the Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3198) is amended—

(1) in subsection (a), by striking "establish a program" and inserting "establish an excepted service appointment authority,";

(2) in subsection (b), by striking "competitive service as defined in section 2102 of such title for which such person is eligible under subchapter I of chapter 33 of such title, in selection to such position" and inserting "excepted service as defined in section 2103 of such title";

(3) in subsection (e), by redesignating paragraph (2) as paragraph (3) and inserting after paragraph (1) the following new paragraph (2):

"(2) CONVERSION TO COMPETITIVE SERVICE.—Employees who satisfactorily complete two years of continuous service in a permanent appointment made under subsection (a) and who meet satisfactory performance and competitive service qualification requirements shall have their appointment converted to competitive service career-conditional or career employment as appropriate. This paragraph applies to individuals appointed on or after March 30, 2009. An employee who does not meet competitive service qualification requirements after two years of continuous service in an appointment made under subsection (a) shall be converted upon meeting such qualification requirements. Temporary and time-limited appointments will be made in the excepted service. There is no provision for conversion to competitive service when appointments are time-limited.".

Applicability.
Effective date.

(c) GULF OF MEXICO REGION.—For fiscal years 2012 and 2013, funds made available in this title for the Bureau of Ocean Energy

Management and the Bureau of Safety and Environmental Enforcement may be used by the Secretary of the Interior to establish higher minimum rates of basic pay for employees of the Department of the Interior in the Gulf of Mexico Region in the Geophysicist (GS–1313), Geologist (GS–1350), and Petroleum Engineer (GS–0881) job series at grades 5 through 15 at rates no greater than 25 percent above the minimum rates of basic pay normally scheduled, and such higher rates shall be consistent with the subsections (e) through (h) of section 5305 of title 5, United States Code.

BUREAU OF LAND MANAGEMENT ACTIONS REGARDING GRAZING ON PUBLIC LANDS

SEC. 122. (a) EXHAUSTION OF ADMINISTRATIVE REVIEW REQUIRED.—

(1) For fiscal years 2012 and 2013 only, a person may bring a civil action challenging a decision of the Bureau of Land Management concerning grazing on public lands (as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e))) in a Federal district court only if the person has exhausted the administrative hearings and appeals procedures established by the Department of the Interior, including having filed a timely appeal and a request for stay.

(2) An issue may be considered in the judicial review of a decision referred to in paragraph (1) only if the issue was raised in the administrative review process described in such paragraph.

(3) An exception to the requirement of exhausting the administrative review process before seeking judicial review shall be available if a Federal court finds that the agency failed or was unable to make information timely available during the administrative review process for issues of material fact. For the purposes of this paragraph, the term "timely" means within 120 calendar days after the date that the challenge to the agency action or amendment at issue is received for administrative review. Definition.

(b) ACCEPTANCE OF DONATION OF CERTAIN EXISTING PERMITS OR LEASES.— 43 USC 1781a.

(1) During fiscal year 2012 and thereafter, the Secretary of the Interior shall accept the donation of any valid existing permits or leases authorizing grazing on public lands within the California Desert Conservation Area. With respect to each permit or lease donated under this paragraph, the Secretary shall terminate the grazing permit or lease, ensure a permanent end (except as provided in paragraph (2)), to grazing on the land covered by the permit or lease, and make the land available for mitigation by allocating the forage to wildlife use consistent with any applicable Habitat Conservation Plan, section 10(a)(1)(B) permit, or section 7 consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). Termination.

(2) If the land covered by a permit or lease donated under paragraph (1) is also covered by another valid existing permit or lease that is not donated under such paragraph, the Secretary of the Interior shall reduce the authorized grazing level on the land covered by the permit or lease to reflect the donation of the permit or lease under paragraph (1). To ensure that

there is a permanent reduction in the level of grazing on the land covered by a permit or lease donated under paragraph (1), the Secretary shall not allow grazing use to exceed the authorized level under the remaining valid existing permit or lease that is not donated.

TRAILING LIVESTOCK OVER PUBLIC LAND

SEC. 123. During fiscal years 2012 through 2013 only, the Bureau of Land Management may, at its sole discretion, review planning and implementation decisions regarding the trailing of livestock across public lands, including, but not limited to, issuance of crossing or trailing authorizations or permits, under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Temporary trailing or crossing authorizations across public lands shall not be subject to protest and/or appeal under subpart E of part 4 of title 43, Code of Federal Regulations, and subpart 4160 of part 4100 of such title.

LEASE AUTHORIZATION

SEC. 124. (a) IN GENERAL.—The Secretary of the Interior (referred to in this section as the "Secretary") may lease to the Savannah Bar Pilots Association, or a successor organization, no more than 30,000 square feet of land and improvements within Fort Pulaski National Monument (referred to in this section as the "Monument") at the location on Cockspur Island that has been used continuously by the Savannah Bar Pilots Association since 1940.

(b) RENTAL FEE AND PROCEEDS.—

(1) RENTAL FEE.—For the lease authorized by this Act, the Secretary shall require a rental fee based on fair market value adjusted, as the Secretary deems appropriate, for amounts to be expended by the lessee for property preservation, maintenance, or repair and related expenses.

(2) PROCEEDS.—Disposition of the proceeds from the rental fee required pursuant to paragraph (1) shall be made in accordance with section 3(k)(5) of Public Law 91–383 (16 U.S.C. 1a–2(k)(5)).

(c) TERMS AND CONDITIONS.—A lease entered into under this section—

(1) shall be for a term of no more than 10 years and, at the Secretary's discretion, for successive terms of no more than 10 years at a time; and

(2) shall include any terms and conditions the Secretary determines to be necessary to protect the resources of the Monument and the public interest.

(d) EXEMPTION FROM APPLICABLE LAW.—Except as provided in section 2(b)(2) of this Act, the lease authorized by this Act shall not be subject to section 3(k) of Public Law 91–383 (16 U.S.C. 1a–2(k)) or section 321 of Act of June 30, 1932 (40 U.S.C. 1302).

WILD LANDS FUNDING PROHIBITION

SEC. 125. None of the funds made available in this Act or any other Act may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010: *Provided,* That nothing in this section shall

restrict the Secretary's authorities under sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711 and 1712).

TITLE II

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE AND TECHNOLOGY

For science and technology, including research and development activities, which shall include research and development activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; necessary expenses for personnel and related costs and travel expenses; procurement of laboratory equipment and supplies; and other operating expenses in support of research and development, $795,000,000, to remain available until September 30, 2013.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

For environmental programs and management, including necessary expenses, not otherwise provided for, for personnel and related costs and travel expenses; hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; administrative costs of the brownfields program under the Small Business Liability Relief and Brownfields Revitalization Act of 2002; and not to exceed $19,000 for official reception and representation expenses, $2,682,514,000, to remain available until September 30, 2013: *Provided*, That of the funds included under this heading, not less than $410,375,000 shall be for Geographic Programs specified in the explanatory statement accompanying this Act.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $42,000,000, to remain available until September 30, 2013.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of, or for use by, the Environmental Protection Agency, $36,428,000, to remain available until expended.

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including sections 111(c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611) $1,215,753,000, to remain available

until expended, consisting of such sums as are available in the Trust Fund on September 30, 2011, as authorized by section 517(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and up to $1,215,753,000 as a payment from general revenues to the Hazardous Substance Superfund for purposes as authorized by section 517(b) of SARA, as amended: *Provided*, That funds appropriated under this heading may be allocated to other Federal agencies in accordance with section 111(a) of CERCLA: *Provided further*, That of the funds appropriated under this heading, $9,955,000 shall be paid to the "Office of Inspector General" appropriation to remain available until September 30, 2013, and $23,016,000 shall be paid to the "Science and Technology" appropriation to remain available until September 30, 2013.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM

For necessary expenses to carry out leaking underground storage tank cleanup activities authorized by subtitle I of the Solid Waste Disposal Act, as amended, $104,309,000, to remain available until expended, of which $73,809,000 shall be for carrying out leaking underground storage tank cleanup activities authorized by section 9003(h) of the Solid Waste Disposal Act, as amended; $30,500,000 shall be for carrying out the other provisions of the Solid Waste Disposal Act specified in section 9508(c) of the Internal Revenue Code, as amended: *Provided*, That the Administrator is authorized to use appropriations made available under this heading to implement section 9013 of the Solid Waste Disposal Act to provide financial assistance to federally recognized Indian tribes for the development and implementation of programs to manage underground storage tanks.

Native Americans.

INLAND OIL SPILL PROGRAMS

For expenses necessary to carry out the Environmental Protection Agency's responsibilities under the Oil Pollution Act of 1990, $18,274,000, to be derived from the Oil Spill Liability trust fund, to remain available until expended.

STATE AND TRIBAL ASSISTANCE GRANTS

For environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance partnership grants, $3,618,727,000, to remain available until expended, of which $1,468,806,000 shall be for making capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended (the "Act"); of which $919,363,000 shall be for making capitalization grants for the Drinking Water State Revolving Funds under section 1452 of the Safe Drinking Water Act, as amended: *Provided*, That for fiscal year 2012, to the extent there are sufficient eligible project applications, not less than 10 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities: *Provided further,* That for fiscal year 2012, funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants may, at the discretion of each

State, be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities; $5,000,000 shall be for architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission; $10,000,000 shall be for grants to the State of Alaska to address drinking water and wastewater infrastructure needs of rural and Alaska Native Villages: *Provided further*, That, of these funds: (1) the State of Alaska shall provide a match of 25 percent; (2) no more than 5 percent of the funds may be used for administrative and overhead expenses; and (3) the State of Alaska shall make awards consistent with the State-wide priority list established in conjunction with the Agency and the U.S. Department of Agriculture for all water, sewer, waste disposal, and similar projects carried out by the State of Alaska that are funded under section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) or the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) which shall allocate not less than 25 percent of the funds provided for projects in regional hub communities; $95,000,000 shall be to carry out section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including grants, interagency agreements, and associated program support costs; $30,000,000 shall be for grants under title VII, subtitle G of the Energy Policy Act of 2005, as amended; and $1,090,558,000 shall be for grants, including associated program support costs, to States, federally recognized tribes, interstate agencies, tribal consortia, and air pollution control agencies for multimedia or single media pollution prevention, control and abatement and related activities, including activities pursuant to the provisions set forth under this heading in Public Law 104–134, and for making grants under section 103 of the Clean Air Act for particulate matter monitoring and data collection activities subject to terms and conditions specified by the Administrator, of which $49,396,000 shall be for carrying out section 128 of CERCLA, as amended, $9,980,000 shall be for Environmental Information Exchange Network grants, including associated program support costs, $18,463,000 of the funds available for grants under section 106 of the Act shall be for State participation in national- and State-level statistical surveys of water resources and enhancements to State monitoring programs, and, in addition to funds appropriated under the heading "Leaking Underground Storage Tank Trust Fund Program" to carry out the provisions of the Solid Waste Disposal Act specified in section 9508(c) of the Internal Revenue Code other than section 9003(h) of the Solid Waste Disposal Act, as amended, $1,550,000 shall be for grants to States under section 2007(f)(2) of the Solid Waste Disposal Act, as amended: *Provided further,* That notwithstanding section 603(d)(7) of the Federal Water Pollution Control Act, the limitation on the amounts in a State water pollution control revolving fund that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in fiscal year 2012 and prior years where such amounts represent costs of administering the fund to the extent that such amounts are or were deemed reasonable by the Administrator, accounted for separately from other assets in the

Alaska.

Grants. Native Americans.

fund, and used for eligible purposes of the fund, including administration: *Provided further,* That for fiscal year 2012, and notwithstanding section 518(f) of the Act, the Administrator is authorized to use the amounts appropriated for any fiscal year under section 319 of that Act to make grants to federally recognized Indian tribes pursuant to sections 319(h) and 518(e) of that Act: *Provided further*, That for fiscal year 2012, notwithstanding the limitation on amounts in section 518(c) of the Federal Water Pollution Control Act and section 1452(i) of the Safe Drinking Water Act, up to a total of 2 percent of the funds appropriated for State Revolving Funds under such Acts may be reserved by the Administrator for grants under section 518(c) and section 1452(i) of such Acts: *Provided further*, That for fiscal year 2012, notwithstanding the amounts specified in section 205(c) of the Federal Water Pollution Control Act, up to 1.5 percent of the aggregate funds appropriated for the Clean Water State Revolving Fund program under the Act less any sums reserved under section 518(c) of the Act, may be reserved by the Administrator for grants made under title II of the Clean Water Act for American Samoa, Guam, the Commonwealth of the Northern Marianas, and United States Virgin Islands: *Provided further*, That for fiscal year 2012, notwithstanding the limitations on amounts specified in section 1452(j) of the Safe Drinking Water Act, up to 1.5 percent of the funds appropriated for the Drinking Water State Revolving Fund programs under the Safe Drinking Water Act may be reserved by the Administrator for grants made under section 1452(j) of the Safe Drinking Water Act: *Provided further*, That not less than 20 percent but not more than 30 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants and not less than 20 percent but not more than 30 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these), and shall be so used by the State only where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients only where such debt was incurred on or after the date of enactment of this Act, except that for the Clean Water State Revolving Fund capitalization grant appropriation this section shall only apply to the portion that exceeds $1,000,000,000: *Provided further,* That no funds provided by this appropriations Act to address the water, wastewater and other critical infrastructure needs of the colonias in the United States along the United States-Mexico border shall be made available to a county or municipal government unless that government has established an enforceable local ordinance, or other zoning rule, which prevents in that jurisdiction the development or construction of any additional colonia areas, or the development within an existing colonia the construction of any new home, business, or other structure which lacks water, wastewater, or other necessary infrastructure: *Provided further,* That for fiscal year 2012 and hereafter, the Administrator may transfer funds provided for tribal set-asides through funds appropriated for the Clean Water State Revolving Funds and for the Drinking Water State Revolving Funds between those accounts in such manner as the Administrator

Applicability.

42 USC 300j–12 note.

deems appropriate, but not to exceed the transfer limits given to States under section 302(a) of Public Law 104–182.

ADMINISTRATIVE PROVISIONS—ENVIRONMENTAL PROTECTION AGENCY

(INCLUDING TRANSFER AND RESCISSION OF FUNDS)

For fiscal year 2012, notwithstanding 31 U.S.C. 6303(1) and 6305(1), the Administrator of the Environmental Protection Agency, in carrying out the Agency's function to implement directly Federal environmental programs required or authorized by law in the absence of an acceptable tribal program, may award cooperative agreements to federally recognized Indian tribes or Intertribal consortia, if authorized by their member tribes, to assist the Administrator in implementing Federal environmental programs for Indian tribes required or authorized by law, except that no such cooperative agreements may be awarded from funds designated for State financial assistance agreements.

Fees.

The Administrator of the Environmental Protection Agency is authorized to collect and obligate pesticide registration service fees in accordance with section 33 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by Public Law 110–94, the Pesticide Registration Improvement Renewal Act.

Contracts. Grants.

The Administrator is authorized to transfer up to $300,000,000 of the funds appropriated for the Great Lakes Restoration Initiative under the heading "Environmental Programs and Management" to the head of any Federal department or agency, with the concurrence of such head, to carry out activities that would support the Great Lakes Restoration Initiative and Great Lakes Water Quality Agreement programs, projects, or activities; to enter into an interagency agreement with the head of such Federal department or agency to carry out these activities; and to make grants to governmental entities, nonprofit organizations, institutions, and individuals for planning, research, monitoring, outreach, and implementation in furtherance of the Great Lakes Restoration Initiative and the Great Lakes Water Quality Agreement.

From unobligated balances available to the Administrator of the Environmental Protection Agency, $50,000,000 are permanently rescinded: *Provided*, That of these funds, $5,000,000 shall be rescinded from unobligated balances within the "Hazardous Substance Superfund" account; $5,000,000 shall be rescinded from unobligated Brownfields balances within the "State and Tribal Assistance Grants" account; $5,000,000 shall be rescinded from unobligated Mexico Border balances within the "State and Tribal Assistance Grants" account; $5,000,000 shall be rescinded from unobligated Diesel Emissions Reduction Act balances within the "State and Tribal Assistance Grants" account; $20,000,000 shall be rescinded from unobligated categorical grant balances within the "State and Tribal Assistance Grants" account; and $10,000,000 shall be rescinded from unobligated Clean Water State Revolving Funds balances within the "State and Tribal Assistance Grants" account: *Provided further,* That no amounts may be rescinded from amounts that were designated by the Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

Applicability. 33 USC 1372 note.

For fiscal year 2012 and each fiscal year thereafter, the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund as authorized by title VI of that Act (33 U.S.C. 1381 et seq.), or with assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both.

Applicability. 42 USC 300j–9 note.

For fiscal year 2012 and each fiscal year thereafter, the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j–9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j–12).

Deadline. Notification.

Notwithstanding section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604), the Administrator may authorize the expenditure or transfer of up to $10,000,000 from any appropriation in this title, in addition to the amounts included in the "Inland Oil Spill Programs" account, for removal activities related to actual oil spills 5 days after notifying the House and Senate Committees on Appropriations of the intention to expend or transfer such funds: *Provided*, That no funds shall be expended or transferred under this authority until the Administrator determines that amounts made available for expenditure in the "Inland Oil Spill Programs" account will be exhausted within 30 days: *Provided further,* That such funds shall be replenished to the appropriation that was the source of the expenditure or transfer, following EPA's receipt of reimbursement from the Oil Spill Liability Trust Fund pursuant to the Oil Pollution Act of 1990.

Determination. Deadline.

TITLE III

RELATED AGENCIES

DEPARTMENT OF AGRICULTURE

FOREST SERVICE

FOREST AND RANGELAND RESEARCH

For necessary expenses of forest and rangeland research as authorized by law, $295,773,000, to remain available until expended: *Provided,* That of the funds provided, $64,372,000 is for the forest inventory and analysis program.

STATE AND PRIVATE FORESTRY

For necessary expenses of cooperating with and providing technical and financial assistance to States, territories, possessions, and others, and for forest health management, including treatments of pests, pathogens, and invasive or noxious plants and for restoring and rehabilitating forests damaged by pests or invasive plants, cooperative forestry, and education and land conservation activities and conducting an international program as authorized, $253,331,000, to remain available until expended, as authorized by law; of which $53,388,000 is to be derived from the Land and Water Conservation Fund.

NATIONAL FOREST SYSTEM

For necessary expenses of the Forest Service, not otherwise provided for, for management, protection, improvement, and utilization of the National Forest System, $1,556,628,000, to remain available until expended: *Provided*, That of the funds provided, $336,049,000 shall be for forest products: *Provided further*, That of the funds provided, $40,000,000 shall be deposited in the Collaborative Forest Landscape Restoration Fund for ecological restoration treatments as authorized by 16 U.S.C. 7303(f): *Provided further*, That of the funds provided, up to $68,000,000 is for the Integrated Resource Restoration pilot program for Region 1, Region 3 and Region 4: *Provided further,* That of the funds provided for forest products, up to $44,585,000 may be transferred to support the Integrated Resource Restoration pilot program in the preceding proviso.

CAPITAL IMPROVEMENT AND MAINTENANCE

(INCLUDING TRANSFER OF FUNDS)

Roads.

For necessary expenses of the Forest Service, not otherwise provided for, $394,721,000, to remain available until expended, for construction, capital improvement, maintenance and acquisition of buildings and other facilities and infrastructure; and for construction, reconstruction, decommissioning (including decommissioning unauthorized roads not part of the transportation system), and maintenance of forest roads and trails by the Forest Service as authorized by 16 U.S.C. 532–538 and 23 U.S.C. 101 and 205: *Provided,* That $45,000,000 shall be designated for urgently needed road decommissioning, road and trail repair and maintenance and associated activities, and removal of fish passage barriers, especially in areas where Forest Service roads may be contributing to water quality problems in streams and water bodies which support threatened, endangered, or sensitive species or community water sources: *Provided further*, That funds becoming available in fiscal year 2012 under the Act of March 4, 1913 (16 U.S.C. 501) shall be transferred to the General Fund of the Treasury and shall not be available for transfer or obligation for any other purpose unless the funds are appropriated: *Provided further*, That of the funds provided for decommissioning of roads, up to $13,000,000 may be transferred to the "National Forest System" to support the Integrated Resource Restoration pilot program.

LAND ACQUISITION

For expenses necessary to carry out the provisions of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–4 through 11), including administrative expenses, and for acquisition of land or waters, or interest therein, in accordance with statutory authority applicable to the Forest Service, $52,605,000, to be derived from the Land and Water Conservation Fund and to remain available until expended.

ACQUISITION OF LANDS FOR NATIONAL FORESTS SPECIAL ACTS

For acquisition of lands within the exterior boundaries of the Cache, Uinta, and Wasatch National Forests, Utah; the Toiyabe

National Forest, Nevada; and the Angeles, San Bernardino, Sequoia, and Cleveland National Forests, California, as authorized by law, $955,000, to be derived from forest receipts.

ACQUISITION OF LANDS TO COMPLETE LAND EXCHANGES

For acquisition of lands, such sums, to be derived from funds deposited by State, county, or municipal governments, public school districts, or other public school authorities, and for authorized expenditures from funds deposited by non-Federal parties pursuant to Land Sale and Exchange Acts, pursuant to the Act of December 4, 1967, as amended (16 U.S.C. 484a), to remain available until expended (16 U.S.C. 460l–516–617a, 555a; Public Law 96–586; Public Law 76–589, 76–591; and Public Law 78–310).

RANGE BETTERMENT FUND

For necessary expenses of range rehabilitation, protection, and improvement, 50 percent of all moneys received during the prior fiscal year, as fees for grazing domestic livestock on lands in National Forests in the 16 Western States, pursuant to section 401(b)(1) of Public Law 94–579, as amended, to remain available until expended, of which not to exceed 6 percent shall be available for administrative expenses associated with on-the-ground range rehabilitation, protection, and improvements.

GIFTS, DONATIONS AND BEQUESTS FOR FOREST AND RANGELAND RESEARCH

For expenses authorized by 16 U.S.C. 1643(b), $45,000, to remain available until expended, to be derived from the fund established pursuant to the above Act.

MANAGEMENT OF NATIONAL FOREST LANDS FOR SUBSISTENCE USES

For necessary expenses of the Forest Service to manage Federal lands in Alaska for subsistence uses under title VIII of the Alaska National Interest Lands Conservation Act (Public Law 96–487), $2,577,000, to remain available until expended.

WILDLAND FIRE MANAGEMENT

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for forest fire presuppression activities on National Forest System lands, for emergency fire suppression on or adjacent to such lands or other lands under fire protection agreement, hazardous fuels reduction on or adjacent to such lands, and for emergency rehabilitation of burned-over National Forest System lands and water, $1,737,631,000, to remain available until expended: *Provided*, That such funds including unobligated balances under this heading, are available for repayment of advances from other appropriations accounts previously transferred for such purposes: *Provided further*, That such funds shall be available to reimburse State and other cooperating entities for services provided in response to wildfire and other emergencies or disasters to the extent such reimbursements by the Forest Service for non-fire emergencies are fully repaid by the responsible emergency management

agency: *Provided further*, That, notwithstanding any other provision of law, $7,262,000 of funds appropriated under this appropriation shall be available for the Forest Service in support of fire science research authorized by the Joint Fire Science Program, including all Forest Service authorities for the use of funds, such as contracts, grants, research joint venture agreements, and cooperative agreements: *Provided further*, That all authorities for the use of funds, including the use of contracts, grants, and cooperative agreements, available to execute the Forest and Rangeland Research appropriation, are also available in the utilization of these funds for Fire Science Research: *Provided further*, That funds provided shall be available for emergency rehabilitation and restoration, hazardous fuels reduction activities in the urban-wildland interface, support to Federal emergency response, and wildfire suppression activities of the Forest Service: *Provided further*, That of the funds provided, $317,584,000 is for hazardous fuels reduction activities, $21,734,000 is for research activities and to make competitive research grants pursuant to the Forest and Rangeland Renewable Resources Research Act, as amended (16 U.S.C. 1641 et seq.), $55,564,000 is for State fire assistance, $6,366,000 is for volunteer fire assistance, $15,983,000 is for forest health activities on Federal lands and $8,366,000 is for forest health activities on State and private lands: *Provided further*, That amounts in this paragraph may be transferred to the "State and Private Forestry", "National Forest System", and "Forest and Rangeland Research" accounts to fund State fire assistance, volunteer fire assistance, forest health management, forest and rangeland research, the Joint Fire Science Program, vegetation and watershed management, heritage site rehabilitation, and wildlife and fish habitat management and restoration: *Provided further*, That the costs of implementing any cooperative agreement between the Federal Government and any non-Federal entity may be shared, as mutually agreed on by the affected parties: *Provided further*, That up to $15,000,000 of the funds provided herein may be used by the Secretary of Agriculture to enter into procurement contracts or cooperative agreements or to issue grants for hazardous fuels reduction and for training or monitoring associated with such hazardous fuels reduction activities on Federal land or on non-Federal land if the Secretary determines such activities implement a community wildfire protection plan (or equivalent) and benefit resources on Federal land: *Provided further,* That funds made available to implement the Community Forest Restoration Act, Public Law 106–393, title VI, shall be available for use on non-Federal lands in accordance with authorities made available to the Forest Service under the "State and Private Forestry" appropriation: *Provided further*, That the Secretary of the Interior and the Secretary of Agriculture may authorize the transfer of funds appropriated for wildland fire management, in an aggregate amount not to exceed $50,000,000, between the Departments when such transfers would facilitate and expedite wildland fire management programs and projects: *Provided further*, That of the funds provided for hazardous fuels reduction, not to exceed $5,000,000 may be used to make grants, using any authorities available to the Forest Service under the "State and Private Forestry" appropriation, for the purpose of creating incentives for increased use of biomass from National Forest System lands: *Provided further,* That no amounts may be cancelled from amounts that were designated by the Congress as an emergency requirement

Determination.

pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further,* That before obligating any of the funds provided herein for wildland fire suppression, the Secretary of Agriculture shall obligate all unobligated balances previously made available under this heading (including the unobligated balances transferred to Forest Service accounts under this heading by division B of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110–329, 122 Stat. 3594)) that, when appropriated, were designated by Congress as an emergency requirement pursuant to the Concurrent Resolution on the Budget or the Balanced Budget and Emergency Deficit Control Act of 1985 and notify the Committees on Appropriations of the House of Representatives and the Senate in writing of the imminent need to begin obligating funds provided herein for wildland fire suppression: *Provided further,* That funds designated for wildfire suppression, including funds transferred from the "FLAME Wildfire Suppression Reserve Fund", shall be assessed for cost pools on the same basis as such assessments are calculated against other agency programs: *Provided further*, That of the funds for hazardous fuels reduction, up to $21,000,000 may be transferred to the "National Forest System" to support the Integrated Resource Restoration pilot program.

Notification.

Assessments.

FLAME WILDFIRE SUPPRESSION RESERVE FUND

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for large fire suppression operations of the Department of Agriculture and as a reserve fund for suppression and Federal emergency response activities, $315,886,000, to remain available until expended: *Provided,* That such amounts are available only for transfer to the "Wildland Fire Management" account and only following a declaration by the Secretary that either (1) a wildland fire suppression event meets certain previously established risk-based written criteria for significant complexity, severity, or threat posed by the fire or (2) funds in the "Wildland Fire Management" account will be exhausted within 30 days.

Declaration.
Deadline.

ADMINISTRATIVE PROVISIONS—FOREST SERVICE

(INCLUDING TRANSFERS OF FUNDS)

Appropriations to the Forest Service for the current fiscal year shall be available for: (1) purchase of passenger motor vehicles; acquisition of passenger motor vehicles from excess sources, and hire of such vehicles; purchase, lease, operation, maintenance, and acquisition of aircraft from excess sources to maintain the operable fleet for use in Forest Service wildland fire programs and other Forest Service programs; notwithstanding other provisions of law, existing aircraft being replaced may be sold, with proceeds derived or trade-in value used to offset the purchase price for the replacement aircraft; (2) services pursuant to 7 U.S.C. 2225, and not to exceed $100,000 for employment under 5 U.S.C. 3109; (3) purchase, erection, and alteration of buildings and other public improvements (7 U.S.C. 2250); (4) acquisition of land, waters, and interests therein pursuant to 7 U.S.C. 428a; (5) for expenses pursuant to the Volunteers in the National Forest Act of 1972 (16 U.S.C.

558a, 558d, and 558a note); (6) the cost of uniforms as authorized by 5 U.S.C. 5901–5902; and (7) for debt collection contracts in accordance with 31 U.S.C. 3718(c).

Notification. Deadline.

Any appropriations or funds available to the Forest Service may be transferred to the Wildland Fire Management appropriation for forest firefighting, emergency rehabilitation of burned-over or damaged lands or waters under its jurisdiction, and fire preparedness due to severe burning conditions upon the Secretary's notification of the House and Senate Committees on Appropriations that all fire suppression funds appropriated under the headings "Wildland Fire Management" and "FLAME Wildfire Suppression Reserve Fund" will be obligated within 30 days: *Provided,* That all funds used pursuant to this paragraph must be replenished by a supplemental appropriation which must be requested as promptly as possible.

Funds appropriated to the Forest Service shall be available for assistance to or through the Agency for International Development in connection with forest and rangeland research, technical information, and assistance in foreign countries, and shall be available to support forestry and related natural resource activities outside the United States and its territories and possessions, including technical assistance, education and training, and cooperation with U.S., private, and international organizations. The Forest Service, acting for the International Program, may sign direct funding agreements with foreign governments and institutions as well as other domestic agencies (including the U.S. Agency for International Development, the Department of State, and the Millennium Challenge Corporation), U.S. private sector firms, institutions and organizations to provide technical assistance and training programs overseas on forestry and rangeland management.

16 USC 556i.

None of the funds made available to the Forest Service in this Act or any other Act with respect to any fiscal year shall be subject to transfer under the provisions of section 702(b) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2257), section 442 of Public Law 106–224 (7 U.S.C. 7772), or section 10417(b) of Public Law 107–107 (7 U.S.C. 8316(b)).

None of the funds available to the Forest Service may be reprogrammed without the advance approval of the House and Senate Committees on Appropriations in accordance with the reprogramming procedures contained in the joint explanatory statement of the managers accompanying this Act.

Not more than $82,000,000 of funds available to the Forest Service shall be transferred to the Working Capital Fund of the Department of Agriculture and not more than $14,500,000 of funds available to the Forest Service shall be transferred to the Department of Agriculture for Department Reimbursable Programs, commonly referred to as Greenbook charges. Nothing in this paragraph shall prohibit or limit the use of reimbursable agreements requested by the Forest Service in order to obtain services from the Department of Agriculture's National Information Technology Center. Nothing in this paragraph shall limit the Forest Service portion of implementation costs to be paid to the Department of Agriculture for the Financial Management Modernization Initiative.

Of the funds available to the Forest Service up to $5,000,000 shall be available for priority projects within the scope of the approved budget, which shall be carried out by the Youth Conservation Corps and shall be carried out under the authority of the

Public Lands Corps Act of 1993, Public Law 103–82, as amended by Public Lands Corps Healthy Forests Restoration Act of 2005, Public Law 109–154.

Of the funds available to the Forest Service, $4,000 is available to the Chief of the Forest Service for official reception and representation expenses.

Pursuant to sections 405(b) and 410(b) of Public Law 101–593, of the funds available to the Forest Service, up to $3,000,000 may be advanced in a lump sum to the National Forest Foundation to aid conservation partnership projects in support of the Forest Service mission, without regard to when the Foundation incurs expenses, for projects on or benefitting National Forest System lands or related to Forest Service programs: *Provided,* That of the Federal funds made available to the Foundation, no more than $300,000 shall be available for administrative expenses: *Provided further,* That the Foundation shall obtain, by the end of the period of Federal financial assistance, private contributions to match on at least one-for-one basis funds made available by the Forest Service: *Provided further*, That the Foundation may transfer Federal funds to a Federal or a non-Federal recipient for a project at the same rate that the recipient has obtained the non-Federal matching funds: *Provided further*, That authorized investments of Federal funds held by the Foundation may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

Time period.

Pursuant to section 2(b)(2) of Public Law 98–244, $3,000,000 of the funds available to the Forest Service may be advanced to the National Fish and Wildlife Foundation in a lump sum to aid cost-share conservation projects, without regard to when expenses are incurred, on or benefitting National Forest System lands or related to Forest Service programs: *Provided*, That such funds shall be matched on at least a one-for-one basis by the Foundation or its sub-recipients: *Provided further*, That the Foundation may transfer Federal funds to a Federal or non-Federal recipient for a project at the same rate that the recipient has obtained the non-Federal matching funds.

Funds appropriated to the Forest Service shall be available for interactions with and providing technical assistance to rural communities and natural resource-based businesses for sustainable rural development purposes.

Funds appropriated to the Forest Service shall be available for payments to counties within the Columbia River Gorge National Scenic Area, pursuant to section 14(c)(1) and (2), and section 16(a)(2) of Public Law 99–663.

Any funds appropriated to the Forest Service may be used to meet the non-Federal share requirement in section 502(c) of the Older American Act of 1965 (42 U.S.C. 3056(c)(2)).

Assessments.

Funds available to the Forest Service, not to exceed $55,000,000, shall be assessed for the purpose of performing fire, administrative and other facilities maintenance and decommissioning. Such assessments shall occur using a square foot rate charged on the same basis the agency uses to assess programs for payment of rent, utilities, and other support services.

Notwithstanding any other provision of law, any appropriations or funds available to the Forest Service not to exceed $500,000 may be used to reimburse the Office of the General Counsel (OGC), Department of Agriculture, for travel and related expenses incurred

as a result of OGC assistance or participation requested by the Forest Service at meetings, training sessions, management reviews, land purchase negotiations and similar nonlitigation-related matters. Future budget justifications for both the Forest Service and the Department of Agriculture should clearly display the sums previously transferred and the requested funding transfers.

An eligible individual who is employed in any project funded under title V of the Older American Act of 1965 (42 U.S.C. 3056 et seq.) and administered by the Forest Service shall be considered to be a Federal employee for purposes of chapter 171 of title 28, United States Code.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

For expenses necessary to carry out the Act of August 5, 1954 (68 Stat. 674), the Indian Self-Determination Act, the Indian Health Care Improvement Act, and titles II and III of the Public Health Service Act with respect to the Indian Health Service, $3,872,377,000, together with payments received during the fiscal year pursuant to 42 U.S.C. 238(b) and 238b for services furnished by the Indian Health Service: *Provided*, That funds made available to tribes and tribal organizations through contracts, grant agreements, or any other agreements or compacts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450), shall be deemed to be obligated at the time of the grant or contract award and thereafter shall remain available to the tribe or tribal organization without fiscal year limitation: *Provided further*, That $844,927,000 for contract medical care, including $51,500,000 for the Indian Catastrophic Health Emergency Fund, shall remain available until expended: *Provided further*, That of the funding provided for information technology activities and, notwithstanding any other provision of law, $4,000,000 shall be allocated at the discretion of the Director of the Indian Health Service: *Provided further*, That of the funds provided, up to $36,000,000 shall remain available until expended for implementation of the loan repayment program under section 108 of the Indian Health Care Improvement Act: *Provided further,* That the amounts collected by the Federal Government as authorized by sections 104 and 108 of the Indian Health Care Improvement Act (25 U.S.C. 1613a and 1616a) during the preceding fiscal year for breach of contracts shall be deposited to the Fund authorized by section 108A of the Act (25 U.S.C. 1616a–1) and shall remain available until expended and, notwithstanding section 108A(c) of the Act (25 U.S.C. 1616a–1(c)), funds shall be available to make new awards under the loan repayment and scholarship programs under sections 104 and 108 of the Act (25 U.S.C. 1613a and 1616a): *Provided further*, That notwithstanding any other provision of law, the amounts made available within this account for the methamphetamine and suicide prevention and treatment initiative and for the domestic violence prevention initiative shall be allocated at the discretion of the Director of the Indian Health Service and shall remain available until expended: *Provided further*, That funds provided in this Act may be used for annual contracts

Allocations.

and grants that fall within 2 fiscal years, provided the total obligation is recorded in the year the funds are appropriated: *Provided further*, That the amounts collected by the Secretary of Health and Human Services under the authority of title IV of the Indian Health Care Improvement Act shall remain available until expended for the purpose of achieving compliance with the applicable conditions and requirements of titles XVIII and XIX of the Social Security Act, except for those related to the planning, design, or construction of new facilities: *Provided further*, That funding contained herein for scholarship programs under the Indian Health Care Improvement Act (25 U.S.C. 1613) shall remain available until expended: *Provided further*, That amounts received by tribes and tribal organizations under title IV of the Indian Health Care Improvement Act shall be reported and accounted for and available to the receiving tribes and tribal organizations until expended: *Provided further*, That, notwithstanding any other provision of law, of the amounts provided herein, not to exceed $472,193,000 shall be for payments to tribes and tribal organizations for contract or grant support costs associated with contracts, grants, self-governance compacts, or annual funding agreements between the Indian Health Service and a tribe or tribal organization pursuant to the Indian Self-Determination Act of 1975, as amended, prior to or during fiscal year 2012, of which not to exceed $10,000,000 may be used for contract support costs associated with new or expanded self-determination contracts, grants, self-governance compacts, or annual funding agreements: *Provided further*, That the Bureau of Indian Affairs may collect from the Indian Health Service, tribes and tribal organizations operating health facilities pursuant to Public Law 93–638, such individually identifiable health information relating to disabled children as may be necessary for the purpose of carrying out its functions under the Individuals with Disabilities Education Act (20 U.S.C. 1400, et seq.): *Provided further*, That the Indian Health Care Improvement Fund may be used, as needed, to carry out activities typically funded under the Indian Health Facilities account.

Reports.

INDIAN HEALTH FACILITIES

For construction, repair, maintenance, improvement, and equipment of health and related auxiliary facilities, including quarters for personnel; preparation of plans, specifications, and drawings; acquisition of sites, purchase and erection of modular buildings, and purchases of trailers; and for provision of domestic and community sanitation facilities for Indians, as authorized by section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the Indian Self-Determination Act, and the Indian Health Care Improvement Act, and for expenses necessary to carry out such Acts and titles II and III of the Public Health Service Act with respect to environmental health and facilities support activities of the Indian Health Service, $441,052,000, to remain available until expended: *Provided*, That notwithstanding any other provision of law, funds appropriated for the planning, design, construction, renovation or expansion of health facilities for the benefit of an Indian tribe or tribes may be used to purchase land on which such facilities will be located: *Provided further*, That not to exceed $500,000 shall be used by the Indian Health Service to purchase TRANSAM equipment from the Department of Defense for distribution to the Indian

Health Service and tribal facilities: *Provided further*, That none of the funds appropriated to the Indian Health Service may be used for sanitation facilities construction for new homes funded with grants by the housing programs of the United States Department of Housing and Urban Development: *Provided further*, That not to exceed $2,700,000 from this account and the "Indian Health Services" account shall be used by the Indian Health Service to obtain ambulances for the Indian Health Service and tribal facilities in conjunction with an existing interagency agreement between the Indian Health Service and the General Services Administration: *Provided further*, That not to exceed $500,000 shall be placed in a Demolition Fund, to remain available until expended, and be used by the Indian Health Service for the demolition of Federal buildings.

ADMINISTRATIVE PROVISIONS—INDIAN HEALTH SERVICE

Appropriations provided in this Act to the Indian Health Service shall be available for services as authorized by 5 U.S.C. 3109 at rates not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376; hire of passenger motor vehicles and aircraft; purchase of medical equipment; purchase of reprints; purchase, renovation and erection of modular buildings and renovation of existing facilities; payments for telephone service in private residences in the field, when authorized under regulations approved by the Secretary; uniforms or allowances therefor as authorized by 5 U.S.C. 5901–5902; and for expenses of attendance at meetings that relate to the functions or activities of the Indian Health Service: *Provided,* That in accordance with the provisions of the Indian Health Care Improvement Act, non-Indian patients may be extended health care at all tribally administered or Indian Health Service facilities, subject to charges, and the proceeds along with funds recovered under the Federal Medical Care Recovery Act (42 U.S.C. 2651–2653) shall be credited to the account of the facility providing the service and shall be available without fiscal year limitation: *Provided further,* That notwithstanding any other law or regulation, funds transferred from the Department of Housing and Urban Development to the Indian Health Service shall be administered under Public Law 86–121, the Indian Sanitation Facilities Act and Public Law 93–638, as amended: *Provided further,* That funds appropriated to the Indian Health Service in this Act, except those used for administrative and program direction purposes, shall not be subject to limitations directed at curtailing Federal travel and transportation: *Provided further,* That none of the funds made available to the Indian Health Service in this Act shall be used for any assessments or charges by the Department of Health and Human Services unless identified in the budget justification and provided in this Act, or approved by the House and Senate Committees on Appropriations through the reprogramming process: *Provided further,* That notwithstanding any other provision of law, funds previously or herein made available to a tribe or tribal organization through a contract, grant, or agreement authorized by title I or title V of the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 450), may be deobligated and reobligated to a self-determination contract under title I, or a self-governance agreement under title V of such Act and thereafter shall remain available to the tribe

Assessments.

Regulations.
Budget request.

or tribal organization without fiscal year limitation: *Provided further,* That none of the funds made available to the Indian Health Service in this Act shall be used to implement the final rule published in the Federal Register on September 16, 1987, by the Department of Health and Human Services, relating to the eligibility for the health care services of the Indian Health Service until the Indian Health Service has submitted a budget request reflecting the increased costs associated with the proposed final rule, and such request has been included in an appropriations Act and enacted into law: *Provided further,* That with respect to functions transferred by the Indian Health Service to tribes or tribal organizations, the Indian Health Service is authorized to provide goods and services to those entities on a reimbursable basis, including payments in advance with subsequent adjustment, and the reimbursements received therefrom, along with the funds received from those entities pursuant to the Indian Self-Determination Act, may be credited to the same or subsequent appropriation account from which the funds were originally derived, with such amounts to remain available until expended: *Provided further,* That reimbursements for training, technical assistance, or services provided by the Indian Health Service will contain total costs, including direct, administrative, and overhead associated with the provision of goods, services, or technical assistance: *Provided further,* That the appropriation structure for the Indian Health Service may not be altered without advance notification to the House and Senate Committees on Appropriations.

Notification.

NATIONAL INSTITUTES OF HEALTH

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For necessary expenses for the National Institute of Environmental Health Sciences in carrying out activities set forth in section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and section 126(g) of the Superfund Amendments and Reauthorization Act of 1986, $79,054,000.

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

TOXIC SUBSTANCES AND ENVIRONMENTAL PUBLIC HEALTH

For necessary expenses for the Agency for Toxic Substances and Disease Registry (ATSDR) in carrying out activities set forth in sections 104(i) and 111(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended; section 118(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended; and section 3019 of the Solid Waste Disposal Act, as amended, $76,337,000, of which up to $1,000 per eligible employee of the Agency for Toxic Substances and Disease Registry shall remain available until expended for Individual Learning Accounts: *Provided*, That notwithstanding any other provision of law, in lieu of performing a health assessment under section 104(i)(6) of CERCLA, the Administrator of ATSDR may conduct other appropriate health studies, evaluations, or activities, including, without limitation, biomedical testing, clinical evaluations, medical monitoring, and referral to accredited healthcare providers: *Provided further*, That in performing any

such health assessment or health study, evaluation, or activity, the Administrator of ATSDR shall not be bound by the deadlines in section 104(i)(6)(A) of CERCLA: *Provided further*, That none of the funds appropriated under this heading shall be available for ATSDR to issue in excess of 40 toxicological profiles pursuant to section 104(I) of CERCLA during fiscal year 2012, and existing profiles may be updated as necessary.

OTHER RELATED AGENCIES

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses to continue functions assigned to the Council on Environmental Quality and Office of Environmental Quality pursuant to the National Environmental Policy Act of 1969, the Environmental Quality Improvement Act of 1970, and Reorganization Plan No. 1 of 1977, and not to exceed $750 for official reception and representation expenses, $3,153,000: *Provided*, That notwithstanding section 202 of the National Environmental Policy Act of 1970, the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.

Appointment.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

SALARIES AND EXPENSES

For necessary expenses in carrying out activities pursuant to section 112(r)(6) of the Clean Air Act, as amended, including hire of passenger vehicles, uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902, and for services authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376, $11,147,000: *Provided*, That the Chemical Safety and Hazard Investigation Board (Board) shall have not more than three career Senior Executive Service positions: *Provided further*, That notwithstanding any other provision of law, the individual appointed to the position of Inspector General of the Environmental Protection Agency (EPA) shall, by virtue of such appointment, also hold the position of Inspector General of the Board: *Provided further*, That notwithstanding any other provision of law, the Inspector General of the Board shall utilize personnel of the Office of Inspector General of EPA in performing the duties of the Inspector General of the Board, and shall not appoint any individuals to positions within the Board.

Career positions.

5 USC app. 8G note.

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

SALARIES AND EXPENSES

For necessary expenses of the Office of Navajo and Hopi Indian Relocation as authorized by Public Law 93–531, $7,750,000, to remain available until expended: *Provided*, That funds provided in this or any other appropriations Act are to be used to relocate

eligible individuals and groups including evictees from District 6, Hopi-partitioned lands residents, those in significantly substandard housing, and all others certified as eligible and not included in the preceding categories: *Provided further*, That none of the funds contained in this or any other Act may be used by the Office of Navajo and Hopi Indian Relocation to evict any single Navajo or Navajo family who, as of November 30, 1985, was physically domiciled on the lands partitioned to the Hopi Tribe unless a new or replacement home is provided for such household: *Provided further*, That no relocatee will be provided with more than one new or replacement home: *Provided further*, That the Office shall relocate any certified eligible relocatees who have selected and received an approved homesite on the Navajo reservation or selected a replacement residence off the Navajo reservation or on the land acquired pursuant to 25 U.S.C. 640d–10.

Relocation.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

PAYMENT TO THE INSTITUTE

For payment to the Institute of American Indian and Alaska Native Culture and Arts Development, as authorized by title XV of Public Law 99–498, as amended (20 U.S.C. 56 part A), $8,533,000.

SMITHSONIAN INSTITUTION

SALARIES AND EXPENSES

For necessary expenses of the Smithsonian Institution, as authorized by law, including research in the fields of art, science, and history; development, preservation, and documentation of the National Collections; presentation of public exhibits and performances; collection, preparation, dissemination, and exchange of information and publications; conduct of education, training, and museum assistance programs; maintenance, alteration, operation, lease agreements of no more than 30 years, and protection of buildings, facilities, and approaches; not to exceed $100,000 for services as authorized by 5 U.S.C. 3109; and purchase, rental, repair, and cleaning of uniforms for employees, $636,530,000, to remain available until September 30, 2013, except as otherwise provided herein; of which not to exceed $20,137,000 for the instrumentation program, collections acquisition, exhibition reinstallation, the National Museum of African American History and Culture, and the repatriation of skeletal remains program shall remain available until expended; and including such funds as may be necessary to support American overseas research centers: *Provided,* That funds appropriated herein are available for advance payments to independent contractors performing research services or participating in official Smithsonian presentations.

Contracts.

FACILITIES CAPITAL

For necessary expenses of repair, revitalization, and alteration of facilities owned or occupied by the Smithsonian Institution, by contract or otherwise, as authorized by section 2 of the Act of August 22, 1949 (63 Stat. 623), and for construction, including necessary personnel, $175,000,000, to remain available until

expended, of which not to exceed $10,000 is for services as authorized by 5 U.S.C. 3109, and of which $75,000,000 shall be to complete design and begin construction of the National Museum of African American History and Culture: *Provided,* That during fiscal year 2012 and any succeeding fiscal year, a single procurement for construction of the National Museum of African American History and Culture, as authorized under section 8 of the National Museum of African American History and Culture Act (20 U.S.C. 80r–6), may be issued that includes the full scope of the project: *Provided further,* That the solicitation and contract shall contain the clause "availability of funds" found at 48 CFR 52.232.18.

20 USC 80r–6 note.

Contracts.

NATIONAL GALLERY OF ART

SALARIES AND EXPENSES

For the upkeep and operations of the National Gallery of Art, the protection and care of the works of art therein, and administrative expenses incident thereto, as authorized by the Act of March 24, 1937 (50 Stat. 51), as amended by the public resolution of April 13, 1939 (Public Resolution 9, Seventy-sixth Congress), including services as authorized by 5 U.S.C. 3109; payment in advance when authorized by the treasurer of the Gallery for membership in library, museum, and art associations or societies whose publications or services are available to members only, or to members at a price lower than to the general public; purchase, repair, and cleaning of uniforms for guards, and uniforms, or allowances therefor, for other employees as authorized by law (5 U.S.C. 5901–5902); purchase or rental of devices and services for protecting buildings and contents thereof, and maintenance, alteration, improvement, and repair of buildings, approaches, and grounds; and purchase of services for restoration and repair of works of art for the National Gallery of Art by contracts made, without advertising, with individuals, firms, or organizations at such rates or prices and under such terms and conditions as the Gallery may deem proper, $114,066,000, of which not to exceed $3,481,000 for the special exhibition program shall remain available until expended.

REPAIR, RESTORATION, AND RENOVATION OF BUILDINGS

For necessary expenses of repair, restoration and renovation of buildings, grounds and facilities owned or occupied by the National Gallery of Art, by contract or otherwise, for operating lease agreements of no more than 10 years, with no extensions or renewals beyond the 10 years, that address space needs created by the ongoing renovations in the Master Facilities Plan, as authorized, $14,516,000, to remain available until expended: *Provided,* That contracts awarded for environmental systems, protection systems, and exterior repair or renovation of buildings of the National Gallery of Art may be negotiated with selected contractors and awarded on the basis of contractor qualifications as well as price.

JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

OPERATIONS AND MAINTENANCE

For necessary expenses for the operation, maintenance and security of the John F. Kennedy Center for the Performing Arts, $23,200,000.

CAPITAL REPAIR AND RESTORATION

For necessary expenses for capital repair and restoration of the existing features of the building and site of the John F. Kennedy Center for the Performing Arts, $13,650,000, to remain available until expended.

WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

SALARIES AND EXPENSES

For expenses necessary in carrying out the provisions of the Woodrow Wilson Memorial Act of 1968 (82 Stat. 1356) including hire of passenger vehicles and services as authorized by 5 U.S.C. 3109, $11,005,000, to remain available until September 30, 2013.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

NATIONAL ENDOWMENT FOR THE ARTS

GRANTS AND ADMINISTRATION

For necessary expenses to carry out the National Foundation on the Arts and the Humanities Act of 1965, $146,255,000 shall be available to the National Endowment for the Arts for the support of projects and productions in the arts, including arts education and public outreach activities, through assistance to organizations and individuals pursuant to section 5 of the Act, for program support, and for administering the functions of the Act, to remain available until expended.

NATIONAL ENDOWMENT FOR THE HUMANITIES

GRANTS AND ADMINISTRATION

For necessary expenses to carry out the National Foundation on the Arts and the Humanities Act of 1965, $146,255,000, to remain available until expended, of which $135,500,000 shall be available for support of activities in the humanities, pursuant to section 7(c) of the Act and for administering the functions of the Act; and $10,755,000 shall be available to carry out the matching grants program pursuant to section 10(a)(2) of the Act including $8,370,000 for the purposes of section 7(h): *Provided*, That appropriations for carrying out section 10(a)(2) shall be available for obligation only in such amounts as may be equal to the total amounts of gifts, bequests, and devises of money, and other property accepted by the chairman or by grantees of the Endowment under the provisions of subsections 11(a)(2)(B) and 11(a)(3)(B) during the current and preceding fiscal years for which equal amounts have not previously been appropriated.

ADMINISTRATIVE PROVISIONS

None of the funds appropriated to the National Foundation on the Arts and the Humanities may be used to process any grant or contract documents which do not include the text of 18 U.S.C. 1913: *Provided*, That none of the funds appropriated to the National Foundation on the Arts and the Humanities may be used for official reception and representation expenses: *Provided further*, That funds from nonappropriated sources may be used as necessary for official reception and representation expenses: *Provided further*, That the Chairperson of the National Endowment for the Arts may approve grants of up to $10,000, if in the aggregate this amount does not exceed 5 percent of the sums appropriated for grantmaking purposes per year: *Provided further*, That such small grant actions are taken pursuant to the terms of an expressed and direct delegation of authority from the National Council on the Arts to the Chairperson.

COMMISSION OF FINE ARTS

SALARIES AND EXPENSES

For expenses of the Commission of Fine Arts under Chapter 91 of title 40, United States Code, $2,400,000: *Provided*, That the Commission is authorized to charge fees to cover the full costs of its publications, and such fees shall be credited to this account as an offsetting collection, to remain available until expended without further appropriation: *Provided further*, That the Commission is authorized to accept gifts, including objects, papers, artwork, drawings and artifacts, that pertain to the history and design of the Nation's Capital or the history and activities of the Commission of Fine Arts, for the purpose of artistic display, study or education.

NATIONAL CAPITAL ARTS AND CULTURAL AFFAIRS

For necessary expenses as authorized by Public Law 99–190 (20 U.S.C. 956a), as amended, $2,000,000.

ADMINISTRATIVE PROVISION

The item relating to "National Capital Arts and Cultural Affairs" in the Department of the Interior and Related Agencies Appropriations Act, 1986, as enacted into law by section 101(d) of Public Law 99–190 (99 Stat. 1261; 20 U.S.C. 956a) is amended—

(1) by deleting the last sentence in the second paragraph and replacing it with the following: "Each eligible organization must have its principal place of business in the District of Columbia and in a facility or facilities located in the District of Columbia."; and

(2) In the third paragraph, by deleting "in addition to those herein named" at the end of the sentence.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

SALARIES AND EXPENSES

For necessary expenses of the Advisory Council on Historic Preservation (Public Law 89–665, as amended), $6,108,000.

NATIONAL CAPITAL PLANNING COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the National Capital Planning Commission under chapter 87 of title 40, United States Code, including services as authorized by 5 U.S.C. 3109, $8,154,000: *Provided,* That one-quarter of 1 percent of the funds provided under this heading may be used for official reception and representational expenses associated with hosting international visitors engaged in the planning and physical development of world capitals.

UNITED STATES HOLOCAUST MEMORIAL MUSEUM

HOLOCAUST MEMORIAL MUSEUM

For expenses of the Holocaust Memorial Museum, as authorized by Public Law 106–292 (36 U.S.C. 2301–2310), $50,798,000, of which $515,000 shall remain available until September 30, 2014, for the Museum's equipment replacement program; and of which $1,900,000 for the Museum's repair and rehabilitation program and $1,264,000 for the Museum's outreach initiatives program shall remain available until expended.

PRESIDIO TRUST

PRESIDIO TRUST FUND

For necessary expenses to carry out title I of the Omnibus Parks and Public Lands Management Act of 1996, $12,000,000 shall be available to the Presidio Trust, to remain available until expended.

DWIGHT D. EISENHOWER MEMORIAL COMMISSION

SALARIES AND EXPENSES

For necessary expenses, including the costs of construction design, of the Dwight D. Eisenhower Memorial Commission, $2,000,000, to remain available until expended.

CAPITAL CONSTRUCTION

Effective date. Contracts. 40 USC 8903 note.

For necessary expenses of the Dwight D. Eisenhower Memorial Commission for design and construction of a memorial in honor of Dwight D. Eisenhower, as authorized by Public Law 106–79, $30,990,000, to remain available until expended: *Provided*, That beginning in fiscal year 2012 and thereafter, any procurement for the construction of the permanent memorial to Dwight D. Eisenhower, as authorized by section 8162 of the Department of Defense Appropriations Act, 2000 (16 U.S.C. 431 note; Public Law 106–79), as amended by section 8120 of the Department of Defense

Appropriations Act, 2002 (Public Law 107–117), may be issued which includes the full scope of the project: *Provided further*, That the solicitation and contract with respect to the procurement shall contain the "availability of funds" clause described in section 52.232.18 of title 48, Code of Federal Regulations: *Provided further,* That the funds appropriated herein shall be deemed to satisfy the criteria for issuing a permit contained in 40 U.S.C. 8906(a)(4) and (b).

TITLE IV

GENERAL PROVISIONS

(INCLUDING TRANSFERS OF FUNDS)

LIMITATION ON CONSULTING SERVICES

Contracts.

SEC. 401. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

RESTRICTION ON USE OF FUNDS

Lobbying.

SEC. 402. No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete other than to communicate to Members of Congress as described in 18 U.S.C. 1913.

OBLIGATION OF APPROPRIATIONS

SEC. 403. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

PROHIBITION ON USE OF FUNDS FOR PERSONAL SERVICES

SEC. 404. None of the funds provided in this Act to any department or agency shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of such department or agency except as otherwise provided by law.

DISCLOSURE OF ADMINISTRATIVE EXPENSES

Budget estimates.

SEC. 405. Estimated overhead charges, deductions, reserves or holdbacks from programs, projects, activities and subactivities to support government-wide, departmental, agency, or bureau administrative functions or headquarters, regional, or central operations shall be presented in annual budget justifications and subject to approval by the Committees on Appropriations of the House of Representatives and the Senate. Changes to such estimates shall be presented to the Committees on Appropriations for approval.

GIANT SEQUOIA

SEC. 406. None of the funds in this Act may be used to plan, prepare, or offer for sale timber from trees classified as giant sequoia (Sequoiadendron giganteum) which are located on National Forest System or Bureau of Land Management lands in a manner different than such sales were conducted in fiscal year 2011.

MINING APPLICATIONS

Patents and trademarks.

SEC. 407. (a) LIMITATION OF FUNDS.—None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to accept or process applications for a patent for any mining or mill site claim located under the general mining laws.

Determination.

(b) EXCEPTIONS.—Subsection (a) shall not apply if the Secretary of the Interior determines that, for the claim concerned (1) a patent application was filed with the Secretary on or before September 30, 1994; and (2) all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims, sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) for placer claims, and section 2337 of the Revised Statutes (30 U.S.C. 42) for mill site claims, as the case may be, were fully complied with by the applicant by that date.

(c) REPORT.—On September 30, 2013, the Secretary of the Interior shall file with the House and Senate Committees on Appropriations and the Committee on Natural Resources of the House and the Committee on Energy and Natural Resources of the Senate a report on actions taken by the Department under the plan submitted pursuant to section 314(c) of the Department of the Interior and Related Agencies Appropriations Act, 1997 (Public Law 104–208).

(d) MINERAL EXAMINATIONS.—In order to process patent applications in a timely and responsible manner, upon the request of a patent applicant, the Secretary of the Interior shall allow the applicant to fund a qualified third-party contractor to be selected by the Director of the Bureau of Land Management to conduct a mineral examination of the mining claims or mill sites contained in a patent application as set forth in subsection (b). The Bureau of Land Management shall have the sole responsibility to choose and pay the third-party contractor in accordance with the standard procedures employed by the Bureau of Land Management in the retention of third-party contractors.

CONTRACT SUPPORT COSTS

SEC. 408. Notwithstanding any other provision of law, amounts appropriated to or otherwise designated in committee reports for the Bureau of Indian Affairs and the Indian Health Service by Public Laws 103–138, 103–332, 104–134, 104–208, 105–83, 105–277, 106–113, 106–291, 107–63, 108–7, 108–108, 108–447, 109–54, 109–289, division B and Continuing Appropriations Resolution, 2007 (division B of Public Law 109–289, as amended by Public Laws 110–5 and 110–28), Public Laws 110–92, 110–116, 110–137, 110–149, 110–161, 110–329, 111–6, 111–8, 111–88, and 112–10 for payments for contract support costs associated with self-determination or self-governance contracts, grants, compacts, or annual

funding agreements with the Bureau of Indian Affairs or the Indian Health Service as funded by such Acts, are the total amounts available for fiscal years 1994 through 2011 for such purposes, except that the Bureau of Indian Affairs, tribes and tribal organizations may use their tribal priority allocations for unmet contract support costs of ongoing contracts, grants, self-governance compacts, or annual funding agreements.

FOREST MANAGEMENT PLANS

16 USC 1604 note.

SEC. 409. The Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)(A)) solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System. Nothing in this section exempts the Secretary from any other requirement of the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1600 et seq.) or any other law: *Provided,* That if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise a plan for a unit of the National Forest System, this section shall be void with respect to such plan and a court of proper jurisdiction may order completion of the plan on an accelerated basis.

PROHIBITION WITHIN NATIONAL MONUMENTS

SEC. 410. No funds provided in this Act may be expended to conduct preleasing, leasing and related activities under either the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) within the boundaries of a National Monument established pursuant to the Act of June 8, 1906 (16 U.S.C. 431 et seq.) as such boundary existed on January 20, 2001, except where such activities are allowed under the Presidential proclamation establishing such monument.

AMENDMENTS TO THE TEMPORARY EMERGENCY WILDFIRE SUPPRESSION ACT

SEC. 411. The Temporary Emergency Wildfire Suppression Act (42 U.S.C. 1856m et seq.) is amended—

(1) in the first section (42 U.S.C. 1856m note)—

(A) by striking "That this" and inserting the following:

"SEC. 1. SHORT TITLE.

"This"; and

(B) by striking "Temporary";

(2) by striking section 2 (42 U.S.C. 1856m) and inserting the following:

"SEC. 2. DEFINITIONS.

"In this Act:

"(1) ASSUME ANY AND ALL LIABILITY.—The term 'assume any and all liability' means—

"(A) the payment of—

"(i) any judgment, settlement, fine, penalty, or cost assessment (including prevailing party legal fees) associated with the applicable litigation; and

"(ii) any cost incurred in handling the applicable litigation (including legal fees); and

"(B) with respect to a Federal firefighter, arranging for, and paying the costs of, representation in the applicable litigation.

"(2) FEDERAL FIREFIGHTER.—The term 'Federal firefighter' means an individual furnished by the Secretary of Agriculture or the Secretary of the Interior under an agreement entered into under section 3.

"(3) FOREIGN FIRE ORGANIZATION.—The term 'foreign fire organization' means any foreign governmental, public, or private entity that has wildfire protection resources.

"(4) FOREIGN FIREFIGHTER.—The term 'foreign firefighter' means an individual furnished by a foreign fire organization under an agreement entered into under section 3.

"(5) WILDFIRE.—The term 'wildfire' means any forest or range fire.

"(6) WILDFIRE PROTECTION RESOURCES.—The term 'wildfire protection resources' means any personnel, supplies, equipment, or other resources required for wildfire presuppression and suppression activities.";

(3) in section 3 (42 U.S.C. 1856n)—

(A) in subsection (a)—

(i) by striking "(a)(1) The Secretary of Agriculture" and inserting the following:

"(a) EXCHANGE OF WILDFIRE PROTECTION RESOURCES UNDER A RECIPROCAL AGREEMENT WITH A FOREIGN FIRE ORGANIZATION.—

"(1) AUTHORITY TO ENTER INTO A RECIPROCAL AGREEMENT.—The Secretary of Agriculture"; and

(ii) in paragraph (2), by striking "(2) Any agreement" and inserting the following:

"(2) REQUIREMENTS FOR A RECIPROCAL AGREEMENT.—Any agreement";

(B) in subsection (b)—

(i) by striking "(b) In the absence" and inserting the following:

"(b) EXCHANGE OF WILDFIRE PROTECTION RESOURCES WITHOUT A RECIPROCAL AGREEMENT.—In the absence"; and

(ii) in paragraph (1), by striking "United States, and" and inserting "United States; and";

(C) in subsection (c), by striking "(c) Notwithstanding" and inserting the following:

"(c) REIMBURSEMENT UNDER AGREEMENTS WITH CANADA.—Notwithstanding"; and

(D) in subsection (d)—

(i) by striking, "(d) Any service" and inserting the following:

"(d) SERVICE PERFORMED UNDER THIS ACT BY FEDERAL EMPLOYEES.—

"(1) IN GENERAL.—Any service"; and

(ii) in the second sentence, by striking "The" and inserting the following:

"(2) EFFECT.—Except as provided in section 4, the";

(4) by redesignating section 4 (42 U.S.C. 1856o) as section 5;

(5) by inserting after section 3 the following:

"SEC. 4. RECIPROCAL AGREEMENTS WITH LIABILITY COVERAGE. 42 USC 1856n–1.

"(a) PROTECTION FROM LIABILITY FOR FOREIGN FIREFIGHTERS AND FOREIGN FIRE ORGANIZATIONS.—Subject to subsection (b), in an agreement with a foreign fire organization entered into under section 3, the Secretary of Agriculture and the Secretary of the Interior may provide that—

"(1) a foreign firefighter shall be considered to be an employee of the United States for purposes of tort liability while the foreign firefighter is acting within the scope of an official duty under the agreement; and

"(2) any claim against the foreign fire organization or any legal organization associated with the foreign firefighter that arises out of an act or omission of the foreign firefighter in the performance of an official duty under the agreement, or that arises out of any other act, omission, or occurrence for which the foreign fire organization or legal organization associated with the foreign firefighter is legally responsible under applicable law, may be prosecuted only—

"(A) against the United States; and

"(B) as if the act or omission were the act or omission of an employee of the United States.

"(b) PROTECTION FROM LIABILITY FOR FEDERAL FIREFIGHTERS AND THE FEDERAL GOVERNMENT.—The Secretary of Agriculture and the Secretary of the Interior may provide the protections under subsection (a) if the foreign fire organization agrees—

"(1) to assume any and all liability for any legal action brought against the Federal firefighter for an act or omission of the Federal firefighter while acting within the scope of an official duty under the agreement; and

"(2) to the extent the United States or any legal organization associated with the Federal firefighter is not entitled to immunity from the jurisdiction of the courts having jurisdiction over the foreign fire organization receiving the services of the Federal firefighters, to assume any and all liability for any legal action brought against the United States or the legal organization arising out of—

"(A) an act or omission of the Federal firefighter in the performance of an official duty under the agreement; or

"(B) any other act, omission, or occurrence for which the United States or the legal organization associated with the Federal firefighter is legally responsible under the laws applicable to the foreign fire organization."; and

(6) in section 5 (as redesignated by paragraph (4))—

(A) by striking "under section 3(c)" and inserting "under this Act"; and

(B) in the proviso—

(i) by striking "wildfire protection resources or personnel" each place it appears and inserting "wildfire protection resources (including personnel)";

(ii) by inserting "for wildfire suppression activities" before "unless"; and

(iii) by striking "provide wildfire protection" and inserting "provide wildfire suppression".

CONTRACTING AUTHORITIES

Urban and rural areas.

SEC. 412. In awarding a Federal contract with funds made available by this Act, notwithstanding Federal Government procurement and contracting laws, the Secretary of Agriculture and the Secretary of the Interior (the "Secretaries") may, in evaluating bids and proposals, through fiscal year 2013, give consideration to local contractors who are from, and who provide employment and training for, dislocated and displaced workers in an economically disadvantaged rural community, including those historically timber-dependent areas that have been affected by reduced timber harvesting on Federal lands and other forest-dependent rural communities isolated from significant alternative employment opportunities: *Provided*, That notwithstanding Federal Government procurement and contracting laws the Secretaries may award contracts, grants or cooperative agreements to local non-profit entities, Youth Conservation Corps or related partnerships with State, local or non-profit youth groups, or small or micro-business or disadvantaged business: *Provided further*, That the contract, grant, or cooperative agreement is for forest hazardous fuels reduction, watershed or water quality monitoring or restoration, wildlife or fish population monitoring, road decommissioning, trail maintenance or improvement, or habitat restoration or management: *Provided further*, That the terms "rural community" and "economically disadvantaged" shall have the same meanings as in section 2374 of Public Law 101–624 (16 U.S.C. 6612): *Provided further*, That the Secretaries shall develop guidance to implement this section: *Provided further*, That nothing in this section shall be construed as relieving the Secretaries of any duty under applicable procurement laws, except as provided in this section.

Guidance.

LIMITATION ON TAKINGS

SEC. 413. Unless otherwise provided herein, no funds appropriated in this Act for the acquisition of lands or interests in lands may be expended for the filing of declarations of taking or complaints in condemnation without the approval of the House and Senate Committees on Appropriations: *Provided*, That this provision shall not apply to funds appropriated to implement the Everglades National Park Protection and Expansion Act of 1989, or to funds appropriated for Federal assistance to the State of Florida to acquire lands for Everglades restoration purposes.

TIMBER SALE REQUIREMENTS

Alaska.

SEC. 414. No timber sale in Alaska's Region 10 shall be advertised if the indicated rate is deficit (defined as the value of the timber is not sufficient to cover all logging and stumpage costs and provide a normal profit and risk allowance under the Forest Service's appraisal process) when appraised using a residual value appraisal. The western red cedar timber from those sales which is surplus to the needs of the domestic processors in Alaska, shall be made available to domestic processors in the contiguous 48 United States at prevailing domestic prices. All additional western red cedar volume not sold to Alaska or contiguous 48 United States domestic processors may be exported to foreign markets at the election of the timber sale holder. All Alaska yellow cedar may

be sold at prevailing export prices at the election of the timber sale holder.

EXTENSION OF GRAZING PERMITS

SEC. 415. The terms and conditions of section 325 of Public Law 108–108 (117 Stat. 1307), regarding grazing permits at the Department of the Interior and the Forest Service, shall remain in effect for fiscal years 2012 and 2013. A grazing permit or lease issued by the Secretary of the Interior for lands administered by the Bureau of Land Management that is the subject of a request for a grazing preference transfer shall be issued, without further processing, for the remaining time period in the existing permit or lease using the same mandatory terms and conditions. If the authorized officer determines a change in the mandatory terms and conditions is required, the new permit must be processed as directed in section 325 of Public Law 108–108.

PROHIBITION ON NO-BID CONTRACTS

SEC. 416. None of the funds appropriated or otherwise made available by this Act to executive branch agencies may be used to enter into any Federal contract unless such contract is entered into in accordance with the requirements of Chapter 33 of title 41, United States Code, or Chapter 137 of title 10, United States Code, and the Federal Acquisition Regulation, unless—

(1) Federal law specifically authorizes a contract to be entered into without regard for these requirements, including formula grants for States, or federally recognized Indian tribes; or

(2) such contract is authorized by the Indian Self-Determination and Education and Assistance Act (Public Law 93–638, 25 U.S.C. 450 et seq., as amended) or by any other Federal laws that specifically authorize a contract within an Indian tribe as defined in section 4(e) of that Act (25 U.S.C. 450b(e)); or

(3) such contract was awarded prior to the date of enactment of this Act.

POSTING OF REPORTS

SEC. 417. (a) Any agency receiving funds made available in this Act, shall, subject to subsections (b) and (c), post on the public website of that agency any report required to be submitted by the Congress in this or any other Act, upon the determination by the head of the agency that it shall serve the national interest. Web posting.

(b) Subsection (a) shall not apply to a report if—

(1) the public posting of the report compromises national security; or

(2) the report contains proprietary information.

(c) The head of the agency posting such report shall do so only after such report has been made available to the requesting Committee or Committees of Congress for no less than 45 days.

NATIONAL ENDOWMENT FOR THE ARTS GRANT GUIDELINES

SEC. 418. Of the funds provided to the National Endowment for the Arts—

(1) The Chairperson shall only award a grant to an individual if such grant is awarded to such individual for a literature fellowship, National Heritage Fellowship, or American Jazz Masters Fellowship.

Procedures.

(2) The Chairperson shall establish procedures to ensure that no funding provided through a grant, except a grant made to a State or local arts agency, or regional group, may be used to make a grant to any other organization or individual to conduct activity independent of the direct grant recipient. Nothing in this subsection shall prohibit payments made in exchange for goods and services.

(3) No grant shall be used for seasonal support to a group, unless the application is specific to the contents of the season, including identified programs and/or projects.

NATIONAL ENDOWMENT FOR THE ARTS PROGRAM PRIORITIES

SEC. 419. (a) In providing services or awarding financial assistance under the National Foundation on the Arts and the Humanities Act of 1965 from funds appropriated under this Act, the Chairperson of the National Endowment for the Arts shall ensure that priority is given to providing services or awarding financial assistance for projects, productions, workshops, or programs that serve underserved populations.

Definitions.

(b) In this section:

(1) The term "underserved population" means a population of individuals, including urban minorities, who have historically been outside the purview of arts and humanities programs due to factors such as a high incidence of income below the poverty line or to geographic isolation.

(2) The term "poverty line" means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved.

(c) In providing services and awarding financial assistance under the National Foundation on the Arts and Humanities Act of 1965 with funds appropriated by this Act, the Chairperson of the National Endowment for the Arts shall ensure that priority is given to providing services or awarding financial assistance for projects, productions, workshops, or programs that will encourage public knowledge, education, understanding, and appreciation of the arts.

(d) With funds appropriated by this Act to carry out section 5 of the National Foundation on the Arts and Humanities Act of 1965—

(1) the Chairperson shall establish a grant category for projects, productions, workshops, or programs that are of national impact or availability or are able to tour several States;

(2) the Chairperson shall not make grants exceeding 15 percent, in the aggregate, of such funds to any single State, excluding grants made under the authority of paragraph (1);

Reports.
Deadline.

(3) the Chairperson shall report to the Congress annually and by State, on grants awarded by the Chairperson in each grant category under section 5 of such Act; and

(4) the Chairperson shall encourage the use of grants to improve and support community-based music performance and education.

USE OF COMPETITIVE GRANT FUNDS

SEC. 420. Section 6(d) of Public Law 96–297 (16 U.S.C. 431 note), as added by section 101 of Public Law 108–126, is amended by inserting ", except funds awarded through competitive grants," after "No Federal funds".

FOREST SERVICE FACILITY REALIGNMENT AND ENHANCEMENT

SEC. 421. Section 503(f) of the Forest Service Realignment and Enhancement Act of 2005 (title V of Public Law 109–54; 16 U.S.C. 580d note), as amended by section 422(1) of Public Law 111–8 (123 Stat. 748), is further amended by striking "2011" and inserting "2016".

SERVICE FIRST

SEC. 422. Section 330 of the Department of the Interior and Related Agencies Appropriations Act, 2001 (Public Law 106–291; 114 Stat. 996; 43 U.S.C. 1701 note), concerning Service First authorities, as amended by section 428 of Public Law 109–54 (119 Stat. 555–556) and section 418 of Public Law 111–8 (123 Stat. 747), is amended—

(1) by striking in the first sentence "In fiscal years 2001 through 2011", and inserting "In fiscal year 2012 and each fiscal year thereafter"; and

(2) by striking in the first sentence "pilot programs" and inserting "programs."

FEDERAL, STATE, COOPERATIVE FOREST, RANGE-LAND AND WATERSHED RESTORATION IN UTAH

SEC. 423. The authority provided by section 337 of the Department of the Interior and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 118 Stat. 3012), as amended, shall remain in effect until September 30, 2013. Termination date.

STATUS OF BALANCES OF APPROPRIATIONS

SEC. 424. The Department of the Interior, the Environmental Protection Agency, the Forest Service, and the Indian Health Service shall provide the Committees on Appropriations of the House of Representatives and Senate quarterly reports on the status of balances of appropriations including all uncommitted, committed, and unobligated funds in each program and activity. Deadline. Reports.

REPORT ON USE OF CLIMATE CHANGE FUNDS

SEC. 425. Not later than 120 days after the date on which the President's fiscal year 2013 budget request is submitted to Congress, the President shall submit a comprehensive report to the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate describing in detail all Federal agency funding, domestic and international, for climate change programs, projects and activities in fiscal year President.

2011, including an accounting of funding by agency with each agency identifying climate change programs, projects and activities and associated costs by line item as presented in the President's Budget Appendix, and including citations and linkages where practicable to each strategic plan that is driving funding within each climate change program, project and activity listed in the report.

PROHIBITION ON USE OF FUNDS

SEC. 426. Notwithstanding any other provision of law, none of the funds made available in this Act or any other Act may be used to promulgate or implement any regulation requiring the issuance of permits under title V of the Clean Air Act (42 U.S.C. 7661 et seq.) for carbon dioxide, nitrous oxide, water vapor, or methane emissions resulting from biological processes associated with livestock production.

GREENHOUSE GAS REPORTING RESTRICTIONS

SEC. 427. Notwithstanding any other provision of law, none of the funds made available in this or any other Act may be used to implement any provision in a rule, if that provision requires mandatory reporting of greenhouse gas emissions from manure management systems.

FOREST SERVICE PRE-DECISIONAL OBJECTION PROCESS

Regulations. Applicability. 16 USC 6515 note.

SEC. 428. Hereafter, upon issuance of final regulations, the Secretary of Agriculture, acting through the Chief of the Forest Service, shall apply section 105(a) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6515(a)), providing for a pre-decisional objection process, to proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and documented with a Record of Decision or Decision Notice, in lieu of subsections (c), (d), and (e) of section 322 of Public Law 102–381 (16 U.S.C. 1612 note), providing for an administrative appeal process: *Provided*, That if the Chief of the Forest Service determines an emergency situation exists for which immediate implementation of a proposed action is necessary, the proposed action shall not be subject to the pre-decisional objection process, and implementation shall begin immediately after the Forest Service gives notice of the final decision for the proposed action: *Provided further*, That this section shall not apply to an authorized hazardous fuel reduction project under title I of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 et seq.).

Determination. Notice.

SILVICULTURAL ACTIVITIES

Effective date. Termination date. Permits. Water.

SEC. 429. From the date of enactment of this Act until September 30, 2012, the Administrator of the Environmental Protection Agency shall not require a permit under section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342), nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from roads, the construction,

use, or maintenance of which are associated with silvicultural activities, or from other silvicultural activities involving nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, or surface drainage.

CLAIM MAINTENANCE FEE AMENDMENTS

SEC. 430. Section 10101 of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28f) is amended—

(1) in subsection (a)—

(A) by striking so much as precedes the second sentence and inserting the following:

"(a) CLAIM MAINTENANCE FEE.—

"(1) LODE MINING CLAIMS, MILL SITES, AND TUNNEL SITES.—The holder of each unpatented lode mining claim, mill site, or tunnel site, located pursuant to the mining laws of the United States on or after August 10, 1993, shall pay to the Secretary of the Interior, on or before September 1 of each year, to the extent provided in advance in appropriations Acts, a claim maintenance fee of $100 per claim or site, respectively."; and

(B) by adding at the end the following:

"(2) PLACER MINING CLAIMS.—The holder of each unpatented placer mining claim located pursuant to the mining laws of the United States located before, on, or after August 10, 1993, shall pay to the Secretary of the Interior, on or before September 1 of each year, the claim maintenance fee described in subsection (a), for each 20 acres of the placer claim or portion thereof."; and

(2) in subsection (b), by striking the first sentence and inserting the following: "The claim main tenance fee under subsection (a) shall be paid for the year in which the location is made, at the time the location notice is recorded with the Bureau of Land Management.".

DOMESTIC LIVESTOCK GRAZING

SEC. 431. (a) PROHIBITION REGARDING POTENTIAL DOMESTIC SHEEP AND BIGHORN SHEEP CONTACT ON NATIONAL FOREST SYSTEM LAND.—Notwithstanding any other provision of law or regulation (other than the Endangered Species Act of 1973 and regulations issued under such Act), none of the funds made available by this Act or made available by any other Act for fiscal year 2012 only may be used to carry out—

(1) any new management restrictions on domestic sheep on parcels of National Forest System land (as defined in the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))) with potential domestic sheep and bighorn sheep (whether native or nonnative) contact in excess of the management restrictions that existed on July 1, 2011; or

(2) any other agency regulation for managing bighorn sheep populations on any allotment of such National Forest System land if the management action will result in a reduction in the number of domestic livestock permitted to graze on the allotment or in the distribution of livestock on the allotment.

(b) EXCEPTION.—Notwithstanding subsection (a), the Secretary of Agriculture may make such management changes as the Secretary determines to be necessary to manage bighorn sheep if the management changes—

(1) are consistent with the wildlife plans of the relevant State fish and game agency and determined in consultation with that agency; and

(2) are developed in consultation with the affected permittees.

(c) BUREAU OF LAND MANAGEMENT LANDS.—In circumstances involving conflicts between bighorn sheep and domestic sheep grazing on public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)), the Bureau of Land Management may only modify or cancel domestic sheep grazing permits after consulting with the appropriate State fish and game agency. However, if the State in question has an approved State Wildlife Management Plan that addresses, with specificity, bighorn sheep management, then the Bureau of Land Management modification or cancellation of permits in that State shall conform to the bighorn sheep management objectives in the State Wildlife Management Plan, unless conformance would be inconsistent with Federal statute or regulation. The Bureau of Land Management shall be bound by the requirements of this subsection until September 30, 2012.

Termination date.

(d) VOLUNTARY CLOSURE OF ALLOTMENTS.—Nothing in this section shall be construed as limiting the voluntary closure of existing domestic sheep allotments when the closure is agreed to in writing between the permittee and the Secretary of the Interior or the Secretary of Agriculture and is carried out for the purpose of reducing conflicts between domestic sheep and bighorn sheep.

(e) WAIVER OF GRAZING PERMITS AND LEASES.—The Secretary of the Interior and the Secretary of Agriculture may accept the voluntary waiver of any valid existing lease or permit authorizing grazing on National Forest System land described in subsection (a) or public lands described in subsection (c). If the grazing permit or lease for a grazing allotment is only partially within the area of potential domestic sheep and bighorn sheep contact, the affected permittee may elect to waive only the portion of the grazing permit or lease that is within that area. The Secretary concerned shall—

(1) terminate each permit or lease waived or portion of a permit or lease waived under this subsection;

(2) ensure a permanent end to domestic sheep grazing on the land covered by the waived permit or lease or waived portion of the permit or lease unless or until there is no conflict with bighorn sheep management; and

(3) provide for the reimbursement of range improvements in compliance with section 4 of the Act of June 28, 1934 (commonly known as the Taylor Grazing Act; 43 U.S.C. 315c).

AIR EMISSIONS FROM OUTER CONTINENTAL SHELF ACTIVITIES

42 USC 7627 note.

SEC. 432. (a) It is the purpose of this section to ensure that the energy policy of the United States focuses on the expeditious and orderly development of domestic energy resources in a manner that protects human health and the environment.

(b) Section 328(a)(1) of the Clean Air Act (42 U.S.C. 7627(a)(1)) is amended—

(1) in the first sentence, by inserting "(other than Outer Continental Shelf sources located offshore of the North Slope Borough of the State of Alaska)" after "Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts"; and

(2) in the fourth sentence, by inserting "and this Act" after "regulations".

(c) Section 328(b) of the Clean Air Act (42 U.S.C. 7627(b)) is amended in the first sentence—

(1) by striking "Gulf Coast"; and

(2) by inserting "or are adjacent to the North Slope Borough of the State of Alaska" after "Alabama".

(d) The transfer of air quality permitting authority pursuant to this section shall not invalidate or stay— 42 USC 7627 note.

(1) any air quality permit pending or existing as of the date of the enactment of this Act; or

(2) any proceeding related thereto.

(e)(1) The Comptroller General of the United States shall undertake a study on the process for air quality permitting in the Outer Continental Shelf. Study.

(2) The study shall consist of a comparison of air quality permitting for Outer Continental Shelf sources (as such term is defined in section 328(a)(4) of the Clean Air Act (42 U.S.C. 7627(a)(4)) by the Department of the Interior with such permitting by the Environmental Protection Agency, taking into account the time elapsed between application and permit approval, the number of applications, and the experiences and assessments of the applicants.

(3) In carrying out the study, the Comptroller General shall consult with the Administrator of the Environmental Protection Agency, the Secretary of the Interior, and applicants for air quality permits. Consultation.

(4) The Comptroller General shall complete the study and submit a report on the results of the study to the Congress not later than September 30, 2014. Reports. Deadline.

FUNDING PROHIBITION

SEC. 433. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent and made a determination that this further action is not necessary to protect the interests of the Government. Corporations. Criminal violations.

LIMITATION WITH RESPECT TO DELINQUENT TAX DEBTS

SEC. 434. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation with respect to which any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant Corporations.

to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

ALASKA NATIVE REGIONAL HEALTH ENTITIES

Termination date.

SEC. 435. (a) Notwithstanding any other provision of law and until October 1, 2013, the Indian Health Service may not disburse funds for the provision of health care services pursuant to Public Law 93–638 (25 U.S.C. 450 et seq.) to any Alaska Native village or Alaska Native village corporation that is located within the area served by an Alaska Native regional health entity.

(b) Nothing in this section shall be construed to prohibit the disbursal of funds to any Alaska Native village or Alaska Native village corporation under any contract or compact entered into prior to May 1, 2006, or to prohibit the renewal of any such agreement.

(c) For the purpose of this section, Eastern Aleutian Tribes, Inc., the Council of Athabascan Tribal Governments, and the Native Village of Eyak shall be treated as Alaska Native regional health entities to which funds may be disbursed under this section.

GENERAL REDUCTION

SEC. 436. (a) ACROSS-THE-BOARD RESCISSIONS.—There is hereby rescinded an amount equal to 0.16 percent of the budget authority provided for fiscal year 2012 for any discretionary appropriation in titles I through IV of this Act.

(b) PROPORTIONATE APPLICATION.—Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in subsection (a); and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in the appropriation Act or accompanying reports for the relevant fiscal year covering such account or item, or for accounts and items not included in appropriation Acts, as delineated in the most recently submitted President's budget).

Applicability.

(c) INDIAN LAND AND WATER CLAIM SETTLEMENTS.—Under the heading "Bureau of Indian Affairs, Indian Land and Water Claim Settlements and Miscellaneous Payments to Indians", the across-the-board rescission in this section, and any subsequent across-the-board rescission for fiscal year 2012, shall apply only to the first dollar amount in the paragraph and the distribution of the rescission shall be at the discretion of the Secretary of the Interior who shall submit a report on such distribution and the rationale therefore to the House and Senate Committees on Appropriations.

(d) OMB REPORT.—Within 30 days after the date of the enactment of this section the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying the account and amount of each rescission made pursuant to this section.

This division may be cited as the "Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012".

DIVISION F—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2012.

TITLE I

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

Department of Labor Appropriations Act, 2012.

TRAINING AND EMPLOYMENT SERVICES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Workforce Investment Act of 1998 (referred to in this Act as "WIA"), the Second Chance Act of 2007, and the Women in Apprenticeship and Non-Traditional Occupations Act of 1992 ("WANTO"), including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by the WIA, $3,195,383,000, plus reimbursements, shall be available. Of the amounts provided:

(1) for grants to States for adult employment and training activities, youth activities, and dislocated worker employment and training activities, $2,605,268,000 as follows:

(A) $770,922,000 for adult employment and training activities, of which $58,922,000 shall be available for the period July 1, 2012, through June 30, 2013, and of which $712,000,000 shall be available for the period October 1, 2012 through June 30, 2013;

(B) $825,914,000 for youth activities, which shall be available for the period April 1, 2012 through June 30, 2013; and

(C) $1,008,432,000 for dislocated worker employment and training activities, of which $148,432,000 shall be available for the period July 1, 2012 through June 30, 2013, and of which $860,000,000 shall be available for the period October 1, 2012 through June 30, 2013:

Provided, That notwithstanding the transfer limitation under section 133(b)(4) of the WIA, up to 30 percent of such funds may be transferred by a local board if approved by the Governor: *Provided further*, That a local board may award a contract to an institution of higher education or other eligible training provider if the local board determines that it would facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice: *Provided further,* That notwithstanding section 128(a)(1) of the WIA, the amount available to the Governor for statewide workforce investment activities shall not exceed 5 percent of the amount allotted to the State from each of the appropriations under the preceding subparagraphs;

(2) for federally administered programs, $487,053,000 as follows:

(A) $224,112,000 for the dislocated workers assistance national reserve, of which $24,112,000 shall be available for the period July 1, 2012 through June 30, 2013, and of which $200,000,000 shall be available for the period

October 1, 2012 through June 30, 2013: *Provided*, That funds provided to carry out section 132(a)(2)(A) of the WIA may be used to provide assistance to a State for statewide or local use in order to address cases where there have been worker dislocations across multiple sectors or across multiple local areas and such workers remain dislocated; coordinate the State workforce development plan with emerging economic development needs; and train such eligible dislocated workers: *Provided further*, That funds provided to carry out section 171(d) of the WIA may be used for demonstration projects that provide assistance to new entrants in the workforce and incumbent workers: *Provided further*, That none of the funds shall be obligated to carry out section 173(e) of the WIA;

(B) $47,652,000 for Native American programs, which shall be available for the period July 1, 2012 through June 30, 2013;

(C) $84,451,000 for migrant and seasonal farmworker programs under section 167 of the WIA, including $78,253,000 for formula grants (of which not less than 70 percent shall be for employment and training services), $5,689,000 for migrant and seasonal housing (of which not less than 70 percent shall be for permanent housing), and $509,000 for other discretionary purposes, which shall be available for the period July 1, 2012 through June 30, 2013: *Provided*, That notwithstanding any other provision of law or related regulation, the Department of Labor shall take no action limiting the number or proportion of eligible participants receiving related assistance services or discouraging grantees from providing such services;

(D) $998,000 for carrying out the WANTO, which shall be available for the period July 1, 2012 through June 30, 2013; and

(E) $79,840,000 for YouthBuild activities as described in section 173A of the WIA, which shall be available for the period April 1, 2012 through June 30, 2013; and

(F) $50,000,000 to be available to the Secretary of Labor (referred to in this title as "Secretary") for the Workforce Innovation Fund to carry out projects that demonstrate innovative strategies or replicate effective evidence-based strategies that align and strengthen the workforce investment system in order to improve program delivery and education and employment outcomes for beneficiaries, which shall be for the period July 1, 2012 through September 30, 2013: *Provided*, That amounts shall be available for awards to States or State agencies that are eligible for assistance under any program authorized under the WIA, consortia of States, or partnerships, including regional partnerships: *Provided further,* That not more than 5 percent of the funds available for workforce innovation activities shall be for technical assistance and evaluations related to the projects carried out with these funds;

(3) for national activities, $103,062,000, as follows:

(A) $6,616,000, in addition to any amounts available under paragraph (2), for Pilots, Demonstrations, and Research, which shall be available for the period April 1, 2012 through June 30, 2013: *Provided*, That funds made

available by Public Law 112–10 that were designated for grants to address the employment and training needs of young parents may be used for other pilots, demonstrations, and research activities and for implementation activities related to the VOW to Hire Heroes Act of 2011 and may be transferred to "State Unemployment Insurance and Employment Service Operations" to carry out such implementation activities;

(B) $80,390,000 for ex-offender activities, under the authority of section 171 of the WIA and section 212 of the Second Chance Act of 2007, which shall be available for the period April 1, 2012 through June 30, 2013, notwithstanding the requirements of section 171(b)(2)(B) or 171(c)(4)(D) of the WIA: *Provided*, That of this amount, $20,000,000 shall be for competitive grants to national and regional intermediaries for activities that prepare young ex-offenders and school dropouts for employment, with a priority for projects serving high-crime, high-poverty areas; Grants.

(C) $9,581,000 for Evaluation, which shall be available for the period July 1, 2012 through June 30, 2013; and

(D) $6,475,000 for the Workforce Data Quality Initiative, under the authority of section 171(c)(2) of the WIA, which shall be available for the period July 1, 2012 through June 30, 2013, and which shall not be subject to the requirements of section 171(c)(4)(D).

OFFICE OF JOBS CORPS

To carry out subtitle C of title I of the WIA, including Federal administrative expenses, the purchase and hire of passenger motor vehicles, the construction, alteration, and repairs of buildings and other facilities, and the purchase of real property for training centers as authorized by the WIA, $1,706,171,000, plus reimbursements, as follows:

(1) $1,572,049,000 for Job Corps Operations, which shall be available for the period July 1, 2012 through June 30, 2013;

(2) $104,990,000 for construction, rehabilitation and acquisition of Job Corps Centers, which shall be available for the period July 1, 2012 through June 30, 2015: *Provided*, That the Secretary may transfer up to 15 percent of such funds to meet the operational needs of such centers or to achieve administrative efficiencies: *Provided further*, That any funds transferred pursuant to the preceding proviso shall not be available for obligation after June 30, 2013; and

(3) $29,132,000 for necessary expenses of the Office of Job Corps, which shall be available for obligation for the period October 1, 2011 through September 30, 2012:

Provided further, That no funds from any other appropriation shall be used to provide meal services at or for Job Corps centers.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

To carry out title V of the Older Americans Act of 1965 (referred to in this Act as "OAA"), $449,100,000, which shall be available for the period July 1, 2012 through June 30, 2013, and may be

recaptured and reobligated in accordance with section 517(c) of the OAA.

FEDERAL UNEMPLOYMENT BENEFITS AND ALLOWANCES

For payments during fiscal year 2012 of trade adjustment benefit payments and allowances under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974, and section 246 of that Act; and for training, employment and case management services, allowances for job search and relocation, and related State administrative expenses under part II of subchapter B of chapter 2 of title II of the Trade Act of 1974, including benefit payments, allowances, training, employment and case management services, and related State administration provided pursuant to section 231(a) of the Trade Adjustment Assistance Extension Act of 2011, $1,100,100,000, together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15, 2012.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

For authorized administrative expenses, $86,231,000, together with not to exceed $3,958,441,000 which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund ("the Trust Fund"), of which:

(1) $3,181,154,000 from the Trust Fund is for grants to States for the administration of State unemployment insurance laws as authorized under title III of the Social Security Act (including not less than $10,000,000 to conduct in-person reemployment and eligibility assessments and unemployment insurance improper payment reviews), the administration of unemployment insurance for Federal employees and for ex-service members as authorized under 5 U.S.C. 8501–8523, and the administration of trade readjustment allowances, reemployment trade adjustment assistance, and alternative trade adjustment assistance under the Trade Act of 1974 and under section 231(a) of the Trade Adjustment Assistance Extension Act of 2011, and shall be available for obligation by the States through December 31, 2012, except that funds used for automation acquisitions or competitive grants awarded to States for improved operations, or reemployment and eligibility assessments and improper payments shall be available for obligation by the States through September 30, 2014, and funds used for unemployment insurance workloads experienced by the States through September 30, 2012 shall be available for Federal obligation through December 31, 2012;

(2) $11,287,000 from the Trust Fund is for national activities necessary to support the administration of the Federal-State unemployment insurance system;

(3) $679,531,000 from the Trust Fund, together with $22,638,000 from the General Fund of the Treasury, is for grants to States in accordance with section 6 of the Wagner-Peyser Act, and shall be available for Federal obligation for the period July 1, 2012 through June 30, 2013;

(4) $20,952,000 from the Trust Fund is for national activities of the Employment Service, including administration of the work opportunity tax credit under section 51 of the Internal

Revenue Code of 1986, and the provision of technical assistance and staff training under the Wagner-Peyser Act, including not to exceed $1,228,000 that may be used for amortization payments to States which had independent retirement plans in their State employment service agencies prior to 1980;

(5) $65,517,000 from the Trust Fund is for the administration of foreign labor certifications and related activities under the Immigration and Nationality Act and related laws, of which $50,418,000 shall be available for the Federal administration of such activities, and $15,099,000 shall be available for grants to States for the administration of such activities; and

(6) $63,593,000 from the General Fund is to provide workforce information, national electronic tools, and one-stop system building under the Wagner-Peyser Act and section 171 (e)(2)(C) of the WIA and shall be available for Federal obligation for the period July 1, 2012 through June 30, 2013:

Provided, That to the extent that the Average Weekly Insured Unemployment ("AWIU") for fiscal year 2012 is projected by the Department of Labor to exceed 4,832,000, an additional $28,600,000 from the Trust Fund shall be available for obligation for every 100,000 increase in the AWIU level (including a pro rata amount for any increment less than 100,000) to carry out title III of the Social Security Act: *Provided further*, That funds appropriated in this Act that are allotted to a State to carry out activities under title III of the Social Security Act may be used by such State to assist other States in carrying out activities under such title III if the other States include areas that have suffered a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act: *Provided further*, That the Secretary may use funds appropriated for grants to States under title III of the Social Security Act to make payments on behalf of States for the use of the National Directory of New Hires under section 453(j)(8) of such Act: *Provided further*, That funds appropriated in this Act which are used to establish a national one-stop career center system, or which are used to support the national activities of the Federal-State unemployment insurance or immigration programs, may be obligated in contracts, grants, or agreements with non-State entities: *Provided further*, That funds appropriated under this Act for activities authorized under title III of the Social Security Act and the Wagner-Peyser Act may be used by States to fund integrated Unemployment Insurance and Employment Service automation efforts, notwithstanding cost allocation principles prescribed under the Office of Management and Budget Circular A–87: *Provided further,* That the Secretary, at the request of a State participating in a consortium with other States, may reallot funds allotted to such State under title III of the Social Security Act to other States participating in the consortium in order to carry out activities that benefit the administration of the unemployment compensation law of the State making the request.

In addition, $50,000,000 from the Employment Security Administration Account of the Unemployment Trust Fund shall be available to conduct in-person reemployment and eligibility assessments and unemployment insurance improper payment reviews.

ADVANCES TO THE UNEMPLOYMENT TRUST FUND AND OTHER FUNDS

For repayable advances to the Unemployment Trust Fund as authorized by sections 905(d) and 1203 of the Social Security Act, and to the Black Lung Disability Trust Fund as authorized by section 9501(c)(1) of the Internal Revenue Code of 1986; and for nonrepayable advances to the Unemployment Trust Fund as authorized by 5 U.S.C. 8509, and to the "Federal Unemployment Benefits and Allowances" account, such sums as may be necessary, which shall be available for obligation through September 30, 2013.

PROGRAM ADMINISTRATION

For expenses of administering employment and training programs, $97,320,000, together with not to exceed $50,040,000 which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

EMPLOYEE BENEFITS SECURITY ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Employee Benefits Security Administration, $183,500,000.

PENSION BENEFIT GUARANTY CORPORATION

PENSION BENEFIT GUARANTY CORPORATION FUND

The Pension Benefit Guaranty Corporation ("Corporation") is authorized to make such expenditures, including financial assistance authorized by subtitle E of title IV of the Employee Retirement Income Security Act of 1974, within limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations, as provided by 31 U.S.C. 9104, as may be necessary in carrying out the program, including associated administrative expenses, through September 30, 2012, for the Corporation: *Provided*, That none of the funds available to the Corporation for fiscal year 2012 shall be available for obligations for administrative expenses in excess of $476,901,000: *Provided further*, That to the extent that the number of new plan participants in plans terminated by the Corporation exceeds 100,000 in fiscal year 2012, an amount not to exceed an additional $9,200,000 shall be available through September 30, 2013, for obligation for administrative expenses for every 20,000 additional terminated participants: *Provided further*, That an additional $50,000 shall be made available through September 30, 2013, for obligation for investment management fees for every $25,000,000 in assets received by the Corporation as a result of new plan terminations or asset growth, after approval by the Office of Management and Budget and notification of the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That obligations in excess of the amounts provided in this paragraph may be incurred for unforeseen and extraordinary pretermination expenses or extraordinary multiemployer program related expenses after approval by the Office of Management and Budget and notification

Notification.

Notification.

of the Committees on Appropriations of the House of Representatives and the Senate.

WAGE AND HOUR DIVISION

SALARIES AND EXPENSES

For necessary expenses for the Wage and Hour Division, including reimbursement to State, Federal, and local agencies and their employees for inspection services rendered, $227,491,000.

OFFICE OF LABOR MANAGEMENT STANDARDS

SALARIES AND EXPENSES

For necessary expenses for the Office of Labor Management Standards, $41,367,000.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

SALARIES AND EXPENSES

For necessary expenses for the Office of Federal Contract Compliance Programs, $105,386,000.

OFFICE OF WORKERS' COMPENSATION PROGRAMS

SALARIES AND EXPENSES

For necessary expenses for the Office of Workers' Compensation Programs, $115,939,000, together with $2,124,000 which may be expended from the Special Fund in accordance with sections 39(c), 44(d), and 44(j) of the Longshore and Harbor Worker's Compensation Act.

SPECIAL BENEFITS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation, benefits, and expenses (except administrative expenses) accruing during the current or any prior fiscal year authorized by 5 U.S.C. 81; continuation of benefits as provided for under the heading "Civilian War Benefits" in the Federal Security Agency Appropriation Act, 1947; the Employees' Compensation Commission Appropriation Act, 1944; sections 4(c) and 5(f) of the War Claims Act of 1948; and 50 percent of the additional compensation and benefits required by section 10(h) of the Longshore and Harbor Workers' Compensation Act, $350,000,000, together with such amounts as may be necessary to be charged to the subsequent year appropriation for the payment of compensation and other benefits for any period subsequent to August 15 of the current year: *Provided*, That amounts appropriated may be used under 5 U.S.C. 8104 by the Secretary to reimburse an employer, who is not the employer at the time of injury, for portions of the salary of a re-employed, disabled beneficiary: *Provided further*, That balances of reimbursements unobligated on September 30, 2011, shall remain available until expended for the payment of compensation, benefits, and expenses: *Provided*

Determination.

further, That in addition there shall be transferred to this appropriation from the Postal Service and from any other corporation or instrumentality required under 5 U.S.C. 8147(c) to pay an amount for its fair share of the cost of administration, such sums as the Secretary determines to be the cost of administration for employees of such fair share entities through September 30, 2012: *Provided further*, That of those funds transferred to this account from the fair share entities to pay the cost of administration of the Federal Employees' Compensation Act, $59,488,000 shall be made available to the Secretary as follows:

(1) For enhancement and maintenance of automated data processing systems and telecommunications systems, $17,253,000;

(2) For automated workload processing operations, including document imaging, centralized mail intake, and medical bill processing, $26,769,000;

(3) For periodic roll management and medical review, $15,466,000; and

(4) The remaining funds shall be paid into the Treasury as miscellaneous receipts:

Provided further, That the Secretary may require that any person filing a notice of injury or a claim for benefits under 5 U.S.C. 81, or the Longshore and Harbor Workers' Compensation Act, provide as part of such notice and claim, such identifying information (including Social Security account number) as such regulations may prescribe.

SPECIAL BENEFITS FOR DISABLED COAL MINERS

For carrying out title IV of the Federal Mine Safety and Health Act of 1977, as amended by Public Law 107–275, $141,227,000, to remain available until expended.

For making after July 31 of the current fiscal year, benefit payments to individuals under title IV of such Act, for costs incurred in the current fiscal year, such amounts as may be necessary.

For making benefit payments under title IV for the first quarter of fiscal year 2013, $40,000,000, to remain available until expended.

ADMINISTRATIVE EXPENSES, ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION FUND

For necessary expenses to administer the Energy Employees Occupational Illness Compensation Program Act, $52,147,000, to remain available until expended: *Provided*, That the Secretary may require that any person filing a claim for benefits under the Act provide as part of such claim such identifying information (including Social Security account number) as may be prescribed.

BLACK LUNG DISABILITY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

26 USC 95001 note.

Such sums as may be necessary from the Black Lung Disability Trust Fund ("Fund"), to remain available until expended, for payment of all benefits authorized by section 9501(d)(1), (2), (6), and (7) of the Internal Revenue Code of 1986; and repayment of, and payment of interest on advances, as authorized by section 9501(d)(4) of that Act. In addition, the following amounts may be expended

from the Fund for fiscal year 2012 for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): not to exceed $32,906,000 for transfer to the Office of Workers' Compensation Programs, "Salaries and Expenses"; not to exceed $25,217,000 for transfer to Departmental Management, "Salaries and Expenses"; not to exceed $327,000 for transfer to Departmental Management, "Office of Inspector General"; and not to exceed $356,000 for payments into miscellaneous receipts for the expenses of the Department of the Treasury.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Occupational Safety and Health Administration, $565,857,000, including not to exceed $104,393,000 which shall be the maximum amount available for grants to States under section 23(g) of the Occupational Safety and Health Act ("Act"), which grants shall be no less than 50 percent of the costs of State occupational safety and health programs required to be incurred under plans approved by the Secretary under section 18 of the Act; and, in addition, notwithstanding 31 U.S.C. 3302, the Occupational Safety and Health Administration may retain up to $200,000 per fiscal year of training institute course tuition fees, otherwise authorized by law to be collected, and may utilize such sums for occupational safety and health training and education: *Provided*, That notwithstanding 31 U.S.C. 3302, the Secretary is authorized, during the fiscal year ending September 30, 2012, to collect and retain fees for services provided to Nationally Recognized Testing Laboratories, and may utilize such sums, in accordance with the provisions of 29 U.S.C. 9a, to administer national and international laboratory recognition programs that ensure the safety of equipment and products used by workers in the workplace: *Provided further*, That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further*, That no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Act with respect to any employer of 10 or fewer employees who is included within a category having a Days Away, Restricted, or Transferred (DART) occupational injury and illness rate, at the most precise industrial classification code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of the Act, except—

Fees.

Farms and farming.

Small businesses.

(1) to provide, as authorized by the Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies;

(2) to conduct an inspection or investigation in response to an employee complaint, to issue a citation for violations found during such inspection, and to assess a penalty for violations which are not corrected within a reasonable abatement period and for any willful violations found;

(3) to take any action authorized by the Act with respect to imminent dangers;

(4) to take any action authorized by the Act with respect to health hazards;

(5) to take any action authorized by the Act with respect to a report of an employment accident which is fatal to one or more employees or which results in hospitalization of two or more employees, and to take any action pursuant to such investigation authorized by the Act; and

(6) to take any action authorized by the Act with respect to complaints of discrimination against employees for exercising rights under the Act:

Farms and farming.

Provided further, That the foregoing proviso shall not apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: *Provided further*, That $10,729,000 shall be available for Susan Harwood training grants.

MINE SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Mine Safety and Health Administration, $374,000,000, including purchase and bestowal of certificates and trophies in connection with mine rescue and first-aid work, and the hire of passenger motor vehicles, including up to $2,000,000 for mine rescue and recovery activities; in addition, not to exceed $750,000 may be collected by the National Mine Health and Safety Academy for room, board, tuition, and the sale of training materials, otherwise authorized by law to be collected, to be available for mine safety and health education and training activities, notwithstanding 31 U.S.C. 3302; and, in addition, the Mine Safety and Health Administration may retain up to $1,499,000 from fees collected for the approval and certification of equipment, materials, and explosives for use in mines, and may utilize such sums for such activities; and, in addition, the Secretary may transfer from amounts provided under this heading up to $3,000,000 to "Departmental Management" for activities related to the Office of the Solicitor's caseload before the Federal Mine Safety and Health Review Commission; the Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private; the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations; the Secretary is authorized to recognize the Joseph A. Holmes Safety Association as a principal safety association and, notwithstanding any other provision of law, may provide funds and, with or without reimbursement, personnel, including service of Mine Safety and Health Administration officials as officers in local chapters or in the national organization; and any funds available to the Department of Labor may be used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of a major disaster.

30 USC 962.

BUREAU OF LABOR STATISTICS

SALARIES AND EXPENSES

For necessary expenses for the Bureau of Labor Statistics, including advances or reimbursements to State, Federal, and local agencies and their employees for services rendered, $542,921,000, together with not to exceed $67,303,000 which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund, of which $1,500,000 may be used to fund the mass layoff statistics program under section 15 of the Wagner-Peyser Act.

OFFICE OF DISABILITY EMPLOYMENT POLICY

SALARIES AND EXPENSES

For necessary expenses for the Office of Disability Employment Policy to provide leadership, develop policy and initiatives, and award grants furthering the objective of eliminating barriers to the training and employment of people with disabilities, $38,953,000.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for Departmental Management, including the hire of three passenger motor vehicles, $346,683,000, together with not to exceed $326,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund: *Provided*, That $66,500,000 for the Bureau of International Labor Affairs shall be available for obligation through December 31, 2012: *Provided further*, That funds available to the Bureau of International Labor Affairs may be used to administer or operate international labor activities, bilateral and multilateral technical assistance, and microfinance programs, by or through contracts, grants, subgrants and other arrangements: *Provided further*, That $40,000,000 shall be for programs to combat exploitative child labor internationally: *Provided further*, That not less than $6,500,000 shall be used to implement model programs that address worker rights issues through technical assistance in countries with which the United States has free trade agreements or trade preference programs: *Provided further*, That $8,500,000 shall be used for program evaluation and shall be available for obligation through September 30, 2013: *Provided further,* That funds available for program evaluation may be transferred to any other appropriate account in the Department for such purpose: *Provided further,* That the funds available to the Women's Bureau may be used for grants to serve and promote the interests of women in the workforce.

VETERANS EMPLOYMENT AND TRAINING

Not to exceed $212,060,000 may be derived from the Employment Security Administration Account in the Unemployment Trust

Fund to carry out the provisions of 38 U.S.C. 4100–4113, 4211–4215, and 4321–4327, and Public Law 103–353, and which shall be available for obligation by the States through December 31, 2012, of which $2,444,000 is for the National Veterans' Employment and Training Services Institute.

In addition, to carry out Department of Labor programs under section 5(a)(1) of the Homeless Veterans Comprehensive Assistance Act of 2001 and the Veterans Workforce Investment Programs under section 168 of the WIA, $52,879,000, of which $14,622,000 shall be available for obligation for the period July 1, 2012 through June 30, 2013.

IT MODERNIZATION

For necessary expenses for Department of Labor centralized infrastructure technology investment activities related to support systems and modernization, $19,852,000.

OFFICE OF INSPECTOR GENERAL

For salaries and expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $77,937,000, together with not to exceed $5,909,000 which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

GENERAL PROVISIONS

SEC. 101. None of the funds appropriated by this Act for the Job Corps shall be used to pay the salary and bonuses of an individual, either as direct costs or any proration as an indirect cost, at a rate in excess of Executive Level II.

(TRANSFER OF FUNDS)

SEC. 102. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985) which are appropriated for the current fiscal year for the Department of Labor in this Act may be transferred between a program, project, or activity, but no such program, project, or activity shall be increased by more than 3 percent by any such transfer: *Provided*, That the transfer authority granted by this section shall be available only to meet emergency needs and shall not be used to create any new program or to fund any project or activity for which no funds are provided in this Act: *Provided further*, That the Committees on Appropriations of the House of Representatives and the Senate are notified at least 15 days in advance of any transfer.

Notification. Deadline.

Child labor.

SEC. 103. In accordance with Executive Order No. 13126, none of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended for the procurement of goods mined, produced, manufactured, or harvested or services rendered, in whole or in part, by forced or indentured child labor in industries and host countries already identified by the United States Department of Labor prior to enactment of this Act.

SEC. 104. None of the funds made available to the Department of Labor for grants under section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 may be used

for any purpose other than competitive grants for training in the occupations and industries for which employers are using H–1B visas to hire foreign workers, and the related activities necessary to support such training.

SEC. 105. None of the funds made available by this Act under the heading "Employment and Training Administration" shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. This limitation shall not apply to vendors providing goods and services as defined in Office of Management and Budget Circular A–133. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer Federal programs involved including Employment and Training Administration programs. Notwithstanding this section, the limitation on salaries for the Job Corps shall continue to be governed by section 101.

SEC. 106. The Secretary shall take no action to amend, through regulatory or administration action, the definition established in section 667.220 of title 20 of the Code of Federal Regulations for functions and activities under title I of WIA, or to modify, through regulatory or administrative action, the procedure for redesignation of local areas as specified in subtitle B of title I of that Act (including applying the standards specified in section 116(a)(3)(B) of that Act, but notwithstanding the time limits specified in section 116(a)(3)(B) of that Act), until such time as legislation reauthorizing the Act is enacted. Nothing in the preceding sentence shall permit or require the Secretary to withdraw approval for such redesignation from a State that received the approval not later than October 12, 2005, or to revise action taken or modify the redesignation procedure being used by the Secretary in order to complete such redesignation for a State that initiated the process of such redesignation by submitting any request for such redesignation not later than October 26, 2005.

(INCLUDING TRANSFER OF FUNDS)

SEC. 107. Notwithstanding section 102, the Secretary may transfer funds made available to the Employment and Training Administration by this Act or by Public Law 112–10, either directly or through a set-aside, for technical assistance services to grantees to "Program Administration" when it is determined that those services will be more efficiently performed by Federal employees.

(INCLUDING TRANSFER OF FUNDS)

SEC. 108. (a) The Secretary may reserve not more than 0.5 percent from each appropriation made available in this Act identified in subsection (b) in order to carry out evaluations of any of the programs or activities that are funded under such accounts. Any funds reserved under this section shall be transferred to "Departmental Management" for use by the Office of the Chief Evaluation Officer within the Department of Labor, and shall be available for obligation through September 30, 2013: *Provided*, That such funds shall only be available if the Chief Evaluation Officer

Plan.
Deadline.

of the Department of Labor submits a plan to the Committees on Appropriations of the House of Representatives and the Senate describing the evaluations to be carried out 15 days in advance of any transfer.

(b) The accounts referred to in subsection (a) are: "Office of Job Corps", "State Unemployment Insurance and Employment Service Operations", "Employee Benefits Security Administration", "Office of Workers' Compensation Programs", "Wage and Hour Division", "Office of Federal Contract Compliance Programs", "Office of Labor Management Standards", "Occupational Safety and Health Administration", "Mine Safety and Health Administration", and "Veterans Employment and Training".

SEC. 109. None of the funds made available by this Act may be used to promulgate the Definition of "Fiduciary" regulation (Regulatory Identification Number 1210–AB32) published by the Employee Benefits Security Administration of the Department of Labor on October 22, 2010 (75 Fed. Reg. 65263).

SEC. 110. None of the amounts made available under this Act may be used to implement the rule entitled "Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program" (76 Fed. Reg. 3452 (January 19, 2011)).

SEC. 111. None of the funds made available by this Act may be used to continue the development of or to promulgate, administer, enforce, or otherwise implement the Occupational Injury and Illness Recording and Reporting Requirements—Musculoskeletal Disorders (MSD) Column regulation (Regulatory Identification Number 1218–AC45) being developed by the Occupational Safety and Health Administration of the Department of Labor.

SEC. 112. None of the funds made available by this Act may be used to implement or enforce the proposed rule entitled "Lowering Miners' Exposure to Coal Mine Dust, Including Continuous Personal Dust Monitors" regulation published by the Mine Safety and Health Administration (MSHA) of the Department of Labor on October 19, 2010 (75 Fed. Reg. 64412, RIN 1219–AB64) until—

(1) the Government Accountability Office—

Reports.

(A) issues, at a minimum, an interim report which—

(i) evaluates the completeness of MSHA's data collection and sampling, to include an analysis of whether such data supports current trends of the incidence of lung disease arising from occupational exposure to respirable coal mine dust across working underground coal miners; and

(ii) assesses the sufficiency of MSHA's analytical methodology; and

Deadline.

(B) not later than 240 days after enactment of this Act, submits the report described in subparagraph (A) to the Committees on Appropriations of the House of Representatives and the Senate; or

(2) the deadline described in paragraph (1)(B) for submission of the report has passed.

SEC. 113. None of the funds made available by this Act may be used by the Secretary to administer or enforce 29 CFR 779.372(c)(4).

This title may be cited as the "Department of Labor Appropriations Act, 2012".

Department of Health and Human Services Appropriation Act, 2012.

TITLE II

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

PRIMARY HEALTH CARE

For carrying out titles II and III of the Public Health Service Act (referred to in this Act as the "PHS Act") with respect to primary health care and the Native Hawaiian Health Care Act of 1988, $1,598,957,000, of which $129,000 shall be available until expended for facilities renovations at the Gillis W. Long Hansen's Disease Center: *Provided,* That no more than $40,000 shall be available until expended for carrying out the provisions of section 224(o) of the PHS Act, including associated administrative expenses and relevant evaluations: *Provided further*, That no more than $95,073,000 shall be available until expended for carrying out the provisions of Public Law 104–73 and for expenses incurred by the Department of Health and Human Services (referred to in this Act as "HHS") pertaining to administrative claims made under such law.

HEALTH WORKFORCE

For carrying out titles III, VII, and VIII of the PHS Act with respect to the health workforce, section 1128E of the Social Security Act, and the Health Care Quality Improvement Act of 1986, $734,402,000: *Provided*, That sections 747(c)(2), 751(j)(2), and the proportional funding amounts in paragraphs (1) through (4) of section 756(e) of the PHS Act shall not apply to funds made available under this heading: *Provided further*, That for any program operating under section 751 of the PHS Act on or before January 1, 2009, the Secretary of Health and Human Services (referred to in this title as "Secretary") may waive any of the requirements contained in sections 751(d)(2)(A) and 751(d)(2)(B) of such Act for the full project period of a grant under such section: *Provided further*, That no funds shall be available for section 340G–1 of the PHS Act: *Provided further*, That in addition to fees authorized by section 427(b) of the Health Care Quality Improvement Act of 1986, fees shall be collected for the full disclosure of information under such Act sufficient to recover the full costs of operating the National Practitioner Data Bank and shall remain available until expended to carry out that Act: *Provided further*, That fees collected for the full disclosure of information under the "Health Care Fraud and Abuse Data Collection Program", authorized by section 1128E(d)(2) of the Social Security Act, shall be sufficient to recover the full costs of operating the program, and shall remain available until expended to carry out that Act: *Provided further*, That funds transferred to this account to carry out section 846 and subpart 3 of part D of title III of the PHS Act may be used to make prior year adjustments to awards made under such sections.

Waiver authority.

Fees.

MATERNAL AND CHILD HEALTH

For carrying out titles III, XI, XII, and XIX of the PHS Act with respect to maternal and child health, title V of the Social

Security Act, and section 712 of the American Jobs Creation Act of 2004, $863,607,000: *Provided*, That notwithstanding sections 502(a)(1) and 502(b)(1) of the Social Security Act, not more than $79,586,000 shall be available for carrying out special projects of regional and national significance pursuant to section 501(a)(2) of such Act and $10,400,000 shall be available for projects described in paragraphs (A) through (F) of section 501(a)(3) of such Act.

RYAN WHITE HIV/AIDS PROGRAM

For carrying out title XXVI of the PHS Act with respect to the Ryan White HIV/AIDS program, $2,326,665,000, of which $1,995,670,000 shall remain available to the Secretary of Health and Human Services through September 30, 2014, for parts A and B of title XXVI of the PHS Act, and of which not less than $900,000,000 shall be for State AIDS Drug Assistance Programs under the authority of section 2616 or 311(c) of such Act: *Provided*, That in addition to amounts provided herein, $25,000,000 shall be available from amounts available under section 241 of the PHS Act to carry out parts A, B, C, and D of title XXVI of the PHS Act to fund Special Projects of National Significance under section 2691.

HEALTH CARE SYSTEMS

For carrying out titles III and XII of the PHS Act with respect to health care systems, and the Stem Cell Therapeutic and Research Act of 2005, $83,526,000.

RURAL HEALTH

For carrying out titles III and IV of the PHS Act with respect to rural health, section 427(a) of the Federal Coal Mine Health and Safety Act, the Cardiac Arrest Survival Act of 2000, and sections 711 and 1820 of the Social Security Act, $139,832,000, of which $41,118,000 from general revenues, notwithstanding section 1820(j) of the Social Security Act, shall be available for carrying out the Medicare rural hospital flexibility grants program: *Provided*, That of the funds made available under this heading for Medicare rural hospital flexibility grants, $15,000,000 shall be available for the Small Rural Hospital Improvement Grant Program for quality improvement and adoption of health information technology and $1,000,000 shall be to carry out section 1820(g)(6) of the Social Security Act, with funds provided for grants under section 1820(g)(6) available for the purchase and implementation of telehealth services, including pilots and demonstrations on the use of electronic health records to coordinate rural veterans care between rural providers and the Department of Veterans Affairs electronic health record system: *Provided further*, That notwithstanding section 338J(k) of the PHS Act, $10,055,000 shall be available for State Offices of Rural Health.

FAMILY PLANNING

Abortion.

For carrying out the program under title X of the PHS Act to provide for voluntary family planning projects, $297,400,000: *Provided,* That amounts provided to said projects under such title shall not be expended for abortions, that all pregnancy counseling

shall be nondirective, and that such amounts shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office.

PROGRAM MANAGEMENT

For program support in the Health Resources and Services Administration, $161,815,000: *Provided*, That funds made available under this heading may be used to supplement program support funding provided under the headings "Primary Health Care", "Health Workforce", "Maternal and Child Health", "Ryan White HIV/AIDS Program", "Health Care Systems", and "Rural Health".

HEALTH EDUCATION ASSISTANCE LOANS PROGRAM ACCOUNT

Such sums as may be necessary to carry out the purpose of the program, as authorized by title VII of the PHS Act. For administrative expenses to carry out the guaranteed loan program, including section 709 of the PHS Act, $2,841,000.

VACCINE INJURY COMPENSATION PROGRAM TRUST FUND

For payments from the Vaccine Injury Compensation Program Trust Fund ("Trust Fund"), such sums as may be necessary for claims associated with vaccine-related injury or death with respect to vaccines administered after September 30, 1988, pursuant to subtitle 2 of title XXI of the PHS Act, to remain available until expended: *Provided*, That for necessary administrative expenses, not to exceed $6,489,000 shall be available from the Trust Fund to the Secretary.

CENTERS FOR DISEASE CONTROL AND PREVENTION

IMMUNIZATION AND RESPIRATORY DISEASES

For carrying out titles II, III, VII, XVII, and XXI, and section 2821 of the PHS Act, titles II and IV of the Immigration and Nationality Act, and section 501 of the Refugee Education Assistance Act, with respect to immunization and respiratory diseases, $579,375,000: *Provided,* That in addition to amounts provided herein, $12,864,000 shall be available from amounts available under section 241 of the PHS Act to carry out the National Immunization Surveys.

HIV/AIDS, VIRAL HEPATITIS, SEXUALLY TRANSMITTED DISEASES, AND TUBERCULOSIS PREVENTION

For carrying out titles II, III, VII, XVII, XXIII, and XXVI of the PHS Act with respect to HIV/AIDS, viral hepatitis, sexually transmitted diseases, and tuberculosis prevention, $1,105,995,000.

EMERGING AND ZOONOTIC INFECTIOUS DISEASES

For carrying out titles II, III, VII, and XVII, and section 2821 of the PHS Act, titles II and IV of the Immigration and Nationality Act, and section 501 of the Refugee Education Assistance Act, with respect to emerging and zoonotic infectious diseases, $253,919,000.

CHRONIC DISEASE PREVENTION AND HEALTH PROMOTION

For carrying out titles II, III, VII, XI, XV, XVII, and XIX of the PHS Act with respect to chronic disease prevention and health promotion, $760,700,000: *Provided*, That funds appropriated under this account may be available for making grants under section 1509 of the PHS Act for not less than 21 States, tribes, or tribal organizations.

BIRTH DEFECTS, DEVELOPMENTAL DISABILITIES, DISABILITIES AND HEALTH

For carrying out titles II, III, VII, XI, and XVII of the PHS Act with respect to birth defects, developmental disabilities, disabilities and health, $138,072,000.

PUBLIC HEALTH SCIENTIFIC SERVICES

For carrying out titles II and III of the PHS Act with respect to health statistics, surveillance, informatics, and workforce development, $144,795,000: *Provided*, That in addition to amounts provided herein, $247,769,000 shall be available from amounts available under section 241 of the PHS Act to carry out Public Health Scientific Services.

ENVIRONMENTAL HEALTH

For carrying out titles II, III, VII, and XVII of the PHS Act with respect to environmental health, $105,598,000.

INJURY PREVENTION AND CONTROL

For carrying out titles II, III, VII, and XVII of the PHS Act with respect to injury prevention and control, $138,480,000.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

For carrying out titles II, III, VII, and XVII of the PHS Act, sections 101, 102, 103, 201, 202, 203, 301, 501, and 514 of the Federal Mine Safety and Health Act, section 13 of the Mine Improvement and New Emergency Response Act, and sections 20, 21, and 22 of the Occupational Safety and Health Act, with respect to occupational safety and health, $182,903,000: *Provided*, That in addition to amounts provided herein, $110,724,000 shall be available from amounts available under section 241 of the PHS Act.

EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

For necessary expenses to administer the Energy Employees Occupational Illness Compensation Program Act, $55,358,000, to remain available until expended, of which $4,500,000 shall be for use by or in support of the Advisory Board on Radiation and Worker Health ("Board") to carry out its statutory responsibilities, including obtaining audits, technical assistance, and other support from the Board's audit contractor with regard to radiation dose estimation and reconstruction efforts, site profiles, procedures, and review of Special Exposure Cohort petitions and evaluation reports: *Provided*, That this amount shall be available consistent with the

provision regarding administrative expenses in section 151(b) of division B, title I of Public Law 106–554.

GLOBAL HEALTH

For carrying out titles II, III, VII and XVII of the PHS Act with respect to global health, $349,547,000, of which $118,023,000 for international HIV/AIDS shall remain available through September 30, 2013: *Provided,* That funds may be used for purchase and insurance of official motor vehicles in foreign countries.

PUBLIC HEALTH PREPAREDNESS AND RESPONSE

For carrying out titles II, III, VII, and XVII of the PHS Act with respect to public health preparedness and response, and for expenses necessary to support activities related to countering potential biological, nuclear, radiological, and chemical threats to civilian populations, $1,306,906,000, of which $509,486,000 shall remain available until expended for the Strategic National Stockpile under section 319F–2 of the PHS Act.

CDC-WIDE ACTIVITIES AND PROGRAM SUPPORT

For carrying out titles II, III, VII, XVII and XIX, and section 2821 of the PHS Act and for cross-cutting activities and program support that supplement activities funded under the headings "Immunization and Respiratory Diseases", "HIV/AIDS, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis Prevention", "Emerging and Zoonotic Infectious Diseases", "Chronic Disease Prevention and Health Promotion", "Birth Defects, Developmental Disabilities, Disabilities and Health", "Environmental Health", "Injury Prevention and Control", "National Institute for Occupational Safety and Health", "Employees Occupational Illness Compensation Program Act", "Global Health", "Public Health Preparedness and Response", and "Public Health Scientific Services", $621,445,000, of which $30,000,000 shall be available until September 30, 2013, for business services, of which $25,000,000 shall be available until September 30, 2016, for equipment, construction and renovation of facilities, and of which $80,000,000 shall be for the Preventive Health and Health Services Block Grant Program: *Provided*, That paragraphs (1) through (3) of subsection (b) of section 2821 of the PHS Act shall not apply to funds appropriated under this heading and in all other accounts of the Centers for Disease Control and Prevention (referred to in this title as "CDC"): *Provided further,* That funds appropriated under this heading and in all other accounts of CDC may be used to support the purchase, hire, maintenance, and operation of aircraft for use and support of the activities of CDC: *Provided further,* That employees of CDC or the Public Health Service, both civilian and commissioned officers, detailed to States, municipalities, or other organizations under authority of section 214 of the PHS Act, or in overseas assignments, shall be treated as non-Federal employees for reporting purposes only and shall not be included within any personnel ceiling applicable to the Agency, Service, or HHS during the period of detail or assignment: *Provided further*, That CDC may use up to $10,000 from amounts appropriated to CDC in this Act for official reception and representation expenses when specifically approved by the Director of CDC: *Provided further*, That in addition,

such sums as may be derived from authorized user fees, which shall be credited to the appropriation charged with the cost thereof: *Provided further*, That with respect to the previous proviso, authorized user fees from the Vessel Sanitation Program shall be available through September 30, 2013: *Provided further,* That of the funds made available under this heading, up to $1,000 per eligible employee of CDC shall be made available until expended for Individual Learning Accounts: *Provided further,* That CDC may establish a Working Capital Fund, with the authorities equivalent to those provided in 42 U.S.C. 231, to improve the provision of supplies and service.

NATIONAL INSTITUTES OF HEALTH

NATIONAL CANCER INSTITUTE

For carrying out section 301 and title IV of the PHS Act with respect to cancer, $5,081,788,000, of which up to $8,000,000 may be used for facilities repairs and improvements at the National Cancer Institute—Frederick Federally Funded Research and Development Center in Frederick, Maryland.

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

For carrying out section 301 and title IV of the PHS Act with respect to cardiovascular, lung, and blood diseases, and blood and blood products, $3,084,851,000.

NATIONAL INSTITUTE OF DENTAL AND CRANIOFACIAL RESEARCH

For carrying out section 301 and title IV of the PHS Act with respect to dental disease, $411,488,000.

NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

For carrying out section 301 and title IV of the PHS Act with respect to diabetes and digestive and kidney disease, $1,800,447,000.

NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

For carrying out section 301 and title IV of the PHS Act with respect to neurological disorders and stroke, $1,629,445,000.

NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

For carrying out section 301 and title IV of the PHS Act with respect to allergy and infectious diseases, $4,499,215,000.

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

For carrying out section 301 and title IV of the PHS Act with respect to general medical sciences, $2,434,637,000: *Provided*, That not less than $276,480,000 is provided for the Institutional Development Awards program.

EUNICE KENNEDY SHRIVER NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

For carrying out section 301 and title IV of the PHS Act with respect to child health and human development, $1,323,900,000.

NATIONAL EYE INSTITUTE

For carrying out section 301 and title IV of the PHS Act with respect to eye diseases and visual disorders, $704,043,000.

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For carrying out section 301 and title IV of the PHS Act with respect to environmental health sciences, $686,869,000.

NATIONAL INSTITUTE ON AGING

For carrying out section 301 and title IV of the PHS Act with respect to aging, $1,105,530,000.

NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

For carrying out section 301 and title IV of the PHS Act with respect to arthritis and musculoskeletal and skin diseases, $536,801,000.

NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS

For carrying out section 301 and title IV of the PHS Act with respect to deafness and other communication disorders, $417,061,000.

NATIONAL INSTITUTE OF NURSING RESEARCH

For carrying out section 301 and title IV of the PHS Act with respect to nursing research, $145,043,000.

NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM

For carrying out section 301 and title IV of the PHS Act with respect to alcohol abuse and alcoholism, $460,389,000.

NATIONAL INSTITUTE ON DRUG ABUSE

For carrying out section 301 and title IV of the PHS Act with respect to drug abuse, $1,055,362,000.

NATIONAL INSTITUTE OF MENTAL HEALTH

For carrying out section 301 and title IV of the PHS Act with respect to mental health, $1,483,068,000.

NATIONAL HUMAN GENOME RESEARCH INSTITUTE

For carrying out section 301 and title IV of the PHS Act with respect to human genome research, $513,844,000.

NATIONAL INSTITUTE OF BIOMEDICAL IMAGING AND BIOENGINEERING

For carrying out section 301 and title IV of the PHS Act with respect to biomedical imaging and bioengineering research, $338,998,000.

NATIONAL CENTER FOR COMPLEMENTARY AND ALTERNATIVE MEDICINE

For carrying out section 301 and title IV of the PHS Act with respect to complementary and alternative medicine, $128,299,000.

NATIONAL INSTITUTE ON MINORITY HEALTH AND HEALTH DISPARITIES

For carrying out section 301 and title IV of the PHS Act with respect to minority health and health disparities research, $276,963,000.

JOHN E. FOGARTY INTERNATIONAL CENTER

For carrying out the activities of the John E. Fogarty International Center (described in subpart 2 of part E of title IV of the PHS Act), $69,754,000.

NATIONAL LIBRARY OF MEDICINE

For carrying out section 301 and title IV of the PHS Act with respect to health information communications, $338,278,000, of which $4,000,000 shall be available until September 30, 2013, for improvement of information systems: *Provided*, That in fiscal year 2012, the National Library of Medicine may enter into personal services contracts for the provision of services in facilities owned, operated, or constructed under the jurisdiction of the National Institutes of Health (referred to in this title as "NIH"): *Provided further*, That in addition to amounts provided herein, $8,200,000 shall be available from amounts available under section 241 of the PHS Act to carry out the purposes of the National Information Center on Health Services Research and Health Care Technology established under section 478A of the PHS Act and related health services.

NATIONAL CENTER FOR ADVANCING TRANSLATIONAL SCIENCES

For carrying out section 301 and title IV of the PHS Act with respect to translational sciences, $576,456,000: *Provided,* That up to $10,000,000 shall be available to implement section 402C of the PHS Act, relating to the Cures Acceleration Network: *Provided further*, That funds appropriated may be used to support the reorganization and activities required to eliminate the National Center for Research Resources: *Provided further*, That the Director of the NIH shall ensure that, of all funds made available to Institute, Center, and Office of the Director accounts within "Department of Health and Human Services, National Institutes of Health", at least $487,767,000 is provided to the Clinical and Translational Sciences Awards program.

OFFICE OF THE DIRECTOR

For carrying out the responsibilities of the Office of the Director, NIH, $1,461,880,000, of which up to $25,000,000 shall be used to carry out section 213 of this Act: *Provided*, That funding shall be available for the purchase of not to exceed 29 passenger motor vehicles for replacement only: *Provided further*, That NIH is authorized to collect third-party payments for the cost of clinical services that are incurred in NIH research facilities and that such payments shall be credited to the NIH Management Fund: *Provided further*, That all funds credited to the NIH Management Fund shall remain available for one fiscal year after the fiscal year in which they are deposited: *Provided further*, That $193,880,000 shall be available for continuation of the National Children's Study: *Provided further*, That $545,962,000 shall be available for the Common Fund established under section 402A(c)(1) of the PHS Act: *Provided further*, That of the funds provided $10,000 shall be for official reception and representation expenses when specifically approved by the Director of the NIH: *Provided further*, That the Office of AIDS Research within the Office of the Director of the NIH may spend up to $8,000,000 to make grants for construction or renovation of facilities as provided for in section 2354(a)(5)(B) of the PHS Act.

BUILDINGS AND FACILITIES

For the study of, construction of, renovation of, and acquisition of equipment for, facilities of or used by NIH, including the acquisition of real property, $125,581,000, to remain available until September 30, 2016.

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

MENTAL HEALTH

For carrying out titles III, V, and XIX of the PHS Act with respect to mental health, and the Protection and Advocacy for Individuals with Mental Illness Act, $934,853,000: *Provided*, That notwithstanding section 520A(f)(2) of the PHS Act, no funds appropriated for carrying out section 520A shall be available for carrying out section 1971 of the PHS Act: *Provided further,* That in addition to amounts provided herein, $21,039,000 shall be available under section 241 of the PHS Act to carry out subpart I of part B of title XIX of the PHS Act to fund section 1920(b) technical assistance, national data, data collection and evaluation activities, and further that the total available under this Act for section 1920(b) activities shall not exceed 5 percent of the amounts appropriated for subpart I of part B of title XIX: *Provided further,* That section 520E(b)(2) of the PHS Act shall not apply to funds appropriated under this Act for fiscal year 2012: *Provided further,* That of the amount appropriated under this heading, $45,800,000 shall be for the National Child Traumatic Stress Initiative as described in section 582 of the PHS Act.

SUBSTANCE ABUSE TREATMENT

For carrying out titles III, V, and XIX of the PHS Act with respect to substance abuse treatment and section 1922(a) of the

PHS Act with respect to substance abuse prevention, $2,123,993,000: *Provided*, That in addition to amounts provided herein, the following amounts shall be available under section 241 of the PHS Act: (1) $79,200,000 to carry out subpart II of part B of title XIX of the PHS Act to fund section 1935(b) technical assistance, national data, data collection and evaluation activities, and further that the total available under this Act for section 1935(b) activities shall not exceed 5 percent of the amounts appropriated for subpart II of part B of title XIX; and (2) $2,000,000 to evaluate substance abuse treatment programs: *Provided further*, That no funds shall be available for the National All Schedules Prescription Reporting system.

SUBSTANCE ABUSE PREVENTION

For carrying out titles III and V of the PHS Act with respect to substance abuse prevention, $186,361,000.

HEALTH SURVEILLANCE AND PROGRAM SUPPORT

For program support and cross-cutting activities that supplement activities funded under the headings "Mental Health", "Substance Abuse Treatment", and "Substance Abuse Prevention" in carrying out titles III, V, and XIX of the PHS Act and the Protection and Advocacy for Individuals with Mental Illness Act in the Substance Abuse and Mental Health Services Administration, $109,106,000: *Provided*, That in addition to amounts provided herein, $27,428,000 shall be available under section 241 of the PHS Act to supplement funds available to carry out national surveys on drug abuse and mental health, to collect and analyze program data, and to conduct public awareness and technical assistance activities: *Provided further,* That funds made available under this heading may be used to supplement program support funding provided under the headings "Mental Health", "Substance Abuse Treatment", and "Substance Abuse Prevention".

AGENCY FOR HEALTHCARE RESEARCH AND QUALITY

HEALTHCARE RESEARCH AND QUALITY

For carrying out titles III and IX of the PHS Act, part A of title XI of the Social Security Act, and section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, $369,053,000 shall be available from amounts available under section 241 of the PHS Act, notwithstanding subsection 947(c) of such Act: *Provided*, That in addition, amounts received from Freedom of Information Act fees, reimbursable and interagency agreements, and the sale of data shall be credited to this appropriation and shall remain available until September 30, 2013.

CENTERS FOR MEDICARE AND MEDICAID SERVICES

GRANTS TO STATES FOR MEDICAID

For carrying out, except as otherwise provided, titles XI and XIX of the Social Security Act, $184,279,110,000, to remain available until expended.

For making, after May 31, 2012, payments to States under title XIX or in the case of section 1928 on behalf of States under title XIX of the Social Security Act for the last quarter of fiscal year 2012 for unanticipated costs incurred for the current fiscal year, such sums as may be necessary.

For making payments to States or in the case of section 1928 on behalf of States under title XIX of the Social Security Act for the first quarter of fiscal year 2013, $90,614,082,000, to remain available until expended.

Payment under such title XIX may be made for any quarter with respect to a State plan or plan amendment in effect during such quarter, if submitted in or prior to such quarter and approved in that or any subsequent quarter.

PAYMENTS TO HEALTH CARE TRUST FUNDS

For payment to the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as provided under sections 217(g), 1844, and 1860D–16 of the Social Security Act, sections 103(c) and 111(d) of the Social Security Amendments of 1965, section 278(d)(3) of Public Law 97–248, and for administrative expenses incurred pursuant to section 201(g) of the Social Security Act, $230,741,378,000.

In addition, for making matching payments under section 1844 and benefit payments under section 1860D–16 of the Social Security Act that were not anticipated in budget estimates, such sums as may be necessary.

PROGRAM MANAGEMENT

For carrying out, except as otherwise provided, titles XI, XVIII, XIX, and XXI of the Social Security Act, titles XIII and XXVII of the PHS Act, the Clinical Laboratory Improvement Amendments of 1988, and other responsibilities of the Centers for Medicare and Medicaid Services, not to exceed $3,879,476,000, to be transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as authorized by section 201(g) of the Social Security Act; together with all funds collected in accordance with section 353 of the PHS Act and section 1857(e)(2) of the Social Security Act, funds retained by the Secretary pursuant to section 302 of the Tax Relief and Health Care Act of 2006; and such sums as may be collected from authorized user fees and the sale of data, which shall be credited to this account and remain available until September 30, 2017: *Provided,* That all funds derived in accordance with 31 U.S.C. 9701 from organizations established under title XIII of the PHS Act shall be credited to and available for carrying out the purposes of this appropriation: *Provided further,* That $34,000,000, to remain available through September 30, 2013, shall be for contract costs for the Healthcare Integrated General Ledger Accounting System: *Provided further,* That the Secretary is directed to collect fees in fiscal year 2012 from Medicare Advantage organizations pursuant to section 1857(e)(2) of the Social Security Act and from eligible organizations with risk-sharing contracts under section 1876 of that Act pursuant to section 1876(k)(4)(D) of that Act: *Provided further*, That $44,000,000 shall be available for the State high-risk health insurance pool program as authorized by the State High Risk Pool Funding Extension Act of 2006.

Fees.

HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT

In addition to amounts otherwise available for program integrity and program management, $310,377,000, to remain available through September 30, 2013, to be transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as authorized by section 201(g) of the Social Security Act, of which $219,879,000 shall be for the Medicare Integrity Program at the Centers for Medicare and Medicaid Services, including administrative costs, to conduct oversight activities for Medicare Advantage under Part C and the Medicare Prescription Drug Program under Part D of the Social Security Act and for activities described in section 1893(b) of such Act, of which $29,730,000 shall be for the Department of Health and Human Services Office of Inspector General to carry out fraud and abuse activities authorized by section 1817(k)(3) of such Act, of which $31,038,000 shall be for the Medicaid and Children's Health Insurance Program ("CHIP") program integrity activities, and of which $29,730,000 shall be for the Department of Justice to carry out fraud and abuse activities authorized by section 1817(k)(3) of such Act: *Provided,* That the report required by section 1817(k)(5) of the Social Security Act for fiscal year 2012 shall include measures of the operational efficiency and impact on fraud, waste, and abuse in the Medicare, Medicaid, and CHIP programs for the funds provided by this appropriation.

Reports.

ADMINISTRATION FOR CHILDREN AND FAMILIES

PAYMENTS TO STATES FOR CHILD SUPPORT ENFORCEMENT AND FAMILY SUPPORT PROGRAMS

For making payments to States or other non-Federal entities under titles I, IV–D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960, $2,305,035,000, to remain available until expended; and for such purposes for the first quarter of fiscal year 2013, $1,100,000,000, to remain available until expended.

For making payments to each State for carrying out the program of Aid to Families with Dependent Children under title IV–A of the Social Security Act before the effective date of the program of Temporary Assistance for Needy Families with respect to such State, such sums as may be necessary: *Provided*, That the sum of the amounts available to a State with respect to expenditures under such title IV–A in fiscal year 1997 under this appropriation and under such title IV–A as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall not exceed the limitations under section 116(b) of such Act.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under titles I, IV–D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960, for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

LOW INCOME HOME ENERGY ASSISTANCE

For making payments under subsections (b) and (d) of section 2602 of the Low Income Home Energy Assistance Act of 1981, $3,478,246,000: *Provided*, That all but $497,000,000 of such funds

shall be allocated as though the total appropriation for such payments for fiscal year 2012 was less than $1,975,000,000: *Provided further*, That notwithstanding section 2609A(a), of the amounts appropriated under section 2602(b), not more than $3,000,000 of such amounts may be reserved by the Secretary for technical assistance, training, and monitoring of program activities for compliance with internal controls, policies and procedures.

REFUGEE AND ENTRANT ASSISTANCE

For necessary expenses for refugee and entrant assistance activities authorized by section 414 of the Immigration and Nationality Act and section 501 of the Refugee Education Assistance Act of 1980, for carrying out section 462 of the Homeland Security Act of 2002, section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and the Trafficking Victims Protection Act of 2000, for costs associated with the care and placement of unaccompanied alien children, and for carrying out the Torture Victims Relief Act of 1998, $769,789,000, of which up to $9,794,000 shall be available to carry out the Trafficking Victims Protection Act of 2000: *Provided*, That funds appropriated under this heading pursuant to section 414(a) of the Immigration and Nationality Act, section 462 of the Homeland Security Act of 2002, section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and the Trafficking Victims Protection Act of 2000 for fiscal year 2012 shall be available for the costs of assistance provided and other activities to remain available through September 30, 2014.

PAYMENTS TO STATES FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

For carrying out the Child Care and Development Block Grant Act of 1990, $2,282,627,000 shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: *Provided*, That $19,433,000 shall be available for child care resource and referral and school-aged child care activities, of which $1,000,000 shall be available to the Secretary for a competitive grant for the operation of a national toll free hotline and Web site to develop and disseminate child care consumer education information for parents and help parents access child care in their local community: *Provided further*, That, in addition to the amounts required to be reserved by the States under section 658G, $291,248,000 shall be reserved by the States for activities authorized under section 658G, of which $106,813,000 shall be for activities that improve the quality of infant and toddler care: *Provided further*, That $9,890,000 shall be for use by the Secretary for child care research, demonstration, and evaluation activities.

SOCIAL SERVICES BLOCK GRANT

For making grants to States pursuant to section 2002 of the Social Security Act, $1,700,000,000: *Provided*, That notwithstanding subparagraph (B) of section 404(d)(2) of such Act, the applicable percent specified under such subparagraph for a State to carry out State programs pursuant to title XX of such Act shall be 10 percent.

CHILDREN AND FAMILIES SERVICES PROGRAMS

For carrying out, except as otherwise provided, the Runaway and Homeless Youth Act, the Developmental Disabilities Assistance and Bill of Rights Act, the Head Start Act, the Child Abuse Prevention and Treatment Act, sections 303 and 313 of the Family Violence Prevention and Services Act, the Native American Programs Act of 1974, title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (adoption opportunities), the Abandoned Infants Assistance Act of 1988, section 291 of the Help America Vote Act of 2002, part B–1 of title IV and sections 413, 1110, and 1115 of the Social Security Act; for making payments under the Community Services Block Grant Act ("CSBG Act"), sections 439(i), 473B, and 477(i) of the Social Security Act, and the Assets for Independence Act; and for necessary administrative expenses to carry out such Acts and titles I, IV, V, X, XI, XIV, XVI, and XX of the Social Security Act, the Act of July 5, 1960, the Low Income Home Energy Assistance Act of 1981, title IV of the Immigration and Nationality Act, and section 501 of the Refugee Education Assistance Act of 1980, $9,926,709,000, of which $39,421,000, to remain available through September 30, 2013, shall be for grants to States for adoption incentive payments, as authorized by section 473A of the Social Security Act and may be made for adoptions completed before September 30, 2012: *Provided,* That $7,983,633,000 shall be for making payments under the Head Start Act: *Provided further*, That for purposes of allocating funds described by the immediately preceding proviso, the term "base grant" as used in subsection (a)(7)(A) of section 640 of such Act with respect to funding provided to a Head Start agency (including each Early Head Start agency) for fiscal year 2011 shall be calculated as described in such subsection and to which amount shall be added 50 percent of the amount of funds appropriated under the heading "Department of Health and Human Services, Administration for Children and Families, Children and Family Services Programs" in Public Law 111–5 and provided to such agency for carrying out expansion of Head Start programs, as that phrase is used in subsection (a)(4)(D) of such section 640, and provided to such agency as the ongoing funding level for operations in the 12-month period beginning in fiscal year 2010: *Provided further*, That $713,630,000 shall be for making payments under the CSBG Act: *Provided further,* That $35,340,000 shall be for sections 680 and 678E(b)(2) of the CSBG Act, of which not less than $30,000,000 shall be for section 680(a)(2) and not less than $4,990,000 shall be for section 680(a)(3)(B) of such Act: *Provided further*, That in addition to amounts provided herein, $5,762,000 shall be available from amounts available under section 241 of the PHS Act to carry out the provisions of section 1110 of the Social Security Act: *Provided further,* That to the extent Community Services Block Grant funds are distributed as grant funds by a State to an eligible entity as provided under the CSBG Act, and have not been expended by such entity, they shall remain with such entity for carryover into the next fiscal year for expenditure by such entity consistent with program purposes: *Provided further*, That the Secretary shall establish procedures regarding the disposition of intangible assets and program income that permit such assets acquired with, and program income derived from, grant funds authorized under section 680 of the CSBG Act to become the sole property of such grantees

Procedures.
Time period.
42 USC 9921 note.

after a period of not more than 12 years after the end of the grant period for any activity consistent with section 680(a)(2)(A) of the CSBG Act: *Provided further*, That intangible assets in the form of loans, equity investments and other debt instruments, and program income may be used by grantees for any eligible purpose consistent with section 680(a)(2)(A) of the CSBG Act: *Provided further*, That these procedures shall apply to such grant funds made available after November 29, 1999: *Provided further*, That funds appropriated for section 680(a)(2) of the CSBG Act shall be available for financing construction and rehabilitation and loans or investments in private business enterprises owned by community development corporations: *Provided further,* That $5,245,000 shall be for activities authorized by section 291 of the Help America Vote Act of 2002: *Provided further*, That $1,996,000 shall be for a human services case management system for federally declared disasters, to include a comprehensive national case management contract and Federal costs of administering the system: *Provided further*, That up to $2,000,000 shall be for improving the Public Assistance Reporting Information System, including grants to States to support data collection for a study of the system's effectiveness.

Applicability.

PROMOTING SAFE AND STABLE FAMILIES

For carrying out section 436 of the Social Security Act, $345,000,000 and section 437 of such Act, $63,184,000.

PAYMENTS FOR FOSTER CARE AND PERMANENCY

For making payments to States or other non-Federal entities under title IV–E of the Social Security Act, $5,153,000,000.

For making payments to States or other non-Federal entities under title IV–E of the Social Security Act, for the first quarter of fiscal year 2013, $2,100,000,000.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under section 474 of title IV–E of the Social Security Act, for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For carrying out, to the extent not otherwise provided, the Older Americans Act of 1965 ("OAA"), section 398 and title XXIX of the PHS Act, section 119 of the Medicare Improvements for Patients and Providers Act of 2008, $1,473,703,000: *Provided*, That amounts appropriated under this heading may be used for grants to States under section 361 of the OAA only for disease prevention and health promotion programs and activities which have been demonstrated through rigorous evaluation to be evidence-based and effective: *Provided further,* That none of the funds provided shall be used to carry out sections 1701 and 1703 of the PHS Act (with respect to chronic disease self-management activity grants),

except that such funds may be used for necessary expenses associated with administering any such grants awarded prior to the date of the enactment of this Act: *Provided further,* That the total amount available for fiscal year 2012 under this and any other Act to carry out activities related to Aging and Disability Resource Centers under subsections (a)(20)(B)(iii) and (b)(8) of section 202 of the OAA shall not exceed the amount obligated for such purposes for fiscal year 2010 from funds available under Public Law 111–117: *Provided further,* That notwithstanding any other provision of this Act, funds made available under this heading to carry out section 311 of the OAA may be transferred to the Secretary of Agriculture in accordance with such section.

OFFICE OF THE SECRETARY

GENERAL DEPARTMENTAL MANAGEMENT

For necessary expenses, not otherwise provided, for general departmental management, including hire of six passenger motor vehicles, and for carrying out titles III, XVII, and XXI of the PHS Act, the United States-Mexico Border Health Commission Act, and research studies under section 1110 of the Social Security Act, $475,221,000, together with $69,211,000 from the amounts available under section 241 of the PHS Act to carry out national health or human services research and evaluation activities: *Provided*, That of this amount, $53,783,000 shall be for minority AIDS prevention and treatment activities: *Provided further,* That of the funds made available under this heading, $104,790,000 shall be for making competitive contracts and grants to public and private entities to fund medically accurate and age appropriate programs that reduce teen pregnancy and for the Federal costs associated with administering and evaluating such contracts and grants, of which not less than $75,000,000 shall be for replicating programs that have been proven effective through rigorous evaluation to reduce teenage pregnancy, behavioral risk factors underlying teenage pregnancy, or other associated risk factors, of which not less than $25,000,000 shall be available for research and demonstration grants to develop, replicate, refine, and test additional models and innovative strategies for preventing teenage pregnancy, and of which any remaining amounts shall be available for training and technical assistance, evaluation, outreach, and additional program support activities: *Provided further*, That of the amounts provided under this heading from amounts available under section 241 of the PHS Act, $8,455,000 shall be available to carry out evaluations (including longitudinal evaluations) of teenage pregnancy prevention approaches: *Provided further,* That of the funds made available under this heading, $5,000,000 shall be for making competitive grants to provide abstinence education (as defined by section 510(b)(2)(A)–(H) of the Social Security Act) to adolescents, and for Federal costs of administering the grant: *Provided further,* That grants made under the authority of section 510(b)(2)(A)–(H) of the Social Security Act shall be made only to public and private entities that agree that, with respect to an adolescent to whom the entities provide abstinence education under such grant, the entities will not provide to that adolescent any other education regarding sexual conduct, except that, in the case of an entity expressly required by law to provide health information or services

the adolescent shall not be precluded from seeking health information or services from the entity in a different setting than the setting in which abstinence education was provided: *Provided further*, That funds provided in this Act for embryo adoption activities may be used to provide to individuals adopting embryos, through grants and other mechanisms, medical and administrative services deemed necessary for such adoptions: *Provided further*, That such services shall be provided consistent with 42 CFR 59.5(a)(4).

Embryo adoption.

OFFICE OF MEDICARE HEARINGS AND APPEALS

For expenses necessary for administrative law judges responsible for hearing cases under title XVIII of the Social Security Act (and related provisions of title XI of such Act), $72,147,000, to be transferred in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund.

OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY

For expenses necessary for the Office of the National Coordinator for Health Information Technology, including grants, contracts, and cooperative agreements for the development and advancement of interoperable health information technology, $16,446,000: *Provided*, That in addition to amounts provided herein, $44,811,000 shall be available from amounts available under section 241 of the PHS Act.

OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General, including the hire of passenger motor vehicles for investigations, in carrying out the provisions of the Inspector General Act of 1978, $50,178,000: *Provided,* That of such amount, necessary sums shall be available for providing protective services to the Secretary and investigating non-payment of child support cases for which non-payment is a Federal offense under 18 U.S.C. 228: *Provided further*, That at least 40 percent of the funds provided in this Act for the Office of Inspector General shall be used only for investigations, audits, and evaluations pertaining to the discretionary programs funded in this Act.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, $41,016,000.

RETIREMENT PAY AND MEDICAL BENEFITS FOR COMMISSIONED OFFICERS

For retirement pay and medical benefits of Public Health Service Commissioned Officers as authorized by law, for payments under the Retired Serviceman's Family Protection Plan and Survivor Benefit Plan, and for medical care of dependents and retired personnel under the Dependents' Medical Care Act, such amounts as may be required during the current fiscal year.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary to support activities related to countering potential biological, nuclear, radiological, chemical, and cybersecurity threats to civilian populations, and for other public health emergencies, $569,452,000; of which $10,000,000 shall remain available until September 30, 2014, to support emergency operations.

From funds transferred to this account pursuant to the fourth paragraph under this heading in Public Law 111–117, up to $415,000,000 shall be available for expenses necessary to support advanced research and development pursuant to section 319L of the PHS Act, and other administrative expenses of the Biomedical Advanced Research and Development Authority to support additional advanced research and development.

GENERAL PROVISIONS

SEC. 201. Funds appropriated in this title shall be available for not to exceed $50,000 for official reception and representation expenses when specifically approved by the Secretary.

Government employees. Children and youth. AIDS.

SEC. 202. The Secretary shall make available through assignment not more than 60 employees of the Public Health Service to assist in child survival activities and to work in AIDS programs through and with funds provided by the Agency for International Development, the United Nations International Children's Emergency Fund or the World Health Organization.

SEC. 203. None of the funds appropriated in this title shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II.

Reports.

SEC. 204. None of the funds appropriated in this Act may be expended pursuant to section 241 of the PHS Act, except for funds specifically provided for in this Act, or for other taps and assessments made by any office located in HHS, prior to the preparation and submission of a report by the Secretary to the Committees on Appropriations of the House of Representatives and the Senate detailing the planned uses of such funds.

Determination.

SEC. 205. Notwithstanding section 241(a) of the PHS Act, such portion as the Secretary shall determine, but not more than 2.5 percent, of any amounts appropriated for programs authorized under such Act shall be made available for the evaluation (directly, or by grants or contracts) of the implementation and effectiveness of such programs.

(TRANSFER OF FUNDS)

SEC. 206. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985) which are appropriated for the current fiscal year for HHS in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: *Provided*, That the transfer authority granted by this section shall not be used to create any new program or to fund any project or activity for which no funds are provided

in this Act: *Provided further*, That the Committees on Appropriations of the House of Representatives and the Senate are notified at least 15 days in advance of any transfer.

Notification. Deadline.

(TRANSFER OF FUNDS)

SEC. 207. The Director of the NIH, jointly with the Director of the Office of AIDS Research, may transfer up to 3 percent among institutes and centers from the total amounts identified by these two Directors as funding for research pertaining to the human immunodeficiency virus: *Provided*, That the Committees on Appropriations of the House of Representatives and the Senate are notified at least 15 days in advance of any transfer.

Notification. Deadline.

(TRANSFER OF FUNDS)

SEC. 208. Of the amounts made available in this Act for NIH, the amount for research related to the human immunodeficiency virus, as jointly determined by the Director of NIH and the Director of the Office of AIDS Research, shall be made available to the "Office of AIDS Research" account. The Director of the Office of AIDS Research shall transfer from such account amounts necessary to carry out section 2353(d)(3) of the PHS Act.

SEC. 209. None of the funds appropriated in this Act may be made available to any entity under title X of the PHS Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities.

Certification. Family planning. Children and youth.

SEC. 210. Notwithstanding any other provision of law, no provider of services under title X of the PHS Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.

Child abuse.

SEC. 211. None of the funds appropriated by this Act (including funds appropriated to any trust fund) may be used to carry out the Medicare Advantage program if the Secretary denies participation in such program to an otherwise eligible entity (including a Provider Sponsored Organization) because the entity informs the Secretary that it will not provide, pay for, provide coverage of, or provide referrals for abortions: *Provided*, That the Secretary shall make appropriate prospective adjustments to the capitation payment to such an entity (based on an actuarially sound estimate of the expected costs of providing the service to such entity's enrollees): *Provided further*, That nothing in this section shall be construed to change the Medicare program's coverage for such services and a Medicare Advantage organization described in this section shall be responsible for informing enrollees where to obtain information about all Medicare covered services.

Abortion.

SEC. 212. In order for HHS to carry out international health activities, including HIV/AIDS and other infectious disease, chronic and environmental disease, and other health activities abroad during fiscal year 2012:

(1) The Secretary may exercise authority equivalent to that available to the Secretary of State in section 2(c) of the State Department Basic Authorities Act of 1956. The Secretary shall consult with the Secretary of State and relevant Chief of Mission to ensure that the authority provided in this section

is exercised in a manner consistent with section 207 of the Foreign Service Act of 1980 and other applicable statutes administered by the Department of State.

(2) The Secretary is authorized to provide such funds by advance or reimbursement to the Secretary of State as may be necessary to pay the costs of acquisition, lease, alteration, renovation, and management of facilities outside of the United States for the use of HHS. The Department of State shall cooperate fully with the Secretary to ensure that HHS has secure, safe, functional facilities that comply with applicable regulation governing location, setback, and other facilities requirements and serve the purposes established by this Act. The Secretary is authorized, in consultation with the Secretary of State, through grant or cooperative agreement, to make available to public or nonprofit private institutions or agencies in participating foreign countries, funds to acquire, lease, alter, or renovate facilities in those countries as necessary to conduct programs of assistance for international health activities, including activities relating to HIV/AIDS and other infectious diseases, chronic and environmental diseases, and other health activities abroad.

(3) The Secretary is authorized to provide to personnel appointed or assigned by the Secretary to serve abroad, allowances and benefits similar to those provided under chapter 9 of title I of the Foreign Service Act of 1980, and 22 U.S.C. 4081 through 4086 and subject to such regulations prescribed by the Secretary. The Secretary is further authorized to provide locality-based comparability payments (stated as a percentage) up to the amount of the locality-based comparability payment (stated as a percentage) that would be payable to such personnel under section 5304 of title 5, United States Code if such personnel's official duty station were in the District of Columbia. Leaves of absence for personnel under this subsection shall be on the same basis as that provided under subchapter I of chapter 63 of title 5, United States Code, or section 903 of the Foreign Service Act of 1980, to individuals serving in the Foreign Service.

SEC. 213. (a) AUTHORITY.—Notwithstanding any other provision of law, the Director of NIH ("Director") may use funds available under section 402(b)(7) or 402(b)(12) of the PHS Act to enter into transactions (other than contracts, cooperative agreements, or grants) to carry out research identified pursuant to such section 402(b)(7) (pertaining to the Common Fund) or research and activities described in such section 402(b)(12).

(b) PEER REVIEW.—In entering into transactions under subsection (a), the Director may utilize such peer review procedures (including consultation with appropriate scientific experts) as the Director determines to be appropriate to obtain assessments of scientific and technical merit. Such procedures shall apply to such transactions in lieu of the peer review and advisory council review procedures that would otherwise be required under sections 301(a)(3), 405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494 of the PHS Act.

Applicability.

SEC. 214. Funds which are available for Individual Learning Accounts for employees of CDC and the Agency for Toxic Substances and Disease Registry ("ATSDR") may be transferred to appropriate accounts of CDC, to be available only for Individual Learning

Accounts: *Provided*, That such funds may be used for any individual full-time equivalent employee while such employee is employed either by CDC or ATSDR.

SEC. 215. Notwithstanding any other provisions of law, discretionary funds made available in this Act may be used to continue operating the Council on Graduate Medical Education established by section 301 of Public Law 102–408. 42 USC 2940 note.

SEC. 216. Not to exceed $45,000,000 of funds appropriated by this Act to the institutes and centers of the National Institutes of Health may be used for alteration, repair, or improvement of facilities, as necessary for the proper and efficient conduct of the activities authorized herein, at not to exceed $3,500,000 per project.

(TRANSFER OF FUNDS)

SEC. 217. Of the amounts made available for NIH, 1 percent of the amount made available for National Research Service Awards ("NRSA") shall be made available to the Administrator of the Health Resources and Services Administration to make NRSA awards for research in primary medical care to individuals affiliated with entities who have received grants or contracts under section 747 of the PHS Act, and 1 percent of the amount made available for NRSA shall be made available to the Director of the Agency for Healthcare Research and Quality to make NRSA awards for health service research.

SEC. 218. None of the funds made available in this title may be used, in whole or in part, to advocate or promote gun control. Gun control.

SEC. 219. None of the funds appropriated or otherwise made available in this Act may be expended to advance the creation of a Federally Funded Research and Development Center at the Centers for Medicare and Medicaid Services, prior to a Federal Register notice being issued that outlines: how this proposal would meet the specific requirements identified in FAR 35.017–2; agency procedures that ensure small business competitiveness is maintained; and the outline of a transparent award and governance process to be employed. Federal Register, publication.

SEC. 220. (a) The Secretary shall establish a publicly accessible website to provide information regarding the uses of funds made available under section 4002 of Public Law 111–148. Web site. Public information. 42 USC 300u–11 note.

(b) With respect to funds provided for fiscal year 2012, the Secretary shall include on the website established under subsection (a) at a minimum the following information:

(1) In the case of each transfer of funds under section 4002(c), a statement indicating the program or activity receiving funds, the operating division or office that will administer the funds, and the planned uses of the funds, to be posted not later than the day after the transfer is made.

(2) Identification (along with a link to the full text) of each funding opportunity announcement, request for proposals, or other announcement or solicitation of proposals for grants, cooperative agreements, or contracts intended to be awarded using such funds, to be posted not later than the day after the announcement or solicitation is issued.

(3) Identification of each grant, cooperative agreement, or contract with a value of $25,000 or more awarded using such funds, including the purpose of the award and the identity Deadline.

of the recipient, to be posted not later than 5 days after the award is made.

Reports. Deadline.

(4) A report detailing the uses of all funds transferred under section 4002(c) during the fiscal year, to be posted not later than 90 days after the end of the fiscal year.

Reports. Deadlines. Time period.

(5) Semi-annual reports from each entity awarded a grant, cooperative agreement, or contract from such funds with a value of $25,000 or more, summarizing the activities undertaken and identifying any sub-grants or sub-contracts awarded (including the purpose of the award and the identity of the recipient), to be posted not later than 30 days after the end of each 6-month period.

SEC. 221. (a) ESTABLISHMENT OF NATIONAL CENTER FOR ADVANCING TRANSLATIONAL SCIENCES; ELIMINATION OF NATIONAL CENTER FOR RESEARCH RESOURCES.—

(1) IN GENERAL.—Subpart 1 of part E of title IV of the Public Health Service Act (42 U.S.C. 287 et seq.) is amended—

(A) in the subpart heading, by striking "National Center for Research Resources" and inserting "National Center for Advancing Translational Sciences";

42 USC 287a, 287a–1.

(B) by striking sections 480 and 481; and

(C) by amending section 479 to read as follows:

42 USC 287.

"SEC. 479. NATIONAL CENTER FOR ADVANCING TRANSLATIONAL SCIENCES.

"(a) PURPOSE.—The purpose of the National Center for Advancing Translational Sciences (in this subpart referred to as the 'Center') is to advance translational sciences, including by—

"(1) coordinating and developing resources that leverage basic research in support of translational science; and

"(2) developing partnerships and working cooperatively to foster synergy in ways that do not create duplication, redundancy, and competition with industry activities.

"(b) CLINICAL TRIAL ACTIVITIES.—

"(1) IN GENERAL.—The Center may develop and provide infrastructure and resources for all phases of clinical trials research. Except as provided in paragraph (2), the Center may support clinical trials only through the end of phase IIA.

"(2) EXCEPTION.—The Center may support clinical trial activities through the end of phase IIB for a treatment for a rare disease or condition (as defined in section 526 of the Federal Food, Drug, and Cosmetic Act) so long as—

Notice. Time period.

"(A) the Center gives public notice for a period of at least 120 days of the Center's intention to support the clinical trial activities in phase IIB;

"(B) no public or private organization provides credible written intent to the Center that the organization has timely plans to further the clinical trial activities or conduct clinical trials of a similar nature beyond phase IIA; and

"(C) the Center ensures that support of the clinical trial activities in phase IIB will not increase the Federal Government's liability beyond the award value of the Center's support.

"(c) ANNUAL REPORT.—The Center shall publish an annual report that, with respect to all research supported by the Center, includes a complete list of—

"(1) the molecules being studied;

"(2) clinical trial activities being conducted;

"(3) the methods and tools in development;

"(4) ongoing partnerships, including—

"(A) the rationale for each partnership;

"(B) the status of each partnership;

"(C) the funding provided by the Center to other entities pursuant to each partnership, and

"(D) the activities which have been transferred to industry pursuant to each partnership; and

"(5) known research activity of other entities that is or will expand upon research activity of the Center.".

(2) LIST OF INSTITUTES AND CENTERS.—Section 401(b)(21) of the Public Health Service Act (42 U.S.C. 281(b)(21)) is amended by striking "National Center for Research Resources" and inserting "National Center for Advancing Translational Sciences".

(b) ASSIGNMENT OF CERTAIN FUNCTIONS OF FORMER NATIONAL CENTER FOR RESEARCH RESOURCES.—

(1) BIOMEDICAL AND BEHAVIORAL RESEARCH FACILITIES.— Section 481A of the Public Health Service Act (42 U.S.C. 287a–2)— 42 USC 283k.

(A) is redesignated as section 404I and is moved to follow section 404H of such Act (42 U.S.C. 283j); and

(B) is amended—

(i) in subsection (a)(1), by striking "acting through the Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases" and inserting "acting through the Office of the Director of NIH or the Director of the National Institute of Allergy and Infectious Diseases";

(ii) in subsections (c), (d), (e), and (f)(2), by striking "Director of the Center or the Director of the National Institute of Allergy and Infectious Diseases" each place it appears and inserting "Director of NIH, acting through the Office of the Director of NIH or the National Institute of Allergy and Infectious Diseases,";

(iii) in subsection (b)(2), by striking "Director of the Center" each place it appears and inserting "Director of NIH";

(iv) in subsections (b)(3)(A), (f)(1), and (g), by striking the comma at the end of "Director of the Center," each place it appears;

(v) by striking "Director of the Center" each place it appears and inserting "Director of NIH, acting through the Office of the Director of NIH,";

(vi) in subsection (b)—

(I) in paragraph (1)(A), by striking "within the Center"; and

(II) in paragraph (2)—

(aa) in subparagraph (A), by striking "and the advisory council established under section 480 (in this section referred to as the 'Advisory Council')" and inserting "and the Council of Councils established under section 402(l) (in this section referred to as the 'Council')"; and

(bb) in subparagraphs (B), (C), and (D), by striking "Advisory" each place it appears; and

(vii) in subsection (g), by striking "after consultation with the Advisory Council" and inserting "after consultation with the Council".

42 USC 283*l*.

(2) CONSTRUCTION OF REGIONAL CENTERS FOR RESEARCH ON PRIMATES.—Section 481B of the Public Health Service Act (42 U.S.C. 287a–3)—

(A) is redesignated as section 404J and is moved to follow section 404I, as redesignated by paragraph (1); and

(B) in subsection (a), is amended—

(i) by striking "by the National Center for Research Resources" and inserting "by the Director of NIH, acting through the Office of the Director of NIH,"; and

(ii) by striking "481A" and inserting "404I".

42 USC 283m.

(3) SANCTUARY SYSTEM FOR SURPLUS CHIMPANZEES.—Section 481C of the Public Health Service Act (42 U.S.C. 287a–3a)—

(A) is redesignated as section 404K and is moved to follow section 404J, as redesignated by paragraph (2); and

(B) in subsection (d)(4)(A)(ii), is amended by striking "that is carried out by the National Center for Research Resources" and inserting "that is carried out by the Director of NIH, acting through the Office of the Director of NIH,".

42 USC 283n.

(4) SHARED INSTRUMENTATION GRANT PROGRAM.—Section 305 of the Public Health Improvement Act (42 U.S.C. 287 note)—

(A) is redesignated as section 404L of the Public Health Service Act and is moved to follow section 404K of that Act, as redesignated by paragraph (3); and

(B) is amended—

(i) by striking subsection (a) and redesignating subsections (b) and (c) as subsections (a) and (b), respectively;

(ii) in subsection (a), as so redesignated, by striking "under the program described in subsection (a)" and inserting "under the Shared Instrumentation Grant Program";

(iii) by striking "Director of the National Center for Research Resources" each place it appears and inserting "Director of NIH, acting through the Office of the Director of NIH,"; and

(iv) in subsection (b), as so redesignated—

(I) by striking "in subsection (a)" and inserting "in subsection (a), the"; and

(II) by striking "of the Public Health Service Act (42 U.S.C. 289a)".

(5) INSTITUTIONAL DEVELOPMENT AWARD PROGRAM.—Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended—

42 USC 285k.

(A) in section 461, by striking the section heading and designation and all that follows through "The general purpose" and inserting the following:

"SEC. 461. NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES.

"(a) GENERAL PURPOSE.—The general purpose";

(B) by moving subsection (g) of section 402 to the end of section 461, as amended, and redesignating that subsection as subsection (b); and 42 USC 282, 285k.

(C) in section 461(b), as so redesignated— 42 USC 285k.

(i) by striking "(b)(1)(A) In the case of" and inserting the following:

"(b) INSTITUTIONAL DEVELOPMENT AWARD PROGRAM.—

"(1)(A) In the case of";

(ii) by moving two ems to the right—

(I) subparagraphs (B) and (C) of paragraph (1);

(II) clauses (i), (ii), and (iii) of such subparagraph (C); and

(III) paragraph (2); and

(iii) in paragraph (1)(A), by striking "acting through the Director of the National Center for Research Resources" and inserting "acting through the Director of the National Institute of General Medical Sciences".

(c) ASSIGNMENT OF CERTAIN OFFICES AND FUNCTIONS TO NATIONAL CENTER FOR ADVANCING TRANSLATIONAL SCIENCES.—

(1) CURES ACCELERATION NETWORK.—Section 402C of the Public Health Service Act (42 U.S.C. 282d)— 42 USC 287a.

(A) is redesignated as section 480 and is moved to follow section 479;

(B) in subsection (b), is amended in the matter that precedes paragraph (1) by striking "within the Office of the Director of NIH" and inserting "within the Center";

(C) by striking "Director of NIH" each place it appears and inserting "Director of the Center"; and

(D) in the headings of subsections (d)(4) and (d)(4)(B), by striking "DIRECTOR OF NIH" each place it appears and inserting "DIRECTOR OF THE CENTER".

(2) OFFICE OF RARE DISEASES.—Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended—

(A) in section 404F—

(i) by redesignating such section as section 481 and moving such section to follow section 480, as redesignated by paragraph (1); 42 USC 283h, 287a–1.

(ii) in subsection (a)— 42 USC 287a–1.

(I) by striking "within the Office of the Director of NIH" and inserting "within the Center"; and

(II) by striking "Director of NIH" and inserting "Director of the Center"; and

(iii) in subsection (b)(1)(C), by striking "404G" and inserting "481A"; and 42 USC 287a–1.

(B) in section 401(c)(2)(A), by striking "the Office of Rare Diseases,". 42 USC 281.

(3) RARE DISEASE REGIONAL CENTERS OF EXCELLENCE.— Section 404G of the Public Health Service Act (42 U.S.C. 283i) is redesignated as section 481A and is moved to follow section 481, as redesignated by paragraph (2). 42 USC 287a–2.

(4) GENERAL CLINICAL RESEARCH CENTERS.—Section 481D of the Public Health Service Act (42 U.S.C. 287a–4)—

(A) is redesignated as section 481B; and

(B) in subsection (a), is amended by striking "Director of the National Center for Research Resources" and inserting "Director of the Center".

(d) CONFORMING AMENDMENTS.—Title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended—

(1) in section 402(b)(24) (42 U.S.C. 282(b)(24)), by striking "402C" and inserting "480";

(2) in section 404C(e)(3)(A) (42 U.S.C. 283e(e)(3)(A)), by striking "and the Director of the Center for Research Resources";

(3) in section 464z–3(i)(1) (42 U.S.C. 285t(i)(1))—

(A) by striking "Director of National Institute for Research Resources" and inserting "Director of NIH";

(B) by striking "481(c)(3)" and inserting "404I(c)(2)"; and

(C) by inserting "under such section" after "Institutions of Emerging Excellence";

(4) in section 499(c)(1)(E) (42 U.S.C. 290b(c)(1)(E)), by striking "section 402C" and inserting "section 480".

Reduction.

SEC. 222. The discretionary appropriation for CDC is hereby reduced by $20,000,000: *Provided*, That the reduction should be taken from contracting and administrative costs in each of the CDC accounts.

This title may be cited as the "Department of Health and Human Services Appropriations Act, 2012".

Department of Education Appropriations Act, 2012.

TITLE III

DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

For carrying out title I of the Elementary and Secondary Education Act of 1965 (referred to in this Act as "ESEA") and section 418A of the Higher Education Act of 1965 (referred to in this Act as "HEA"), $15,750,983,000, of which $4,817,117,000 shall become available on July 1, 2012, and shall remain available through September 30, 2013, and of which $10,841,177,000 shall become available on October 1, 2012, and shall remain available through September 30, 2013, for academic year 2012–2013: *Provided*, That $6,584,750,000 shall be for basic grants under section 1124 of the ESEA: *Provided further*, That up to $3,992,000 of these funds shall be available to the Secretary of Education (referred to in this title as "Secretary") on October 1, 2011, to obtain annually updated local educational agency-level census poverty data from the Bureau of the Census: *Provided further*, That $1,362,301,000 shall be for concentration grants under section 1124A of the ESEA: *Provided further*, That $3,288,183,000 shall be for targeted grants under section 1125 of the ESEA: *Provided further*, That $3,288,183,000 shall be for education finance incentive grants under section 1125A of the ESEA: *Provided further*, That $3,200,000 shall be to carry out sections 1501 and 1503 of the ESEA: *Provided further,* That $534,562,000 shall be available for school improvement grants under section 1003(g) of the ESEA, which shall be allocated by the Secretary through the formula described in section 1003(g)(2) and shall be used consistent with the requirements of section 1003(g), except that State and local educational agencies

may use such funds to serve any school eligible to receive assistance under part A of title I that has not made adequate yearly progress for at least 2 years or is in the State's lowest quintile of performance based on proficiency rates and, in the case of secondary schools, priority shall be given to those schools with graduation rates below 60 percent: *Provided further*, That notwithstanding section 1003(g)(5)(A), each State educational agency may establish a maximum subgrant size of not more than $2,000,000 for each participating school applicable to such funds: *Provided further,* That the Secretary may reserve up to 5 percent of the funds available for section 1003(g) of the ESEA to carry out activities to build State and local educational agency capacity to implement effectively the school improvement grants program: *Provided further*, That $160,000,000 shall be available under section 1502 of the ESEA for a comprehensive literacy development and education program to advance literacy skills, including pre-literacy skills, reading, and writing, for students from birth through grade 12, including limited-English-proficient students and students with disabilities, of which one-half of 1 percent shall be reserved for the Secretary of the Interior for such a program at schools funded by the Bureau of Indian Education, one-half of 1 percent shall be reserved for grants to the outlying areas for such a program, up to 5 percent may be reserved for national activities, and the remainder shall be used to award competitive grants to State educational agencies for such a program, of which a State educational agency may reserve up to 5 percent for State leadership activities, including technical assistance and training, data collection, reporting, and administration, and shall subgrant not less than 95 percent to local educational agencies or, in the case of early literacy, to local educational agencies or other nonprofit providers of early childhood education that partner with a public or private nonprofit organization or agency with a demonstrated record of effectiveness in improving the early literacy development of children from birth through kindergarten entry and in providing professional development in early literacy, giving priority to such agencies or other entities serving greater numbers or percentages of disadvantaged children: *Provided further*, That the State educational agency shall ensure that at least 15 percent of the subgranted funds are used to serve children from birth through age 5, 40 percent are used to serve students in kindergarten through grade 5, and 40 percent are used to serve students in middle and high school including an equitable distribution of funds between middle and high schools: *Provided further*, That eligible entities receiving subgrants from State educational agencies shall use such funds for services and activities that have the characteristics of effective literacy instruction through professional development, screening and assessment, targeted interventions for students reading below grade level and other research-based methods of improving classroom instruction and practice.

IMPACT AID

For carrying out programs of financial assistance to federally affected schools authorized by title VIII of the ESEA, $1,293,631,000, of which $1,155,724,000 shall be for basic support payments under section 8003(b), $48,505,000 shall be for payments for children with disabilities under section 8003(d), $17,474,000

shall be for construction under section 8007(b) and shall remain available through September 30, 2013, $67,074,000 shall be for Federal property payments under section 8002, and $4,854,000, to remain available until expended, shall be for facilities maintenance under section 8008: *Provided*, That for purposes of computing the amount of a payment for an eligible local educational agency under section 8003(a) for school year 2011–2012, children enrolled in a school of such agency that would otherwise be eligible for payment under section 8003(a)(1)(B) of such Act, but due to the deployment of both parents or legal guardians, or a parent or legal guardian having sole custody of such children, or due to the death of a military parent or legal guardian while on active duty (so long as such children reside on Federal property as described in section 8003(a)(1)(B)), are no longer eligible under such section, shall be considered as eligible students under such section, provided such students remain in average daily attendance at a school in the same local educational agency they attended prior to their change in eligibility status.

Eligibility.

SCHOOL IMPROVEMENT PROGRAMS

For carrying out school improvement activities authorized by parts A and B of title II, part B of title IV, parts A and B of title VI, and parts B and C of title VII of the ESEA; the McKinney-Vento Homeless Assistance Act; section 203 of the Educational Technical Assistance Act of 2002; the Compact of Free Association Amendments Act of 2003; and the Civil Rights Act of 1964, $4,550,018,000, of which $2,725,246,000 shall become available on July 1, 2012, and remain available through September 30, 2013, and of which $1,681,441,000 shall become available on October 1, 2012, and shall remain available through September 30, 2013, for academic year 2012–2013: *Provided*, That funds made available to carry out part B of title VII of the ESEA may be used for construction, renovation, and modernization of any elementary school, secondary school, or structure related to an elementary school or secondary school, run by the Department of Education of the State of Hawaii, that serves a predominantly Native Hawaiian student body: *Provided further*, That funds made available to carry out part C of title VII of the ESEA shall be awarded on a competitive basis, and also may be used for construction: *Provided further*, That $51,210,000 shall be available to carry out section 203 of the Educational Technical Assistance Act of 2002: *Provided further*, That $17,652,000 shall be available to carry out the Supplemental Education Grants program for the Federated States of Micronesia and the Republic of the Marshall Islands: *Provided further*, That up to 5 percent of these amounts may be reserved by the Federated States of Micronesia and the Republic of the Marshall Islands to administer the Supplemental Education Grants programs and to obtain technical assistance, oversight and consultancy services in the administration of these grants and to reimburse the United States Departments of Labor, Health and Human Services, and Education for such services: *Provided further*, That up to 1.5 percent of the funds for subpart 1 of part A of title II of the ESEA shall be reserved by the Secretary for competitive awards for teacher or principal training or professional enhancement activities to national not-for-profit organizations.

INDIAN EDUCATION

For expenses necessary to carry out, to the extent not otherwise provided, title VII, part A of the ESEA, $131,027,000.

INNOVATION AND IMPROVEMENT

For carrying out activities authorized by part G of title I, subpart 5 of part A and parts C and D of title II, parts B, C, and D of title V of the ESEA, and sections 14006 and 14007 of division A of the American Recovery and Reinvestment Act of 2009, as amended, $1,530,429,000: *Provided*, That the Secretary may use up to $550,000,000, which shall remain available for obligation through December 31, 2012, for section 14006 of division A of Public Law 111–5, as amended, to make awards (including on the basis of previously submitted applications) to States or to local educational agencies, or both, in accordance with the applicable requirements of that section, as determined by the Secretary, and may use up to 5 percent of such funds for technical assistance and evaluation of the activities carried out under that section: *Provided further,* That up to $149,700,000 shall be available for obligation through December 31, 2012 for section 14007 of division A of Public Law 111–5, and up to 5 percent of such funds may be used for technical assistance and the evaluation of activities carried out under such section: *Provided further,* That $300,000,000 of the funds for subpart 1 of part D of title V of the ESEA shall be for competitive grants to local educational agencies, including charter schools that are local educational agencies, or States, or partnerships of: (1) a local educational agency, a State, or both; and (2) at least one nonprofit organization to develop and implement performance-based compensation systems for teachers, principals, and other personnel in high-need schools: *Provided further*, That such performance-based compensation systems must consider gains in student academic achievement as well as classroom evaluations conducted multiple times during each school year among other factors and provide educators with incentives to take on additional responsibilities and leadership roles: *Provided further*, That recipients of such grants shall demonstrate that such performance-based compensation systems are developed with the input of teachers and school leaders in the schools and local educational agencies to be served by the grant: *Provided further*, That recipients of such grants may use such funds to develop or improve systems and tools (which may be developed and used for the entire local educational agency or only for schools served under the grant) that would enhance the quality and success of the compensation system, such as high-quality teacher evaluations and tools to measure growth in student achievement: *Provided further*, That applications for such grants shall include a plan to sustain financially the activities conducted and systems developed under the grant once the grant period has expired: *Provided further*, That up to 5 percent of such funds for competitive grants shall be available for technical assistance, training, peer review of applications, program outreach, and evaluation activities: *Provided further*, That of the funds available for part B of title V of the ESEA, the Secretary shall use not less than $23,000,000 to carry out activities under section 5205(b) and under subpart 2: *Provided further*, That of the funds available for subpart 1 of part B of title V of the ESEA, and notwithstanding section 5205(a), the

Grants.

Financial plan.

Secretary may reserve up to $55,000,000 to make multiple awards to non-profit charter management organizations and other entities that are not for-profit entities for the replication and expansion of successful charter school models and shall reserve up to $11,000,000 to carry out the activities described in section 5205(a), including improving quality and oversight of charter schools and providing technical assistance and grants to authorized public chartering agencies in order to increase the number of high-performing charter schools: *Provided further*, That each application submitted pursuant to section 5203(a) shall describe a plan to monitor and hold accountable authorized public chartering agencies through such activities as providing technical assistance or establishing a professional development program, which may include evaluation, planning, training, and systems development for staff of authorized public chartering agencies to improve the capacity of such agencies in the State to authorize, monitor, and hold accountable charter schools: *Provided further*, That each application submitted pursuant to section 5203(a) shall contain assurances that State law, regulations, or other policies require that: (1) each authorized charter school in the State operate under a legally binding charter or performance contract between itself and the school's authorized public chartering agency that describes the obligations and responsibilities of the school and the public chartering agency; conduct annual, timely, and independent audits of the school's financial statements that are filed with the school's authorized public chartering agency; and demonstrate improved student academic achievement; and (2) authorized public chartering agencies use increases in student academic achievement for all groups of students described in section 1111(b)(2)(C)(v) of the ESEA as the most important factor when determining to renew or revoke a school's charter.

Plans.

Charter schools. Audits.

SAFE SCHOOLS AND CITIZENSHIP EDUCATION

For carrying out activities authorized by part A of title IV and subparts 1, 2, and 10 of part D of title V of the ESEA, $256,237,000: *Provided*, That $65,000,000 shall be available for subpart 2 of part A of title IV: *Provided further,* That $60,000,000 shall be available for Promise Neighborhoods and shall be available through December 31, 2012.

ENGLISH LANGUAGE ACQUISITION

For carrying out part A of title III of the ESEA, $733,530,000, which shall become available on July 1, 2012, and shall remain available through September 30, 2013, except that 6.5 percent of such amount shall be available on October 1, 2011, and shall remain available through September 30, 2013, to carry out activities under section 3111(c)(1)(C): *Provided,* That the Secretary shall use estimates of the American Community Survey child counts for the most recent 3-year period available to calculate allocations under such part.

SPECIAL EDUCATION

For carrying out the Individuals with Disabilities Education Act ("IDEA") and the Special Olympics Sport and Empowerment Act of 2004, $12,647,066,000, of which $3,115,716,000 shall become available on July 1, 2012, and shall remain available through

September 30, 2013, and of which $9,283,383,000 shall become available on October 1, 2012, and shall remain available through September 30, 2013, for academic year 2012–2013: *Provided*, That the amount for section 611(b)(2) of the IDEA shall be equal to the lesser of the amount available for that activity during fiscal year 2011, increased by the amount of inflation as specified in section 619(d)(2)(B) of the IDEA, or the percent change in the funds appropriated under section 611(i) of the IDEA, but not less than the amount for that activity during fiscal year 2011: *Provided further*, That $2,000,000, to remain available for obligation through September 30, 2013, shall be for activities aimed at improving the outcomes of children receiving Supplemental Security Income (SSI) and their families, which may include competitive grants to States to improve the provision and coordination of services for SSI child recipients in order to achieve improved health status, including both physical and emotional health, and education and post-school outcomes, including completion of postsecondary education and employment, and to improve services and supports to the families or households of the SSI child recipient, such as education and job training for the parents: *Provided further*, That States may award subgrants for a portion of the funds to other public and private, non-profit entities.

REHABILITATION SERVICES AND DISABILITY RESEARCH

For carrying out, to the extent not otherwise provided, the Rehabilitation Act of 1973, the Assistive Technology Act of 1998, and the Helen Keller National Center Act, $3,512,019,000: *Provided*, That the Secretary may use amounts provided in this Act that remain available subsequent to the reallotment of funds to States pursuant to section 110(b) of the Rehabilitation Act for activities aimed at improving the outcomes of children receiving Supplemental Security Income (SSI) and their families, including competitive grants to States to improve the provision and coordination of services for SSI child recipients in order to achieve improved health status, education and post-school outcomes, including completion of postsecondary education and employment, and to improve services and supports to the family or households of the SSI child recipient, such as education and job training for the parents: *Provided further,* That States may award subgrants for a portion of the funds to other public and private, non-profit entities: *Provided further,* That any funds made available subsequent to reallotment for activities aimed at improving the outcomes of children receiving SSI and their families shall remain available until September 30, 2013: *Provided further,* That $2,000,000 shall be for competitive grants to support alternative financing programs that provide for the purchase of assistive technology devices, such as a low-interest loan fund; an interest buy-down program; a revolving loan fund; a loan guarantee; or insurance program: *Provided further,* That applicants shall provide an assurance that, and information describing the manner in which, the alternative financing program will expand and emphasize consumer choice and control: *Provided further,* That State agencies and community-based disability organizations that are directed by and operated for individuals with disabilities shall be eligible to compete.

SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES

AMERICAN PRINTING HOUSE FOR THE BLIND

For carrying out the Act of March 3, 1879, $24,551,000.

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

For the National Technical Institute for the Deaf under titles I and II of the Education of the Deaf Act of 1986, $65,546,000: *Provided,* That from the total amount available, the Institute may at its discretion use funds for the endowment program as authorized under section 207 of such Act.

GALLAUDET UNIVERSITY

For the Kendall Demonstration Elementary School, the Model Secondary School for the Deaf, and the partial support of Gallaudet University under titles I and II of the Education of the Deaf Act of 1986, $125,754,000, of which $7,990,000 shall be for construction and shall remain available until expended: *Provided*, That from the total amount available, the University may at its discretion use funds for the endowment program as authorized under section 207 of such Act.

CAREER, TECHNICAL, AND ADULT EDUCATION

For carrying out, to the extent not otherwise provided, the Carl D. Perkins Career and Technical Education Act of 2006 and the Adult Education and Family Literacy Act (referred to in this Act as the "AEFLA"), $1,738,946,000, of which $947,946,000 shall become available on July 1, 2012, and shall remain available through September 30, 2013, and of which $791,000,000 shall become available on October 1, 2012, and shall remain available through September 30, 2013: *Provided,* That of the amount provided for Adult Education State Grants, $74,850,000 shall be made available for integrated English literacy and civics education services to immigrants and other limited-English-proficient populations: *Provided further,* That of the amount reserved for integrated English literacy and civics education, notwithstanding section 211 of the AEFLA, 65 percent shall be allocated to States based on a State's absolute need as determined by calculating each State's share of a 10-year average of the United States Citizenship and Immigration Services data for immigrants admitted for legal permanent residence for the 10 most recent years, and 35 percent allocated to States that experienced growth as measured by the average of the 3 most recent years for which United States Citizenship and Immigration Services data for immigrants admitted for legal permanent residence are available, except that no State shall be allocated an amount less than $60,000: *Provided further,* That of the amounts made available for AEFLA, $11,323,000 shall be for national leadership activities under section 243.

STUDENT FINANCIAL ASSISTANCE

For carrying out subparts 1 and 3 of part A, and part C of title IV of the HEA, $24,538,521,000, which shall remain available through September 30, 2013.

The maximum Pell Grant for which a student shall be eligible during award year 2012–2013 shall be $4,860.

20 USC 1070a note.

STUDENT AID ADMINISTRATION

For Federal administrative expenses to carry out part D of title I, and subparts 1, 3, 4, 9, and 10 of part A, and parts B, C, D, and E of title IV of the HEA, $1,045,363,000, to remain available until September 30, 2013.

HIGHER EDUCATION

For carrying out, to the extent not otherwise provided, titles II, III, IV, V, VI, VII, and VIII of the HEA, the Mutual Educational and Cultural Exchange Act of 1961, and section 117 of the Carl D. Perkins Career and Technical Education Act of 2006, $1,873,196,000: *Provided,* That $608,000 shall be for data collection and evaluation activities for programs under the HEA, including such activities needed to comply with the Government Performance and Results Act of 1993: *Provided further*, That notwithstanding any other provision of law, funds made available in this Act to carry out title VI of the HEA and section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 may be used to support visits and study in foreign countries by individuals who are participating in advanced foreign language training and international studies in areas that are vital to United States national security and who plan to apply their language skills and knowledge of these countries in the fields of government, the professions, or international development: *Provided further*, That of the funds referred to in the preceding proviso up to 1 percent may be used for program evaluation, national outreach, and information dissemination activities: *Provided further,* That notwithstanding any other provision of law, a recipient of a multi-year award under section 316 of the HEA, as that section was in effect prior to the date of enactment of the Higher Education Opportunity Act (referred to in this Act as "HEOA"), that would have otherwise received a continuation award for fiscal year 2012 under that section, shall receive under section 316, as amended by the HEOA, not less than the amount that such recipient would have received under such a continuation award: *Provided further,* That the portion of the funds received under section 316 by a recipient described in the preceding proviso that is equal to the amount of such continuation award shall be used in accordance with the terms of such continuation award.

HOWARD UNIVERSITY

For partial support of Howard University, $234,507,000, of which not less than $3,600,000 shall be for a matching endowment grant pursuant to the Howard University Endowment Act and shall remain available until expended.

COLLEGE HOUSING AND ACADEMIC FACILITIES LOANS PROGRAM

For Federal administrative expenses to carry out activities related to existing facility loans pursuant to section 121 of the HEA, $460,000.

HISTORICALLY BLACK COLLEGE AND UNIVERSITY CAPITAL FINANCING PROGRAM ACCOUNT

For the cost of guaranteed loans, $20,188,000, as authorized pursuant to part D of title III of the HEA: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $367,255,000: *Provided further,* That these funds may be used to support loans to public and private Historically Black Colleges and Universities without regard to the limitations within section 344(a) of the HEA.

In addition, for administrative expenses to carry out the Historically Black College and University Capital Financing Program entered into pursuant to part D of title III of the HEA, $353,000.

INSTITUTE OF EDUCATION SCIENCES

For carrying out activities authorized by the Education Sciences Reform Act of 2002, the National Assessment of Educational Progress Authorization Act, section 208 of the Educational Technical Assistance Act of 2002, and section 664 of the Individuals with Disabilities Education Act, $594,788,000, which shall remain available through September 30, 2013: *Provided*, That funds available to carry out section 208 of the Educational Technical Assistance Act may be used to link Statewide elementary and secondary data systems with early childhood, postsecondary, and workforce data systems, or to further develop such systems: *Provided further*, That up to $11,000,000 of the funds available to carry out section 208 of the Educational Technical Assistance Act may be used for awards to public or private organizations or agencies to support activities to improve data coordination, quality, and use at the local, State, and national levels.

DEPARTMENTAL MANAGEMENT

PROGRAM ADMINISTRATION

For carrying out, to the extent not otherwise provided, the Department of Education Organization Act, including rental of conference rooms in the District of Columbia and hire of three passenger motor vehicles, $447,104,000.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, as authorized by section 203 of the Department of Education Organization Act, $102,818,000.

OFFICE OF THE INSPECTOR GENERAL

For expenses necessary for the Office of the Inspector General, as authorized by section 212 of the Department of Education Organization Act, $59,933,000.

GENERAL PROVISIONS

SEC. 301. No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.

Racial desegregation.

SEC. 302. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing, or clustering. The prohibition described in this section does not include the establishment of magnet schools.

SEC. 303. No funds appropriated in this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

Voluntary prayer. Meditation.

(TRANSFER OF FUNDS)

SEC. 304. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985) which are appropriated for the Department of Education in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: *Provided*, That the transfer authority granted by this section shall not be used to create any new program or to fund any project or activity for which no funds are provided in this Act: *Provided further*, That the Committees on Appropriations of the House of Representatives and the Senate are notified at least 15 days in advance of any transfer.

Notification. Deadline.

SEC. 305. The Outlying Areas may consolidate funds received under this Act, pursuant to 48 U.S.C. 1469a, under part A of title V of the ESEA.

SEC. 306. Section 105(f)(1)(B)(ix) of the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921d(f)(1)(B)(ix)) shall be applied by substituting "2012" for "2009".

Applicability. 42 USC 1921d note.

SEC. 307. (a) Notwithstanding any other provision of law, the Secretary is authorized to modify the terms and conditions of gulf hurricane disaster loans to affected institutions pursuant to section 2601 of Public Law 109–234 using the authority provided herein, on such terms as the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget jointly determine are in the best interests of both the United States and the borrowers, and necessary to mitigate the economic effects of Hurricanes Katrina and Rita. Any modification under this section shall not result in any net cost to the Federal Government, as jointly determined by the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget, beginning on the date on which the Secretary modifies a loan under this section.

(b) FEDERAL REGISTER NOTICE.—The Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget, shall jointly publish a notice in the Federal Register prior to any modification of loans under paragraph (a) that—

(1) establishes the terms and conditions governing the modifications authorized by paragraph (a);

(2) includes an outline of the methodology and factors that the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget, will jointly consider in evaluating the modification of the loans made under this title; and

(3) describes how the use of such methodology and consideration of such factors used to determine the modifications will ensure that loan modifications do not result in any net cost to the Federal Government.

(c) FEES.—An affected institution that receives a modification to its disaster loan pursuant to section 2601 of Public Law 109–234 shall pay a fee to the Secretary which shall be credited to the HBCU Hurricane Supplemental Loan Program. Such fees shall remain available without fiscal year limitation to pay the modification costs. The amount of the fee paid shall be equal to the modification cost as jointly determined by the Secretary, the Secretary of the Treasury, and the Director of the Office of Management and Budget, calculated in accordance with section 502 of the Federal Credit Reform Act of 1990, as amended, of such loan.

SEC. 308. Section 14006(c)(2) of division A of the American Recovery and Reinvestment Act of 2009 (as amended by section 1832(b) of division B of Public Law 112–10) is amended by inserting before the period, "except that such a State may use its grant funds to make subgrants to public or private agencies and organizations for activities consistent with the purposes of the grant".

123 Stat. 3272; *Ante*, p. 164.

SEC. 309. (a) FEDERAL PELL GRANT ELIGIBILITY.—

(1) MINIMUM LEVEL.—Section 401(b)(4) of the HEA (20 U.S.C. 1070a(b)(4)) is amended by striking ", except that" and all that follows and inserting a period.

(2) DURATION OF AWARD PERIOD.—Section 401(c)(5) of the HEA (20 U.S.C. 1070a(c)(5)) is amended—

(A) by striking "18" each place it appears and inserting "12"; and

(B) by striking the last sentence.

(b) ZERO EXPECTED FAMILY CONTRIBUTION.—Section 479(c) of the HEA (20 U.S.C. 1087ss(c)) is amended—

(1) in paragraph (1)(B), by striking "$30,000" and inserting "$23,000"; and

(2) in paragraph (2)(B), by striking "$30,000" and inserting "$23,000".

(c) STUDENTS WHO ARE NOT HIGH SCHOOL GRADUATES.—

(1) AMENDMENT.—Section 484(d) of the HEA (20 U.S.C. 1091(d)) is amended—

(A) in the matter preceding paragraph (1), by striking "meet one of the following standards:";

(B) by striking paragraphs (1), (2), and (4); and

(C) in paragraph (3), by striking "(3) The student has" and inserting "have"; and

Applicability. 20 USC 1091 note.

(2) TRANSITION.—The amendment made by paragraph (1) shall apply to students who first enroll in a program of study on or after July 1, 2012.

(3) CONFORMING CHANGE.—Section 101(a)(1) of the HEA (20 U.S.C. 1001(a)(1) is amended by striking "section 484(d)(3)" and inserting "section 484(d)".

(d) TEMPORARY ELIMINATION OF INTEREST SUBSIDY DURING STUDENT LOAN GRACE PERIOD.—

(1) Section 428(a)(3)(A)(i)(I) of the HEA (20 U.S.C. 1078(a)(3)(A)(i)(I)) is amended to read as follows:

"(I) which accrues prior to the date the student ceases to carry at least one-half the normal full-time academic workload (as determined by the institution), or".

(2) The amendment made by paragraph (1) shall apply to new Federal Direct Stafford Loans made on or after July 1, 2012 and before July 1, 2014.

Applicability. Time period. 20 USC 1078 note.

(e) REVISED SPECIAL ALLOWANCE CALCULATION.—

(1) REVISED CALCULATION RULE.—Section 438(b)(2)(I) of the HEA (20 U.S.C. 1087–1(b)(2)(I)) is amended by adding at the end the following:

"(vii) REVISED CALCULATION RULE TO REFLECT FINANCIAL MARKET CONDITIONS.—

"(I) CALCULATION BASED ON LIBOR.—For the calendar quarter beginning on April 1, 2012 and each subsequent calendar quarter, in computing the special allowance paid pursuant to this subsection with respect to loans described in subclause (II), clause (i)(I) of this subparagraph shall be applied by substituting 'of the 1-month London Inter Bank Offered Rate (LIBOR) for United States dollars in effect for each of the days in such quarter as compiled and released by the British Bankers Association' for 'of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period'.

Applicability. Time periods.

"(II) LOANS ELIGIBLE FOR LIBOR-BASED CALCULATION.—The special allowance paid pursuant to this subsection shall be calculated as described in subclause (I) with respect to special allowance payments for the 3-month period ending June 30, 2012, and each succeeding 3-month period, on loans for which the first disbursement is made on or after January 1, 2000, and before July 1, 2010, if, not later than April 1, 2012, the holder of the loan (or, if the holder acts as eligible lender trustee for the beneficial owner of the loan, the beneficial owner of the loan), affirmatively and permanently waives all contractual, statutory, or other legal rights to a special allowance paid pursuant to this subsection that is calculated using the formula in effect at the time the loans were first disbursed.

"(III) TERMS OF WAIVER.—

"(aa) IN GENERAL.—A waiver pursuant to subclause (II) shall be in a form (printed or electronic) prescribed by the Secretary, and shall be applicable to—

Applicability.

"(AA) all loans described in such subclause that the lender holds solely in its own right under any lender identification number associated with the holder (pursuant to section 487B);

"(BB) all loans described in such subclause for which the beneficial owner has the authority to make an election of a waiver under such subclause, regardless of the lender identification number associated with the loan or the lender that holds the loan as eligible lender trustee on behalf of such beneficial owner; and

"(CC) all future calculations of the special allowance on loans that, on the date of such waiver, are loans described in subitem (AA) or (BB), or that, after such date, become loans described in subitem (AA) or (BB).

"(bb) EXCEPTIONS.—Any waiver pursuant to subclause (II) that is elected for loans described in subitem (AA) or (BB) of item (aa) shall not apply to any loan described in such subitem for which the lender or beneficial owner of the loan demonstrates to the satisfaction of the Secretary that—

"(AA) in accordance with an agreement entered into before the date of enactment of this section by which such lender or owner is governed and that applies to such loans, such lender or owner is not legally permitted to make an election of such waiver with respect to such loans without the approval of one or more third parties with an interest in the loans, and that the lender or owner followed all available options under such agreement to obtain such approval, and was unable to do so; or

"(BB) such lender or beneficial owner presented the proposal of electing such a waiver applicable to such loans associated with an obligation rated by a nationally recognized statistical rating organization (as defined in section 3(a)(62) of the Securities Exchange Act of 1934), and such rating organization provided a written opinion that the agency would downgrade the rating applicable to such obligation if the lender or owner elected such a waiver.".

(2) CONFORMING AMENDMENTS.—Section 438(b)(2)(I) of the HEA (20 U.S.C. 1087–1(b)(2)(I)) is further amended—

(A) in clause (i)(II), by striking "such average bond equivalent rate" and inserting "the rate determined under subclause (I) (in accordance with clause (vii))"; and

(B) in clause (v)(III), by striking "(iv), and (vi)" and inserting "(iv), (vi), and (vii)".

(f) REAPPROPRIATION OF MANDATORY SAVINGS.—Section 401(b)(7)(A)(iv) of the HEA (20 U.S.C. 1070a(b)(7)(A)(iv)) is amended to read as follows:

"(iv) to carry out this section—

"(I) $13,500,000,000 for fiscal year 2011;

"(II) $13,795,000,000 for fiscal year 2012;

"(III) $7,587,000,000 for fiscal year 2013;

"(IV) $588,000,000 for fiscal year 2014;

"(V) $0 for fiscal year 2015;

"(VI) $0 for fiscal year 2016;

"(VII) $1,574,000,000 for fiscal year 2017;

"(VIII) $1,382,000,000 for fiscal year 2018;

"(IX) $1,409,000,000 for fiscal year 2019;

"(X) $1,430,000,000 for fiscal year 2020; and

"(XI) $1,145,000,000 for fiscal year 2021 and each succeeding fiscal year.".

(g) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall take effect on July 1, 2012. 20 USC 1001 note.

(h) INAPPLICABILITY OF NEGOTIATED RULEMAKING AND MASTER CALENDAR EXCEPTION.—Sections 482(c) and 492 of the HEA (20 U.S.C. 1089(c), 1098a) shall not apply to the amendments made by this section, or to any regulations promulgated under those amendments. 20 USC 1089 note.

This title may be cited as the "Department of Education Appropriations Act, 2012".

TITLE IV

RELATED AGENCIES

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

SALARIES AND EXPENSES

For expenses necessary for the Committee for Purchase From People Who Are Blind or Severely Disabled established by Public Law 92–28, $5,385,000.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

OPERATING EXPENSES

For necessary expenses for the Corporation for National and Community Service (referred to in this title as "CNCS") to carry out the Domestic Volunteer Service Act of 1973 (referred to in this title as "1973 Act") and the National and Community Service Act of 1990 (referred to in this title as "1990 Act"), $751,672,000, notwithstanding sections 198B(b)(3), 198S(g), 501(a)(4)(C), and 501(a)(4)(F) of the 1990 Act: *Provided*, That of the amounts provided under this heading: (1) up to 1 percent of program grant funds may be used to defray the costs of conducting grant application reviews, including the use of outside peer reviewers and electronic management of the grants cycle; (2) $44,900,000 shall be available for expenses authorized under section 501(a)(4)(E) of the 1990 Act; (3) $2,000,000 shall be available for expenses to carry out sections

112(e), 179A, and 198O and subtitle J of title I of the 1990 Act, notwithstanding section 501(a)(6) of the 1990 Act; (4) $13,466,000 shall be available to provide assistance to State commissions on national and community service, under section 126(a) of the 1990 Act and notwithstanding section 501(a)(5)(B) of the 1990 Act; (5) $31,942,000 shall be available to carry out subtitle E of the 1990 Act; and (6) $3,992,000 shall be available for expenses authorized under section 501(a)(4)(F) of the 1990 Act, which, notwithstanding the provisions of section 198P shall be awarded by CNCS on a competitive basis: *Provided further,* That, with respect to amounts provided under this heading for State Service Commissions, section 126 of the 1990 Act shall be applied by substituting "$200,000" for "$250,000" each place that it appears.

Applicability.

NATIONAL SERVICE TRUST

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the National Service Trust established under subtitle D of title I of the 1990 Act, $212,198,000, to remain available until expended: *Provided*, That CNCS may transfer additional funds from the amount provided within "Operating Expenses" allocated to grants under subtitle C of title I of the 1990 Act to the National Service Trust upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to the Committees on Appropriations of the House of Representatives and the Senate: *Provided further*, That amounts appropriated for or transferred to the National Service Trust may be invested under section 145(b) of the 1990 Act without regard to the requirement to apportion funds under 31 U.S.C. 1513(b).

Determination.
Notice.

SALARIES AND EXPENSES

For necessary expenses of administration as provided under section 501(a)(5) of the 1990 Act and under section 504(a) of the 1973 Act, including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, the employment of experts and consultants authorized under 5 U.S.C. 3109, and not to exceed $2,500 for official reception and representation expenses, $83,000,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, $4,000,000.

ADMINISTRATIVE PROVISIONS

SEC. 401. CNCS shall make any significant changes to program requirements, service delivery or policy only through public notice and comment rulemaking. For fiscal year 2012, during any grant selection process, an officer or employee of CNCS shall not knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of CNCS that is authorized by CNCS to receive such information.

Notice.
Public comment.

SEC. 402. AmeriCorps programs receiving grants under the National Service Trust program shall meet an overall minimum share requirement of 24 percent for the first 3 years that they receive AmeriCorps funding, and thereafter shall meet the overall minimum share requirement as provided in section 2521.60 of title 45, Code of Federal Regulations, without regard to the operating costs match requirement in section 121(e) or the member support Federal share limitations in section 140 of the 1990 Act, and subject to partial waiver consistent with section 2521.70 of title 45, Code of Federal Regulations.

Requirements. 42 USC 12571 note.

SEC. 403. Donations made to CNCS under section 196 of the 1990 Act for the purposes of financing programs and operations under titles I and II of the 1973 Act or subtitle B, C, D, or E of title I of the 1990 Act shall be used to supplement and not supplant current programs and operations.

SEC. 404. In addition to the requirements in section 146(a) of the 1990 Act, use of an educational award for the purpose described in section 148(a)(4) shall be limited to individuals who are veterans as defined under section 101 of the Act.

CORPORATION FOR PUBLIC BROADCASTING

For payment to the Corporation for Public Broadcasting (referred to in this Act as "CPB"), as authorized by the Communications Act of 1934, an amount which shall be available within limitations specified by that Act, for the fiscal year 2014, $445,000,000: *Provided*, That none of the funds made available to CPB by this Act shall be used to pay for receptions, parties, or similar forms of entertainment for Government officials or employees: *Provided further*, That none of the funds made available to CPB by this Act shall be available or used to aid or support any program or activity from which any person is excluded, or is denied benefits, or is discriminated against, on the basis of race, color, national origin, religion, or sex: *Provided further*, That none of the funds made available to CPB by this Act shall be used to apply any political test or qualification in selecting, appointing, promoting, or taking any other personnel action with respect to officers, agents, and employees of CPB: *Provided further*, That none of the funds made available to CPB by this Act shall be used to support the Television Future Fund or any similar purpose.

Discrimination.

Political test.

FEDERAL MEDIATION AND CONCILIATION SERVICE

SALARIES AND EXPENSES

For expenses necessary for the Federal Mediation and Conciliation Service ("Service") to carry out the functions vested in it by the Labor-Management Relations Act, 1947, including hire of passenger motor vehicles; for expenses necessary for the Labor-Management Cooperation Act of 1978; and for expenses necessary for the Service to carry out the functions vested in it by the Civil Service Reform Act, $46,250,000: *Provided,* That notwithstanding 31 U.S.C. 3302, fees charged, up to full-cost recovery, for special training activities and other conflict resolution services and technical assistance, including those provided to foreign governments and international organizations, and for arbitration services shall be credited to and merged with this account, and shall remain available until expended: *Provided further,* That fees for arbitration

Fees.

services shall be available only for education, training, and professional development of the agency workforce: *Provided further*, That the Director of the Service is authorized to accept and use on behalf of the United States gifts of services and real, personal, or other property in the aid of any projects or functions within the Director's jurisdiction.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Federal Mine Safety and Health Review Commission, $17,637,000.

INSTITUTE OF MUSEUM AND LIBRARY SERVICES

OFFICE OF MUSEUM AND LIBRARY SERVICES: GRANTS AND ADMINISTRATION

For carrying out the Museum and Library Services Act of 1996 and the National Museum of African American History and Culture Act, $232,393,000.

MEDICAID AND CHIP PAYMENT AND ACCESS COMMISSION

SALARIES AND EXPENSES

For expenses necessary to carry out section 1900 of the Social Security Act, $6,000,000.

MEDICARE PAYMENT ADVISORY COMMISSION

SALARIES AND EXPENSES

For expenses necessary to carry out section 1805 of the Social Security Act, $11,800,000, to be transferred to this appropriation from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund.

NATIONAL COUNCIL ON DISABILITY

SALARIES AND EXPENSES

For expenses necessary for the National Council on Disability as authorized by title IV of the Rehabilitation Act of 1973, $3,264,000.

NATIONAL LABOR RELATIONS BOARD

SALARIES AND EXPENSES

For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management Relations Act, 1947, and other laws, $278,833,000: *Provided*, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935, and as amended by the

Labor-Management Relations Act, 1947, and as defined in section 3(f) of the Act of June 25, 1938, and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 percent of the water stored or supplied thereby is used for farming purposes.

ADMINISTRATIVE PROVISION

SEC. 405. None of the funds provided by this Act or previous Acts making appropriations for the National Labor Relations Board may be used to issue any new administrative directive or regulation that would provide employees any means of voting through any electronic means in an election to determine a representative for the purposes of collective bargaining.

NATIONAL MEDIATION BOARD

SALARIES AND EXPENSES

For expenses necessary to carry out the provisions of the Railway Labor Act, including emergency boards appointed by the President, $13,436,000.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Occupational Safety and Health Review Commission, $11,689,000.

RAILROAD RETIREMENT BOARD

DUAL BENEFITS PAYMENTS ACCOUNT

For payment to the Dual Benefits Payments Account, authorized under section 15(d) of the Railroad Retirement Act of 1974, $51,000,000, which shall include amounts becoming available in fiscal year 2012 pursuant to section 224(c)(1)(B) of Public Law 98–76; and in addition, an amount, not to exceed 2 percent of the amount provided herein, shall be available proportional to the amount by which the product of recipients and the average benefit received exceeds the amount available for payment of vested dual benefits: *Provided*, That the total amount provided herein shall be credited in 12 approximately equal amounts on the first day of each month in the fiscal year.

FEDERAL PAYMENTS TO THE RAILROAD RETIREMENT ACCOUNTS

For payment to the accounts established in the Treasury for the payment of benefits under the Railroad Retirement Act for interest earned on unnegotiated checks, $150,000, to remain available through September 30, 2013, which shall be the maximum amount available for payment pursuant to section 417 of Public Law 98–76.

LIMITATION ON ADMINISTRATION

For necessary expenses for the Railroad Retirement Board ("Board") for administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, $108,855,000, to be derived in such amounts as determined by the Board from the railroad retirement accounts and from moneys credited to the railroad unemployment insurance administration fund.

LIMITATION ON THE OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General for audit, investigatory and review activities, as authorized by the Inspector General Act of 1978, not more than $8,170,000, to be derived from the railroad retirement accounts and railroad unemployment insurance account.

SOCIAL SECURITY ADMINISTRATION

PAYMENTS TO SOCIAL SECURITY TRUST FUNDS

For payment to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as provided under sections 201(m), 228(g), and 1131(b)(2) of the Social Security Act, $20,404,000.

SUPPLEMENTAL SECURITY INCOME PROGRAM

For carrying out titles XI and XVI of the Social Security Act, section 401 of Public Law 92–603, section 212 of Public Law 93–66, as amended, and section 405 of Public Law 95–216, including payment to the Social Security trust funds for administrative expenses incurred pursuant to section 201(g)(1) of the Social Security Act, $37,582,991,000, to remain available until expended: *Provided*, That any portion of the funds provided to a State in the current fiscal year and not obligated by the State during that year shall be returned to the Treasury: *Provided further,* That not more than $8,000,000 shall be available for research and demonstrations under sections 1110 and 1144 of the Social Security Act and remain available through September 30, 2013.

For making, after June 15 of the current fiscal year, benefit payments to individuals under title XVI of the Social Security Act, for unanticipated costs incurred for the current fiscal year, such sums as may be necessary.

For making benefit payments under title XVI of the Social Security Act for the first quarter of fiscal year 2013, $18,200,000,000, to remain available until expended.

LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, including the hire of two passenger motor vehicles, and not to exceed $20,000 for official reception and representation expenses, not more than $10,555,494,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to in such section: *Provided*, That not less than $2,150,000 shall be for the Social Security Advisory Board: *Provided further*, That unobligated balances of funds provided under this paragraph at

the end of fiscal year 2012 not needed for fiscal year 2012 shall remain available until expended to invest in the Social Security Administration information technology and telecommunications hardware and software infrastructure, including related equipment and non-payroll administrative expenses associated solely with this information technology and telecommunications infrastructure: *Provided further,* That the Commissioner of Social Security shall notify the Committees on Appropriations of the House of Representatives and the Senate prior to making unobligated balances available under the authority in the previous proviso: *Provided further*, That reimbursement to the trust funds under this heading for expenditures for official time for employees of the Social Security Administration pursuant to 5 U.S.C. 7131, and for facilities or support services for labor organizations pursuant to policies, regulations, or procedures referred to in section 7135(b) of such title shall be made by the Secretary of the Treasury, with interest, from amounts in the general fund not otherwise appropriated, as soon as possible after such expenditures are made.

Notification.

In addition, for continuing disability reviews under titles II and XVI of the Social Security Act and for the cost associated with conducting redeterminations of eligibility under title XVI of the Social Security Act, $274,000,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: *Provided,* That the Commissioner shall provide to the Congress (at the conclusion of the fiscal year) a report on the obligation and expenditure of these funds, similar to the reports that were required by section 103(d)(2) of Public Law 104–121 for fiscal years 1996 through 2002.

Deadline.
Reports.

In addition, $161,000,000 to be derived from administration fees in excess of $5.00 per supplementary payment collected pursuant to section 1616(d) of the Social Security Act or section 212(b)(3) of Public Law 93–66, which shall remain available until expended. To the extent that the amounts collected pursuant to such sections in fiscal year 2012 exceed $161,000,000, the amounts shall be available in fiscal year 2013 only to the extent provided in advance in appropriations Acts.

In addition, up to $1,000,000 to be derived from fees collected pursuant to section 303(c) of the Social Security Protection Act, which shall remain available until expended.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $28,942,000, together with not to exceed $73,535,000, to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

In addition, an amount not to exceed 3 percent of the total provided in this appropriation may be transferred from the "Limitation on Administrative Expenses", Social Security Administration, to be merged with this account, to be available for the time and purposes for which this account is available: *Provided,* That notice

Notice.
Deadline.

of such transfers shall be transmitted promptly to the Committees on Appropriations of the House of Representatives and the Senate at least 15 days in advance of any transfer.

TITLE V

GENERAL PROVISIONS

(TRANSFER OF FUNDS)

SEC. 501. The Secretaries of Labor, Health and Human Services, and Education are authorized to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations provided in this Act. Such transferred balances shall be used for the same purpose, and for the same periods of time, for which they were originally appropriated.

SEC. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Lobbying.

SEC. 503. (a) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

(b) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111–148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

Gun control.

(c) The prohibitions in subsections (a) and (b) shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

SEC. 504. The Secretaries of Labor and Education are authorized to make available not to exceed $28,000 and $20,000, respectively, from funds available for salaries and expenses under titles I and III, respectively, for official reception and representation expenses; the Director of the Federal Mediation and Conciliation Service is authorized to make available for official reception and

representation expenses not to exceed $5,000 from the funds available for "Federal Mediation and Conciliation Service, Salaries and Expenses"; and the Chairman of the National Mediation Board is authorized to make available for official reception and representation expenses not to exceed $5,000 from funds available for "National Mediation Board, Salaries and Expenses".

SEC. 505. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds included in this Act, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state—

(1) the percentage of the total costs of the program or project which will be financed with Federal money;

(2) the dollar amount of Federal funds for the project or program; and

(3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Abortion.

SEC. 506. (a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.

(b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.

Definition.

(c) The term "health benefits coverage" means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

Abortion.

SEC. 507. (a) The limitations established in the preceding section shall not apply to an abortion—

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).

(d)(1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

Definition.

(2) In this subsection, the term "health care entity" includes an individual physician or other health care professional, a hospital,

a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

SEC. 508. (a) None of the funds made available in this Act may be used for—

Human embryos.

(1) the creation of a human embryo or embryos for research purposes; or

(2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

Definition.

(b) For purposes of this section, the term "human embryo or embryos" includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

Drugs and drug abuse.

SEC. 509. (a) None of the funds made available in this Act may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive-congressional communications.

(b) The limitation in subsection (a) shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

Health and health care.

SEC. 510. None of the funds made available in this Act may be used to promulgate or adopt any final standard under section 1173(b) of the Social Security Act providing for, or providing for the assignment of, a unique health identifier for an individual (except in an individual's capacity as an employer or a health care provider), until legislation is enacted specifically approving the standard.

Contracts. Reports.

SEC. 511. None of the funds made available in this Act may be obligated or expended to enter into or renew a contract with an entity if—

(1) such entity is otherwise a contractor with the United States and is subject to the requirement in 38 U.S.C. 4212(d) regarding submission of an annual report to the Secretary of Labor concerning employment of certain veterans; and

(2) such entity has not submitted a report as required by that section for the most recent year for which such requirement was applicable to such entity.

SEC. 512. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

Certifications.

SEC. 513. None of the funds made available by this Act to carry out the Library Services and Technology Act may be made available to any library covered by paragraph (1) of section 224(f) of such Act, as amended by the Children's Internet Protection Act, unless such library has made the certifications required by paragraph (4) of such section.

Certifications.

SEC. 514. None of the funds made available by this Act to carry out part D of title II of the Elementary and Secondary Education Act of 1965 may be made available to any elementary or secondary school covered by paragraph (1) of section 2441(a) of such Act, as amended by the Children's Internet Protection Act and the No Child Left Behind Act, unless the local educational agency with responsibility for such covered school has made the certifications required by paragraph (2) of such section.

Deadlines. Notifications.

SEC. 515. (a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2012, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that—

(1) creates new programs;

(2) eliminates a program, project, or activity;

(3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;

(4) relocates an office or employees;

(5) reorganizes or renames offices;

(6) reorganizes programs or activities; or

(7) contracts out or privatizes any functions or activities presently performed by Federal employees;

unless the Committees on Appropriations of the House of Representatives and the Senate are notified 15 days in advance of such reprogramming or of an announcement of intent relating to such reprogramming, whichever occurs earlier.

(b) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2012, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds in excess of $500,000 or 10 percent, whichever is less, that—

(1) augments existing programs, projects (including construction projects), or activities;

(2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or

(3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress;

unless the Committees on Appropriations of the House of Representatives and the Senate are notified 15 days in advance of such reprogramming or of an announcement of intent relating to such reprogramming, whichever occurs earlier.

Political disclosures.

SEC. 516. (a) None of the funds made available in this Act may be used to request that a candidate for appointment to a Federal scientific advisory committee disclose the political affiliation or voting history of the candidate or the position that the candidate holds with respect to political issues not directly related to and necessary for the work of the committee involved.

(b) None of the funds made available in this Act may be used to disseminate information that is deliberately false or misleading.

Deadline.
Operating plan.

SEC. 517. Within 45 days of enactment of this Act, each department and related agency funded through this Act shall submit an operating plan that details at the program, project, and activity level any funding allocations for fiscal year 2012 that are different than those specified in this Act, the accompanying detailed table in the statement of the managers on the conference report accompanying this Act, or the fiscal year 2012 budget request.

Reports.

SEC. 518. The Secretaries of Labor, Health and Human Services, and Education shall each prepare and submit to the Committees on Appropriations of the House of Representatives and the Senate a report on the number and amount of contracts, grants, and cooperative agreements exceeding $500,000 in value and awarded by the Department on a non-competitive basis during each quarter of fiscal year 2012, but not to include grants awarded on a formula basis or directed by law. Such report shall include the name of the contractor or grantee, the amount of funding, the governmental purpose, including a justification for issuing the award on a non-competitive basis. Such report shall be transmitted to the Committees within 30 days after the end of the quarter for which the report is submitted.

Deadline.

Contracts.
Grants.
Certification.

SEC. 519. None of the funds appropriated or otherwise made available by this Act may be used to enter into a contract in an amount greater than $5,000,000 or to award a grant in excess of such amount unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that, to the best of its knowledge and belief, the contractor or grantee has filed all Federal tax returns required during the 3 years preceding the certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

Claims.

SEC. 520. None of the funds appropriated in this Act shall be expended or obligated by the Commissioner of Social Security, for purposes of administering Social Security benefit payments under title II of the Social Security Act, to process any claim for credit for a quarter of coverage based on work performed under a social security account number that is not the claimant's number and the performance of such work under such number has formed the basis for a conviction of the claimant of a violation of section 208(a)(6) or (7) of the Social Security Act.

Mexico.

SEC. 521. None of the funds appropriated by this Act may be used by the Commissioner of Social Security or the Social Security Administration to pay the compensation of employees of the Social Security Administration to administer Social Security benefit payments, under any agreement between the United States and Mexico establishing totalization arrangements between the social security system established by title II of the Social Security Act and the social security system of Mexico, which would not otherwise be payable but for such agreement.

(RESCISSION)

SEC. 522. Of the funds made available for performance bonus payments under section 2105(a)(3)(E) of the Social Security Act, $6,367,964,000 are hereby rescinded.

SEC. 523. Notwithstanding any other provision of this Act, no funds appropriated in this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Needle distribution.

(RESCISSION)

SEC. 524. Of the funds made available under section 1322 of Public Law 111–148, $400,000,000 are rescinded.

(RESCISSION)

SEC. 525. Of the funds made available for fiscal year 2012 under section 3403 of Public Law 111–148, $10,000,000 are rescinded.

SEC. 526. Not later than 30 days after the end of each calendar quarter, beginning with the first quarter of fiscal year 2013, the Departments of Labor, Health and Human Services and Education and the Social Security Administration shall provide the Committees on Appropriations of the House of Representatives and Senate a quarterly report on the status of balances of appropriations: *Provided,* That for balances that are unobligated and uncommitted, committed, and obligated but unexpended, the quarterly reports shall separately identify the amounts attributable to each source year of appropriation (beginning with fiscal year 2012, or, to the extent feasible, earlier fiscal years) from which balances were derived.

Deadlines. Reports. 31 USC 1502 note.

SEC. 527. (a) ACROSS-THE-BOARD RESCISSIONS.—There is hereby rescinded an amount equal to 0.189 percent of—

(1) the budget authority provided for fiscal year 2012 for any discretionary account of this Act; and

(2) the budget authority provided in any advance appropriation for fiscal year 2012 for any discretionary account in prior Acts making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies.

(b) PROPORTIONATE APPLICATION.—Any rescission made by subsection (a) shall be applied proportionately—

(1) to each discretionary account and each item of budget authority described in such subsection; and

(2) within each such account and item, to each program, project, and activity (with programs, projects, and activities as delineated in this Act or the accompanying statement of managers).

(c) EXCEPTION.—This section shall not apply to discretionary authority appropriated for the Federal Pell Grants program under the heading "Department of Education, Student Financial Assistance".

(d) OMB REPORT.—Within 30 days after the date of the enactment of this section, the Director of the Office of Management and Budget shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report specifying

the account and amount of each rescission made pursuant to this section.

This division may be cited as the "Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2012".

Legislative Branch Appropriations Act, 2012.
2 USC 60a note.

DIVISION G—LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2012

TITLE I

LEGISLATIVE BRANCH

SENATE

EXPENSE ALLOWANCES

For expense allowances of the Vice President, $18,760; the President Pro Tempore of the Senate, $37,520; Majority Leader of the Senate, $39,920; Minority Leader of the Senate, $39,920; Majority Whip of the Senate, $9,980; Minority Whip of the Senate, $9,980; Chairmen of the Majority and Minority Conference Committees, $4,690 for each Chairman; and Chairmen of the Majority and Minority Policy Committees, $4,690 for each Chairman; in all, $174,840.

REPRESENTATION ALLOWANCES FOR THE MAJORITY AND MINORITY LEADERS

For representation allowances of the Majority and Minority Leaders of the Senate, $14,070 for each such Leader; in all, $28,140.

SALARIES, OFFICERS AND EMPLOYEES

For compensation of officers, employees, and others as authorized by law, including agency contributions, $175,763,738, which shall be paid from this appropriation without regard to the following limitations:

OFFICE OF THE VICE PRESIDENT

For the Office of the Vice President, $2,361,248.

OFFICE OF THE PRESIDENT PRO TEMPORE

For the Office of the President Pro Tempore, $705,466.

OFFICES OF THE MAJORITY AND MINORITY LEADERS

For Offices of the Majority and Minority Leaders, $5,201,576.

OFFICES OF THE MAJORITY AND MINORITY WHIPS

For Offices of the Majority and Minority Whips, $3,281,424.

COMMITTEE ON APPROPRIATIONS

For salaries of the Committee on Appropriations, $14,863,573.

CONFERENCE COMMITTEES

For the Conference of the Majority and the Conference of the Minority, at rates of compensation to be fixed by the Chairman of each such committee, $1,619,195 for each such committee; in all, $3,238,390.

OFFICES OF THE SECRETARIES OF THE CONFERENCE OF THE MAJORITY AND THE CONFERENCE OF THE MINORITY

For Offices of the Secretaries of the Conference of the Majority and the Conference of the Minority, $797,402.

POLICY COMMITTEES

For salaries of the Majority Policy Committee and the Minority Policy Committee, $1,653,905 for each such committee; in all, $3,307,810.

OFFICE OF THE CHAPLAIN

For Office of the Chaplain, $405,886.

OFFICE OF THE SECRETARY

For Office of the Secretary, $24,194,115.

OFFICE OF THE SERGEANT AT ARMS AND DOORKEEPER

For Office of the Sergeant at Arms and Doorkeeper, $73,000,000.

OFFICES OF THE SECRETARIES FOR THE MAJORITY AND MINORITY

For Offices of the Secretary for the Majority and the Secretary for the Minority, $1,722,388.

AGENCY CONTRIBUTIONS AND RELATED EXPENSES

For agency contributions for employee benefits, as authorized by law, and related expenses, $42,684,460.

OFFICE OF THE LEGISLATIVE COUNSEL OF THE SENATE

For salaries and expenses of the Office of the Legislative Counsel of the Senate, $6,995,300.

OFFICE OF SENATE LEGAL COUNSEL

For salaries and expenses of the Office of Senate Legal Counsel, $1,449,000.

EXPENSE ALLOWANCES OF THE SECRETARY OF THE SENATE, SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE, AND SECRETARIES FOR THE MAJORITY AND MINORITY OF THE SENATE

For expense allowances of the Secretary of the Senate, $7,110; Sergeant at Arms and Doorkeeper of the Senate, $7,110; Secretary for the Majority of the Senate, $7,110; Secretary for the Minority of the Senate, $7,110; in all, $28,440.

CONTINGENT EXPENSES OF THE SENATE

INQUIRIES AND INVESTIGATIONS

For expenses of inquiries and investigations ordered by the Senate, or conducted under paragraph 1 of rule XXVI of the Standing Rules of the Senate, section 112 of the Supplemental Appropriations and Rescission Act, 1980 (Public Law 96–304), and Senate Resolution 281, 96th Congress, agreed to March 11, 1980, $131,305,860, of which $26,650,000 shall be available until September 30, 2014.

EXPENSES OF THE UNITED STATES SENATE CAUCUS ON INTERNATIONAL NARCOTICS CONTROL

For expenses of the United States Senate Caucus on International Narcotics Control, $487,822.

SECRETARY OF THE SENATE

For expenses of the Office of the Secretary of the Senate $5,816,344 of which $4,200,000 shall remain available until September 30, 2016.

SERGEANT AT ARMS AND DOORKEEPER OF THE SENATE

For expenses of the Office of the Sergeant at Arms and Doorkeeper of the Senate, $130,722,080, which shall remain available until September 30, 2016.

MISCELLANEOUS ITEMS

For miscellaneous items, $19,360,000, which shall remain available until September 30, 2014.

SENATORS' OFFICIAL PERSONNEL AND OFFICE EXPENSE ACCOUNT

For Senators' Official Personnel and Office Expense Account, $396,180,000 of which $18,921,206 shall remain available until September 30, 2014.

OFFICIAL MAIL COSTS

For expenses necessary for official mail costs of the Senate, $281,436.

ADMINISTRATIVE PROVISION

PAYMENT OF CERTAIN EXPENSES

2 USC 68f.

SEC. 1. (a) IN GENERAL.—Subject to the approval of the Committee on Appropriations of the Senate, if in any fiscal year amounts in any appropriations account under the heading "SENATE" under the heading "LEGISLATIVE BRANCH" are available for more than 1 fiscal year, the Secretary of the Senate may establish procedures for the payment of expenses with respect to that account from any amounts available for that fiscal year.

(b) EFFECTIVE DATE.—This section shall apply to fiscal year 2012 and each fiscal year thereafter.

HOUSE OF REPRESENTATIVES

SALARIES AND EXPENSES

For salaries and expenses of the House of Representatives, $1,225,680,000, as follows:

HOUSE LEADERSHIP OFFICES

For salaries and expenses, as authorized by law, $23,275,773, including: Office of the Speaker, $6,942,770, including $25,000 for official expenses of the Speaker; Office of the Majority Floor Leader, $2,277,595, including $10,000 for official expenses of the Majority Leader; Office of the Minority Floor Leader, $7,432,812, including $10,000 for official expenses of the Minority Leader; Office of the Majority Whip, including the Chief Deputy Majority Whip, $1,971,050, including $5,000 for official expenses of the Majority Whip; Office of the Minority Whip, including the Chief Deputy Minority Whip, $1,524,951, including $5,000 for official expenses of the Minority Whip; Republican Conference, $1,572,788; Democratic Caucus, $1,553,807. In addition to the amounts made available above, for salaries and expenses under this heading, to be available during the period beginning September 30, 2012, and ending December 31, 2013; $5,818,948, including: Office of the Speaker, $1,735,694, including $6,250 for official expenses of the Speaker; Office of the Majority Floor Leader, $569,399, including $2,500 for official expenses of the Majority Leader; Office of the Minority Floor Leader, $1,858,205, including $2,500 for official expenses of the Minority Leader; Office of the Majority Whip, including the Chief Deputy Majority Whip, $492,763, including $1,250 for official expenses of the Majority Whip; Office of the Minority Whip, including the Chief Deputy Minority Whip, $381,238, including $1,250 for official expenses of the Minority Whip; Republican Conference, $393,197; Democratic Caucus, $388,452.

MEMBERS' REPRESENTATIONAL ALLOWANCES

INCLUDING MEMBERS' CLERK HIRE, OFFICIAL EXPENSES OF MEMBERS, AND OFFICIAL MAIL

For Members' representational allowances, including Members' clerk hire, official expenses, and official mail, $573,939,282.

COMMITTEE EMPLOYEES

STANDING COMMITTEES, SPECIAL AND SELECT

For salaries and expenses of standing committees, special and select, authorized by House resolutions, $125,964,870: *Provided*, That such amount shall remain available for such salaries and expenses until December 31, 2012.

COMMITTEE ON APPROPRIATIONS

For salaries and expenses of the Committee on Appropriations, $26,665,785, including studies and examinations of executive agencies and temporary personal services for such committee, to be

expended in accordance with section 202(b) of the Legislative Reorganization Act of 1946 and to be available for reimbursement to agencies for services performed: *Provided*, That such amount shall remain available for such salaries and expenses until December 31, 2012.

SALARIES, OFFICERS AND EMPLOYEES

For salaries and expenses of officers and employees, as authorized by law, $177,628,400, including: for salaries and expenses of the Office of the Clerk, including not more than $23,000, of which not more than $20,000 is for the Family Room, for official representation and reception expenses, $26,114,400, of which $2,000,000 shall remain available until expended; for salaries and expenses of the Office of the Sergeant at Arms, including the position of Superintendent of Garages and the Office of Emergency Management, and including not more than $3,000 for official representation and reception expenses, $12,585,000 of which $4,445,000 shall remain available until expended; for salaries and expenses of the Office of the Chief Administrative Officer including not more than $3,000 for official representation and reception expenses, $116,782,000, of which $3,937,000 shall remain available until expended; for salaries and expenses of the Office of the Inspector General, $5,045,000; for salaries and expenses of the Office of General Counsel, $1,415,000; for the Office of the Chaplain, $179,000; for salaries and expenses of the Office of the Parliamentarian, including the Parliamentarian, $2,000 for preparing the Digest of Rules, and not more than $1,000 for official representation and reception expenses, $2,060,000; for salaries and expenses of the Office of the Law Revision Counsel of the House, $3,258,000; for salaries and expenses of the Office of the Legislative Counsel of the House, $8,814,000; for salaries and expenses of the Office of Interparliamentary Affairs, $859,000; for other authorized employees, $347,000; and for salaries and expenses of the Historian, $170,000.

ALLOWANCES AND EXPENSES

For allowances and expenses as authorized by House resolution or law, $292,386,942, including: supplies, materials, administrative costs and Federal tort claims, $3,696,118; official mail for committees, leadership offices, and administrative offices of the House, $201,000; Government contributions for health, retirement, Social Security, and other applicable employee benefits, $264,848,219; Business Continuity and Disaster Recovery, $17,112,072, of which $5,000,000 shall remain available until expended; transition activities for new members and staff, $1,721,533; Wounded Warrior Program $2,500,000, to remain available until expended; Office of Congressional Ethics, $1,548,000; and miscellaneous items including purchase, exchange, maintenance, repair and operation of House motor vehicles, interparliamentary receptions, and gratuities to heirs of deceased employees of the House, $760,000.

ADMINISTRATIVE PROVISIONS

SEC. 101. (a) REQUIRING AMOUNTS REMAINING IN MEMBERS' REPRESENTATIONAL ALLOWANCES TO BE USED FOR DEFICIT REDUCTION OR TO REDUCE THE FEDERAL DEBT.—Notwithstanding any

other provision of law, any amounts appropriated under this Act for "HOUSE OF REPRESENTATIVES—SALARIES AND EXPENSES—MEMBERS' REPRESENTATIONAL ALLOWANCES" shall be available only for fiscal year 2012. Any amount remaining after all payments are made under such allowances for fiscal year 2012 shall be deposited in the Treasury and used for deficit reduction (or, if there is no Federal budget deficit after all such payments have been made, for reducing the Federal debt, in such manner as the Secretary of the Treasury considers appropriate).

(b) REGULATIONS.—The Committee on House Administration of the House of Representatives shall have authority to prescribe regulations to carry out this section.

(c) DEFINITION.—As used in this section, the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress.

REPUBLICAN POLICY COMMITTEE

SEC. 102. (a) Section 109(a) of the Legislative Branch Appropriations Act, 2005 (2 U.S.C. 74a–13(a)) is amended by striking "the chair of the Republican Conference" and inserting the following: "the Speaker of the House of Representatives (or, if the Speaker is not a member of the Republican Party, the Minority Leader of the House of Representatives)".

(b) Section 109(b) of such Act (2 U.S.C. 74a–13(b)) is amended by striking the period at the end and inserting the following: ", and which shall be obligated and expended as directed by the Speaker (or, if the Speaker is not a member of the Republican party, the Minority Leader).".

(c) The amendment made by subsection (a) shall apply with respect to fiscal year 2012 and each succeeding fiscal year.

Applicability. 2 USC 74a–13 note.

AUTHORITY OF SPEAKER AND MINORITY LEADER TO ALLOCATE FUNDS AMONG CERTAIN HOUSE LEADERSHIP OFFICES

SEC. 103. (a) AUTHORITY OF SPEAKER.— 2 USC 74a–11a.

(1) AUTHORITY DESCRIBED.—Notwithstanding any other provision of law (including any provision of law that sets forth an allowance for official expenses), the amount appropriated or otherwise made available during a Congress for the salaries and expenses of any office or authority described in paragraph (2) shall be the amount allocated for such office or authority by the Speaker of the House of Representatives from the aggregate amount appropriated or otherwise made available for all such offices and authorities.

(2) OFFICES AND AUTHORITIES DESCRIBED.—The offices and authorities described in this paragraph are as follows:

(A) The Office of the Speaker.

(B) The Speaker's Office for Legislative Floor Activities.

(C) The Republican Steering Committee (if the Speaker is a member of the Republican party) or the Democratic Steering and Policy Committee (if the Speaker is a member of the Democratic party).

(D) The Republican Policy Committee (if the Speaker is a member of the Republican party).

(E) Training and program development—majority (as described under the heading "House leadership offices" in

the most recent bill making appropriations for the legislative branch that was enacted prior to the date of the enactment of this Act).

(F) Cloakroom personnel—majority (as so described).

(b) AUTHORITY OF MINORITY LEADER.—

(1) AUTHORITY DESCRIBED.—Notwithstanding any other provision of law (including any provision of law that sets forth an allowance for official expenses), the amount appropriated or otherwise made available during a Congress for the salaries and expenses of any office or authority described in paragraph (2) shall be the amount allocated for such office or authority by the Minority Leader of the House of Representatives from the aggregate amount appropriated or otherwise made available for all such offices and authorities.

(2) OFFICES AND AUTHORITIES DESCRIBED.—The offices and authorities described in this paragraph are as follows:

(A) The Office of the Minority Leader.

(B) The Democratic Steering and Policy Committee (if the Minority Leader is a member of the Democratic party) or the Republican Steering Committee (if the Minority Leader is a member of the Republican party).

(C) The Republican Policy Committee (if the Minority Leader is a member of the Republican party).

(D) Training and program development—minority (as described under the heading "House leadership offices" in the most recent bill making appropriations for the legislative branch that was enacted prior to the date of the enactment of this Act).

(E) Cloakroom personnel—minority (as so described).

(F) Nine minority employees (as so described).

(c) EFFECTIVE DATE.—This section shall apply with respect to any months occurring during the One Hundred Twelfth Congress that begin after the date of the enactment of this Act, and to any succeeding Congress.

REPUBLICAN CONFERENCE AND THE DEMOCRATIC STEERING AND POLICY COMMITTEE

SEC. 104. (a) Section 103(b) of the Legislative Branch Appropriations Act, 1999 (2 U.S.C. 74a–8(b)) is amended—

(1) in the matter preceding paragraph (1), by striking "Subject to the allocation described in subsection (c), funds" and inserting "Funds";

(2) in paragraph (1), by striking "direct;" and inserting the following: "direct (or, if the Speaker is not a member of the Republican Party, under such terms and conditions as the Minority Leader of the House of Representatives may direct);"; and

(3) in paragraph (2), by striking "direct." and inserting the following: "direct (or, if the Speaker is a member of the Democratic Party, under such terms and conditions as the Speaker may direct).".

(b) Section 103 of such Act (2 U.S.C. 74a–8(c)) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(c) The amendments made by this section shall take effect as if included in the enactment of the Legislative Branch Appropriations Act, 1999.

Effective date.
2 USC 74a–8 note.

TRANSFER OF HOUSE EMERGENCY PLANNING, PREPAREDNESS, AND OPERATIONS FUNCTIONS TO SERGEANT AT ARMS

SEC. 105. Effective February 1, 2010—

Effective date.
Repeal.

(1) section 905 of the Emergency Supplemental Act, 2002 (2 U.S.C. 130i) is repealed; and

(2) the functions and responsibilities of the Office of Emergency Planning, Preparedness and Operations under section 905 of such Act are transferred and assigned to the Sergeant at Arms of the House of Representatives.

JOINT ITEMS

For Joint Committees, as follows:

JOINT ECONOMIC COMMITTEE

For salaries and expenses of the Joint Economic Committee, $4,203,000, to be disbursed by the Secretary of the Senate.

JOINT CONGRESSIONAL COMMITTEE ON INAUGURAL CEREMONIES OF 2013

For salaries and expenses associated with conducting the inaugural ceremonies of the President and Vice President of the United States, January 20, 2013, in accordance with such program as may be adopted by the joint congressional committee authorized to conduct the inaugural ceremonies of 2013, $1,237,000 to be disbursed by the Secretary of the Senate and to remain available until September 30, 2013. Funds made available under this heading shall be available for payment, on a direct or reimbursable basis, whether incurred on, before, or after, October 1, 2012: *Provided,* That the compensation of any employee of the Committee on Rules and Administration of the Senate who has been designated to perform service with respect to the inaugural ceremonies of 2013 shall continue to be paid by the Committee on Rules and Administration, but the account from which such staff member is paid may be reimbursed for the services of the staff member (including agency contributions when appropriate) out of funds made available under this heading.

JOINT COMMITTEE ON TAXATION

For salaries and expenses of the Joint Committee on Taxation, $10,004,000, to be disbursed by the Chief Administrative Officer of the House of Representatives.

For other joint items, as follows:

OFFICE OF THE ATTENDING PHYSICIAN

For medical supplies, equipment, and contingent expenses of the emergency rooms, and for the Attending Physician and his assistants, including: (1) an allowance of $2,175 per month to the Attending Physician; (2) an allowance of $1,300 per month to the Senior Medical Officer; (3) an allowance of $725 per month each

to three medical officers while on duty in the Office of the Attending Physician; (4) an allowance of $725 per month to 2 assistants and $580 per month each not to exceed 11 assistants on the basis heretofore provided for such assistants; and (5) $2,427,000 for reimbursement to the Department of the Navy for expenses incurred for staff and equipment assigned to the Office of the Attending Physician, which shall be advanced and credited to the applicable appropriation or appropriations from which such salaries, allowances, and other expenses are payable and shall be available for all the purposes thereof, $3,400,000, to be disbursed by the Chief Administrative Officer of the House of Representatives.

OFFICE OF CONGRESSIONAL ACCESSIBILITY SERVICES

SALARIES AND EXPENSES

For salaries and expenses of the Office of Congressional Accessibility Services, $1,363,000, to be disbursed by the Secretary of the Senate.

ADMINISTRATIVE PROVISION

SEC. 1001. (a) IN GENERAL.—Section 102(a) of the Legislative Branch Appropriations Act, 2002 (2 U.S.C. 60c–5(a)) is amended—

(1) in paragraph (1), by inserting ", except as provided under subsection (b)(3)" after "means an individual"; and

(2) by striking paragraphs (2) and (3) and inserting the following:

"(2) EMPLOYEE OF THE SENATE.—The term 'employee of the Senate'—

"(A) has the meaning given the term under section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301); and

"(B) includes any employee of the Office of Congressional Accessibility Services whose pay is disbursed by the Secretary of the Senate.

"(3) EMPLOYING OFFICE.—The term 'employing office'—

"(A) means the employing office, as defined under section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), of an employee of the Senate; and

"(B) includes the Office of Congressional Accessibility Services with respect to employees of that office whose pay is disbursed by the Secretary of the Senate.".

(b) EXCLUSION FROM PARTICIPATION IN DUAL PROGRAMS.—Section 102(b) of the Legislative Branch Appropriations Act, 2002 (2 U.S.C. 60c–5(b)) is amended by adding at the end the following:

"(3) EXCLUSION FROM PARTICIPATION IN DUAL PROGRAMS.—Notwithstanding section 5379 of title 5, United States Code, an employee of the Office of Congressional Accessibility Services may not participate in the student loan repayment program through an agreement under that section and participate in the student loan repayment program through a service agreement under this section at the same time.".

2 USC 60c–5 note.

(c) EFFECTIVE DATE AND APPLICATION.—The amendments made by this section shall take effect on the date of enactment of this Act and apply to service agreements entered into under section 102 of the Legislative Branch Appropriations Act, 2002 (2 U.S.C.

60c–5) or section 5379 of title 5, United States Code, on or after that date.

CAPITOL POLICE

SALARIES

For salaries of employees of the Capitol Police, including overtime, hazardous duty pay differential, and Government contributions for health, retirement, social security, professional liability insurance, and other applicable employee benefits, $277,133,000, to be disbursed by the Chief of the Capitol Police or his designee.

GENERAL EXPENSES

For necessary expenses of the Capitol Police, including motor vehicles, communications and other equipment, security equipment and installation, uniforms, weapons, supplies, materials, training, medical services, forensic services, stenographic services, personal and professional services, the employee assistance program, the awards program, postage, communication services, travel advances, relocation of instructor and liaison personnel for the Federal Law Enforcement Training Center, and not more than $5,000 to be expended on the certification of the Chief of the Capitol Police in connection with official representation and reception expenses, $63,004,000, of which $2,400,000 shall remain available until September 30, 2014, to be disbursed by the Chief of the Capitol Police or his designee: *Provided*, That, notwithstanding any other provision of law, the cost of basic training for the Capitol Police at the Federal Law Enforcement Training Center for fiscal year 2012 shall be paid by the Secretary of Homeland Security from funds available to the Department of Homeland Security.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

SEC. 1101. Amounts appropriated for fiscal year 2012 for the Capitol Police may be transferred between the headings "Salaries" and "General expenses" upon the approval of the Committees on Appropriations of the House of Representatives and the Senate.

WAIVER BY CHIEF OF CAPITOL POLICE OF CLAIMS ARISING OUT OF ERRONEOUS PAYMENTS TO OFFICERS AND EMPLOYEES

SEC. 1102. (a) WAIVER OF CLAIM.—Subject to the joint approval of the Chief Administrative Officer of the House of Representatives and the Secretary of the Senate, the Chief of the United States Capitol Police may waive in whole or in part a claim of the United States against a person arising out of an erroneous payment of any pay or allowances, other than travel and transportation expenses and allowances, to an officer, member, or employee of the United States Capitol Police, if the collection of the claim would be against equity and good conscience and not in the best interests of the United States. 2 USC 1934.

(b) INVESTIGATION OF APPLICATION; REPORT.—The Chief shall investigate each application for the waiver of a claim under subsection (a) and shall submit a written report of the investigation,

including a description of the facts and circumstances of the claim, to the Chief Administrative Officer of the House of Representatives and the Secretary of the Senate, except that if the aggregate amount of the claim involved exceeds $1,500, the Comptroller General may also investigate the application and submit a written report of the investigation, including a description of the facts and circumstances of the claim, to the Chief Administrative Officer of the House of Representatives and the Secretary of the Senate.

(c) PROHIBITION OF WAIVER UNDER CERTAIN CIRCUMSTANCES.—The Chief may not exercise the authority to waive a claim under subsection (a) if—

(1) in the Chief's opinion, there exists in connection with the claim an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the officer, member, or employee involved or of any other person having an interest in obtaining a waiver of the claim; or

(2) the Chief receives the application for the waiver after the expiration of the 3-year period that begins on the date on which the erroneous payment of pay or allowances was discovered.

(d) CREDIT FOR WAIVER.—In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under subsection (a).

(e) EFFECT OF WAIVER.—An erroneous payment, the collection of which is waived under subsection (a), is deemed a valid payment for all purposes.

(f) CONSTRUCTION WITH OTHER LAWS.—This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(g) RULES AND REGULATIONS.—Subject to the approval of the Chief Administrative Officer of the House of Representatives and the Secretary of the Senate, the Chief shall promulgate rules and regulations to carry out this section.

Applicability.

(h) EFFECTIVE DATE.—This section shall apply with respect to payments of pay and allowances made at any time after the Chief became the disbursing officer for the United States Capitol Police pursuant to section 1018(a) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1907(a)).

OFFICE OF COMPLIANCE

SALARIES AND EXPENSES

For salaries and expenses of the Office of Compliance, as authorized by section 305 of the Congressional Accountability Act of 1995 (2 U.S.C. 1385), $3,817,000, of which $700,000 shall remain available until September 30, 2013: *Provided*, That not more than $500 may be expended on the certification of the Executive Director of the Office of Compliance in connection with official representation and reception expenses.

CONGRESSIONAL BUDGET OFFICE

SALARIES AND EXPENSES

For salaries and expenses necessary for operation of the Congressional Budget Office, including not more than $6,000 to

be expended on the certification of the Director of the Congressional Budget Office in connection with official representation and reception expenses, $43,787,000.

ARCHITECT OF THE CAPITOL

GENERAL ADMINISTRATION

For salaries for the Architect of the Capitol, and other personal services, at rates of pay provided by law; for surveys and studies in connection with activities under the care of the Architect of the Capitol; for all necessary expenses for the general and administrative support of the operations under the Architect of the Capitol including the Botanic Garden; electrical substations of the Capitol, Senate and House office buildings, and other facilities under the jurisdiction of the Architect of the Capitol; including furnishings and office equipment; including not more than $5,000 for official reception and representation expenses, to be expended as the Architect of the Capitol may approve; for purchase or exchange, maintenance, and operation of a passenger motor vehicle, $101,340,000, of which $3,749,000 shall remain available until September 30, 2016.

CAPITOL BUILDING

For all necessary expenses for the maintenance, care and operation of the Capitol, $36,154,000, of which $11,063,000 shall remain available until September 30, 2016.

CAPITOL GROUNDS

For all necessary expenses for care and improvement of grounds surrounding the Capitol, the Senate and House office buildings, and the Capitol Power Plant, $9,852,000.

SENATE OFFICE BUILDINGS

For all necessary expenses for the maintenance, care and operation of Senate office buildings; and furniture and furnishings to be expended under the control and supervision of the Architect of the Capitol, $71,128,000, of which $13,128,000 shall remain available until September 30, 2016.

HOUSE OFFICE BUILDINGS

For all necessary expenses for the maintenance, care and operation of the House office buildings, $94,154,000, of which $45,631,000 shall remain available until September 30, 2016.

In addition, for a payment to the House Historic Buildings Revitalization Trust Fund, $30,000,000, shall remain available until expended.

CAPITOL POWER PLANT

For all necessary expenses for the maintenance, care and operation of the Capitol Power Plant; lighting, heating, power (including the purchase of electrical energy) and water and sewer services for the Capitol, Senate and House office buildings, Library of Congress buildings, and the grounds about the same, Botanic Garden,

Senate garage, and air conditioning refrigeration not supplied from plants in any of such buildings; heating the Government Printing Office and Washington City Post Office, and heating and chilled water for air conditioning for the Supreme Court Building, the Union Station complex, the Thurgood Marshall Federal Judiciary Building and the Folger Shakespeare Library, expenses for which shall be advanced or reimbursed upon request of the Architect of the Capitol and amounts so received shall be deposited into the Treasury to the credit of this appropriation, $123,229,000, of which $37,617,000 shall remain available until September 30, 2016: *Provided*, That not more than $9,000,000 of the funds credited or to be reimbursed to this appropriation as herein provided shall be available for obligation during fiscal year 2012.

LIBRARY BUILDINGS AND GROUNDS

For all necessary expenses for the mechanical and structural maintenance, care and operation of the Library buildings and grounds, $46,876,000, of which $21,116,000 shall remain available until September 30, 2016.

CAPITOL POLICE BUILDINGS, GROUNDS AND SECURITY

For all necessary expenses for the maintenance, care and operation of buildings, grounds and security enhancements of the United States Capitol Police, wherever located, the Alternate Computer Facility, and AOC security operations, $21,500,000, of which $3,473,000 shall remain available until September 30, 2016.

BOTANIC GARDEN

For all necessary expenses for the maintenance, care and operation of the Botanic Garden and the nurseries, buildings, grounds, and collections; and purchase and exchange, maintenance, repair, and operation of a passenger motor vehicle; all under the direction of the Joint Committee on the Library, $12,000,000: *Provided*, That of the amount made available under this heading, the Architect of the Capitol may obligate and expend such sums as may be necessary for the maintenance, care and operation of the National Garden established under section 307E of the Legislative Branch Appropriations Act, 1989 (2 U.S.C. 2146), upon vouchers approved by the Architect of the Capitol or a duly authorized designee.

CAPITOL VISITOR CENTER

For all necessary expenses for the operation of the Capitol Visitor Center, $21,276,000.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

USE OF CONSTRUCTION PROJECT FUNDS TO REIMBURSE CAPITOL POLICE FOR RELATED OVERTIME COSTS

2 USC 1862a.

SEC. 1201. (a) PAYMENT OF OVERTIME COSTS.—The Architect of the Capitol shall transfer amounts made available for construction projects during a fiscal year to the applicable appropriations accounts of the United States Capitol Police in order to reimburse

the Capitol Police for overtime costs incurred in connection with such projects.

(b) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2013 and each succeeding fiscal year.

TRANSFER TO ARCHITECT OF THE CAPITOL

SEC. 1202. (a) TRANSFER.—To the extent that the Director of the National Park Service has jurisdiction and control over any portion of the area described in subsection (b) and any monument or other facility which is located within such area, such jurisdiction and control is hereby transferred to the Architect of the Capitol as of the date of the enactment of this Act. 2 USC 1811 note.

(b) AREA DESCRIBED.—The area described in this subsection is the property which is bounded on the north by Pennsylvania Avenue Northwest, on the east by First Street Northwest and First Street Southwest, on the south by Maryland Avenue Southwest, and on the west by Third Street Southwest and Third Street Northwest.

LIBRARY OF CONGRESS

SALARIES AND EXPENSES

For necessary expenses of the Library of Congress not otherwise provided for, including development and maintenance of the Library's catalogs; custody and custodial care of the Library buildings; special clothing; cleaning, laundering and repair of uniforms; preservation of motion pictures in the custody of the Library; operation and maintenance of the American Folklife Center in the Library; activities under the Civil Rights History Project Act of 2009; preparation and distribution of catalog records and other publications of the Library; hire or purchase of one passenger motor vehicle; and expenses of the Library of Congress Trust Fund Board not properly chargeable to the income of any trust fund held by the Board, $420,093,000, of which not more than $6,000,000 shall be derived from collections credited to this appropriation during fiscal year 2012, and shall remain available until expended, under the Act of June 28, 1902 (chapter 1301; 32 Stat. 480; 2 U.S.C. 150) and not more than $350,000 shall be derived from collections during fiscal year 2012 and shall remain available until expended for the development and maintenance of an international legal information database and activities related thereto: *Provided*, That the Library of Congress may not obligate or expend any funds derived from collections under the Act of June 28, 1902, in excess of the amount authorized for obligation or expenditure in appropriations Acts: *Provided further,* That the total amount available for obligation shall be reduced by the amount by which collections are less than $6,350,000: *Provided further,* That of the total amount appropriated, not more than $12,000 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for the Overseas Field Offices: *Provided further,* That of the total amount appropriated, $6,959,000 shall remain available until expended for the digital collections and educational curricula program.

COPYRIGHT OFFICE

SALARIES AND EXPENSES

For all necessary expenses of the Copyright Office, $51,650,000, of which not more than $28,029,000, to remain available until expended, shall be derived from collections credited to this appropriation during fiscal year 2012 under section 708(d) of title 17, United States Code: *Provided*, That not more than $2,000,000 shall be derived from prior year available unobligated balances: *Provided further*, That the Copyright Office may not obligate or expend any funds derived from collections under such section, in excess of the amount authorized for obligation or expenditure in appropriations Acts: *Provided further*, That not more than $5,484,000 shall be derived from collections during fiscal year 2012 under sections 111(d)(2), 119(b)(2), 803(e), 1005, and 1316 of such title: *Provided further*, That the total amount available for obligation shall be reduced by the amount by which collections and prior year available unobligated balances are less than $35,513,000: *Provided further*, That not more than $100,000 of the amount appropriated is available for the maintenance of an "International Copyright Institute" in the Copyright Office of the Library of Congress for the purpose of training nationals of developing countries in intellectual property laws and policies: *Provided further*, That not more than $4,250 may be expended, on the certification of the Librarian of Congress, in connection with official representation and reception expenses for activities of the International Copyright Institute and for copyright delegations, visitors, and seminars: *Provided further*, That notwithstanding any provision of chapter 8 of title 17, United States Code, any amounts made available under this heading which are attributable to royalty fees and payments received by the Copyright Office pursuant to sections 111, 119, and chapter 10 of such title may be used for the costs incurred in the administration of the Copyright Royalty Judges program, with the exception of the costs of salaries and benefits for the Copyright Royalty Judges and staff under section 802(e).

CONGRESSIONAL RESEARCH SERVICE

SALARIES AND EXPENSES

For all necessary expenses to carry out the provisions of section 203 of the Legislative Reorganization Act of 1946 (2 U.S.C. 166) and to revise and extend the Annotated Constitution of the United States of America, $106,790,000: *Provided*, That no part of such amount may be used to pay any salary or expense in connection with any publication, or preparation of material therefor (except the Digest of Public General Bills), to be issued by the Library of Congress unless such publication has obtained prior approval of either the Committee on House Administration of the House of Representatives or the Committee on Rules and Administration of the Senate.

BOOKS FOR THE BLIND AND PHYSICALLY HANDICAPPED

SALARIES AND EXPENSES

For salaries and expenses to carry out the Act of March 3, 1931 (chapter 400; 46 Stat. 1487; 2 U.S.C. 135a), $50,674,000: *Provided*, That of the total amount appropriated, $650,000 shall be available to contract to provide newspapers to blind and physically handicapped residents at no cost to the individual.

Contracts.
Newspapers.

ADMINISTRATIVE PROVISIONS

REIMBURSABLE AND REVOLVING FUND ACTIVITIES

SEC. 1301. (a) IN GENERAL.—For fiscal year 2012, the obligational authority of the Library of Congress for the activities described in subsection (b) may not exceed $169,725,000.

(b) ACTIVITIES.—The activities referred to in subsection (a) are reimbursable and revolving fund activities that are funded from sources other than appropriations to the Library in appropriations Acts for the legislative branch.

(c) TRANSFER OF FUNDS.—During fiscal year 2012, the Librarian of Congress may temporarily transfer funds appropriated in this Act, under the heading "Library of Congress", under the subheading "Salaries and Expenses", to the revolving fund for the FEDLINK Program and the Federal Research Program established under section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 2 U.S.C. 182c): *Provided*, That the total amount of such transfers may not exceed $1,900,000: *Provided further*, That the appropriate revolving fund account shall reimburse the Library for any amounts transferred to it before the period of availability of the Library appropriation expires.

TRANSFER AUTHORITY

SEC. 1302. (a) IN GENERAL.—Amounts appropriated for fiscal year 2012 for the Library of Congress may be transferred during fiscal year 2012 between any of the headings under the heading "Library of Congress" upon the approval of the Committees on Appropriations of the House of Representatives and the Senate.

(b) LIMITATION.—Not more than 10 percent of the total amount of funds appropriated to the account under any heading under the heading "Library of Congress" for fiscal year 2012 may be transferred from that account by all transfers made under subsection (a).

FUNDS AVAILABLE FOR WORKERS COMPENSATION PAYMENTS

SEC. 1303. (a) IN GENERAL.—Available balances of expired Library of Congress appropriations shall be available to the Library of Congress to make the deposit to the credit of the Employees' Compensation Fund required by subsection 8147(b) of title 5, United States Code.

2 USC 143d.

(b) EFFECTIVE DATE.—This section shall apply with respect to appropriations for fiscal year 2012 and each fiscal year thereafter.

PERMITTING USE OF PROCEEDS FROM DISPOSITION OF SURPLUS OR OBSOLETE PERSONAL PROPERTY

2 USC 149a.

SEC. 1304. (a) DISPOSITION OF PROPERTY.—Within the limits of available appropriations, the Librarian of Congress may dispose of surplus or obsolete personal property of the Library of Congress by interagency transfer, donation, sale, trade-in, or other appropriate method.

(b) USE OF PROCEEDS.—Any amounts received by the Librarian of Congress from the disposition of property under subsection (a) shall be credited to the funds available for the operations of the Library of Congress, and shall be available to acquire the same or similar property during the fiscal year in which the amounts are received and the following fiscal year.

(c) EFFECTIVE DATE.—This section shall apply with respect to fiscal year 2012 and each succeeding fiscal year.

GOVERNMENT PRINTING OFFICE

CONGRESSIONAL PRINTING AND BINDING

(INCLUDING TRANSFER OF FUNDS)

For authorized printing and binding for the Congress and the distribution of Congressional information in any format; printing and binding for the Architect of the Capitol; expenses necessary for preparing the semimonthly and session index to the Congressional Record, as authorized by law (section 902 of title 44, United States Code); printing and binding of Government publications authorized by law to be distributed to Members of Congress; and printing, binding, and distribution of Government publications authorized by law to be distributed without charge to the recipient, $90,700,000: *Provided*, That this appropriation shall not be available for paper copies of the permanent edition of the Congressional Record for individual Representatives, Resident Commissioners or Delegates authorized under section 906 of title 44, United States Code: *Provided further,* That this appropriation shall be available for the payment of obligations incurred under the appropriations for similar purposes for preceding fiscal years: *Provided further,* That notwithstanding the 2-year limitation under section 718 of title 44, United States Code, none of the funds appropriated or made available under this Act or any other Act for printing and binding and related services provided to Congress under chapter 7 of title 44, United States Code, may be expended to print a document, report, or publication after the 27-month period beginning on the date that such document, report, or publication is authorized by Congress to be printed, unless Congress reauthorizes such printing in accordance with section 718 of title 44, United States Code: *Provided further,* That any unobligated or unexpended balances in this account or accounts for similar purposes for preceding fiscal years may be transferred to the Government Printing Office revolving fund for carrying out the purposes of this heading, subject to the approval of the Committees on Appropriations of the House of Representatives and Senate: *Provided further*, That notwithstanding sections 901, 902, and 906 of title 44, United States Code, this appropriation may be used to prepare indexes to the Congressional Record on only a monthly and session basis.

Time period.

OFFICE OF SUPERINTENDENT OF DOCUMENTS

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For expenses of the Office of Superintendent of Documents necessary to provide for the cataloging and indexing of Government publications and their distribution to the public, Members of Congress, other Government agencies, and designated depository and international exchange libraries as authorized by law, $35,000,000: *Provided*, That amounts of not more than $2,000,000 from current year appropriations are authorized for producing and disseminating congressional serial sets and other related publications for fiscal years 2010 and 2011 to depository and other designated libraries: *Provided further,* That any unobligated or unexpended balances in this account or accounts for similar purposes for preceding fiscal years may be transferred to the Government Printing Office revolving fund for carrying out the purposes of this heading, subject to the approval of the Committees on Appropriations of the House of Representatives and Senate.

GOVERNMENT PRINTING OFFICE REVOLVING FUND

For payment to the Government Printing Office Revolving Fund, $500,000 for information technology development: *Provided*, That the Government Printing Office is hereby authorized to make such expenditures, within the limits of funds available and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the programs and purposes set forth in the budget for the current fiscal year for the Government Printing Office revolving fund: *Provided further,* That not more than $7,500 may be expended on the certification of the Public Printer in connection with official representation and reception expenses: *Provided further,* That the revolving fund shall be available for the hire or purchase of not more than 12 passenger motor vehicles: *Provided further,* That expenditures in connection with travel expenses of the advisory councils to the Public Printer shall be deemed necessary to carry out the provisions of title 44, United States Code: *Provided further,* That the revolving fund shall be available for temporary or intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not more than the daily equivalent of the annual rate of basic pay for level V of the Executive Schedule under section 5316 of such title: *Provided further,* That activities financed through the revolving fund may provide information in any format: *Provided further,* That the revolving fund and the funds provided under the headings "Office of Superintendent of Documents" and "Salaries and Expenses" may not be used for contracted security services at GPO's passport facility in the District of Columbia.

GOVERNMENT ACCOUNTABILITY OFFICE

SALARIES AND EXPENSES

Regulations.

For necessary expenses of the Government Accountability Office, including not more than $12,500 to be expended on the certification of the Comptroller General of the United States in connection with official representation and reception expenses; temporary or intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not more than the daily equivalent of the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of such title; hire of one passenger motor vehicle; advance payments in foreign countries in accordance with section 3324 of title 31, United States Code; benefits comparable to those payable under sections 901(5), (6), and (8) of the Foreign Service Act of 1980 (22 U.S.C. 4081(5), (6), and (8)); and under regulations prescribed by the Comptroller General of the United States, rental of living quarters in foreign countries, $511,296,000: *Provided*, That, in addition, $22,304,000 of payments received under sections 782, 3521, and 9105 of title 31, United States Code, shall be available without fiscal year limitation: *Provided further*, That this appropriation and appropriations for administrative expenses of any other department or agency which is a member of the National Intergovernmental Audit Forum or a Regional Intergovernmental Audit Forum shall be available to finance an appropriate share of either Forum's costs as determined by the respective Forum, including necessary travel expenses of non-Federal participants: *Provided further*, That payments hereunder to the Forum may be credited as reimbursements to any appropriation from which costs involved are initially financed.

ADMINISTRATIVE PROVISION

SEC. 1401. (a) Section 210 of the Legislative Branch Appropriations Act, 2005 (2 U.S.C. 60q) is amended—

(1) by striking subsection (d); and

(2) in subsection (f)(2)(A), by striking "United States Code" and inserting "United States Code, but excluding the Government Accountability Office".

(b) Section 3521(1) of title 5, United States Code, is amended by striking "section 105" and inserting "section 105 (other than the Government Accountability Office)".

Applicability.
2 USC 60q note.

(c) The amendments made by this section shall apply with respect to voluntary separation incentive payments made during fiscal year 2012 or any succeeding fiscal year.

OPEN WORLD LEADERSHIP CENTER TRUST FUND

For a payment to the Open World Leadership Center Trust Fund for financing activities of the Open World Leadership Center under section 313 of the Legislative Branch Appropriations Act, 2001 (2 U.S.C. 1151), $10,000,000.

JOHN C. STENNIS CENTER FOR PUBLIC SERVICE TRAINING AND DEVELOPMENT

For payment to the John C. Stennis Center for Public Service Development Trust Fund established under section 116 of the John

C. Stennis Center for Public Service Training and Development Act (2 U.S.C. 1105), $430,000.

TITLE II

GENERAL PROVISIONS

MAINTENANCE AND CARE OF PRIVATE VEHICLES

SEC. 201. No part of the funds appropriated in this Act shall be used for the maintenance or care of private vehicles, except for emergency assistance and cleaning as may be provided under regulations relating to parking facilities for the House of Representatives issued by the Committee on House Administration and for the Senate issued by the Committee on Rules and Administration.

FISCAL YEAR LIMITATION

SEC. 202. No part of the funds appropriated in this Act shall remain available for obligation beyond fiscal year 2012 unless expressly so provided in this Act.

RATES OF COMPENSATION AND DESIGNATION

SEC. 203. Whenever in this Act any office or position not specifically established by the Legislative Pay Act of 1929 (46 Stat. 32 et seq.) is appropriated for or the rate of compensation or designation of any office or position appropriated for is different from that specifically established by such Act, the rate of compensation and the designation in this Act shall be the permanent law with respect thereto: *Provided*, That the provisions in this Act for the various items of official expenses of Members, officers, and committees of the Senate and House of Representatives, and clerk hire for Senators and Members of the House of Representatives shall be the permanent law with respect thereto.

CONSULTING SERVICES

Contracts.

SEC. 204. The expenditure of any appropriation under this Act for any consulting service through procurement contract, under section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued under existing law.

AWARDS AND SETTLEMENTS

SEC. 205. Such sums as may be necessary are appropriated to the account described in subsection (a) of section 415 of the Congressional Accountability Act of 1995 (2 U.S.C. 1415(a)) to pay awards and settlements as authorized under such subsection.

COSTS OF LBFMC

SEC. 206. Amounts available for administrative expenses of any legislative branch entity which participates in the Legislative Branch Financial Managers Council (LBFMC) established by

charter on March 26, 1996, shall be available to finance an appropriate share of LBFMC costs as determined by the LBFMC, except that the total LBFMC costs to be shared among all participating legislative branch entities (in such allocations among the entities as the entities may determine) may not exceed $2,000.

LANDSCAPE MAINTENANCE

SEC. 207. The Architect of the Capitol, in consultation with the District of Columbia, is authorized to maintain and improve the landscape features, excluding streets, in the irregular shaped grassy areas bounded by Washington Avenue, SW, on the northeast, Second Street, SW, on the west, Square 582 on the south, and the beginning of the I–395 tunnel on the southeast.

LIMITATION ON TRANSFERS

SEC. 208. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

GUIDED TOURS OF THE CAPITOL

SEC. 209. (a) Except as provided in subsection (b), none of the funds made available to the Architect of the Capitol in this Act may be used to eliminate or restrict guided tours of the United States Capitol which are led by employees and interns of offices of Members of Congress and other offices of the House of Representatives and Senate.

(b) At the direction of the Capitol Police Board, or at the direction of the Architect of the Capitol with the approval of the Capitol Police Board, guided tours of the United States Capitol which are led by employees and interns described in subsection (a) may be suspended temporarily or otherwise subject to restriction for security or related reasons to the same extent as guided tours of the United States Capitol which are led by the Architect of the Capitol.

SEC. 210. None of the funds made available in this Act may be used to deliver a printed copy of a bill, joint resolution, or resolution to the office of a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) unless the Member requests a copy.

SEC. 211. None of the funds made available by this Act may be used to deliver a printed copy of any version of the Congressional Record to the office of a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress).

SEC. 212. None of the funds made available in this Act may be used by the Chief Administrative Officer of the House of Representatives to make any payments from any Members' Representational Allowance for the leasing of a vehicle, excluding mobile district offices, in an aggregate amount that exceeds $1,000 for the vehicle in any month.

This division may be cited as the "Legislative Branch Appropriations Act, 2012".

DIVISION H—MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2012

Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2012.

TITLE I

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION, ARMY

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Army as currently authorized by law, including personnel in the Army Corps of Engineers and other personal services necessary for the purposes of this appropriation, and for construction and operation of facilities in support of the functions of the Commander in Chief, $3,006,491,000, to remain available until September 30, 2016: *Provided*, That of this amount, not to exceed $229,741,000 shall be available for study, planning, design, architect and engineer services, and host nation support, as authorized by law, unless the Secretary of Army determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor.

Determination. Notification.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

For acquisition, construction, installation, and equipment of temporary or permanent public works, naval installations, facilities, and real property for the Navy and Marine Corps as currently authorized by law, including personnel in the Naval Facilities Engineering Command and other personal services necessary for the purposes of this appropriation, $2,112,823,000, to remain available until September 30, 2016: *Provided*, That of this amount, not to exceed $84,362,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of Navy determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor.

Determination. Notification.

MILITARY CONSTRUCTION, AIR FORCE

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Air Force as currently authorized by law, $1,227,058,000, to remain available until September 30, 2016: *Provided*, That of this amount, not to exceed $81,913,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of Air Force determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor.

Determination. Notification.

MILITARY CONSTRUCTION, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, installations, facilities, and real property for activities and agencies of the Department of Defense (other than the military departments), as currently authorized by law, $3,431,957,000, to remain available until September 30, 2016: *Provided*, That such amounts of this appropriation as may be determined by the Secretary of Defense may be transferred to such appropriations of the Department of Defense available for military construction or family housing as the Secretary may designate, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided further*, That of the amount appropriated, not to exceed $430,602,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor: *Provided further*, That of the amount appropriated, notwithstanding any other provision of law, $24,118,000 shall be available for payments to the North Atlantic Treaty Organization for the planning, design, and construction of a new North Atlantic Treaty Organization headquarters: *Provided further,* That the Department of Defense shall not award a design contract to exceed the 20 percent design level for the Landstuhl Regional Medical Center in Germany until the Secretary of Defense: (1) provides the Committees on Appropriations of the House of Representatives and the Senate a plan for implementing the recommendations of the Government Accountability Office with respect to the plans, baseline data, and estimated cost of the facility; and (2) certifies in writing to the Committees that the facility is properly sized and scoped to meet current and projected healthcare requirements.

Determination. Notification.

Contracts. Germany. Plans. Certification.

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army National Guard, and contributions therefor, as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $773,592,000, to remain available until September 30, 2016: *Provided*, That of the amount appropriated, not to exceed $20,671,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Director of the Army National Guard determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor.

Determination. Notification.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air National Guard, and contributions therefor, as authorized by

chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $116,246,000, to remain available until September 30, 2016: *Provided*, That of the amount appropriated, not to exceed $12,225,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Director of the Air National Guard determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor.

Determination. Notification.

MILITARY CONSTRUCTION, ARMY RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army Reserve as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $280,549,000, to remain available until September 30, 2016: *Provided*, That of the amount appropriated, not to exceed $28,924,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Chief of the Army Reserve determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor.

Determination. Notification.

MILITARY CONSTRUCTION, NAVY RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the reserve components of the Navy and Marine Corps as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $26,299,000, to remain available until September 30, 2016: *Provided*, That of the amount appropriated, not to exceed $2,591,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Secretary of the Navy determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor.

Determination. Notification.

MILITARY CONSTRUCTION, AIR FORCE RESERVE

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air Force Reserve as authorized by chapter 1803 of title 10, United States Code, and Military Construction Authorization Acts, $33,620,000, to remain available until September 30, 2016: *Provided*, That of the amount appropriated, not to exceed $2,200,000 shall be available for study, planning, design, and architect and engineer services, as authorized by law, unless the Chief of the Air Force Reserve determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of the determination and the reasons therefor.

Determination. Notification.

NORTH ATLANTIC TREATY ORGANIZATION

SECURITY INVESTMENT PROGRAM

For the United States share of the cost of the North Atlantic Treaty Organization Security Investment Program for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area as authorized by section 2806 of title 10, United States Code, and Military Construction Authorization Acts, $247,611,000, to remain available until expended.

FAMILY HOUSING CONSTRUCTION, ARMY

For expenses of family housing for the Army for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, $176,897,000, to remain available until September 30, 2016.

FAMILY HOUSING OPERATION AND MAINTENANCE, ARMY

For expenses of family housing for the Army for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, $493,458,000.

FAMILY HOUSING CONSTRUCTION, NAVY AND MARINE CORPS

For expenses of family housing for the Navy and Marine Corps for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, $100,972,000, to remain available until September 30, 2016.

FAMILY HOUSING OPERATION AND MAINTENANCE, NAVY AND MARINE CORPS

For expenses of family housing for the Navy and Marine Corps for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, $367,863,000.

FAMILY HOUSING CONSTRUCTION, AIR FORCE

For expenses of family housing for the Air Force for construction, including acquisition, replacement, addition, expansion, extension, and alteration, as authorized by law, $60,042,000, to remain available until September 30, 2016.

FAMILY HOUSING OPERATION AND MAINTENANCE, AIR FORCE

For expenses of family housing for the Air Force for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, $429,523,000.

FAMILY HOUSING OPERATION AND MAINTENANCE, DEFENSE-WIDE

For expenses of family housing for the activities and agencies of the Department of Defense (other than the military departments) for operation and maintenance, leasing, and minor construction, as authorized by law, $50,723,000.

DEPARTMENT OF DEFENSE FAMILY HOUSING IMPROVEMENT FUND

For the Department of Defense Family Housing Improvement Fund, $2,184,000, to remain available until expended, for family housing initiatives undertaken pursuant to section 2883 of title 10, United States Code, providing alternative means of acquiring and improving military family housing and supporting facilities.

HOMEOWNERS ASSISTANCE FUND

For the Homeowners Assistance Fund established by section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, (42 U.S.C. 3374), as amended by section 1001 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 194), $1,284,000, to remain available until expended: *Provided*, That the Secretary of Defense shall not issue any regulation or otherwise take any action to limit the submission prior to September 30, 2012, of applications for benefits, including permanent change of station benefits, as provided under section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, (42 U.S.C. 3374), as amended.

CHEMICAL DEMILITARIZATION CONSTRUCTION, DEFENSE-WIDE

For expenses of construction, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), and for the destruction of other chemical warfare materials that are not in the chemical weapon stockpile, as currently authorized by law, $75,312,000, to remain available until September 30, 2016, which shall be only for the Assembled Chemical Weapons Alternatives program.

DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990

For deposit into the Department of Defense Base Closure Account 1990, established by section 2906(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), $323,543,000, to remain available until expended.

DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 2005

For deposit into the Department of Defense Base Closure Account 2005, established by section 2906A(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), $258,776,000, to remain available until expended: *Provided*, That the Department of Defense shall notify the Committees on Appropriations of both Houses of Congress 14 days prior to obligating an amount for a construction project that exceeds or reduces the amount identified for that project in the most recently submitted

Notification. Deadline.

budget request for this account by 20 percent or $2,000,000, whichever is less: *Provided further*, That the previous proviso shall not apply to projects costing less than $5,000,000, except for those projects not previously identified in any budget submission for this account and exceeding the minor construction threshold under section 2805 of title 10, United States Code.

ADMINISTRATIVE PROVISIONS

Contracts.

SEC. 101. None of the funds made available in this title shall be expended for payments under a cost-plus-a-fixed-fee contract for construction, where cost estimates exceed $25,000, to be performed within the United States, except Alaska, without the specific approval in writing of the Secretary of Defense setting forth the reasons therefor.

SEC. 102. Funds made available in this title for construction shall be available for hire of passenger motor vehicles.

Certification.

SEC. 103. Funds made available in this title for construction may be used for advances to the Federal Highway Administration, Department of Transportation, for the construction of access roads as authorized by section 210 of title 23, United States Code, when projects authorized therein are certified as important to the national defense by the Secretary of Defense.

SEC. 104. None of the funds made available in this title may be used to begin construction of new bases in the United States for which specific appropriations have not been made.

SEC. 105. None of the funds made available in this title shall be used for purchase of land or land easements in excess of 100 percent of the value as determined by the Army Corps of Engineers or the Naval Facilities Engineering Command, except: (1) where there is a determination of value by a Federal court; (2) purchases negotiated by the Attorney General or the designee of the Attorney General; (3) where the estimated value is less than $25,000; or (4) as otherwise determined by the Secretary of Defense to be in the public interest.

SEC. 106. None of the funds made available in this title shall be used to: (1) acquire land; (2) provide for site preparation; or (3) install utilities for any family housing, except housing for which funds have been made available in annual Acts making appropriations for military construction.

Notification.

SEC. 107. None of the funds made available in this title for minor construction may be used to transfer or relocate any activity from one base or installation to another, without prior notification to the Committees on Appropriations of both Houses of Congress.

Steel.

SEC. 108. None of the funds made available in this title may be used for the procurement of steel for any construction project or activity for which American steel producers, fabricators, and manufacturers have been denied the opportunity to compete for such steel procurement.

SEC. 109. None of the funds available to the Department of Defense for military construction or family housing during the current fiscal year may be used to pay real property taxes in any foreign nation.

Notification.

SEC. 110. None of the funds made available in this title may be used to initiate a new installation overseas without prior notification to the Committees on Appropriations of both Houses of Congress.

SEC. 111. None of the funds made available in this title may be obligated for architect and engineer contracts estimated by the Government to exceed $500,000 for projects to be accomplished in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Sea, unless such contracts are awarded to United States firms or United States firms in joint venture with host nation firms.

Contracts. Japan.

SEC. 112. None of the funds made available in this title for military construction in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Sea, may be used to award any contract estimated by the Government to exceed $1,000,000 to a foreign contractor: *Provided*, That this section shall not be applicable to contract awards for which the lowest responsive and responsible bid of a United States contractor exceeds the lowest responsive and responsible bid of a foreign contractor by greater than 20 percent: *Provided further*, That this section shall not apply to contract awards for military construction on Kwajalein Atoll for which the lowest responsive and responsible bid is submitted by a Marshallese contractor.

Contracts. Kwajalein Atoll.

SEC. 113. The Secretary of Defense shall inform the appropriate committees of both Houses of Congress, including the Committees on Appropriations, of plans and scope of any proposed military exercise involving United States personnel 30 days prior to its occurring, if amounts expended for construction, either temporary or permanent, are anticipated to exceed $100,000.

Notification. Military exercise. Deadline.

SEC. 114. Not more than 20 percent of the funds made available in this title which are limited for obligation during the current fiscal year shall be obligated during the last 2 months of the fiscal year.

SEC. 115. Funds appropriated to the Department of Defense for construction in prior years shall be available for construction authorized for each such military department by the authorizations enacted into law during the current session of Congress.

SEC. 116. For military construction or family housing projects that are being completed with funds otherwise expired or lapsed for obligation, expired or lapsed funds may be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any.

SEC. 117. Notwithstanding any other provision of law, any funds made available to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were made available, if the funds obligated for such project: (1) are obligated from funds available for military construction projects; and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.

(INCLUDING TRANSFER OF FUNDS)

SEC. 118. In addition to any other transfer authority available to the Department of Defense, proceeds deposited to the Department of Defense Base Closure Account established by section 207(a)(1) of the Defense Authorization Amendments and Base Closure and

Realignment Act (10 U.S.C. 2687 note) pursuant to section 207(a)(2)(C) of such Act, may be transferred to the account established by section 2906(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), to be merged with, and to be available for the same purposes and the same time period as that account.

(INCLUDING TRANSFER OF FUNDS)

Deadline. Notification.

SEC. 119. Subject to 30 days prior notification, or 14 days for a notification provided in an electronic medium pursuant to sections 480 and 2883 of title 10, United States Code, to the Committees on Appropriations of both Houses of Congress, such additional amounts as may be determined by the Secretary of Defense may be transferred to: (1) the Department of Defense Family Housing Improvement Fund from amounts appropriated for construction in "Family Housing" accounts, to be merged with and to be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund; or (2) the Department of Defense Military Unaccompanied Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing in "Military Construction" accounts, to be merged with and to be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund: *Provided*, That appropriations made available to the Funds shall be available to cover the costs, as defined in section 502(5) of the Congressional Budget Act of 1974, of direct loans or loan guarantees issued by the Department of Defense pursuant to the provisions of subchapter IV of chapter 169 of title 10, United States Code, pertaining to alternative means of acquiring and improving military family housing, military unaccompanied housing, and supporting facilities.

(INCLUDING TRANSFER OF FUNDS)

SEC. 120. In addition to any other transfer authority available to the Department of Defense, amounts may be transferred from the accounts established by sections 2906(a)(1) and 2906A(a)(1) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note), to the fund established by section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) to pay for expenses associated with the Homeowners Assistance Program incurred under 42 U.S.C. 3374(a)(1)(A). Any amounts transferred shall be merged with and be available for the same purposes and for the same time period as the fund to which transferred.

10 USC 2821 note.

SEC. 121. Notwithstanding any other provision of law, funds made available in this title for operation and maintenance of family housing shall be the exclusive source of funds for repair and maintenance of all family housing units, including general or flag officer quarters: *Provided*, That not more than $35,000 per unit may be spent annually for the maintenance and repair of any general or flag officer quarters without 30 days prior notification, or 14 days for a notification provided in an electronic medium pursuant to sections 480 and 2883 of title 10, United States Code, to the Committees on Appropriations of both Houses of Congress, except that an after-the-fact notification shall be submitted if the limitation is exceeded solely due to costs associated with environmental

Notification.

remediation that could not be reasonably anticipated at the time of the budget submission: *Provided further,* That the Under Secretary of Defense (Comptroller) is to report annually to the Committees on Appropriations of both Houses of Congress all operation and maintenance expenditures for each individual general or flag officer quarters for the prior fiscal year.

Notification.

SEC. 122. Amounts contained in the Ford Island Improvement Account established by subsection (h) of section 2814 of title 10, United States Code, are appropriated and shall be available until expended for the purposes specified in subsection (i)(1) of such section or until transferred pursuant to subsection (i)(3) of such section.

SEC. 123. None of the funds made available in this title, or in any Act making appropriations for military construction which remain available for obligation, may be obligated or expended to carry out a military construction, land acquisition, or family housing project at or for a military installation approved for closure, or at a military installation for the purposes of supporting a function that has been approved for realignment to another installation, in 2005 under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), unless such a project at a military installation approved for realignment will support a continuing mission or function at that installation or a new mission or function that is planned for that installation, or unless the Secretary of Defense certifies that the cost to the United States of carrying out such project would be less than the cost to the United States of cancelling such project, or if the project is at an active component base that shall be established as an enclave or in the case of projects having multi-agency use, that another Government agency has indicated it will assume ownership of the completed project. The Secretary of Defense may not transfer funds made available as a result of this limitation from any military construction project, land acquisition, or family housing project to another account or use such funds for another purpose or project without the prior approval of the Committees on Appropriations of both Houses of Congress. This section shall not apply to military construction projects, land acquisition, or family housing projects for which the project is vital to the national security or the protection of health, safety, or environmental quality: *Provided*, That the Secretary of Defense shall notify the congressional defense committees within seven days of a decision to carry out such a military construction project.

Certification.

Notification.
Deadline.

(INCLUDING TRANSFER OF FUNDS)

SEC. 124. During the 5-year period after appropriations available in this Act to the Department of Defense for military construction and family housing operation and maintenance and construction have expired for obligation, upon a determination that such appropriations will not be necessary for the liquidation of obligations or for making authorized adjustments to such appropriations for obligations incurred during the period of availability of such appropriations, unobligated balances of such appropriations may be transferred into the appropriation "Foreign Currency Fluctuations, Construction, Defense", to be merged with and to be available for the same time period and for the same purposes as the appropriation to which transferred.

Time period.
Determination.

SEC. 125. Amounts appropriated or otherwise made available in an account funded under the headings in this title may be transferred among projects and activities within the account in accordance with the reprogramming guidelines for military construction and family housing construction contained in Department of Defense Financial Management Regulation 7000.14–R, Volume 3, Chapter 7, of February 2009, as in effect on the date of enactment of this Act.

Oregon.
Deadline.

SEC. 126. (a) Notwithstanding any other provision of law, the Secretary of the Army shall close Umatilla Chemical Depot, Oregon, not later than 1 year after the completion of chemical demilitarization activities required under the Chemical Weapons Convention.

(b) The closure of the Umatilla Chemical Depot, Oregon, and subsequent management and property disposal shall be carried out in accordance with procedures and authorities contained in the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 110–510; 10 U.S.C. 2687 note).

(c) Nothing in this section shall be construed to affect or limit the application of, or any obligation to comply with, any environmental law, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(d) The Secretary of the Army may retain minimum essential ranges, facilities, and training areas at Umatilla Chemical Depot, totaling approximately 7,500 acres, as a training enclave for the reserve components of the Armed Forces to permit the conduct of individual and annual training.

Waiver authority.
Certification.
Notification.
Deadline.

SEC. 127. None of the funds made available by this Act may be used by the Secretary of Defense to take beneficial occupancy of more than 2,000 parking spaces (other than handicap-reserved spaces) to be provided by the BRAC 133 project: *Provided,* That this limitation may be waived in part if: (1) the Secretary of Defense certifies to Congress that levels of service at existing intersections in the vicinity of the project have not experienced failing levels of service as defined by the Transportation Research Board Highway Capacity Manual over a consecutive 90-day period; (2) the Department of Defense and the Virginia Department of Transportation agree on the number of additional parking spaces that may be made available to employees of the facility subject to continued 90-day traffic monitoring; and (3) the Secretary of Defense notifies the congressional defense committees in writing at least 14 days prior to exercising this waiver of the number of additional parking spaces to be made available: *Provided further,* That the Secretary of Defense shall implement the Department of Defense Inspector General recommendations outlined in report number DODIG–2012–024, and certify to Congress not later than 180 days after enactment of this Act that the recommendations have been implemented.

Certification.
Deadline.

Reports.

SEC. 128. None of the funds appropriated or otherwise made available by this title may be obligated or expended for a permanent United States Africa Command headquarters outside of the United States until the Secretary of Defense provides the congressional defense committees an analysis of all military construction costs associated with establishing a permanent location overseas versus in the United States.

Colorado.

SEC. 129. None of the funds made available by this Act may be used for any action that relates to or promotes the expansion

of the boundaries or size of the Pinon Canyon Maneuver Site, Colorado.

SEC. 130. (a) Except as provided in subsection (b), none of the funds made available in this Act may be used by the Secretary of the Army to relocate a unit in the Army that—

(1) performs a testing mission or function that is not performed by any other unit in the Army and is specifically stipulated in title 10, United States Code; and

(2) is located at a military installation at which the total number of civilian employees of the Department of the Army and Army contractor personnel employed exceeds 10 percent of the total number of members of the regular and reserve components of the Army assigned to the installation.

(b) EXCEPTION.—Subsection (a) shall not apply if the Secretary of the Army certifies to the congressional defense committees that in proposing the relocation of the unit of the Army, the Secretary complied with Army Regulation 5–10 relating to the policy, procedures, and responsibilities for Army stationing actions. Certification.

(INCLUDING RESCISSIONS OF FUNDS)

SEC. 131. Of the unobligated balances available under the following headings from prior appropriations Acts (other than appropriations designated by law as being for contingency operations directly related to the global war on terrorism or as an emergency requirement), the following amounts are hereby rescinded: "Military Construction, Army", $100,000,000; "Military Construction, Navy and Marine Corps", $25,000,000; "Military Construction, Air Force", $32,000,000; and "Military Construction, Defense-Wide", $131,400,000.

(INCLUDING RESCISSION OF FUNDS)

SEC. 132. Of the unobligated balances available for "Department of Defense Base Closure Account 2005", from prior appropriations Acts (other than appropriations designated by law as being for contingency operations directly related to the global war on terrorism or as an emergency requirement), $258,776,000 are hereby rescinded.

TITLE II

DEPARTMENT OF VETERANS AFFAIRS

VETERANS BENEFITS ADMINISTRATION

COMPENSATION AND PENSIONS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation benefits to or on behalf of veterans and a pilot program for disability examinations as authorized by section 107 and chapters 11, 13, 18, 51, 53, 55, and 61 of title 38, United States Code; pension benefits to or on behalf of veterans as authorized by chapters 15, 51, 53, 55, and 61 of title 38, United States Code; and burial benefits, the Reinstated Entitlement Program for Survivors, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment

of premiums due on commercial life insurance policies guaranteed under the provisions of title IV of the Servicemembers Civil Relief Act (50 U.S.C. App. 541 et seq.) and for other benefits as authorized by sections 107, 1312, 1977, and 2106, and chapters 23, 51, 53, 55, and 61 of title 38, United States Code, $51,237,567,000, to remain available until expended: *Provided*, That not to exceed $32,187,000 of the amount appropriated under this heading shall be reimbursed to "General operating expenses, Veterans Benefits Administration", "Medical support and compliance", and "Information technology systems" for necessary expenses in implementing the provisions of chapters 51, 53, and 55 of title 38, United States Code, the funding source for which is specifically provided as the "Compensation and pensions" appropriation: *Provided further*, That such sums as may be earned on an actual qualifying patient basis, shall be reimbursed to "Medical care collections fund" to augment the funding of individual medical facilities for nursing home care provided to pensioners as authorized.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by chapters 21, 30, 31, 33, 34, 35, 36, 39, 51, 53, 55, and 61 of title 38, United States Code, $12,108,488,000, to remain available until expended: *Provided*, That expenses for rehabilitation program services and assistance which the Secretary is authorized to provide under subsection (a) of section 3104 of title 38, United States Code, other than under paragraphs (1), (2), (5), and (11) of that subsection, shall be charged to this account.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and veterans mortgage life insurance as authorized by chapters 19 and 21, title 38, United States Code, $100,252,000, to remain available until expended.

VETERANS HOUSING BENEFIT PROGRAM FUND

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the program, as authorized by subchapters I through III of chapter 37 of title 38, United States Code: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That during fiscal year 2012, within the resources available, not to exceed $500,000 in gross obligations for direct loans are authorized for specially adapted housing loans.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, $154,698,000.

VOCATIONAL REHABILITATION LOANS PROGRAM ACCOUNT

For the cost of direct loans, $19,000, as authorized by chapter 31 of title 38, United States Code: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided*

further, That funds made available under this heading are available to subsidize gross obligations for the principal amount of direct loans not to exceed $3,019,000.

In addition, for administrative expenses necessary to carry out the direct loan program, $343,000, which may be paid to the appropriation for "General operating expenses, Veterans Benefits Administration".

NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT

For administrative expenses to carry out the direct loan program authorized by subchapter V of chapter 37 of title 38, United States Code, $1,116,000.

VETERANS HEALTH ADMINISTRATION

MEDICAL SERVICES

For necessary expenses for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs and veterans described in section 1705(a) of title 38, United States Code, including care and treatment in facilities not under the jurisdiction of the Department, and including medical supplies and equipment, food services, and salaries and expenses of health care employees hired under title 38, United States Code, aid to State homes as authorized by section 1741 of title 38, United States Code, assistance and support services for caregivers as authorized by section 1720G of title 38, United States Code, and loan repayments authorized by section 604 of the Caregivers and Veterans Omnibus Health Services Act of 2010 (Public Law 111–163; 124 Stat. 1174; 38 U.S.C. 7681 note) $41,354,000,000, plus reimbursements, shall become available on October 1, 2012, and shall remain available until September 30, 2013: *Provided*, That notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for the provision of medical treatment for veterans who have service-connected disabilities, lower income, or have special needs: *Provided further*, That notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: *Provided further*, That notwithstanding any other provision of law, the Secretary of Veterans Affairs may authorize the dispensing of prescription drugs from Veterans Health Administration facilities to enrolled veterans with privately written prescriptions based on requirements established by the Secretary: *Provided further*, That the implementation of the program described in the previous proviso shall incur no additional cost to the Department of Veterans Affairs.

Priorities.

Priorities.

Drugs and drug abuse. Requirements.

MEDICAL SUPPORT AND COMPLIANCE

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities; and administrative and legal expenses of the Department for collecting and recovering amounts owed the Department as authorized under chapter 17 of title 38, United States Code, and the Federal Medical Care Recovery Act

(42 U.S.C. 2651 et seq.); $5,746,000,000, plus reimbursements, shall become available on October 1, 2012, and shall remain available until September 30, 2013.

MEDICAL FACILITIES

For necessary expenses for the maintenance and operation of hospitals, nursing homes, domiciliary facilities, and other necessary facilities of the Veterans Health Administration; for administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction, and renovation of any facility under the jurisdiction or for the use of the Department; for oversight, engineering, and architectural activities not charged to project costs; for repairing, altering, improving, or providing facilities in the several hospitals and homes under the jurisdiction of the Department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; for leases of facilities; and for laundry services, $5,441,000,000, plus reimbursements, shall become available on October 1, 2012, and shall remain available until September 30, 2013.

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development as authorized by chapter 73 of title 38, United States Code, $581,000,000, plus reimbursements, shall remain available until September 30, 2013.

NATIONAL CEMETERY ADMINISTRATION

For necessary expenses of the National Cemetery Administration for operations and maintenance, not otherwise provided for, including uniforms or allowances therefor; cemeterial expenses as authorized by law; purchase of one passenger motor vehicle for use in cemeterial operations; hire of passenger motor vehicles; and repair, alteration or improvement of facilities under the jurisdiction of the National Cemetery Administration, $250,934,000, of which not to exceed $25,100,000 shall remain available until September 30, 2013: *Provided*, That none of the funds under this heading may be used to expand the Urban Initiative project beyond those sites outlined in the fiscal year 2012 or previous budget submissions until the National Cemetery Administration submits to the Committees on Appropriations of both Houses of Congress a detailed strategy to serve the burial needs of veterans residing in rural and highly rural areas: *Provided further,* That the report shall include a timeline for implementation of such strategy and cost estimates of establishing new burial sites in at least five rural or highly rural locations.

Reports.

Cost estimates.

DEPARTMENTAL ADMINISTRATION

GENERAL ADMINISTRATION

(INCLUDING TRANSFER OF FUNDS)

For necessary operating expenses of the Department of Veterans Affairs, not otherwise provided for, including administrative

expenses in support of Department-Wide capital planning, management and policy activities, uniforms, or allowances therefor; not to exceed $25,000 for official reception and representation expenses; hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, $416,737,000, of which not to exceed $20,837,000 shall remain available until September 30, 2013: *Provided,* That funds provided under this heading may be transferred to "General operating expenses, Veterans Benefits Administration".

GENERAL OPERATING EXPENSES, VETERANS BENEFITS ADMINISTRATION

For necessary operating expenses of the Veterans Benefits Administration, not otherwise provided for, including hire of passenger motor vehicles, reimbursement of the General Services Administration for security guard services, and reimbursement of the Department of Defense for the cost of overseas employee mail, $2,018,764,000: *Provided*, That expenses for services and assistance authorized under paragraphs (1), (2), (5), and (11) of section 3104(a) of title 38, United States Code, that the Secretary of Veterans Affairs determines are necessary to enable entitled veterans: (1) to the maximum extent feasible, to become employable and to obtain and maintain suitable employment; or (2) to achieve maximum independence in daily living, shall be charged to this account: *Provided further*, That of the funds made available under this heading, not to exceed $105,000,000 shall remain available until September 30, 2013: *Provided further*, That from the funds made available under this heading, the Veterans Benefits Administration may purchase (on a one-for-one replacement basis only) up to two passenger motor vehicles for use in operations of that Administration in Manila, Philippines.

Determination.

INFORMATION TECHNOLOGY SYSTEMS

For necessary expenses for information technology systems and telecommunications support, including developmental information systems and operational information systems; for pay and associated costs; and for the capital asset acquisition of information technology systems, including management and related contractual costs of said acquisitions, including contractual costs associated with operations authorized by section 3109 of title 5, United States Code, $3,111,376,000, plus reimbursements: *Provided,* That $915,000,000 shall be for pay and associated costs, of which not to exceed $25,000,000 shall remain available until September 30, 2013: *Provided further,* That $1,616,018,000 shall be for operations and maintenance, of which not to exceed $110,000,000 shall remain available until September 30, 2013: *Provided further,* That $580,358,000 shall be for information technology systems development, modernization, and enhancement, and shall remain available until September 30, 2013: *Provided further,* That none of the funds made available under this heading may be obligated until the Department of Veterans Affairs submits to the Committees on Appropriations of both Houses of Congress, and such Committees approve, a plan for expenditure that: (1) meets the capital planning and investment control review requirements established by the Office of Management and Budget; (2) complies with the Department of Veterans Affairs enterprise architecture; (3) conforms with

Expenditure plan.

Certification.

an established enterprise life cycle methodology; and (4) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government: *Provided further,* That amounts made available for information technology systems development, modernization, and enhancement may not be obligated or expended until the Secretary of Veterans Affairs or the Chief Information Officer of the Department of Veterans Affairs submits to the Committees on Appropriations of both Houses of Congress a certification of the amounts, in parts or in full, to be obligated and expended for each development project: *Provided further,* That amounts made available for salaries and expenses, operations and maintenance, and information technology systems development, modernization, and enhancement may be transferred among the three subaccounts after the Secretary of Veterans Affairs requests from the Committees on Appropriations of both Houses of Congress the authority to make the transfer and an approval is issued: *Provided further,* That the funds made available under this heading for information technology systems development, modernization, and enhancement, shall be for the projects, and in the amounts, specified under this heading in the Joint Explanatory Statement of the Committee of Conference.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, to include information technology, in carrying out the provisions of the Inspector General Act of 1978 (5 U.S.C. App.), $112,391,000, of which $6,000,000 shall remain available until September 30, 2013.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending, and improving any of the facilities, including parking projects, under the jurisdiction or for the use of the Department of Veterans Affairs, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, and 8122 of title 38, United States Code, including planning, architectural and engineering services, construction management services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, where the estimated cost of a project is more than the amount set forth in section 8104(a)(3)(A) of title 38, United States Code, or where funds for a project were made available in a previous major project appropriation, $589,604,000, to remain available until expended, of which $5,000,000 shall be to make reimbursements as provided in section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) for claims paid for contract disputes: *Provided*, That except for advance planning activities, including needs assessments which may or may not lead to capital investments, and other capital asset management related activities, including portfolio development and management activities, and investment strategy studies funded through the advance planning fund and the planning and design activities funded through the design fund, including needs assessments which may or may not lead to capital investments, and salaries and associated costs of the resident engineers who oversee those capital investments funded through this

account, and funds provided for the purchase of land for the National Cemetery Administration through the land acquisition line item, none of the funds made available under this heading shall be used for any project which has not been approved by the Congress in the budgetary process: *Provided further*, That funds made available under this heading for fiscal year 2012, for each approved project shall be obligated: (1) by the awarding of a construction documents contract by September 30, 2012; and (2) by the awarding of a construction contract by September 30, 2013: *Provided further*, That the Secretary of Veterans Affairs shall promptly submit to the Committees on Appropriations of both Houses of Congress a written report on any approved major construction project for which obligations are not incurred within the time limitations established above.

Contracts. Deadlines.

Reports.

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities, including parking projects, under the jurisdiction or for the use of the Department of Veterans Affairs, including planning and assessments of needs which may lead to capital investments, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, 8122, and 8162 of title 38, United States Code, where the estimated cost of a project is equal to or less than the amount set forth in section 8104(a)(3)(A) of title 38, United States Code, $482,386,000, to remain available until expended, along with unobligated balances of previous "Construction, minor projects" appropriations which are hereby made available for any project where the estimated cost is equal to or less than the amount set forth in such section: *Provided*, That funds made available under this heading shall be for: (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the Department which are necessary because of loss or damage caused by any natural disaster or catastrophe; and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify, or alter existing hospital, nursing home, and domiciliary facilities in State homes, for furnishing care to veterans as authorized by sections 8131 through 8137 of title 38, United States Code, $85,000,000, to remain available until expended.

GRANTS FOR CONSTRUCTION OF VETERANS CEMETERIES

For grants to assist States and tribal governments in establishing, expanding, or improving veterans cemeteries as authorized by section 2408 of title 38, United States Code, $46,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

Authority request. Time period.

SEC. 201. Any appropriation for fiscal year 2012 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" may be transferred as necessary to any other of the mentioned appropriations: *Provided*, That before a transfer may take place, the Secretary of Veterans Affairs shall request from the Committees on Appropriations of both Houses of Congress the authority to make the transfer and such Committees issue an approval, or absent a response, a period of 30 days has elapsed.

(INCLUDING TRANSFER OF FUNDS)

Notification.

Authority request.

Authority request.

SEC. 202. Amounts made available for the Department of Veterans Affairs for fiscal year 2012, in this Act or any other Act, under the "Medical services", "Medical support and compliance", and "Medical facilities" accounts may be transferred among the accounts: *Provided*, That any transfers between the "Medical services" and "Medical support and compliance" accounts of 1 percent or less of the total amount appropriated to the account in this or any other Act may take place subject to notification from the Secretary of Veterans Affairs to the Committees on Appropriations of both Houses of Congress of the amount and purpose of the transfer: *Provided further*, That any transfers between the "Medical services" and "Medical support and compliance" accounts in excess of 1 percent, or exceeding the cumulative 1 percent for the fiscal year, may take place only after the Secretary requests from the Committees on Appropriations of both Houses of Congress the authority to make the transfer and an approval is issued: *Provided further*, That any transfers to or from the "Medical facilities" account may take place only after the Secretary requests from the Committees on Appropriations of both Houses of Congress the authority to make the transfer and an approval is issued.

SEC. 203. Appropriations available in this title for salaries and expenses shall be available for services authorized by section 3109 of title 5, United States Code, hire of passenger motor vehicles; lease of a facility or land or both; and uniforms or allowances therefore, as authorized by sections 5901 through 5902 of title 5, United States Code.

SEC. 204. No appropriations in this title (except the appropriations for "Construction, major projects", and "Construction, minor projects") shall be available for the purchase of any site for or toward the construction of any new hospital or home.

SEC. 205. No appropriations in this title shall be available for hospitalization or examination of any persons (except beneficiaries entitled to such hospitalization or examination under the laws providing such benefits to veterans, and persons receiving such treatment under sections 7901 through 7904 of title 5, United States Code, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)), unless reimbursement of the cost of such hospitalization or examination is made to the "Medical services" account at such rates as may be fixed by the Secretary of Veterans Affairs.

SEC. 206. Appropriations available in this title for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" shall be available for payment of prior year accrued obligations required to be recorded by law against the corresponding prior year accounts within the last quarter of fiscal year 2011.

SEC. 207. Appropriations available in this title shall be available to pay prior year obligations of corresponding prior year appropriations accounts resulting from sections 3328(a), 3334, and 3712(a) of title 31, United States Code, except that if such obligations are from trust fund accounts they shall be payable only from "Compensation and pensions".

(INCLUDING TRANSFER OF FUNDS)

Reimbursement.

SEC. 208. Notwithstanding any other provision of law, during fiscal year 2012, the Secretary of Veterans Affairs shall, from the National Service Life Insurance Fund under section 1920 of title 38, United States Code, the Veterans' Special Life Insurance Fund under section 1923 of title 38, United States Code, and the United States Government Life Insurance Fund under section 1955 of title 38, United States Code, reimburse the "General operating expenses, Veterans Benefits Administration" and "Information technology systems" accounts for the cost of administration of the insurance programs financed through those accounts: *Provided*, That reimbursement shall be made only from the surplus earnings accumulated in such an insurance program during fiscal year 2012 that are available for dividends in that program after claims have been paid and actuarially determined reserves have been set aside: *Provided further*, That if the cost of administration of such an insurance program exceeds the amount of surplus earnings accumulated in that program, reimbursement shall be made only to the extent of such surplus earnings: *Provided further*, That the Secretary shall determine the cost of administration for fiscal year 2012 which is properly allocable to the provision of each such insurance program and to the provision of any total disability income insurance included in that insurance program.

Determination.

SEC. 209. Amounts deducted from enhanced-use lease proceeds to reimburse an account for expenses incurred by that account during a prior fiscal year for providing enhanced-use lease services, may be obligated during the fiscal year in which the proceeds are received.

(INCLUDING TRANSFER OF FUNDS)

SEC. 210. Funds available in this title or funds for salaries and other administrative expenses shall also be available to reimburse the Office of Resolution Management of the Department of Veterans Affairs and the Office of Employment Discrimination Complaint Adjudication under section 319 of title 38, United States Code, for all services provided at rates which will recover actual costs but not exceed $42,904,000 for the Office of Resolution Management and $3,360,000 for the Office of Employment and Discrimination Complaint Adjudication: *Provided*, That payments may be made in advance for services to be furnished based on estimated costs: *Provided further*, That amounts received shall be

credited to the "General administration" and "Information technology systems" accounts for use by the office that provided the service.

Contracts. Reports. Deadline.

SEC. 211. No appropriations in this title shall be available to enter into any new lease of real property if the estimated annual rental cost is more than $1,000,000, unless the Secretary submits a report which the Committees on Appropriations of both Houses of Congress approve within 30 days following the date on which the report is received.

SEC. 212. No funds of the Department of Veterans Affairs shall be available for hospital care, nursing home care, or medical services provided to any person under chapter 17 of title 38, United States Code, for a non-service-connected disability described in section 1729(a)(2) of such title, unless that person has disclosed to the Secretary of Veterans Affairs, in such form as the Secretary may require, current, accurate third-party reimbursement information for purposes of section 1729 of such title: *Provided*, That the Secretary may recover, in the same manner as any other debt due the United States, the reasonable charges for such care or services from any person who does not make such disclosure as required: *Provided further*, That any amounts so recovered for care or services provided in a prior fiscal year may be obligated by the Secretary during the fiscal year in which amounts are received.

(INCLUDING TRANSFER OF FUNDS)

SEC. 213. Notwithstanding any other provision of law, proceeds or revenues derived from enhanced-use leasing activities (including disposal) may be deposited into the "Construction, major projects" and "Construction, minor projects" accounts and be used for construction (including site acquisition and disposition), alterations, and improvements of any medical facility under the jurisdiction or for the use of the Department of Veterans Affairs. Such sums as realized are in addition to the amount provided for in "Construction, major projects" and "Construction, minor projects".

SEC. 214. Amounts made available under "Medical services" are available—

(1) for furnishing recreational facilities, supplies, and equipment; and

(2) for funeral expenses, burial expenses, and other expenses incidental to funerals and burials for beneficiaries receiving care in the Department.

(INCLUDING TRANSFER OF FUNDS)

SEC. 215. Such sums as may be deposited to the Medical Care Collections Fund pursuant to section 1729A of title 38, United States Code, may be transferred to "Medical services", to remain available until expended for the purposes of that account.

Native Americans.

SEC. 216. The Secretary of Veterans Affairs may enter into agreements with Indian tribes and tribal organizations which are party to the Alaska Native Health Compact with the Indian Health Service, and Indian tribes and tribal organizations serving rural Alaska which have entered into contracts with the Indian Health Service under the Indian Self Determination and Educational Assistance Act, to provide healthcare, including behavioral health and dental care. The Secretary shall require participating veterans and facilities to comply with all appropriate rules and regulations,

Requirements. Regulations.

as established by the Secretary. The term "rural Alaska" shall mean those lands sited within the external boundaries of the Alaska Native regions specified in sections 7(a)(1)–(4) and (7)–(12) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1606), and those lands within the Alaska Native regions specified in sections 7(a)(5) and 7(a)(6) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1606), which are not within the boundaries of the Municipality of Anchorage, the Fairbanks North Star Borough, the Kenai Peninsula Borough or the Matanuska Susitna Borough.

Definition.

(INCLUDING TRANSFER OF FUNDS)

SEC. 217. Such sums as may be deposited to the Department of Veterans Affairs Capital Asset Fund pursuant to section 8118 of title 38, United States Code, may be transferred to the "Construction, major projects" and "Construction, minor projects" accounts, to remain available until expended for the purposes of these accounts.

SEC. 218. None of the funds made available in this title may be used to implement any policy prohibiting the Directors of the Veterans Integrated Services Networks from conducting outreach or marketing to enroll new veterans within their respective Networks.

SEC. 219. The Secretary of Veterans Affairs shall submit to the Committees on Appropriations of both Houses of Congress a quarterly report on the financial status of the Veterans Health Administration.

Deadlines.
Reports.

(INCLUDING TRANSFER OF FUNDS)

SEC. 220. Amounts made available under the "Medical services", "Medical support and compliance", "Medical facilities", "General operating expenses, Veterans Benefits Administration", "General administration", and "National Cemetery Administration" accounts for fiscal year 2012, may be transferred to or from the "Information technology systems" account: *Provided*, That before a transfer may take place, the Secretary of Veterans Affairs shall request from the Committees on Appropriations of both Houses of Congress the authority to make the transfer and an approval is issued.

Authority
request.

(INCLUDING TRANSFER OF FUNDS)

SEC. 221. Amounts made available for the "Information technology systems" account for development, modernization, and enhancement may be transferred between projects or to newly defined projects: *Provided*, That no project may be increased or decreased by more than $1,000,000 of cost prior to submitting a request to the Committees on Appropriations of both Houses of Congress to make the transfer and an approval is issued, or absent a response, a period of 30 days has elapsed.

Authority
request.
Time period.

SEC. 222. None of the funds appropriated or otherwise made available by this Act or any other Act for the Department of Veterans Affairs may be used in a manner that is inconsistent with: (1) section 842 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Public Law 109–115;

119 Stat. 2506); or (2) section 8110(a)(5) of title 38, United States Code.

SEC. 223. Of the amounts made available to the Department of Veterans Affairs for fiscal year 2012, in this Act or any other Act, under the "Medical facilities" account for nonrecurring maintenance, not more than 20 percent of the funds made available shall be obligated during the last 2 months of that fiscal year: *Provided*, That the Secretary may waive this requirement after providing written notice to the Committees on Appropriations of both Houses of Congress.

Waiver authority. Notice.

(INCLUDING TRANSFER OF FUNDS)

SEC. 224. Of the amounts appropriated to the Department of Veterans Affairs for fiscal year 2012 for "Medical services", "Medical support and compliance", "Medical facilities", "Construction, minor projects", and "Information technology systems", up to $241,666,000, plus reimbursements, may be transferred to the Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund, established by section 1704 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 3571) and may be used for operation of the facilities designated as combined Federal medical facilities as described by section 706 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4500): *Provided*, That additional funds may be transferred from accounts designated in this section to the Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund upon written notification by the Secretary of Veterans Affairs to the Committees on Appropriations of both Houses of Congress.

Notification.

(INCLUDING TRANSFER OF FUNDS)

SEC. 225. Such sums as may be deposited to the Medical Care Collections Fund pursuant to section 1729A of title 38, United States Code, for health care provided at facilities designated as combined Federal medical facilities as described by section 706 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4500) shall also be available: (1) for transfer to the Joint Department of Defense-Department of Veterans Affairs Medical Facility Demonstration Fund, established by section 1704 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 3571); and (2) for operations of the facilities designated as combined Federal medical facilities as described by section 706 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4500).

(INCLUDING TRANSFER OF FUNDS)

SEC. 226. Of the amounts available in this title for "Medical services", "Medical support and compliance", and "Medical facilities", a minimum of $15,000,000, shall be transferred to the DOD-VA Health Care Sharing Incentive Fund, as authorized by section 8111(d) of title 38, United States Code, to remain available until expended, for any purpose authorized by section 8111 of title 38, United States Code.

(INCLUDING RESCISSIONS OF FUNDS)

SEC. 227. (a) Of the funds appropriated in title X of division B of Public Law 112–10, the following amounts which became available on October 1, 2011, are hereby rescinded from the following accounts in the amounts specified:

(1) "Department of Veterans Affairs, Medical services", $1,400,000,000.

(2) "Department of Veterans Affairs, Medical support and compliance", $100,000,000.

(3) "Department of Veterans Affairs, Medical facilities", $250,000,000.

(b) In addition to amounts provided elsewhere in this Act, an additional amount is appropriated to the following accounts in the amounts specified to remain available until September 30, 2013:

(1) "Department of Veterans Affairs, Medical services", $1,400,000,000.

(2) "Department of Veterans Affairs, Medical support and compliance", $100,000,000.

(3) "Department of Veterans Affairs, Medical facilities", $250,000,000.

SEC. 228. The Secretary of the Department of Veterans Affairs shall notify the Committees on Appropriations of both Houses of Congress of all bid savings in major construction projects that total at least $5,000,000, or 5 percent of the programmed amount of the project, whichever is less: *Provided*, That such notification shall occur within 14 days of a contract identifying the programmed amount: *Provided further,* That the Secretary shall notify the committees 14 days prior to the obligation of such bid savings and shall describe the anticipated use of such savings.

Notifications.
Contracts.
Deadlines.

SEC. 229. The scope of work for a project included in "Construction, major projects" may not be increased above the scope specified for that project in the original justification data provided to the Congress as part of the request for appropriations.

SEC. 230. (a) EXCEPTION WITH RESPECT TO CONFIDENTIAL NATURE OF CLAIMS.—Section 5701 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(l) Under regulations the Secretary shall prescribe, the Secretary may disclose information about a veteran or the dependent of a veteran to a State controlled substance monitoring program, including a program approved by the Secretary of Health and Human Services under section 399O of the Public Health Service Act (42 U.S.C. 280g–3), to the extent necessary to prevent misuse and diversion of prescription medicines.".

Regulations.

(b) EXCEPTION WITH RESPECT TO CONFIDENTIALITY OF CERTAIN MEDICAL RECORDS.—Section 7332(b)(2) of title 38, United States Code, is amended by adding at the end the following new subparagraph:

"(G) To a State controlled substance monitoring program, including a program approved by the Secretary of Health and Human Services under section 399O of the Public Health Service Act (42 U.S.C. 280g–3), to the extent necessary to prevent misuse and diversion of prescription medicines.".

SEC. 231. The Secretary of Veterans Affairs shall provide on a quarterly basis to the Committees on Appropriations of both

Deadlines.
Reports.

Houses of Congress notification of any single national outreach and awareness marketing campaign in which obligations exceed $2,000,000. The first report shall be submitted no later than April 15, 2012.

SEC. 232. None of the funds made available by this Act may be used to declare as excess to the needs of the Department of Veterans Affairs or otherwise take any action to exchange, trade, auction, transfer, or otherwise dispose of, or reduce the acreage of, Federal land and improvements at the St. Albans campus, consisting of approximately 55 acres of land, with borders near Linden Boulevard on the northwest, 115th Avenue on the west, the Long Island Railroad on the northeast, and Baisley Boulevard on the southeast.

Contracts.

SEC. 233. None of the funds made available in this Act may be used to enter into a contract using procedures that do not give to small business concerns owned and controlled by veterans (as that term is defined in section 3(q)(3) of the Small Business Act (15 U.S.C. 632(q)(3)) that are included in the database under section 8127(f) of title 38, United States Code, any preference available with respect to such contract, except for a preference given to small business concerns owned and controlled by service-disabled veterans (as defined in section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)).

SEC. 234. Section 315(b) of title 38, United States Code, is amended by striking "December 31, 2011" and inserting "December 31, 2012".

TITLE III

RELATED AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one-for-one replacement basis only) and hire of passenger motor vehicles; not to exceed $7,500 for official reception and representation expenses; and insurance of official motor vehicles in foreign countries, when required by law of such countries, $61,100,000, to remain available until expended.

FOREIGN CURRENCY FLUCTUATIONS ACCOUNT

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, such sums as may be necessary, to remain available until expended, for purposes authorized by section 2109 of title 36, United States Code.

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SALARIES AND EXPENSES

For necessary expenses for the operation of the United States Court of Appeals for Veterans Claims as authorized by sections 7251 through 7298 of title 38, United States Code, $30,770,000: *Provided*, That $2,726,323 shall be available for the purpose of providing financial assistance as described, and in accordance with the process and reporting procedures set forth, under this heading in Public Law 102–229.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase or lease of passenger motor vehicles for replacement on a one-for-one basis only, and not to exceed $1,000 for official reception and representation expenses, $45,800,000, to remain available until expended. In addition, such sums as may be necessary for parking maintenance, repairs and replacement, to be derived from the "Lease of Department of Defense Real Property for Defense Agencies" account.

Funds appropriated under this Act may be provided to Arlington County, Virginia, for the relocation of the federally owned water main at Arlington National Cemetery making additional land available for ground burials.

ARMED FORCES RETIREMENT HOME

TRUST FUND

For expenses necessary for the Armed Forces Retirement Home to operate and maintain the Armed Forces Retirement Home—Washington, District of Columbia, and the Armed Forces Retirement Home—Gulfport, Mississippi, to be paid from funds available in the Armed Forces Retirement Home Trust Fund, $67,700,000, of which $2,000,000 shall remain available until expended for construction and renovation of the physical plants at the Armed Forces Retirement Home—Washington, District of Columbia, and the Armed Forces Retirement Home—Gulfport, Mississippi.

GENERAL FUND PAYMENT, ARMED FORCES RETIREMENT HOME

For payment to the "Armed Forces Retirement Home", $14,630,000, to remain available until expended, for expenses necessary to mitigate structural damage sustained to buildings on the Armed Forces Retirement Home—Washington, District of Columbia, campus as a result of the August 2011 earthquake.

TITLE IV

OVERSEAS CONTINGENCY OPERATIONS

DEPARTMENT OF DEFENSE

MILITARY CONSTRUCTION, ARMY

For an additional amount for "Military Construction, Army", $80,000,000, to remain available until September 30, 2012: *Provided,* That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

MILITARY CONSTRUCTION, NAVY AND MARINE CORPS

For an additional amount for "Military Construction, Navy and Marine Corps", $189,703,000, to remain available until September 30, 2012: *Provided,* That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

ADMINISTRATIVE PROVISIONS

(INCLUDING RESCISSION OF FUNDS)

SEC. 401. Of the unobligated balances in title IV, division E of Public Law 111–117, $269,703,000 are hereby rescinded: *Provided,* That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE V

GENERAL PROVISIONS

SEC. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 502. None of the funds made available in this Act may be used for any program, project, or activity, when it is made known to the Federal entity or official to which the funds are made available that the program, project, or activity is not in compliance with any Federal law relating to risk assessment, the protection of private property rights, or unfunded mandates.

Pay raises.

SEC. 503. Such sums as may be necessary for fiscal year 2012 for pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

Lobbying.

SEC. 504. No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before Congress, except in presentation to Congress itself.

SEC. 505. All departments and agencies funded under this Act are encouraged, within the limits of the existing statutory authorities and funding, to expand their use of "E–Commerce" technologies and procedures in the conduct of their business practices and public service activities.

Submissions.

SEC. 506. Unless stated otherwise, all reports and notifications required by this Act shall be submitted to the Subcommittee on Military Construction and Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives and the Subcommittee on Military Construction and Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

SEC. 507. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government except pursuant to a transfer made by, or transfer authority provided in, this or any other appropriations Act.

SEC. 508. None of the funds made available in this Act may be used for a project or program named for an individual serving as a Member, Delegate, or Resident Commissioner of the United States House of Representatives.

Web posting. Public information. Reports.

SEC. 509. (a) Any agency receiving funds made available in this Act, shall, subject to subsections (b) and (c), post on the public website of that agency any report required to be submitted by the Congress in this or any other Act, upon the determination by the head of the agency that it shall serve the national interest.

(b) Subsection (a) shall not apply to a report if—

(1) the public posting of the report compromises national security; or

(2) the report contains confidential or proprietary information.

Time period.

(c) The head of the agency posting such report shall do so only after such report has been made available to the requesting Committee or Committees of Congress for no less than 45 days.

SEC. 510. (a) None of the funds made available in this Act may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography.

(b) Nothing in subsection (a) shall limit the use of funds necessary for any Federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities.

Detainees. Cuba.

SEC. 511. (a) IN GENERAL.—None of the funds appropriated or otherwise made available to the Department of Defense in this Act may be used to construct, renovate, or expand any facility in the United States, its territories, or possessions to house any individual detained at United States Naval Station, Guantanamo Bay, Cuba, for the purposes of detention or imprisonment in the custody or under the control of the Department of Defense.

(b) The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) An individual described in this subsection is any individual who, as of June 24, 2009, is located at United States Naval Station, Guantanamo Bay, Cuba, and who—

(1) is not a citizen of the United States or a member of the Armed Forces of the United States; and

(2) is—

(A) in the custody or under the effective control of the Department of Defense; or

(B) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

SEC. 512. None of the funds appropriated or otherwise made available in this Act may be used by an agency of the executive branch to pay for first-class travel by an employee of the agency in contravention of sections 301–10.122 through 301–10.124 of title 41, Code of Federal Regulations.

SEC. 513. None of the funds provided in this Act may be used to execute a contract for goods or services, including construction services, where the contractor has not complied with Executive Order No. 12989.

SEC. 514. None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, or to make a grant to, any corporation that was convicted of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

This division may be cited as the "Military Construction and Veterans Affairs, and Related Agencies Appropriations Act, 2012".

Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012.

DIVISION I—DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2012

TITLE I

DEPARTMENT OF STATE AND RELATED AGENCY

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Department of State and the Foreign Service not otherwise provided for, $6,550,947,000, of which up to $1,355,000,000 is for Worldwide Security Protection (to remain available until expended): *Provided*, That funds made available under this heading shall be allocated as follows:

(1) HUMAN RESOURCES.—For necessary expenses for training, human resources management, and salaries, including employment without regard to civil service and classification laws of persons on a temporary basis (not to exceed $700,000), as authorized by section 801 of the United States Information and Educational Exchange Act of 1948, $2,277,862,000, to remain available until September 30, 2013, of which not less than $121,814,000 shall be available only for public diplomacy American salaries, and up to $203,800,000 is for Worldwide Security Protection and shall remain available until expended.

(2) OVERSEAS PROGRAMS.—For necessary expenses for the regional bureaus of the Department of State and overseas activities as authorized by law, $2,109,293,000, to remain available until September 30, 2013, of which not less than $347,572,000 shall be available only for public diplomacy international information programs.

(3) DIPLOMATIC POLICY AND SUPPORT.—For necessary expenses for the functional bureaus of the Department of State including representation to certain international organizations in which the United States participates pursuant to treaties ratified pursuant to the advice and consent of the Senate or specific Acts of Congress, general administration, and arms control, nonproliferation and disarmament activities as authorized, $822,513,000, to remain available until September 30, 2013.

(4) SECURITY PROGRAMS.—For necessary expenses for security activities, $1,341,279,000, to remain available until September 30, 2013, of which up to $1,151,200,000 is for Worldwide Security Protection and shall remain available until expended.

(5) FEES AND PAYMENTS COLLECTED.—In addition to amounts otherwise made available under this heading—

(A) not to exceed $1,753,991 shall be derived from fees collected from other executive agencies for lease or use of facilities located at the International Center in accordance with section 4 of the International Center Act, and, in addition, as authorized by section 5 of such Act, $520,150, to be derived from the reserve authorized by that section, to be used for the purposes set out in that section;

(B) as authorized by section 810 of the United States Information and Educational Exchange Act, not to exceed $5,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from English teaching, library, motion pictures, and publication programs and from fees from educational advising and counseling and exchange visitor programs; and

(C) not to exceed $15,000, which shall be derived from reimbursements, surcharges and fees for use of Blair House facilities.

(6) TRANSFER, REPROGRAMMING, AND OTHER MATTERS.—

(A) Notwithstanding any provision of this Act, funds may be reprogrammed within and between subsections under this heading subject to section 7015 of this Act;

(B) Of the amount made available under this heading, not to exceed $10,000,000 may be transferred to, and merged with, funds made available by this Act under the heading "Emergencies in the Diplomatic and Consular Service", to be available only for emergency evacuations and rewards, as authorized; and

(C) Funds appropriated under this heading are available for acquisition by exchange or purchase of passenger motor vehicles as authorized by law and, pursuant to 31 U.S.C. 1108(g), for the field examination of programs and activities in the United States funded from any account contained in this title.

(D) Of the amount made available under this heading, up to $6,000,000 may be transferred to, and merged with, funds made available by this Act under the heading "Department of State, Administration of Foreign Affairs, Capital Investment Fund": *Provided,* That the transfer authority of this subparagraph is in addition to any other transfer authority available to the Secretary of State.

(E)(i) The headings "Civilian Stabilization Initiative" in titles I and II of prior acts making appropriations for the Department of State, foreign operations, and related programs shall be renamed "Conflict Stabilization Operations".

(ii) Of the funds appropriated under this heading, up to $35,000,000, to remain available until expended, may be transferred to, and merged with, funds previously made available under the heading "Conflict Stabilization Operations" in title I of prior acts making appropriations for the Department of State, foreign operations and related programs, as amended by subparagraph (i).

Historic preservation. Religion. Determination. Reports.

(F) None of the funds appropriated under this heading may be used for the preservation of religious sites unless the Secretary of State determines and reports to the Committees on Appropriations that such sites are historically, artistically, or culturally significant, that the purpose of the project is neither to advance nor to inhibit the free exercise of religion, and that the project is in the national interest of the United States.

CAPITAL INVESTMENT FUND

For necessary expenses of the Capital Investment Fund, $59,380,000, to remain available until expended, as authorized: *Provided*, That section 135(e) of Public Law 103–236 shall not apply to funds available under this heading.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General, $61,904,000, notwithstanding section 209(a)(1) of the Foreign Service Act of 1980 (Public Law 96–465), as it relates to post inspections.

EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

For expenses of educational and cultural exchange programs, as authorized, $583,200,000, to remain available until expended: *Provided,* That not to exceed $5,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from or in connection with English teaching, educational advising and counseling programs, and exchange visitor programs as authorized.

REPRESENTATION ALLOWANCES

For representation allowances as authorized, $7,300,000.

PROTECTION OF FOREIGN MISSIONS AND OFFICIALS

For expenses, not otherwise provided, to enable the Secretary of State to provide for extraordinary protective services, as authorized, $27,000,000, to remain available until September 30, 2013.

EMBASSY SECURITY, CONSTRUCTION, AND MAINTENANCE

For necessary expenses for carrying out the Foreign Service Buildings Act of 1926 (22 U.S.C. 292–303), preserving, maintaining, repairing, and planning for buildings that are owned or directly leased by the Department of State, renovating, in addition to funds otherwise available, the Harry S Truman Building, and carrying out the Diplomatic Security Construction Program as authorized, $762,000,000, to remain available until expended as authorized, of which not to exceed $25,000 may be used for domestic and overseas representation as authorized: *Provided,* That none of the funds appropriated in this paragraph shall be available for acquisition of furniture, furnishings, or generators for other departments and agencies.

In addition, for the costs of worldwide security upgrades, acquisition, and construction as authorized, $775,000,000, to remain available until expended: *Provided*, That not later than 45 days after enactment of this Act, the Secretary of State shall submit to the Committees on Appropriations the proposed allocation of funds made available under this heading and the actual and anticipated proceeds of sales for all projects in fiscal year 2012.

Deadline.
Submission.

EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to enable the Secretary of State to meet unforeseen emergencies arising in the Diplomatic and Consular Service, $9,300,000, to remain available until expended as authorized, of which not to exceed $1,000,000 may be transferred to, and merged with, funds appropriated by this Act under the heading "Repatriation Loans Program Account", subject to the same terms and conditions.

REPATRIATION LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $1,447,000, as authorized, of which $710,000 may be made available for administrative expenses necessary to carry out the direct loan program and may be paid to "Diplomatic and Consular Programs": *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

PAYMENT TO THE AMERICAN INSTITUTE IN TAIWAN

For necessary expenses to carry out the Taiwan Relations Act (Public Law 96–8), $21,108,000.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For payment to the Foreign Service Retirement and Disability Fund, as authorized, $158,900,000.

INTERNATIONAL ORGANIZATIONS

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

United Nations. 22 USC 269a note.

For necessary expenses, not otherwise provided for, to meet annual obligations of membership in international multilateral organizations, pursuant to treaties ratified pursuant to the advice and consent of the Senate, conventions or specific Acts of Congress, $1,449,700,000: *Provided*, That the Secretary of State shall, at the time of the submission of the President's budget to Congress under section 1105(a) of title 31, United States Code, transmit to the Committees on Appropriations the most recent biennial budget prepared by the United Nations for the operations of the United Nations: *Provided further*, That the Secretary of State shall notify the Committees on Appropriations at least 15 days in advance (or in an emergency, as far in advance as is practicable) of any United Nations action to increase funding for any United Nations program without identifying an offsetting decrease elsewhere in the United Nations budget: *Provided further,* That the Secretary of State shall report to the Committees on Appropriations not later than May 1, 2012, on any credits available to the United States from the United Nations Tax Equalization Fund (TEF) and provide updated fiscal year 2013 assessment costs including offsets from available TEF credits and updated foreign currency exchange rates: *Provided further,* That any such credits shall only be available for United States assessed contributions to the United Nations and shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That any payment of arrearages under this heading shall be directed toward activities that are mutually agreed upon by the United States and the respective international organization: *Provided further*, That none of the funds appropriated under this heading shall be available for a United States contribution to an international organization for the United States share of interest costs made known to the United States Government by such organization for loans incurred on or after October 1, 1984, through external borrowings.

Budget.

Notification. Deadline.

Reports. Deadline.

Notification.

CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

For necessary expenses to pay assessed and other expenses of international peacekeeping activities directed to the maintenance or restoration of international peace and security, $1,828,182,000, of which 15 percent shall remain available until September 30, 2013: *Provided*, That none of the funds made available by this Act shall be obligated or expended for any new or expanded United Nations peacekeeping mission unless, at least 15 days in advance of voting for the new or expanded mission in the United Nations Security Council (or in an emergency as far in advance as is practicable), the Committees on Appropriations are notified: (1) of the estimated cost and duration of the mission, the national interest that will be served, and the exit strategy; (2) that the United Nations has taken necessary measures to prevent United

Deadline. Notification. Human trafficking. Web site.

Nations employees, contractor personnel, and peacekeeping troops serving in the mission from trafficking in persons, exploiting victims of trafficking, or committing acts of illegal sexual exploitation or other violations of human rights, and to bring to justice individuals who engage in such acts while participating in the peacekeeping mission, including prosecution in their home countries of such individuals in connection with such acts, and to make information about such cases publicly available in the country where an alleged crime occurs and on the United Nations' Web site; and (3) pursuant to section 7015 of this Act, and the procedures therein followed, setting forth the source of funds that will be used to pay the cost of the new or expanded mission: *Provided further*, That funds shall be available for peacekeeping expenses unless the Secretary of State determines that American manufacturers and suppliers are not being given opportunities to provide equipment, services, and material for United Nations peacekeeping activities equal to those being given to foreign manufacturers and suppliers: *Provided further,* That the Secretary of State shall work with the United Nations and governments contributing peacekeeping troops to develop effective vetting procedures to ensure that such troops have not violated human rights: *Provided further,* That none of the funds appropriated or otherwise made available under this heading may be used for any United Nations peacekeeping mission that will involve United States Armed Forces under the command or operational control of a foreign national, unless the President's military advisors have submitted to the President a recommendation that such involvement is in the national interests of the United States and the President has submitted to the Congress such a recommendation: *Provided further,* That notwithstanding any other provision of law, funds appropriated or otherwise made available under this heading shall be available for United States assessed contributions up to the amount specified in Annex IV accompanying United Nations General Assembly Resolution 64/220: *Provided further,* That such funds may be made available above the amount authorized in section 404(b)(2)(B) of the Foreign Relations Authorization Act, fiscal years 1994 and 1995 (22 U.S.C. 287e note) only if the Secretary of State determines and reports to the Committees on Appropriations, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Foreign Relations of the Senate that it is important to the national interest of the United States: *Provided further,* That the Secretary of State shall report to the Committees on Appropriations not later than May 1, 2012, of any credits available to the United States resulting from United Nations peacekeeping missions or the United Nations Tax Equalization Fund: *Provided further,* That any such credits shall only be available for United States assessed contributions to the United Nations and shall be subject to the regular notification procedures of the Committees on Appropriations.

Determination.

Human rights.

Recommendation.

Determination.
Reports.

Reports.
Deadline.

Notification.

INTERNATIONAL COMMISSIONS

22 USC 269a note.

For necessary expenses, not otherwise provided for, to meet obligations of the United States arising under treaties, or specific Acts of Congress, as follows:

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

For necessary expenses for the United States Section of the International Boundary and Water Commission, United States and Mexico, and to comply with laws applicable to the United States Section, including not to exceed $6,000 for representation; as follows:

SALARIES AND EXPENSES

For salaries and expenses, not otherwise provided for, $44,722,000.

CONSTRUCTION

For detailed plan preparation and construction of authorized projects, $31,453,000, to remain available until expended, as authorized.

AMERICAN SECTIONS, INTERNATIONAL COMMISSIONS

For necessary expenses, not otherwise provided, for the International Joint Commission and the International Boundary Commission, United States and Canada, as authorized by treaties between the United States and Canada or Great Britain, and the Border Environment Cooperation Commission as authorized by Public Law 103–182, $11,687,000: *Provided,* That of the amount provided under this heading for the International Joint Commission, $9,000 may be made available for representation expenses.

INTERNATIONAL FISHERIES COMMISSIONS

For necessary expenses for international fisheries commissions, not otherwise provided for, as authorized by law, $36,300,000: *Provided*, That the United States share of such expenses may be advanced to the respective commissions pursuant to 31 U.S.C. 3324.

RELATED AGENCY

BROADCASTING BOARD OF GOVERNORS

INTERNATIONAL BROADCASTING OPERATIONS

For necessary expenses to enable the Broadcasting Board of Governors (BBG), as authorized, to carry out international communication activities, and to make and supervise grants for radio and television broadcasting to the Middle East, $740,100,000: *Provided*, That funds appropriated under this heading shall be made available to expand unrestricted access to information on the Internet through the development and use of circumvention and secure communication technologies: *Provided further,* That the circumvention technologies and programs supported by such funds shall undergo a review, to include an assessment of protections against such technologies being used for illicit purposes: *Provided further,* That the BBG shall coordinate the development and use of such technologies with the Secretary of State, as appropriate: *Provided further,* That of the total amount appropriated under this heading, not to exceed $16,000 may be used for official receptions within

the United States as authorized, not to exceed $35,000 may be used for representation abroad as authorized, and not to exceed $39,000 may be used for official reception and representation expenses of Radio Free Europe/Radio Liberty: *Provided further*, That the authority provided by section 504(c) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228; 22 U.S.C. 6206 note) shall remain in effect through September 30, 2012: *Provided further,* That the BBG shall notify the Committees on Appropriations within 15 days of any determination by the Board that any of its broadcast entities, including its grantee organizations, provides an open platform for international terrorists or those who support international terrorism, or is in violation of the principles and standards set forth in the United States International Broadcasting Act of 1994 (22 U.S.C. 6202(a) and (b)) or the entity's journalistic code of ethics: *Provided further,* That significant modifications to BBG broadcast hours previously justified to Congress, including changes to transmission platforms (shortwave, medium wave, satellite, Internet, and television), for all BBG language services shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That in addition to funds made available under this heading, and notwithstanding any other provision of law, up to $2,000,000 in receipts from advertising and revenue from business ventures, up to $500,000 in receipts from cooperating international organizations, and up to $1,000,000 in receipts from privatization efforts of the Voice of America and the International Broadcasting Bureau, to remain available until expended for carrying out authorized purposes.

Extension date.
22 USC 6206 note.

Notification.
Deadline.

Notification.

BROADCASTING CAPITAL IMPROVEMENTS

For the purchase, rent, construction, and improvement of facilities for radio and television transmission and reception, and purchase and installation of necessary equipment for radio and television transmission and reception, including to Cuba, as authorized, $7,030,000, to remain available until expended, as authorized.

RELATED PROGRAMS

THE ASIA FOUNDATION

For a grant to The Asia Foundation, as authorized by The Asia Foundation Act (22 U.S.C. 4402), $17,000,000, to remain available until expended, as authorized.

UNITED STATES INSTITUTE OF PEACE

For necessary expenses of the United States Institute of Peace, as authorized by the United States Institute of Peace Act, $30,589,000, to remain available until September 30, 2013, which shall not be used for construction activities.

CENTER FOR MIDDLE EASTERN-WESTERN DIALOGUE TRUST FUND

For necessary expenses of the Center for Middle Eastern-Western Dialogue Trust Fund, as authorized by section 633 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (22 U.S.C. 2078),

the total amount of the interest and earnings accruing to such Fund on or before September 30, 2012, to remain available until expended.

EISENHOWER EXCHANGE FELLOWSHIP PROGRAM

For necessary expenses of Eisenhower Exchange Fellowships, Incorporated, as authorized by sections 4 and 5 of the Eisenhower Exchange Fellowship Act of 1990 (20 U.S.C. 5204–5205), all interest and earnings accruing to the Eisenhower Exchange Fellowship Program Trust Fund on or before September 30, 2012, to remain available until expended: *Provided,* That none of the funds appropriated herein shall be used to pay any salary or other compensation, or to enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376; or for purposes which are not in accordance with OMB Circulars A–110 (Uniform Administrative Requirements) and A–122 (Cost Principles for Nonprofit Organizations), including the restrictions on compensation for personal services.

ISRAELI ARAB SCHOLARSHIP PROGRAM

For necessary expenses of the Israeli Arab Scholarship Program, as authorized by section 214 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (22 U.S.C. 2452), all interest and earnings accruing to the Israeli Arab Scholarship Fund on or before September 30, 2012, to remain available until expended.

EAST-WEST CENTER

To enable the Secretary of State to provide for carrying out the provisions of the Center for Cultural and Technical Interchange Between East and West Act of 1960, by grant to the Center for Cultural and Technical Interchange Between East and West in the State of Hawaii, $16,700,000: *Provided,* That none of the funds appropriated herein shall be used to pay any salary, or enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376.

NATIONAL ENDOWMENT FOR DEMOCRACY

For grants made by the Department of State to the National Endowment for Democracy, as authorized by the National Endowment for Democracy Act, $117,764,000, to remain available until expended, of which $100,000,000 shall be allocated in the traditional and customary manner, including for the core institutes, and $17,764,000 shall be for democracy, human rights, and rule of law programs: *Provided*, That the President of the National Endowment for Democracy shall submit to the Committees on Appropriations not later than 45 days after the date of enactment of this Act a report on the proposed uses of funds under this heading on a regional and country basis.

Deadline.
Reports.

OTHER COMMISSIONS

COMMISSION FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD

SALARIES AND EXPENSES

For necessary expenses for the Commission for the Preservation of America's Heritage Abroad, $634,000, as authorized by section 1303 of Public Law 99–83.

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

SALARIES AND EXPENSES

For necessary expenses for the United States Commission on International Religious Freedom, as authorized by title II of the International Religious Freedom Act of 1998 (Public Law 105–292), $3,000,000, to remain available until September 30, 2013: *Provided,* That section 209 of the International Religious Freedom Act of 1998 (22 U.S.C. 6436) shall be applied by substituting "September 30, 2012" for "September 30, 2011": *Provided further,* That notwithstanding the expenditure limitation specified in section 208(c)(1) of such Act (22 U.S.C. 6435a(c)(1)), the Commission may expend up to $250,000 of the funds made available under this heading to procure temporary and intermittent services under the authority of section 3109(b) of title 5, United States Code: *Provided further,* That travel by members and staff of the Commission shall be arranged and conducted under the rules and procedures applying to travel by members and staff of the House of Representatives: *Provided further,* That for the purposes of employment rights, any employee of the Commission shall be considered to be a congressional employee as defined in section 2107 of title 5, United States Code and the Commission shall be treated as a congressional employing office.

Applicability. 22 USC 6436 note.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

SALARIES AND EXPENSES

For necessary expenses of the Commission on Security and Cooperation in Europe, as authorized by Public Law 94–304, $2,715,000, to remain available until September 30, 2013.

CONGRESSIONAL-EXECUTIVE COMMISSION ON THE PEOPLE'S REPUBLIC OF CHINA

SALARIES AND EXPENSES

For necessary expenses of the Congressional-Executive Commission on the People's Republic of China, as authorized by title III of the U.S.-China Relations Act of 2000 (22 U.S.C. 6911–6919), $1,996,000, including not more than $3,000 for the purpose of official representation, to remain available until September 30, 2013.

UNITED STATES-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the United States-China Economic and Security Review Commission, as authorized by section 1238 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (22 U.S.C. 7002), $3,493,000, including not more than $4,000 for the purpose of official representation, to remain available until September 30, 2013: *Provided*, That the authorities, requirements, limitations, and conditions contained in the second through sixth provisos under this heading in division F of Public Law 111–117 shall continue in effect during fiscal year 2012 and shall apply to funds appropriated under this heading as if included in this Act.

Extension date.
Applicability.

TITLE II

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

FUNDS APPROPRIATED TO THE PRESIDENT

OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the provisions of section 667 of the Foreign Assistance Act of 1961, $1,092,300,000, to remain available until September 30, 2013, of which not less than $25,000,000 should be for costs associated with procurement reform: *Provided*, That none of the funds appropriated under this heading and under the heading "Capital Investment Fund" in this title may be made available to finance the construction (including architect and engineering services), purchase, or long-term lease of offices for use by the United States Agency for International Development (USAID), unless the USAID Administrator has identified such proposed use of funds in a report submitted to the Committees on Appropriations at least 15 days prior to the obligation of funds for such purposes: *Provided further*, That contracts or agreements entered into with funds appropriated under this heading during fiscal year 2013 may entail commitments for the expenditure of such funds through the following fiscal year: *Provided further*, That any decision to open a new or reorganized USAID mission, bureau, center, or office or, except where there is a substantial security risk to mission personnel, to close or significantly reduce the number of personnel of any such mission or office, shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That the authority of sections 610 and 109 of the Foreign Assistance Act of 1961 may be exercised by the Secretary of State to transfer funds appropriated to carry out chapter 1 of part I of such Act to "Operating Expenses" in accordance with the provisions of those sections: *Provided further,* That any reprogramming of funds in excess of $1,000,000 or 10 percent, whichever is less, to the cost categories in the table included under this heading in the joint

Reports.
Deadline.

Contracts.

Notification.

Notification.

explanatory statement accompanying this Act for funds appropriated under this heading, shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That of the funds appropriated or made available under this heading, not to exceed $250,000 may be available for representation and entertainment allowances, of which not to exceed $5,000 may be available for entertainment allowances, for USAID during the current fiscal year: *Provided further*, That no such entertainment funds may be used for the purposes listed in section 7020 of this Act: *Provided further*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

CAPITAL INVESTMENT FUND

For necessary expenses for overseas construction and related costs, and for the procurement and enhancement of information technology and related capital investments, pursuant to section 667 of the Foreign Assistance Act of 1961, $129,700,000, to remain available until expended: *Provided*, That this amount is in addition to funds otherwise available for such purposes: *Provided further*, That funds appropriated under this heading shall be available for obligation only pursuant to the regular notification procedures of the Committees on Appropriations.

Notification.

OFFICE OF INSPECTOR GENERAL

For necessary expenses to carry out the provisions of section 667 of the Foreign Assistance Act of 1961, $46,500,000, to remain available until September 30, 2013, which sum shall be available for the Office of Inspector General of the United States Agency for International Development.

TITLE III

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

For necessary expenses to enable the President to carry out the provisions of the Foreign Assistance Act of 1961, and for other purposes, as follows:

GLOBAL HEALTH PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the provisions of chapters 1 and 10 of part I of the Foreign Assistance Act of 1961, for global health activities, in addition to funds otherwise available for such purposes, $2,625,000,000, to remain available until September 30, 2013, and which shall be apportioned directly to the United States Agency for International Development (USAID): *Provided*, That this amount shall be made available for training, equipment, and technical assistance to build the capacity of public health institutions and organizations in developing countries, and for such activities as: (1) child survival and maternal health programs; (2) immunization and oral rehydration programs; (3) other health,

HIV/AIDS.

nutrition, water and sanitation programs which directly address the needs of mothers and children, and related education programs; (4) assistance for children displaced or orphaned by causes other than AIDS; (5) programs for the prevention, treatment, control of, and research on HIV/AIDS, tuberculosis, polio, malaria, and other infectious diseases including neglected tropical diseases, and for assistance to communities severely affected by HIV/AIDS, including children infected or affected by AIDS; and (6) family planning/reproductive health: *Provided further*, That funds appropriated under this paragraph may be made available for a United States contribution to the GAVI Alliance: *Provided further,* That none of the funds made available in this Act nor any unobligated balances from prior appropriations Acts may be made available to any organization or program which, as determined by the President of the United States, supports or participates in the management of a program of coercive abortion or involuntary sterilization: *Provided further*, That any determination made under the previous proviso must be made no later than 6 months after the date of enactment of this Act, and must be accompanied by the evidence and criteria utilized to make the determination: *Provided further*, That none of the funds made available under this Act may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions: *Provided further*, That nothing in this paragraph shall be construed to alter any existing statutory prohibitions against abortion under section 104 of the Foreign Assistance Act of 1961: *Provided further*, That none of the funds made available under this Act may be used to lobby for or against abortion: *Provided further*, That in order to reduce reliance on abortion in developing nations, funds shall be available only to voluntary family planning projects which offer, either directly or through referral to, or information about access to, a broad range of family planning methods and services, and that any such voluntary family planning project shall meet the following requirements: (1) service providers or referral agents in the project shall not implement or be subject to quotas, or other numerical targets, of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning (this provision shall not be construed to include the use of quantitative estimates or indicators for budgeting and planning purposes); (2) the project shall not include payment of incentives, bribes, gratuities, or financial reward to: (A) an individual in exchange for becoming a family planning acceptor; or (B) program personnel for achieving a numerical target or quota of total number of births, number of family planning acceptors, or acceptors of a particular method of family planning; (3) the project shall not deny any right or benefit, including the right of access to participate in any program of general welfare or the right of access to health care, as a consequence of any individual's decision not to accept family planning services; (4) the project shall provide family planning acceptors comprehensible information on the health benefits and risks of the method chosen, including those conditions that might render the use of the method inadvisable and those adverse side effects known to be consequent to the use of the method; and (5) the project shall ensure that experimental contraceptive drugs and devices and medical procedures are provided only in the context of a scientific study in which participants are advised of potential risks and benefits; and, not less than 60 days after

President. Determination. Abortion. Sterilization.

Deadline.

Abortion.

Lobbying. Abortion.

Family planning. Requirements. Deadline. Determination. Reports.

the date on which the USAID Administrator determines that there has been a violation of the requirements contained in paragraph (1), (2), (3), or (5) of this proviso, or a pattern or practice of violations of the requirements contained in paragraph (4) of this proviso, the Administrator shall submit to the Committees on Appropriations a report containing a description of such violation and the corrective action taken by the Agency: *Provided further*, That in awarding grants for natural family planning under section 104 of the Foreign Assistance Act of 1961 no applicant shall be discriminated against because of such applicant's religious or conscientious commitment to offer only natural family planning; and, additionally, all such applicants shall comply with the requirements of the previous proviso: *Provided further*, That for purposes of this or any other Act authorizing or appropriating funds for the Department of State, foreign operations, and related programs, the term "motivate", as it relates to family planning assistance, shall not be construed to prohibit the provision, consistent with local law, of information or counseling about all pregnancy options: *Provided further*, That information provided about the use of condoms as part of projects or activities that are funded from amounts appropriated by this Act shall be medically accurate and shall include the public health benefits and failure rates of such use.

Grants. Non-discrimination. Compliance.

Condoms.

In addition, for necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 for the prevention, treatment, and control of, and research on, HIV/AIDS, $5,542,860,000, to remain available until September 30, 2016, which shall be apportioned directly to the Department of State: *Provided*, That funds appropriated under this paragraph may be made available, notwithstanding any other provision of law, except for the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 (Public Law 108–25), as amended, for a United States contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund), and shall be expended at the minimum rate necessary to make timely payment for projects and activities: *Provided further*, That the amount of such contribution should be $1,050,000,000: *Provided further*, That up to 5 percent of the aggregate amount of funds made available to the Global Fund in fiscal year 2012 may be made available to USAID for technical assistance related to the activities of the Global Fund: *Provided further*, That of the funds appropriated under this paragraph, up to $14,250,000 may be made available, in addition to amounts otherwise available for such purposes, for administrative expenses of the Office of the United States Global AIDS Coordinator.

DEVELOPMENT ASSISTANCE

For necessary expenses to carry out the provisions of sections 103, 105, 106, 214, and sections 251 through 255, and chapter 10 of part I of the Foreign Assistance Act of 1961, $2,519,950,000, to remain available until September 30, 2013: *Provided,* That relevant bureaus and offices of the United States Agency for International Development (USAID) that support cross-cutting development programs shall coordinate such programs on a regular basis: *Provided further*, That of the funds appropriated under this heading, not less than $23,000,000 shall be made available for the American Schools and Hospitals Abroad program, and not less than

$10,000,000 shall be made available for USAID cooperative development programs within the Office of Private and Voluntary Cooperation.

INTERNATIONAL DISASTER ASSISTANCE

For necessary expenses to carry out the provisions of section 491 of the Foreign Assistance Act of 1961 for international disaster relief, rehabilitation, and reconstruction assistance, $825,000,000, to remain available until expended.

TRANSITION INITIATIVES

For necessary expenses for international disaster rehabilitation and reconstruction assistance pursuant to section 491 of the Foreign Assistance Act of 1961, $50,141,000, to remain available until expended, to support transition to democracy and to long-term development of countries in crisis: *Provided*, That such support may include assistance to develop, strengthen, or preserve democratic institutions and processes, revitalize basic infrastructure, and foster the peaceful resolution of conflict: *Provided further*, That the United States Agency for International Development shall submit a report to the Committees on Appropriations at least 5 days prior to beginning a new program of assistance: *Provided further*, That if the Secretary of State determines that it is important to the national interests of the United States to provide transition assistance in excess of the amount appropriated under this heading, up to $15,000,000 of the funds appropriated by this Act to carry out the provisions of part I of the Foreign Assistance Act of 1961 may be used for purposes of this heading and under the authorities applicable to funds appropriated under this heading: *Provided further*, That funds made available pursuant to the previous proviso shall be made available subject to prior consultation with the Committees on Appropriations.

Reports. Deadline.

Determination.

Consultation.

COMPLEX CRISES FUND

For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 to enable the Administrator of the United States Agency for International Development (USAID), in consultation with the Secretary of State, to support programs and activities to prevent or respond to emerging or unforeseen complex crises overseas, $10,000,000, to remain available until expended: *Provided*, That funds appropriated under this heading may be made available on such terms and conditions as the USAID Administrator may determine, in consultation with the Committees on Appropriations, for the purposes of preventing or responding to such crises, except that no funds shall be made available to respond to natural disasters: *Provided further*, That funds appropriated under this heading may be made available notwithstanding any other provision of law, except sections 7007, 7008, and 7018 of this Act and section 620M of the Foreign Assistance Act of 1961, as amended by this Act: *Provided further*, That funds appropriated under this heading shall be subject to the regular notification procedures of the Committees on Appropriations, except that such notifications shall be transmitted at least 5 days in advance of the obligation of funds.

Notification. Deadline.

DEVELOPMENT CREDIT AUTHORITY

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans and loan guarantees provided by the United States Agency for International Development, as authorized by sections 256 and 635 of the Foreign Assistance Act of 1961, up to $40,000,000 may be derived by transfer from funds appropriated by this Act to carry out part I of such Act and under the heading "Assistance for Europe, Eurasia and Central Asia": *Provided*, That funds provided under this paragraph and funds provided as a gift pursuant to section 635(d) of the Foreign Assistance Act of 1961 shall be made available only for micro and small enterprise programs, urban programs, and other programs which further the purposes of part I of such Act: *Provided further*, That such costs, including the cost of modifying such direct and guaranteed loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further*, That funds made available by this paragraph may be used for the cost of modifying any such guaranteed loans under this Act or prior Acts, and funds used for such costs shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That the provisions of section 107A(d) (relating to general provisions applicable to the Development Credit Authority) of the Foreign Assistance Act of 1961, as contained in section 306 of H.R. 1486 as reported by the House Committee on International Relations on May 9, 1997, shall be applicable to direct loans and loan guarantees provided under this heading, except that the principal amount of loans made or guaranteed under this heading with respect to any single country shall not exceed $300,000,000: *Provided further*, That these funds are available to subsidize total loan principal, any portion of which is to be guaranteed, of up to $750,000,000.

Notification.

Applicability.
Loans.

In addition, for administrative expenses to carry out credit programs administered by the United States Agency for International Development, $8,300,000, which may be transferred to, and merged with, funds made available under the heading "Operating Expenses" in title II of this Act: *Provided*, That funds made available under this heading shall remain available until September 30, 2014.

ECONOMIC SUPPORT FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961, $3,001,745,000, to remain available until September 30, 2013: *Provided*, That of the funds appropriated under this heading, $250,000,000 shall be available for assistance for Egypt, including not less than $35,000,000 for education programs of which not less than $10,000,000 is for scholarships at not-for-profit institutions for Egyptian students with high financial need, and to implement section 7041(a)(3) and (b) of this Act: *Provided further*, That funds appropriated under this heading that are made available for assistance for Cyprus shall be used only for scholarships, administrative support of the scholarship program, bicommunal projects, and measures aimed at reunification of the island and designed to reduce

Cyprus.

tensions and promote peace and cooperation between the two communities on Cyprus: *Provided further*, That $12,000,000 of the funds made available for assistance for Lebanon under this heading shall be for scholarships at not-for-profit institutions for students in Lebanon with high financial need: *Provided further*, That of the funds appropriated under this heading, not less than $360,000,000 shall be available for assistance for Jordan: *Provided further,* That up to $30,000,000 of the funds appropriated for fiscal year 2011 under this heading in Public Law 112–10, division B, may be made available for the costs, as defined in section 502 of the Congressional Budget Act of 1974, of loan guarantees for Tunisia, which are authorized to be provided: *Provided further,* That amounts that are made available under the previous proviso for the cost of guarantees shall not be considered "assistance" for the purposes of provisions of law limiting assistance to a country: *Provided further*, That of the funds appropriated under this heading, not less than $179,000,000 shall be apportioned directly to the United States Agency for International Development for alternative development/institution building programs in Colombia: *Provided further*, That of the funds appropriated under this heading that are available for assistance for Colombia, not less than $7,000,000 shall be transferred to, and merged with, funds appropriated under the heading "Migration and Refugee Assistance" and shall be made available only for assistance to nongovernmental and international organizations that provide assistance to Colombian refugees in neighboring countries: *Provided further,* That in consultation with the Secretary of the Treasury, the Secretary of State may transfer up to $200,000,000 of the funds made available under this heading to funds appropriated in this Act under the headings "Multilateral Assistance, Funds Appropriated to the President, International Financial Institutions" for additional payments to such institutions, facilities, and funds enumerated under such headings: *Provided further,* That prior to exercising the transfer authority under the previous proviso the Secretary of State shall consult with the Committees on Appropriations.

Consultation.

DEMOCRACY FUND

For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 for the promotion of democracy globally, $114,770,000, to remain available until September 30, 2013, of which $68,000,000 shall be made available for the Human Rights and Democracy Fund of the Bureau of Democracy, Human Rights and Labor, Department of State, and $46,770,000 shall be made available for the Office of Democracy and Governance of the Bureau for Democracy, Conflict, and Humanitarian Assistance, United States Agency for International Development.

ASSISTANCE FOR EUROPE, EURASIA AND CENTRAL ASIA

For necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961, the FREEDOM Support Act, and the Support for East European Democracy (SEED) Act of 1989, $626,718,000, to remain available until September 30, 2013, which shall be available, notwithstanding any other provision of law, for assistance and for related programs for countries identified in section 3 of the FREEDOM Support Act and section 3(c) of the SEED Act: *Provided*, That funds appropriated under this

heading shall be considered to be economic assistance under the Foreign Assistance Act of 1961 for purposes of making available the administrative authorities contained in that Act for the use of economic assistance: *Provided further*, That funds made available for the Southern Caucasus region may be used for confidence-building measures and other activities in furtherance of the peaceful resolution of conflicts, including in Nagorno-Karabakh.

DEPARTMENT OF STATE

MIGRATION AND REFUGEE ASSISTANCE

For necessary expenses not otherwise provided for, to enable the Secretary of State to carry out the provisions of section 2(a) and (b) of the Migration and Refugee Assistance Act of 1962, and other activities to meet refugee and migration needs; salaries and expenses of personnel and dependents as authorized by the Foreign Service Act of 1980; allowances as authorized by sections 5921 through 5925 of title 5, United States Code; purchase and hire of passenger motor vehicles; and services as authorized by section 3109 of title 5, United States Code, $1,639,100,000, to remain available until expended, of which $20,000,000 shall be made available for refugees resettling in Israel, and not less than $35,000,000 shall be made available to respond to small-scale emergency humanitarian requirements.

UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSISTANCE FUND

For necessary expenses to carry out the provisions of section 2(c) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)), $27,200,000, to remain available until expended.

INDEPENDENT AGENCIES

PEACE CORPS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the provisions of the Peace Corps Act (22 U.S.C. 2501–2523), including the purchase of not to exceed five passenger motor vehicles for administrative purposes for use outside of the United States, $375,000,000, of which $5,150,000 is for the Office of Inspector General, to remain available until September 30, 2013: *Provided*, That the Director of the Peace Corps may transfer to the Foreign Currency Fluctuations Account, as authorized by 22 U.S.C. 2515, an amount not to exceed $5,000,000: *Provided further*, That funds transferred pursuant to the previous proviso may not be derived from amounts made available for Peace Corps overseas operations: *Provided further*, That of the funds appropriated under this heading, not to exceed $4,000 may be made available for entertainment expenses: *Provided further*, That any decision to open, close, significantly reduce, or suspend a domestic or overseas office or country program shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations, except that prior consultation and regular notification procedures may be waived when

Consultation.
Notification.
Waiver authority.

Abortion.

there is a substantial security risk to volunteers or other Peace Corps personnel, pursuant to section 7015(e) of this Act: *Provided further*, That none of the funds appropriated under this heading shall be used to pay for abortions.

MILLENNIUM CHALLENGE CORPORATION

For necessary expenses to carry out the provisions of the Millennium Challenge Act of 2003, $898,200,000 to remain available until expended: *Provided*, That of the funds appropriated under this heading, up to $105,000,000 may be available for administrative expenses of the Millennium Challenge Corporation (the Corporation): *Provided further*, That up to 5 percent of the funds appropriated under this heading may be made available to carry out the purposes of section 616 of the Millennium Challenge Act of 2003 for fiscal year 2012: *Provided further*, That section 605(e) of the Millennium Challenge Act of 2003 shall apply to funds appropriated under this heading: *Provided further*, That funds appropriated under this heading may be made available for a Millennium Challenge Compact entered into pursuant to section 609 of the Millennium Challenge Act of 2003 only if such Compact obligates, or contains a commitment to obligate subject to the availability of funds and the mutual agreement of the parties to the Compact to proceed, the entire amount of the United States Government funding anticipated for the duration of the Compact: *Provided further*, That the Chief Executive Officer of the Corporation shall notify the Committees on Appropriations not later than 15 days prior to signing any new country compact or new threshold country program; terminating or suspending any country compact or threshold country program; or commencing negotiations for any new compact or threshold country program: *Provided further*, That any funds that are deobligated from a Millennium Challenge Compact shall be subject to the regular notification procedures of the Committees on Appropriations prior to re-obligation: *Provided further,* That notwithstanding section 606(a)(2) of the Millennium Challenge Act of 2003, a country shall be a candidate country for purposes of eligibility for assistance for the fiscal year if the country has a per capita income equal to or below the World Bank's lower middle income country threshold for the fiscal year and is among the 75 lowest per capita income countries as identified by the World Bank; and the country meets the requirements of section 606(a)(1)(B) of the Millennium Challenge Act of 2003: *Provided further,* That notwithstanding section 606(b)(1) of the Millennium Challenge Act of 2003, in addition to countries described in the preceding proviso, a country shall be a candidate country for purposes of eligibility for assistance for the fiscal year if the country has a per capita income equal to or below the World Bank's lower middle income country threshold for the fiscal year and is not among the 75 lowest per capita income countries as identified by the World Bank; and the country meets the requirements of section 606(a)(1)(B) of the Millennium Challenge Act of 2003: *Provided further,* That any Millennium Challenge Corporation candidate country under section 606 of the Millennium Challenge Act of 2003 with a per capita income that changes in the fiscal year such that the country would be reclassified from a low income country to a lower middle income country or from a lower middle income country to a low income country shall retain its candidacy

Applicability.

Notification.
Deadline.

Notification.

Candidate country.

status in its former income classification for the fiscal year and the two subsequent fiscal years: *Provided further*, That of the funds appropriated under this heading, not to exceed $100,000 may be available for representation and entertainment allowances, of which not to exceed $5,000 may be available for entertainment allowances.

INTER-AMERICAN FOUNDATION

For necessary expenses to carry out the functions of the Inter-American Foundation in accordance with the provisions of section 401 of the Foreign Assistance Act of 1969, $22,500,000, to remain available until September 30, 2013: *Provided*, That of the funds appropriated under this heading, not to exceed $2,000 may be available for entertainment and representation allowances.

AFRICAN DEVELOPMENT FOUNDATION

For necessary expenses to carry out title V of the International Security and Development Cooperation Act of 1980 (Public Law 96–533), $30,000,000, to remain available until September 30, 2013: *Provided,* That funds made available to grantees may be invested pending expenditure for project purposes when authorized by the Board of Directors of the Foundation: *Provided further,* That interest earned shall be used only for the purposes for which the grant was made: *Provided further,* That notwithstanding section 505(a)(2) of the African Development Foundation Act, in exceptional circumstances the Board of Directors of the Foundation may waive the $250,000 limitation contained in that section with respect to a project and a project may exceed the limitation by up to 10 percent if the increase is due solely to foreign currency fluctuation: *Provided further,* That the Foundation shall provide a report to the Committees on Appropriations after each time such waiver authority is exercised.

Waiver authority.

Reports.

DEPARTMENT OF THE TREASURY

INTERNATIONAL AFFAIRS TECHNICAL ASSISTANCE

For necessary expenses to carry out the provisions of section 129 of the Foreign Assistance Act of 1961, $25,448,000, to remain available until September 30, 2014, which shall be available notwithstanding any other provision of law.

DEBT RESTRUCTURING

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of modifying loans and loan guarantees, as the President may determine, for which funds have been appropriated or otherwise made available for programs within the International Affairs Budget Function 150, including the cost of selling, reducing, or canceling amounts owed to the United States as a result of concessional loans made to eligible countries, pursuant to part V of the Foreign Assistance Act of 1961, $12,000,000, to remain available until September 30, 2013.

TITLE IV

INTERNATIONAL SECURITY ASSISTANCE

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT

For necessary expenses to carry out section 481 of the Foreign Assistance Act of 1961, $1,061,100,000, to remain available until September 30, 2013: *Provided*, That during fiscal year 2012, the Department of State may also use the authority of section 608 of the Foreign Assistance Act of 1961, without regard to its restrictions, to receive excess property from an agency of the United States Government for the purpose of providing it to a foreign country or international organization under chapter 8 of part I of that Act subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That the Secretary of State shall provide to the Committees on Appropriations not later than 45 days after the date of enactment of this Act and prior to the initial obligation of funds appropriated under this heading, a report on the proposed uses of all funds under this heading on a country-by-country basis for each proposed program, project, or activity: *Provided further*, That section 482(b) of the Foreign Assistance Act of 1961 shall not apply to funds appropriated under this heading: *Provided further,* That assistance provided with funds appropriated under this heading that is made available notwithstanding section 482(b) of the Foreign Assistance Act of 1961 shall be made available subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That none of the funds appropriated under this heading shall be made available for assistance for the Bolivian military and police unless the Secretary of State determines and reports to the Committees on Appropriations that such funds are in the national security interest of the United States: *Provided further,* That, notwithstanding any other provision of law, of the funds appropriated under this heading, $5,000,000 should be made available to combat piracy of United States copyrighted materials, consistent with the requirements of section 688(a) and (b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (division J of Public Law 110–161): *Provided further,* That the reporting requirements contained in section 1404 of Public Law 110–252 shall apply to funds made available by this Act, including a description of modifications, if any, to the security strategy of the Palestinian Authority: *Provided further,* That the provision of assistance which is comparable to assistance made available under this heading but which is provided under any other provision of law, shall be provided in accordance with the provisions of sections 481(b) and 622(c) of the Foreign Assistance Act of 1961.

Notification.

Deadline.
Reports.

Notification.

Bolivia.
Determination.
Reports.

Applicability.

NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS

For necessary expenses for nonproliferation, anti-terrorism, demining and related programs and activities, $590,113,000, to carry out the provisions of chapter 8 of part II of the Foreign Assistance Act of 1961 for anti-terrorism assistance, chapter 9 of part II of the Foreign Assistance Act of 1961, section 504 of the

FREEDOM Support Act, section 23 of the Arms Export Control Act or the Foreign Assistance Act of 1961 for demining activities, the clearance of unexploded ordnance, the destruction of small arms, and related activities, notwithstanding any other provision of law, including activities implemented through nongovernmental and international organizations, and section 301 of the Foreign Assistance Act of 1961 for a voluntary contribution to the International Atomic Energy Agency (IAEA), and for a United States contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission: *Provided*, That the clearance of unexploded ordnance should prioritize areas where such ordnance was caused by the United States: *Provided further,* That of the funds made available under this heading, not to exceed $30,000,000, to remain available until expended, may be made available for the Nonproliferation and Disarmament Fund, notwithstanding any other provision of law and subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations, to promote bilateral and multilateral activities relating to nonproliferation, disarmament and weapons destruction: *Provided further*, That such funds may also be used for such countries other than the Independent States of the former Soviet Union and international organizations when it is in the national security interest of the United States to do so: *Provided further,* That funds appropriated under this heading may be made available for the IAEA unless the Secretary of State determines that Israel is being denied its right to participate in the activities of that Agency: *Provided further*, That funds appropriated under this heading may be made available for public-private partnerships for conventional weapons and mine action by grant, cooperative agreement or contract: *Provided further*, That funds made available for demining and related activities, in addition to funds otherwise available for such purposes, may be used for administrative expenses related to the operation and management of the demining program: *Provided further*, That funds appropriated under this heading that are available for "Antiterrorism Assistance" and "Export Control and Border Security" shall remain available until September 30, 2013.

Consultation.
Notification.

Determination.
Israel.

PEACEKEEPING OPERATIONS

For necessary expenses to carry out the provisions of section 551 of the Foreign Assistance Act of 1961, $302,818,000: *Provided*, That funds appropriated under this heading may be used, notwithstanding section 660 of such Act, to provide assistance to enhance the capacity of foreign civilian security forces, including gendarmes, to participate in peacekeeping operations: *Provided further*, That of the funds appropriated under this heading, not less than $28,000,000 shall be made available for a United States contribution to the Multinational Force and Observers mission in the Sinai: *Provided further*, That of the funds appropriated under this heading, up to $91,818,000 may be used to pay assessed expenses of international peacekeeping activities in Somalia and shall be available until September 30, 2013: *Provided further,* That funds appropriated under this Act should not be used to support any military training or operations that include child soldiers: *Provided further*, That none of the funds appropriated under this heading shall be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

Child soldiers.

Notification.

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL MILITARY EDUCATION AND TRAINING

Notification.

For necessary expenses to carry out the provisions of section 541 of the Foreign Assistance Act of 1961, $105,788,000, of which up to $4,000,000 may remain available until September 30, 2013, and may only be provided through the regular notification procedures of the Committees on Appropriations: *Provided*, That the civilian personnel for whom military education and training may be provided under this heading may include civilians who are not members of a government whose participation would contribute to improved civil-military relations, civilian control of the military, or respect for human rights: *Provided further*, That the Secretary of State shall provide to the Committees on Appropriations, not later than 45 days after enactment of this Act, a report on the proposed uses of all program funds under this heading on a country-by-country basis, including a detailed description of proposed activities: *Provided further*, That of the funds appropriated under this heading, not to exceed $55,000 may be available for entertainment allowances.

Deadline.
Reports.

FOREIGN MILITARY FINANCING PROGRAM

Notification.

For necessary expenses for grants to enable the President to carry out the provisions of section 23 of the Arms Export Control Act, $5,210,000,000: *Provided*, That to expedite the provision of assistance to foreign countries and international organizations, the Secretary of State, following consultation with the Committees on Appropriations and subject to the regular notification procedures of such Committees, may use the funds appropriated under this heading to procure defense articles and services to enhance the capacity of foreign security forces: *Provided further*, That of the funds appropriated under this heading, not less than $3,075,000,000 shall be available for grants only for Israel, and $1,300,000,000 shall be made available for grants only for Egypt, including for border security programs and activities in the Sinai: *Provided further*, That the funds appropriated under this heading for assistance for Israel shall be disbursed within 30 days of enactment of this Act: *Provided further*, That to the extent that the Government of Israel requests that funds be used for such purposes, grants made available for Israel under this heading shall, as agreed by the United States and Israel, be available for advanced weapons systems, of which not less than $808,725,000 shall be available for the procurement in Israel of defense articles and defense services, including research and development: *Provided further*, That funds appropriated under this heading estimated to be outlayed for Egypt during fiscal year 2012 may be transferred to an interest bearing account for Egypt in the Federal Reserve Bank of New York: *Provided further*, That of the funds appropriated under this heading, $300,000,000 shall be made available for assistance for Jordan: *Provided further,* That, not later than 90 days after enactment of this Act and 6 months thereafter, the Secretary of State shall submit a report to the Committees on Appropriations detailing any crowd control items, including tear gas, made available with appropriated funds or through export licenses to foreign security forces that the Secretary of State has credible information have repeatedly used excessive force to repress peaceful, lawful, and

Israel.
Disbursement.
Deadline.

Deadline.
Reports.

organized dissent: *Provided further,* That the Secretary of State should consult with the Committees on Appropriations prior to obligating funds for such items to governments of countries undergoing democratic transition in the Middle East and North Africa: *Provided further*, That none of the funds made available under this heading shall be made available to support or continue any program initially funded under the authority of section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 119 Stat. 3456) unless the Secretary of State, in coordination with the Secretary of Defense, has justified such program to the Committees on Appropriations: *Provided further*, That funds appropriated or otherwise made available under this heading shall be nonrepayable notwithstanding any requirement in section 23 of the Arms Export Control Act: *Provided further*, That funds made available under this heading shall be obligated upon apportionment in accordance with paragraph (5)(C) of title 31, United States Code, section 1501(a).

None of the funds made available under this heading shall be available to finance the procurement of defense articles, defense services, or design and construction services that are not sold by the United States Government under the Arms Export Control Act unless the foreign country proposing to make such procurement has first signed an agreement with the United States Government specifying the conditions under which such procurement may be financed with such funds: *Provided*, That all country and funding level increases in allocations shall be submitted through the regular notification procedures of section 7015 of this Act: *Provided further,* That funds made available under this heading may be used, notwithstanding any other provision of law, for demining, the clearance of unexploded ordnance, and related activities, and may include activities implemented through nongovernmental and international organizations: *Provided further*, That only those countries for which assistance was justified for the "Foreign Military Sales Financing Program" in the fiscal year 1989 congressional presentation for security assistance programs may utilize funds made available under this heading for procurement of defense articles, defense services or design and construction services that are not sold by the United States Government under the Arms Export Control Act: *Provided further*, That funds appropriated under this heading shall be expended at the minimum rate necessary to make timely payment for defense articles and services: *Provided further*, That not more than $62,800,000 of the funds appropriated under this heading may be obligated for necessary expenses, including the purchase of passenger motor vehicles for replacement only for use outside of the United States, for the general costs of administering military assistance and sales, except that this limitation may be exceeded only through the regular notification procedures of the Committees on Appropriations: *Provided further*, That of the funds appropriated under this heading for general costs of administering military assistance and sales, not to exceed $4,000 may be available for entertainment expenses and not to exceed $130,000 may be available for representation allowances: *Provided further*, That not more than $836,900,000 of funds realized pursuant to section 21(e)(1)(A) of the Arms Export Control Act may be obligated for expenses incurred by the Department of Defense during fiscal year 2012 pursuant to section 43(b) of the Arms Export Control Act,

Notification.

Notification.

Notification.

except that this limitation may be exceeded only through the regular notification procedures of the Committees on Appropriations.

TITLE V

MULTILATERAL ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL ORGANIZATIONS AND PROGRAMS

For necessary expenses to carry out the provisions of section 301 of the Foreign Assistance Act of 1961, and of section 2 of the United Nations Environment Program Participation Act of 1973, $348,705,000, of which up to $10,000,000 may be made available for the Intergovernmental Panel on Climate Change/United Nations Framework Convention on Climate Change: *Provided*, That section 307(a) of the Foreign Assistance Act of 1961 shall not apply to contributions to the United Nations Democracy Fund.

INTERNATIONAL FINANCIAL INSTITUTIONS

GLOBAL ENVIRONMENT FACILITY

For payment to the International Bank for Reconstruction and Development as trustee for the Global Environment Facility by the Secretary of the Treasury, $89,820,000, to remain available until expended.

CONTRIBUTION TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

For payment to the International Development Association by the Secretary of the Treasury, $1,325,000,000, to remain available until expended.

For payment to the International Development Association by the Secretary of the Treasury for costs incurred under the Multilateral Debt Relief Initiative, $167,000,000, to remain available until expended.

CONTRIBUTION TO THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

For payment to the International Bank for Reconstruction and Development by the Secretary of the Treasury, for the United States share of the paid-in portion of the increases in capital stock, $117,364,344, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the International Bank for Reconstruction and Development may subscribe without fiscal year limitation to the callable capital portion of the United States share of increases in capital stock in an amount not to exceed $2,928,990,899.

CONTRIBUTION TO THE CLEAN TECHNOLOGY FUND

For payment to the International Bank for Reconstruction and Development as trustee for the Clean Technology Fund by the

Secretary of the Treasury, $184,630,000, to remain available until expended.

CONTRIBUTION TO THE STRATEGIC CLIMATE FUND

For payment to the International Bank for Reconstruction and Development as trustee for the Strategic Climate Fund by the Secretary of the Treasury, $49,900,000, to remain available until expended.

GLOBAL AGRICULTURE AND FOOD SECURITY PROGRAM

For payment to the Global Agriculture and Food Security Program by the Secretary of the Treasury, $135,000,000, to remain available until expended.

CONTRIBUTION TO THE INTER-AMERICAN DEVELOPMENT BANK

For payment to the Inter-American Development Bank by the Secretary of the Treasury for the United States share of the paid-in portion of the increase in capital stock, $75,000,000, to remain available until expended.

For payment to the Inter-American Investment Corporation by the Secretary of the Treasury, $4,670,000, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the Inter-American Development Bank may subscribe without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed $4,098,794,833.

CONTRIBUTION TO THE ENTERPRISE FOR THE AMERICAS MULTILATERAL INVESTMENT FUND

For payment to the Enterprise for the Americas Multilateral Investment Fund by the Secretary of the Treasury, $25,000,000, to remain available until expended.

CONTRIBUTION TO THE ASIAN DEVELOPMENT BANK

For payment to the Asian Development Bank by the Secretary of the Treasury for the United States share of the paid-in portion of increase in capital stock, $106,586,000, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the Asian Development Bank may subscribe without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed $2,558,048,769.

CONTRIBUTION TO THE ASIAN DEVELOPMENT FUND

For payment to the Asian Development Bank's Asian Development Fund by the Secretary of the Treasury, $100,000,000, to remain available until expended.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT BANK

For payment to the African Development Bank by the Secretary of the Treasury for the United States share of the paid-in portion of the increase in capital stock, $32,417,720, to remain available until expended.

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the African Development Bank may subscribe without fiscal year limitation to the callable capital portion of the United States share of such capital stock in an amount not to exceed $507,860,808.

CONTRIBUTION TO THE AFRICAN DEVELOPMENT FUND

For payment to the African Development Fund by the Secretary of the Treasury, $172,500,000, to remain available until expended.

For payment to the African Development Fund by the Secretary of the Treasury for costs incurred under the Multilateral Debt Relief Initiative, $7,500,000, to remain available until expended.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

LIMITATION ON CALLABLE CAPITAL SUBSCRIPTIONS

The United States Governor of the European Bank for Reconstruction and Development may subscribe without fiscal year limitation to the callable capital of the United States share of such capital in an amount not to exceed $1,252,331,952.

CONTRIBUTION TO THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

For payment to the International Fund for Agricultural Development by the Secretary of the Treasury, $30,000,000, to remain available until expended.

TITLE VI

EXPORT AND INVESTMENT ASSISTANCE

EXPORT-IMPORT BANK OF THE UNITED STATES

INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $4,000,000, to remain available until September 30, 2013.

PROGRAM ACCOUNT

Contracts.

The Export-Import Bank of the United States is authorized to make such expenditures within the limits of funds and borrowing authority available to such corporation, and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations, as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying

out the program for the current fiscal year for such corporation: *Provided,* That none of the funds available during the current fiscal year may be used to make expenditures, contracts, or commitments for the export of nuclear equipment, fuel, or technology to any country, other than a nuclear-weapon state as defined in Article IX of the Treaty on the Non-Proliferation of Nuclear Weapons eligible to receive economic or military assistance under this Act, that has detonated a nuclear explosive after the date of the enactment of this Act: *Provided further,* That not less than 10 percent of the aggregate loan, guarantee, and insurance authority available to the Export-Import Bank under this Act should be used for renewable energy technologies or end-use energy efficiency technologies: *Provided further,* That notwithstanding section 1(c) of Public Law 103–428, as amended, sections 1(a) and (b) of Public Law 103–428 shall remain in effect through October 1, 2012: *Provided further,* That notwithstanding the dates specified in section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 6350 and section 1(c) of Public Law 103–428), the Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes through May 31, 2012.

Termination date.
12 USC 635 note.

12 USC 635f note.

SUBSIDY APPROPRIATION

For the cost of direct loans, loan guarantees, insurance, and tied-aid grants as authorized by section 10 of the Export-Import Bank Act of 1945, as amended, not to exceed $58,000,000: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That such funds shall remain available until September 30, 2027, for the disbursement of direct loans, loan guarantees, insurance and tied-aid grants obligated in fiscal years 2012, 2013, 2014, and 2015: *Provided further*, That none of the funds appropriated by this Act or any prior Acts appropriating funds for the Department of State, foreign operations, and related programs for tied-aid credits or grants may be used for any other purpose except through the regular notification procedures of the Committees on Appropriations.

Termination date.
Loans.

Notification.

ADMINISTRATIVE EXPENSES

For administrative expenses to carry out the direct and guaranteed loan and insurance programs, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109, and not to exceed $30,000 for official reception and representation expenses for members of the Board of Directors, not to exceed $89,900,000: *Provided*, That the Export-Import Bank may accept, and use, payment or services provided by transaction participants for legal, financial, or technical services in connection with any transaction for which an application for a loan, guarantee or insurance commitment has been made: *Provided further*, That notwithstanding subsection (b) of section 117 of the Export Enhancement Act of 1992, subsection (a) thereof shall remain in effect until October 1, 2012: *Provided further*, That the Export-Import Bank shall charge fees for necessary expenses (including special services performed on a contract or fee basis, but not including other personal services) in connection with the collection of moneys owed the Export-Import Bank, repossession or sale of pledged collateral

Termination date.
12 USC 635a note.

or other assets acquired by the Export-Import Bank in satisfaction of moneys owed the Export-Import Bank, or the investigation or appraisal of any property, or the evaluation of the legal, financial, or technical aspects of any transaction for which an application for a loan, guarantee or insurance commitment has been made, or systems infrastructure directly supporting transactions: *Provided further*, That, in addition to other funds appropriated for administrative expenses, such fees shall be credited to this account, to remain available until expended.

RECEIPTS COLLECTED

Receipts collected pursuant to the Export-Import Bank Act of 1945, as amended, and the Federal Credit Reform Act of 1990, as amended, in an amount not to exceed the amount appropriated herein, shall be credited as offsetting collections to this account: *Provided*, That the sums herein appropriated from the General Fund shall be reduced on a dollar-for-dollar basis by such offsetting collections so as to result in a final fiscal year appropriation from the General Fund estimated at $0: *Provided further*, That amounts collected in fiscal year 2012 in excess of obligations, up to $50,000,000, shall become available on September 1, 2012, and shall remain available until September 30, 2015.

OVERSEAS PRIVATE INVESTMENT CORPORATION

NONCREDIT ACCOUNT

The Overseas Private Investment Corporation is authorized to make, without regard to fiscal year limitations, as provided by 31 U.S.C. 9104, such expenditures and commitments within the limits of funds available to it and in accordance with law as may be necessary: *Provided,* That the amount available for administrative expenses to carry out the credit and insurance programs (including an amount for official reception and representation expenses which shall not exceed $35,000) shall not exceed $54,990,000: *Provided further,* That project-specific transaction costs, including direct and indirect costs incurred in claims settlements, and other direct costs associated with services provided to specific investors or potential investors pursuant to section 234 of the Foreign Assistance Act of 1961, shall not be considered administrative expenses for the purposes of this heading.

PROGRAM ACCOUNT

For the cost of direct and guaranteed loans, $25,000,000, as authorized by section 234 of the Foreign Assistance Act of 1961, to be derived by transfer from the Overseas Private Investment Corporation Noncredit Account: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That such sums shall be available for direct loan obligations and loan guaranty commitments incurred or made during fiscal years 2012, 2013, and 2014: *Provided further,* That funds so obligated in fiscal year 2012 remain available for disbursement through 2020; funds obligated in fiscal year 2013 remain available for disbursement through 2021; and funds obligated in fiscal year 2014 remain available for disbursement through 2022: *Provided further,* That

notwithstanding any other provision of law, the Overseas Private Investment Corporation is authorized to undertake any program authorized by title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 in Iraq: *Provided further,* That funds made available pursuant to the authority of the previous proviso shall be subject to the regular notification procedures of the Committees on Appropriations.

Notification.

In addition, such sums as may be necessary for administrative expenses to carry out the credit program may be derived from amounts available for administrative expenses to carry out the credit and insurance programs in the Overseas Private Investment Corporation Noncredit Account and merged with said account.

TRADE AND DEVELOPMENT AGENCY

For necessary expenses to carry out the provisions of section 661 of the Foreign Assistance Act of 1961, $50,000,000, to remain available until September 30, 2013: *Provided*, That of the funds appropriated under this heading, not more than $4,000 may be available for representation and entertainment allowances.

TITLE VII

GENERAL PROVISIONS

ALLOWANCES AND DIFFERENTIALS

SEC. 7001. Funds appropriated under title I of this Act shall be available, except as otherwise provided, for allowances and differentials as authorized by subchapter 59 of title 5, United States Code; for services as authorized by 5 U.S.C. 3109; and for hire of passenger transportation pursuant to 31 U.S.C. 1343(b).

UNOBLIGATED BALANCES REPORT

SEC. 7002. Any department or agency of the United States Government to which funds are appropriated or otherwise made available by this Act shall provide to the Committees on Appropriations a quarterly accounting of cumulative unobligated balances and obligated, but unexpended, balances by program, project, and activity, and Treasury Account Fund Symbol of all funds received by such department or agency in fiscal year 2012 or any previous fiscal year: *Provided*, That the report required by this section should specify by account the amount of funds obligated pursuant to bilateral agreements which have not been further sub-obligated.

CONSULTING SERVICES

SEC. 7003. The expenditure of any appropriation under title I of this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

Contracts.

EMBASSY CONSTRUCTION

SEC. 7004. (a) Of funds provided under title I of this Act, except as provided in subsection (b), a project to construct a diplomatic facility of the United States may not include office space or other accommodations for an employee of a Federal agency or department if the Secretary of State determines that such department or agency has not provided to the Department of State the full amount of funding required by subsection (e) of section 604 of the Secure Embassy Construction and Counterterrorism Act of 1999 (as enacted into law by section 1000(a)(7) of Public Law 106–113 and contained in appendix G of that Act; 113 Stat. 1501A–453), as amended by section 629 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005.

(b) Notwithstanding the prohibition in subsection (a), a project to construct a diplomatic facility of the United States may include office space or other accommodations for members of the United States Marine Corps.

Determination.

(c) For the purposes of calculating the fiscal year 2012 costs of providing new United States diplomatic facilities in accordance with section 604(e) of the Secure Embassy Construction and Counterterrorism Act of 1999 (22 U.S.C. 4865 note), the Secretary of State, in consultation with the Director of the Office of Management and Budget, shall determine the annual program level and agency shares in a manner that is proportional to the Department of State's contribution for this purpose.

Consultation.
Notification.

(d) Funds appropriated by this Act, and any prior Act making appropriations for the Department of State, foreign operations, and related programs, which may be made available for the acquisition of property for diplomatic facilities in Afghanistan, Pakistan, and Iraq, shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations.

(e) Section 604(e)(1) of the Secure Embassy Construction and Counterterrorism Act of 1999 (22 U.S.C. 4865 note) is amended by striking "providing new," and inserting in its place "providing, maintaining, repairing, and renovating".

(f)(1) None of the funds appropriated under the heading "Embassy Security, Construction, and Maintenance" in this Act and in prior Acts making appropriations for the Department of State, foreign operations, and related programs, made available through Federal agency Capital Security Cost Sharing contributions and reimbursements, or generated from the proceeds of real property sales, other than from real property sales located in London, United Kingdom, may be made available for site acquisition and mitigation, planning, design or construction of the New London Embassy.

Deadline.
Reports.

(2) Within 60 days of enactment of this Act and every 6 months thereafter until completion of the New London Embassy, the Secretary of State shall submit to the Committees on Appropriations a report on the project: *Provided*, That such report shall include revenue and cost projections, cost containment efforts, project schedule and actual project status, the impact of currency exchange rate fluctuations on project revenue and costs, and options for modifying the scope of the project in the event that proceeds of real property sales in London fall below the total cost of the project.

PERSONNEL ACTIONS

SEC. 7005. Any costs incurred by a department or agency funded under title I of this Act resulting from personnel actions taken in response to funding reductions included in this Act shall be absorbed within the total budgetary resources available under title I to such department or agency: *Provided,* That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: *Provided further,* That use of funds to carry out this section shall be treated as a reprogramming of funds under section 7015 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

LOCAL GUARD CONTRACTS

SEC. 7006. In evaluating proposals for local guard contracts, the Secretary of State shall award contracts in accordance with section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864), except that the Secretary may grant authorization to award such contracts on the basis of best value as determined by a cost-technical tradeoff analysis (as described in Federal Acquisition Regulation part 15.101) in Iraq, Afghanistan, and Pakistan, notwithstanding subsection (c)(3) of such section: *Provided*, That the authority in this section shall apply to any options for renewal that may be exercised under such contracts that are awarded during the current fiscal year: *Provided further*, That prior to issuing a solicitation for a contract to be awarded pursuant to the authority under this section, the Secretary of State shall consult with the Committees on Appropriations and other relevant congressional committees.

Applicability.

Consultation.

PROHIBITION AGAINST DIRECT FUNDING FOR CERTAIN COUNTRIES

SEC. 7007. None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance or reparations for the governments of Cuba, North Korea, Iran, or Syria: *Provided*, That for purposes of this section, the prohibition on obligations or expenditures shall include direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents.

COUPS D'ÉTAT

SEC. 7008. None of the funds appropriated or otherwise made available pursuant to titles III through VI of this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by military coup d'état or decree or, after the date of enactment of this Act, a coup d'état or decree in which the military plays a decisive role: *Provided*, That assistance may be resumed to such government if the President determines and certifies to the Committees on Appropriations that subsequent to the termination of assistance a democratically elected government has taken office: *Provided further*, That the provisions of this section shall not apply to assistance to promote democratic elections or public participation in democratic processes: *Provided further*, That

President.
Determination.
Certification.

Notification.

funds made available pursuant to the previous provisos shall be subject to the regular notification procedures of the Committees on Appropriations.

TRANSFER AUTHORITY

SEC. 7009. (a) DEPARTMENT OF STATE AND BROADCASTING BOARD OF GOVERNORS.—

(1) Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of State under title I of this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers.

(2) Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Broadcasting Board of Governors under title I of this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers.

(3) Any transfer pursuant to this section shall be treated as a reprogramming of funds under section 7015(a) and (b) of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

(b) EXPORT FINANCING TRANSFER AUTHORITIES.—Not to exceed 5 percent of any appropriation other than for administrative expenses made available for fiscal year 2012, for programs under title VI of this Act may be transferred between such appropriations for use for any of the purposes, programs, and activities for which the funds in such receiving account may be used, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 25 percent by any such transfer: *Provided,* That the exercise of such authority shall be subject to the regular notification procedures of the Committees on Appropriations.

Notification.

(c) LIMITATION ON TRANSFERS BETWEEN AGENCIES.—

(1) None of the funds made available under titles II through V of this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

(2) Notwithstanding paragraph (1), in addition to transfers made by, or authorized elsewhere in, this Act, funds appropriated by this Act to carry out the purposes of the Foreign Assistance Act of 1961 may be allocated or transferred to agencies of the United States Government pursuant to the provisions of sections 109, 610, and 632 of the Foreign Assistance Act of 1961.

Notification.

(3) Any agreement entered into by the United States Agency for International Development (USAID) or the Department of State with any department, agency, or instrumentality of the United States Government pursuant to section 632(b) of the Foreign Assistance Act of 1961 valued in excess of $1,000,000 and any agreement made pursuant to section 632(a) of such Act, with funds appropriated by this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs under the headings "Global

Health Programs", "Development Assistance", and "Economic Support Fund" shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided*, That the requirement in the previous sentence shall not apply to agreements entered into between USAID and the Department of State.

President. Deadline. Consultation. Policy justification.

(d) TRANSFERS BETWEEN ACCOUNTS.—None of the funds made available under titles II through V of this Act may be obligated under an appropriation account to which they were not appropriated, except for transfers specifically provided for in this Act, unless the President, not less than 5 days prior to the exercise of any authority contained in the Foreign Assistance Act of 1961 to transfer funds, consults with and provides a written policy justification to the Committees on Appropriations.

Contracts.

(e) AUDIT OF INTER-AGENCY TRANSFERS.—Any agreement for the transfer or allocation of funds appropriated by this Act, or prior Acts, entered into between the Department of State or USAID and another agency of the United States Government under the authority of section 632(a) of the Foreign Assistance Act of 1961 or any comparable provision of law, shall expressly provide that the Inspector General (IG) for the agency receiving the transfer or allocation of such funds, or other entity with audit responsibility if the receiving agency does not have an IG, shall perform periodic program and financial audits of the use of such funds: *Provided,* That such audits shall be transmitted to the Committees on Appropriations: *Provided further*, That funds transferred under such authority may be made available for the cost of such audits.

REPORTING REQUIREMENT

SEC. 7010. The Secretary of State shall provide the Committees on Appropriations, not later than April 1, 2012, and for each fiscal quarter, a report in writing on the uses of funds made available under the headings "Foreign Military Financing Program", "International Military Education and Training", "Peacekeeping Operations", and "Pakistan Counterinsurgency Capability Fund": *Provided*, That such report shall include a description of the obligation and expenditure of funds, and the specific country in receipt of, and the use or purpose of the assistance provided by such funds.

AVAILABILITY OF FUNDS

SEC. 7011. No part of any appropriation contained in this Act shall remain available for obligation after the expiration of the current fiscal year unless expressly so provided in this Act: *Provided,* That funds appropriated for the purposes of chapters 1 and 8 of part I, section 661, chapters 4, 5, 6, 8, and 9 of part II of the Foreign Assistance Act of 1961, section 23 of the Arms Export Control Act, and funds provided under the headings "Assistance for Europe, Eurasia and Central Asia" and "Development Credit Authority", shall remain available for an additional 4 years from the date on which the availability of such funds would otherwise have expired, if such funds are initially obligated before the expiration of their respective periods of availability contained in this Act: *Provided further,* That notwithstanding any other provision of this Act, any funds made available for the purposes of chapter 1 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961 which are allocated or obligated for cash

disbursements in order to address balance of payments or economic policy reform objectives, shall remain available for an additional 4 years from the date on which the availability of such funds would otherwise have expired, if such funds are initially allocated or obligated before the expiration of their respective periods of availability contained in this Act: *Provided further,* That the Secretary of State shall provide a report to the Committees on Appropriations at the beginning of each fiscal year, detailing by account and source year, the use of this authority during the previous fiscal year.

Reports. Deadline.

LIMITATION ON ASSISTANCE TO COUNTRIES IN DEFAULT

President. Determination. Consultation.

SEC. 7012. No part of any appropriation provided under titles III through VI in this Act shall be used to furnish assistance to the government of any country which is in default during a period in excess of one calendar year in payment to the United States of principal or interest on any loan made to the government of such country by the United States pursuant to a program for which funds are appropriated under this Act unless the President determines, following consultations with the Committees on Appropriations, that assistance for such country is in the national interest of the United States.

PROHIBITION ON TAXATION OF UNITED STATES ASSISTANCE

Negotiations.

SEC. 7013. (a) PROHIBITION ON TAXATION.—None of the funds appropriated under titles III through VI of this Act may be made available to provide assistance for a foreign country under a new bilateral agreement governing the terms and conditions under which such assistance is to be provided unless such agreement includes a provision stating that assistance provided by the United States shall be exempt from taxation, or reimbursed, by the foreign government, and the Secretary of State shall expeditiously seek to negotiate amendments to existing bilateral agreements, as necessary, to conform with this requirement.

Certification. Reports.

(b) REIMBURSEMENT OF FOREIGN TAXES.—An amount equivalent to 200 percent of the total taxes assessed during fiscal year 2012 on funds appropriated by this Act by a foreign government or entity against commodities financed under United States assistance programs for which funds are appropriated by this Act, either directly or through grantees, contractors and subcontractors shall be withheld from obligation from funds appropriated for assistance for fiscal year 2013 and allocated for the central government of such country and for the West Bank and Gaza program to the extent that the Secretary of State certifies and reports in writing to the Committees on Appropriations that such taxes have not been reimbursed to the Government of the United States.

(c) DE MINIMIS EXCEPTION.—Foreign taxes of a de minimis nature shall not be subject to the provisions of subsection (b).

(d) REPROGRAMMING OF FUNDS.—Funds withheld from obligation for each country or entity pursuant to subsection (b) shall be reprogrammed for assistance to countries which do not assess taxes on United States assistance or which have an effective arrangement that is providing substantial reimbursement of such taxes.

(e) DETERMINATIONS.—

(1) The provisions of this section shall not apply to any country or entity the Secretary of State determines—

(A) does not assess taxes on United States assistance or which has an effective arrangement that is providing substantial reimbursement of such taxes; or

(B) the foreign policy interests of the United States outweigh the purpose of this section to ensure that United States assistance is not subject to taxation.

(2) The Secretary of State shall consult with the Committees on Appropriations at least 15 days prior to exercising the authority of this subsection with regard to any country or entity.

Consultation. Deadline.

(f) IMPLEMENTATION.—The Secretary of State shall issue rules, regulations, or policy guidance, as appropriate, to implement the prohibition against the taxation of assistance contained in this section.

Regulations.

(g) DEFINITIONS.—As used in this section—

(1) the terms "taxes" and "taxation" refer to value added taxes and customs duties imposed on commodities financed with United States assistance for programs for which funds are appropriated by this Act; and

(2) the term "bilateral agreement" refers to a framework bilateral agreement between the Government of the United States and the government of the country receiving assistance that describes the privileges and immunities applicable to United States foreign assistance for such country generally, or an individual agreement between the Government of the United States and such government that describes, among other things, the treatment for tax purposes that will be accorded the United States assistance provided under that agreement.

(h) REPORT.—The Secretary of State shall submit a report to the Committees on Appropriations not later than 90 days after the enactment of this Act detailing steps taken by the Department of State to comply with the requirements provided in subsections (a) and (f).

RESERVATIONS OF FUNDS

SEC. 7014. (a) Funds appropriated under titles II through VI of this Act which are specifically designated may be reprogrammed for other programs within the same account notwithstanding the designation if compliance with the designation is made impossible by operation of any provision of this or any other Act: *Provided*, That any such reprogramming shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further*, That assistance that is reprogrammed pursuant to this subsection shall be made available under the same terms and conditions as originally provided.

Notification.

(b) In addition to the authority contained in subsection (a), the original period of availability of funds appropriated by this Act and administered by the United States Agency for International Development (USAID) that are specifically designated for particular programs or activities by this or any other Act shall be extended for an additional fiscal year if the USAID Administrator determines and reports promptly to the Committees on Appropriations that the termination of assistance to a country or a significant change in circumstances makes it unlikely that such designated funds

Extension. Determination. Reports.

can be obligated during the original period of availability: *Provided*, That such designated funds that continue to be available for an additional fiscal year shall be obligated only for the purpose of such designation.

(c) Ceilings and specifically designated funding levels contained in this Act shall not be applicable to funds or authorities appropriated or otherwise made available by any subsequent Act unless such Act specifically so directs: *Provided*, That specifically designated funding levels or minimum funding requirements contained in any other Act shall not be applicable to funds appropriated by this Act.

NOTIFICATION REQUIREMENTS

Deadlines.

SEC. 7015. (a) None of the funds made available in title I of this Act, or in prior appropriations Acts to the agencies and departments funded by this Act that remain available for obligation or expenditure in fiscal year 2012, or provided from any accounts in the Treasury of the United States derived by the collection of fees or of currency reflows or other offsetting collections, or made available by transfer, to the agencies and departments funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that:

(1) creates new programs;

(2) eliminates a program, project, or activity;

(3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;

(4) relocates an office or employees;

(5) closes or opens a mission or post;

(6) creates, reorganizes, or renames bureaus, centers, or offices;

(7) reorganizes programs or activities; or

(8) contracts out or privatizes any functions or activities presently performed by Federal employees;

unless the Committees on Appropriations are notified 15 days in advance of such reprogramming of funds: *Provided*, That unless previously justified to the Committees on Appropriations, the requirements of this subsection shall apply to all obligations of funds appropriated under title I of this Act for items (5) and (6) above.

Applicability.

(b) None of the funds provided under title I of this Act, or provided under previous appropriations Acts to the agency or department funded under title I of this Act that remain available for obligation or expenditure in fiscal year 2012, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agency or department funded under title I of this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of $1,000,000 or 10 percent, whichever is less, that:

(1) augments existing programs, projects, or activities;

(2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or

(3) results from any general savings, including savings from a reduction in personnel, which would result in a change

in existing programs, activities, or projects as approved by Congress; unless the Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.

(c) None of the funds made available under titles II through VI and VIII in this Act under the headings "Global Health Programs", "Development Assistance", "International Organizations and Programs", "Trade and Development Agency", "International Narcotics Control and Law Enforcement", "Assistance for Europe, Eurasia and Central Asia", "Economic Support Fund", "Democracy Fund", "Peacekeeping Operations", "Capital Investment Fund", "Operating Expenses", "Conflict Stabilization Operations", "Office of Inspector General", "Nonproliferation, Anti-terrorism, Demining and Related Programs", "Millennium Challenge Corporation", "Foreign Military Financing Program", "International Military Education and Training", "Pakistan Counterinsurgency Capability Fund", and "Peace Corps", shall be available for obligation for activities, programs, projects, type of materiel assistance, countries, or other operations not justified or in excess of the amount justified to the Committees on Appropriations for obligation under any of these specific headings unless the Committees on Appropriations are notified 15 days in advance: *Provided*, That the President shall not enter into any commitment of funds appropriated for the purposes of section 23 of the Arms Export Control Act for the provision of major defense equipment, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress or 20 percent in excess of the quantities justified to Congress unless the Committees on Appropriations are notified 15 days in advance of such commitment: *Provided further*, That requirements of this subsection or any similar provision of any other Act shall not apply to any reprogramming for an activity, program, or project for which funds are appropriated under titles II through IV of this Act of less than 10 percent of the amount previously justified to the Congress for obligation for such activity, program, or project for the current fiscal year.

President.

(d) Notwithstanding any other provision of law, with the exception of funds transferred to, and merged with, funds appropriated under title I of this Act, funds transferred by the Department of Defense to the Department of State and the United States Agency for International Development for assistance for foreign countries and international organizations, and funds made available for programs authorized by section 1206 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163), shall be subject to the regular notification procedures of the Committees on Appropriations.

(e) The requirements of this section or any similar provision of this Act or any other Act, including any prior Act requiring notification in accordance with the regular notification procedures of the Committees on Appropriations, may be waived if failure to do so would pose a substantial risk to human health or welfare: *Provided*, That in case of any such waiver, notification to the Committees on Appropriations shall be provided as early as practicable, but in no event later than 3 days after taking the action to which such notification requirement was applicable, in the context of the circumstances necessitating such waiver: *Provided further*, That any notification provided pursuant to such a waiver shall contain an explanation of the emergency circumstances.

Waiver authority.

Deadline.

Explanation.

(f) None of the funds appropriated under titles III through VI and VIII of this Act shall be obligated or expended for assistance for Serbia, Sudan, South Sudan, Zimbabwe, Afghanistan, Iraq, Pakistan, Cuba, Iran, Haiti, Libya, Ethiopia, Nepal, Colombia, Honduras, Burma, Yemen, Mexico, Kazakhstan, Uzbekistan, the Russian Federation, Somalia, Sri Lanka, or Cambodia except as provided through the regular notification procedures of the Committees on Appropriations.

NOTIFICATION ON EXCESS DEFENSE EQUIPMENT

SEC. 7016. Prior to providing excess Department of Defense articles in accordance with section 516(a) of the Foreign Assistance Act of 1961, the Department of Defense shall notify the Committees on Appropriations to the same extent and under the same conditions as other committees pursuant to subsection (f) of that section: *Provided*, That before issuing a letter of offer to sell excess defense articles under the Arms Export Control Act, the Department of Defense shall notify the Committees on Appropriations in accordance with the regular notification procedures of such Committees if such defense articles are significant military equipment (as defined in section 47(9) of the Arms Export Control Act) or are valued (in terms of original acquisition cost) at $7,000,000 or more, or if notification is required elsewhere in this Act for the use of appropriated funds for specific countries that would receive such excess defense articles: *Provided further*, That such Committees shall also be informed of the original acquisition cost of such defense articles.

LIMITATION ON AVAILABILITY OF FUNDS FOR INTERNATIONAL ORGANIZATIONS AND PROGRAMS

Notification.

SEC. 7017. Subject to the regular notification procedures of the Committees on Appropriations, funds appropriated under titles III through VI of this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs, which are returned or not made available for organizations and programs because of the implementation of section 307(a) of the Foreign Assistance Act of 1961 or section 7049(a) of this Act, shall remain available for obligation until September 30, 2013.

PROHIBITION ON FUNDING FOR ABORTIONS AND INVOLUNTARY STERILIZATION

SEC. 7018. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for the performance of involuntary sterilization as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations. None of the funds made available to carry out part I of the Foreign Assistance Act of 1961, as amended, may be used to pay for any biomedical research which relates in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning. None of the funds made available to carry out part I of

President.
Certification.

the Foreign Assistance Act of 1961, as amended, may be obligated or expended for any country or organization if the President certifies that the use of these funds by any such country or organization would violate any of the above provisions related to abortions and involuntary sterilizations.

ALLOCATIONS

SEC. 7019. (a) Funds provided in this Act shall be made available for programs and countries in the amounts contained in the respective tables included in the joint explanatory statement accompanying this Act.

(b) For the purposes of implementing this section and only with respect to the tables included in the joint explanatory statement accompanying this Act, the Secretary of State, the Administrator of the United States Agency for International Development and the Broadcasting Board of Governors, as appropriate, may propose deviations to the amounts referenced in subsection (a), subject to the regular notification procedures of the Committees on Appropriations. Notification.

PROHIBITION OF PAYMENT OF CERTAIN EXPENSES

SEC. 7020. None of the funds appropriated or otherwise made available by this Act under the headings "International Military Education and Training" or "Foreign Military Financing Program" for Informational Program activities or under the headings "Global Health Programs", "Development Assistance", and "Economic Support Fund" may be obligated or expended to pay for—

(1) alcoholic beverages; or

(2) entertainment expenses for activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.

PROHIBITION ON ASSISTANCE TO GOVERNMENTS SUPPORTING INTERNATIONAL TERRORISM

SEC. 7021. (a) LETHAL MILITARY EQUIPMENT EXPORTS.— President. Determinations.

(1) None of the funds appropriated or otherwise made available by titles III through VI of this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined supports international terrorism for purposes of section 6(j) of the Export Administration Act of 1979: *Provided*, That the prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment: *Provided further*, That this section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997. Termination date. Applicability.

(2) Assistance restricted by paragraph (1) or any other similar provision of law, may be furnished if the President determines that to do so is important to the national interests of the United States.

(3) Whenever the President makes a determination pursuant to paragraph (2), the President shall submit to the Committees on Appropriations a report with respect to the furnishing Reports.

of such assistance, including a detailed explanation of the assistance to be provided, the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests.

(b) BILATERAL ASSISTANCE.—

(1) Funds appropriated for bilateral assistance in titles III through VI of this Act and funds appropriated under any such title in prior acts making appropriations for the Department of State, foreign operations, and related programs, shall not be made available to any foreign government which the President determines—

(A) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism;

(B) otherwise supports international terrorism; or

(C) is controlled by an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.

Waiver authority.

Federal Register, publication. Deadline. Notification.

(2) The President may waive the application of paragraph (1) to a government if the President determines that national security or humanitarian reasons justify such waiver: *Provided*, That the President shall publish each such waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committees on Appropriations of the waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations.

AUTHORIZATION REQUIREMENTS

SEC. 7022. Funds appropriated by this Act, except funds appropriated under the heading "Trade and Development Agency", may be obligated and expended notwithstanding section 10 of Public Law 91–672, section 15 of the State Department Basic Authorities Act of 1956, section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), and section 504(a)(1) of the National Security Act of 1947 (50 U.S.C. 414(a)(1)).

DEFINITION OF PROGRAM, PROJECT, AND ACTIVITY

Reports. Deadline.

SEC. 7023. For the purpose of titles II through VI of this Act "program, project, and activity" shall be defined at the appropriations Act account level and shall include all appropriations and authorizations Acts funding directives, ceilings, and limitations with the exception that for the following accounts: "Economic Support Fund" and "Foreign Military Financing Program", "program, project, and activity" shall also be considered to include country, regional, and central program level funding within each such account; for the development assistance accounts of the United States Agency for International Development "program, project, and activity" shall also be considered to include central, country, regional, and program level funding, either as:

(1) justified to the Congress; or

(2) allocated by the executive branch in accordance with a report, to be provided to the Committees on Appropriations within 30 days of the enactment of this Act, as required by section 653(a) of the Foreign Assistance Act of 1961.

AUTHORITIES FOR THE PEACE CORPS, INTER-AMERICAN FOUNDATION AND AFRICAN DEVELOPMENT FOUNDATION

SEC. 7024. Unless expressly provided to the contrary, provisions of this or any other Act, including provisions contained in prior Acts authorizing or making appropriations for the Department of State, foreign operations, and related programs, shall not be construed to prohibit activities authorized by or conducted under the Peace Corps Act, the Inter-American Foundation Act or the African Development Foundation Act: *Provided*, That prior to conducting activities in a country for which assistance is prohibited, the agency shall consult with the Committees on Appropriations and report to such Committees within 15 days of taking such action.

Consultation. Reports. Deadline.

COMMERCE, TRADE AND SURPLUS COMMODITIES

SEC. 7025. (a) None of the funds appropriated or made available pursuant to titles III through VI of this Act for direct assistance and none of the funds otherwise made available to the Export-Import Bank and the Overseas Private Investment Corporation shall be obligated or expended to finance any loan, any assistance or any other financial commitments for establishing or expanding production of any commodity for export by any country other than the United States, if the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity: *Provided*, That such prohibition shall not apply to the Export-Import Bank if in the judgment of its Board of Directors the benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar, or competing commodity, and the Chairman of the Board so notifies the Committees on Appropriations: *Provided further,* That this subsection shall not prohibit—

Notification.

(1) activities in a country that is eligible for assistance from the International Development Association, is not eligible for assistance from the International Bank for Reconstruction and Development, and does not export on a consistent basis the agricultural commodity with respect to which assistance is furnished; or

(2) activities in a country the President determines is recovering from widespread conflict, a humanitarian crisis, or a complex emergency.

(b) None of the funds appropriated by this or any other Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 shall be available for any testing or breeding feasibility study, variety improvement or introduction, consultancy, publication, conference, or training in connection with the growth or production in a foreign country of an agricultural commodity for export which would compete with a similar commodity grown or produced in the United States: *Provided*, That this subsection shall not prohibit—

(1) activities designed to increase food security in developing countries where such activities will not have a significant impact on the export of agricultural commodities of the United States;

(2) research activities intended primarily to benefit American producers;

(3) activities in a country that is eligible for assistance from the International Development Association, is not eligible for assistance from the International Bank for Reconstruction and Development, and does not export on a consistent basis the agricultural commodity with respect to which assistance is furnished; or

(4) activities in a country the President determines is recovering from widespread conflict, a humanitarian crisis, or a complex emergency.

22 USC 262h note.

(c) The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the North American Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or made available pursuant to titles III through VI of this Act, for the production or extraction of any commodity or mineral for export, if it is in surplus on world markets and if the assistance will cause substantial injury to United States producers of the same, similar, or competing commodity.

SEPARATE ACCOUNTS

22 USC 2362 note.
Contracts.

SEC. 7026. (a) SEPARATE ACCOUNTS FOR LOCAL CURRENCIES.—

(1) If assistance is furnished to the government of a foreign country under chapters 1 and 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961 under agreements which result in the generation of local currencies of that country, the Administrator of the United States Agency for International Development (USAID) shall—

(A) require that local currencies be deposited in a separate account established by that government;

(B) enter into an agreement with that government which sets forth—

(i) the amount of the local currencies to be generated; and

(ii) the terms and conditions under which the currencies so deposited may be utilized, consistent with this section; and

(C) establish by agreement with that government the responsibilities of USAID and that government to monitor and account for deposits into and disbursements from the separate account.

(2) USES OF LOCAL CURRENCIES.—As may be agreed upon with the foreign government, local currencies deposited in a separate account pursuant to subsection (a), or an equivalent amount of local currencies, shall be used only—

(A) to carry out chapter 1 or 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961 (as the case may be), for such purposes as—

(i) project and sector assistance activities; or

(ii) debt and deficit financing; or

(B) for the administrative requirements of the United States Government.

(3) PROGRAMMING ACCOUNTABILITY.—USAID shall take all necessary steps to ensure that the equivalent of the local currencies disbursed pursuant to subsection (a)(2)(A) from the separate account established pursuant to subsection (a)(1) are used for the purposes agreed upon pursuant to subsection (a)(2).

(4) TERMINATION OF ASSISTANCE PROGRAMS.—Upon termination of assistance to a country under chapter 1 or 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961 (as the case may be), any unencumbered balances of funds which remain in a separate account established pursuant to subsection (a) shall be disposed of for such purposes as may be agreed to by the government of that country and the United States Government.

(5) REPORTING REQUIREMENT.—The USAID Administrator shall report on an annual basis as part of the justification documents submitted to the Committees on Appropriations on the use of local currencies for the administrative requirements of the United States Government as authorized in subsection (a)(2)(B), and such report shall include the amount of local currency (and United States dollar equivalent) used and/or to be used for such purpose in each applicable country.

(b) SEPARATE ACCOUNTS FOR CASH TRANSFERS.—

(1) If assistance is made available to the government of a foreign country, under chapter 1 or 10 of part I or chapter 4 of part II of the Foreign Assistance Act of 1961, as cash transfer assistance or as nonproject sector assistance, that country shall be required to maintain such funds in a separate account and not commingle them with any other funds.

(2) APPLICABILITY OF OTHER PROVISIONS OF LAW.—Such funds may be obligated and expended notwithstanding provisions of law which are inconsistent with the nature of this assistance including provisions which are referenced in the Joint Explanatory Statement of the Committee of Conference accompanying House Joint Resolution 648 (House Report No. 98–1159).

(3) NOTIFICATION.—At least 15 days prior to obligating any such cash transfer or nonproject sector assistance, the President shall submit a notification through the regular notification procedures of the Committees on Appropriations, which shall include a detailed description of how the funds proposed to be made available will be used, with a discussion of the United States interests that will be served by the assistance (including, as appropriate, a description of the economic policy reforms that will be promoted by such assistance).

Deadline.
President.

(4) EXEMPTION.—Nonproject sector assistance funds may be exempt from the requirements of subsection (b)(1) only through the regular notification procedures of the Committees on Appropriations.

ELIGIBILITY FOR ASSISTANCE

SEC. 7027. (a) ASSISTANCE THROUGH NONGOVERNMENTAL ORGANIZATIONS.—Restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance in support of programs of nongovernmental

organizations from funds appropriated by this Act to carry out the provisions of chapters 1, 10, 11, and 12 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, and from funds appropriated under the heading "Assistance for Europe, Eurasia and Central Asia": *Provided*, That before using the authority of this subsection to furnish assistance in support of programs of nongovernmental organizations, the President shall notify the Committees on Appropriations under the regular notification procedures of those committees, including a description of the program to be assisted, the assistance to be provided, and the reasons for furnishing such assistance: *Provided further*, That nothing in this subsection shall be construed to alter any existing statutory prohibitions against abortion or involuntary sterilizations contained in this or any other Act.

President. Notification.

Abortion. Sterilization.

(b) PUBLIC LAW 480.—During fiscal year 2012, restrictions contained in this or any other Act with respect to assistance for a country shall not be construed to restrict assistance under the Agricultural Trade Development and Assistance Act of 1954: *Provided*, That none of the funds appropriated to carry out title I of such Act and made available pursuant to this subsection may be obligated or expended except as provided through the regular notification procedures of the Committees on Appropriations.

(c) EXCEPTION.—This section shall not apply—

(1) with respect to section 620A of the Foreign Assistance Act of 1961 or any comparable provision of law prohibiting assistance to countries that support international terrorism; or

(2) with respect to section 116 of the Foreign Assistance Act of 1961 or any comparable provision of law prohibiting assistance to the government of a country that violates internationally recognized human rights.

IMPACT ON JOBS IN THE UNITED STATES

SEC. 7028. None of the funds appropriated under titles III through VI of this Act may be obligated or expended to provide—

(1) any financial incentive to a business enterprise currently located in the United States for the purpose of inducing such an enterprise to relocate outside the United States if such incentive or inducement is likely to reduce the number of employees of such business enterprise in the United States because United States production is being replaced by such enterprise outside the United States; or

(2) assistance for any program, project, or activity that contributes to the violation of internationally recognized workers rights, as defined in section 507(4) of the Trade Act of 1974, of workers in the recipient country, including any designated zone or area in that country: *Provided*, That the application of section 507(4) (D) and (E) of such Act should be commensurate with the level of development of the recipient country and sector, and shall not preclude assistance for the informal sector in such country, micro and small-scale enterprise, and smallholder agriculture.

INTERNATIONAL FINANCIAL INSTITUTIONS

SEC. 7029. (a) None of the funds appropriated under title V of this Act may be made as payment to any international financial

institution while the United States executive director to such institution is compensated by the institution at a rate which, together with whatever compensation such executive director receives from the United States, is in excess of the rate provided for an individual occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, or while any alternate United States executive director to such institution is compensated by the institution at a rate in excess of the rate provided for an individual occupying a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(b) The Secretary of the Treasury shall instruct the United States executive director of each international financial institution to oppose any loan, grant, strategy or policy of such institution that would require user fees or service charges on poor people for primary education or primary healthcare, including prevention, care and treatment for HIV/AIDS, malaria, tuberculosis, and infant, child, and maternal health, in connection with such institution's financing programs.

(c) The Secretary of the Treasury shall instruct the United States Executive Director of the International Monetary Fund (the Fund) to use the voice and vote of the United States to oppose any loan, project, agreement, memorandum, instrument, plan, or other program of the Fund to a Heavily Indebted Poor Country that imposes budget caps or restraints that do not allow the maintenance of or an increase in governmental spending on healthcare or education; and to promote government spending on healthcare, education, agriculture and food security, or other critical safety net programs in all of the Fund's activities with respect to Heavily Indebted Poor Countries.

Definition.

(d) For the purposes of this Act "international financial institutions" shall mean the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Asian Development Fund, the Inter-American Investment Corporation, the North American Development Bank, the European Bank for Reconstruction and Development, the African Development Bank and the African Development Fund.

DEBT-FOR-DEVELOPMENT

Notification.

SEC. 7030. In order to enhance the continued participation of nongovernmental organizations in debt-for-development and debt-for-nature exchanges, a nongovernmental organization which is a grantee or contractor of the United States Agency for International Development may place in interest bearing accounts local currencies which accrue to that organization as a result of economic assistance provided under title III of this Act and, subject to the regular notification procedures of the Committees on Appropriations, any interest earned on such investment shall be used for the purpose for which the assistance was provided to that organization.

FINANCIAL MANAGEMENT AND BUDGET TRANSPARENCY

SEC. 7031. (a) LIMITATION ON DIRECT GOVERNMENT-TO-GOVERNMENT ASSISTANCE.—

(1) Funds appropriated by this Act may be made available for direct Government-to-Government assistance only if—

(A) each implementing agency or ministry to receive assistance has been assessed and is considered to have the systems required to manage such assistance and any identified vulnerabilities or weaknesses of such agency or ministry have been addressed; and

(i) the recipient agency or ministry employs and utilizes staff with the necessary technical, financial, and management capabilities;

(ii) the recipient agency or ministry has adopted competitive procurement policies and systems;

(iii) effective monitoring and evaluation systems are in place to ensure that such assistance is used for its intended purposes; and

(iv) no level of acceptable fraud is assumed.

(B) the Government of the United States and the government of the recipient country have agreed, in writing—

(i) on clear and achievable objectives for the use of such assistance; and

(ii) that such assistance should be made on a cost-reimbursable basis.

Consultation. Notification.

(2) In addition to the requirements in subsection (a), no funds may be made available for such assistance without prior consultation with, and notification to, the Committees on Appropriations: *Provided,* That such notification shall contain an explanation of how the proposed activity meets the requirements of paragraph (1): *Provided further,* That the requirements of this paragraph shall only apply to direct Government-to-Government assistance in excess of $10,000,000 and all funds available for cash transfer, budget support, and cash payments to individuals.

Applicability.

Suspension. Determination. Reports.

(3) The USAID Administrator or the Secretary of State, as appropriate, shall suspend any such assistance if the Administrator or the Secretary has credible information of material misuse of such assistance, unless the Administrator or the Secretary determines and reports to the Committees on Appropriations that it is in the national interest of the United States to continue such assistance.

Deadlines. Reports.

(4) Not later than 90 days after the enactment of this Act and 6 months thereafter, the USAID Administrator shall submit to the Committees on Appropriations a report that—

(A) details all assistance described in subsection (a) provided during the previous 6-month period by country, funding amount, source of funds, and type of such assistance; and

(B) the type of procurement instrument or mechanism utilized and whether the assistance was provided on a cost-reimbursable basis.

Submission.

(5) The USAID Administrator shall submit to the Committees on Appropriations, concurrent with the fiscal year 2013 congressional budget justification materials, amounts planned for assistance described in subsection (a) by country, proposed funding amount, source of funds, and type of assistance.

(b) NATIONAL BUDGET AND CONTRACT TRANSPARENCY.—

(1) LIMITATION ON FUNDING.—None of the funds appropriated under titles III and IV of this Act may be made available to the central government of any country that does not meet minimum standards of fiscal transparency: *Provided*, That the Secretary of State shall develop "minimum standards of fiscal transparency" to be updated and strengthened, as appropriate, to reflect best practices: *Provided further,* That the Secretary shall make an annual determination of "progress" or "no progress" for countries that do not meet minimum standards of fiscal transparency and make those determinations publicly available in an annual "Fiscal Transparency Report".

Standards.

Determination. Public information.

(2) MINIMUM STANDARDS OF FISCAL TRANSPARENCY.—For purposes of paragraph (1), "minimum standards of fiscal transparency" shall include standards for the public disclosure of budget documentation, including receipts and expenditures by ministry, and government contracts and licenses for natural resource extraction, to include bidding and concession allocation practices.

(3) WAIVER.—The Secretary of State may waive the limitation on funding in paragraph (1) on a country-by-country basis if the Secretary reports to the Committees on Appropriations that the waiver is important to the national interest of the United States: *Provided*, That such waiver shall identify any steps taken by the government of the country to publicly disclose its national budget and contracts which are additional to those which were undertaken in previous fiscal years, include specific recommendations of short- and long-term steps such government can take to improve budget transparency, and identify benchmarks for measuring progress.

Reports.

(4) ASSISTANCE.—Of the funds appropriated under title III of this Act, not less than $5,000,000 should be made available for programs and activities to assist the central governments of countries named in the list required by paragraph (1) to improve budget transparency or to support civil society organizations in such countries that promote budget transparency: *Provided*, That such sums shall be in addition to funds otherwise made available for such purposes.

(c) ANTI-KLEPTOCRACY.—

8 USC 1182 note.

(1) Officials of foreign governments and their immediate family members who the Secretary of State has credible information have been involved in significant corruption, including corruption related to the extraction of natural resources, shall be ineligible for entry into the United States.

(2) Individuals shall not be ineligible if entry into the United States would further important United States law enforcement objectives or is necessary to permit the United States to fulfill its obligations under the United Nations Headquarters Agreement: *Provided*, That nothing in this provision shall be construed to derogate from United States Government obligations under applicable international agreements.

(3) The Secretary may waive the application of paragraph (1) if the Secretary determines that the waiver would serve a compelling national interest or that the circumstances which caused the individual to be ineligible have changed sufficiently.

Waiver authority. Determination.

(4) Not later than 90 days after enactment of this Act and 180 days thereafter, the Secretary of State shall submit a report, in classified form if necessary, to the Committees

Deadlines. Reports.

on Appropriations describing the information regarding corruption concerning each of the individuals found ineligible pursuant to paragraph (1), a list of any waivers provided under subsection (3), and the justification for each waiver.

AUTHORITY TO ENGAGE IN DEBT BUYBACKS OR SALES

SEC. 7032. (a) LOANS ELIGIBLE FOR SALE, REDUCTION, OR CANCELLATION.—

(1) AUTHORITY TO SELL, REDUCE, OR CANCEL CERTAIN LOANS.—Notwithstanding any other provision of law, the President may, in accordance with this section, sell to any eligible purchaser any concessional loan or portion thereof made before January 1, 1995, pursuant to the Foreign Assistance Act of 1961, to the government of any eligible country as defined in section 702(6) of that Act or on receipt of payment from an eligible purchaser, reduce or cancel such loan or portion thereof, only for the purpose of facilitating—

(A) debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps; or

(B) a debt buyback by an eligible country of its own qualified debt, only if the eligible country uses an additional amount of the local currency of the eligible country, equal to not less than 40 percent of the price paid for such debt by such eligible country, or the difference between the price paid for such debt and the face value of such debt, to support activities that link conservation and sustainable use of natural resources with local community development, and child survival and other child development, in a manner consistent with sections 707 through 710 of the Foreign Assistance Act of 1961, if the sale, reduction, or cancellation would not contravene any term or condition of any prior agreement relating to such loan.

President.

(2) TERMS AND CONDITIONS.—Notwithstanding any other provision of law, the President shall, in accordance with this section, establish the terms and conditions under which loans may be sold, reduced, or canceled pursuant to this section.

Notification. President. Determination.

(3) ADMINISTRATION.—The Facility, as defined in section 702(8) of the Foreign Assistance Act of 1961, shall notify the administrator of the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 of purchasers that the President has determined to be eligible, and shall direct such agency to carry out the sale, reduction, or cancellation of a loan pursuant to this section: *Provided*, That such agency shall make adjustment in its accounts to reflect the sale, reduction, or cancellation.

(4) LIMITATION.—The authorities of this subsection shall be available only to the extent that appropriations for the cost of the modification, as defined in section 502 of the Congressional Budget Act of 1974, are made in advance.

(b) DEPOSIT OF PROCEEDS.—The proceeds from the sale, reduction, or cancellation of any loan sold, reduced, or canceled pursuant to this section shall be deposited in the United States Government account or accounts established for the repayment of such loan.

(c) ELIGIBLE PURCHASERS.—A loan may be sold pursuant to subsection (a)(1)(A) only to a purchaser who presents plans satisfactory to the President for using the loan for the purpose of engaging

in debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(d) DEBTOR CONSULTATIONS.—Before the sale to any eligible purchaser, or any reduction or cancellation pursuant to this section, of any loan made to an eligible country, the President should consult with the country concerning the amount of loans to be sold, reduced, or canceled and their uses for debt-for-equity swaps, debt-for-development swaps, or debt-for-nature swaps.

(e) AVAILABILITY OF FUNDS.—The authority provided by subsection (a) may be used only with regard to funds appropriated by this Act under the heading "Debt Restructuring".

MULTI-YEAR COMMITMENTS

SEC. 7033. None of the funds appropriated by this Act may be used to make a future year funding pledge for any multilateral or bilateral program funded in titles III through VI of this Act unless such pledge was— Notification. Consultation. Time period.

(1) previously justified in a congressional budget justification;

(2) included in an Act making appropriations for the Department of State, foreign operations, and related programs or previously authorized by an Act of Congress;

(3) notified in accordance with the regular notification procedures of the Committees on Appropriations; or

(4) the subject of prior consultation with the Committees on Appropriations and such consultation was conducted at least 7 days in advance of the pledge.

SPECIAL PROVISIONS

SEC. 7034. (a) VICTIMS OF WAR, DISPLACED CHILDREN, AND DISPLACED BURMESE.—Funds appropriated in titles III and VI of this Act that are made available for victims of war, displaced children, and displaced Burmese, and to assist victims of trafficking in persons and, subject to the regular notification procedures of the Committees on Appropriations, to combat such trafficking, may be made available notwithstanding any other provision of law. Notification.

(b) RECONSTITUTING CIVILIAN POLICE AUTHORITY.—In providing assistance with funds appropriated by this Act under section 660(b)(6) of the Foreign Assistance Act of 1961, support for a nation emerging from instability may be deemed to mean support for regional, district, municipal, or other sub-national entity emerging from instability, as well as a nation emerging from instability.

(c) WORLD FOOD PROGRAM.—Funds managed by the Bureau for Democracy, Conflict, and Humanitarian Assistance, United States Agency for International Development (USAID), from this or any other Act, shall be made available as a general contribution to the World Food Program, notwithstanding any other provision of law.

(d) DISARMAMENT, DEMOBILIZATION AND REINTEGRATION.—Notwithstanding any other provision of law, regulation or Executive order, funds appropriated by this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs under the headings "Economic Support Fund", "Peacekeeping Operations", "International Disaster Assistance", and

"Transition Initiatives" should be made available to support programs to disarm, demobilize, and reintegrate into civilian society former members of foreign terrorist organizations: *Provided*, That the Secretary of State shall consult with the Committees on Appropriations prior to the obligation of funds pursuant to this subsection: *Provided further*, That for the purposes of this subsection the term "foreign terrorist organization" means an organization designated as a terrorist organization under section 219 of the Immigration and Nationality Act.

Consultation.

Definition.

(e) RESEARCH AND TRAINING.—Funds appropriated by this Act under the heading "Economic Support Fund" may be made available to carry out the Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union (title VIII) as authorized by the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508).

(f) CONTINGENCIES.—During fiscal year 2012, the President may use up to $50,000,000 under the authority of section 451 of the Foreign Assistance Act of 1961, notwithstanding any other provision of law.

(g) CONSOLIDATION OF REPORTS.—The Secretary of State, in coordination with the USAID Administrator, shall submit to the Committees on Appropriations, and other relevant congressional committees, not later than 90 days after enactment of this Act recommendations for the consolidation or combination of reports (including plans and strategies) that are called for by any provision of law to be submitted to the Congress and that are substantially duplicative of others called for by any other provision of law: *Provided*, That reports are considered "substantially duplicative" if they are required to address at least more than half of the same substantive factors, criteria and issues that are required to be addressed by any other report, and any such consolidated report must address all the substantive factors, criteria and issues required to be addressed in each of the individual reports: *Provided further,* That reports affected by this subsection are those within the purview of, or prepared primarily by, the Department of State and USAID and that relate to matters addressed under this Act or any other Act authorizing or appropriating funds for use by, or actions of, the Department of State or USAID.

(h) PROMOTION OF DEMOCRACY.—

(1) Funds made available by this Act that are made available for the promotion of democracy may be made available notwithstanding any other provision of law, and with regard to the National Endowment for Democracy, any regulation.

(2) For the purposes of funds appropriated by this Act, the term "promotion of democracy" means programs that support good governance, human rights, independent media, and the rule of law, and otherwise strengthen the capacity of democratic political parties, governments, nongovernmental organizations and institutions, and citizens to support the development of democratic states, institutions, and practices that are responsive and accountable to citizens.

(3) With respect to the provision of assistance for democracy, human rights and governance activities in this Act, the organizations implementing such assistance and the specific nature of that assistance shall not be subject to the prior approval by the government of any foreign country.

(4) Funds appropriated under the heading "Economic Support Fund" shall be made available to the Bureau of Democracy, Human Rights and Labor for programs to promote human rights by expanding open and uncensored access to information and communication as identified in the Department of State's Internet freedom strategy: *Provided*, That funds made available by this paragraph should be matched by sources other than the United States Government, as appropriate: *Provided further,* That the Secretary of State shall coordinate the development and uses of circumvention and secure communications technologies with the Administrator of the United States Agency for International Development and the Broadcasting Board of Governors, as appropriate: *Provided further,* That the circumvention technologies and programs supported by funds made available by this Act, shall undergo a review, to include an assessment of the protection against such technologies being used for illicit purposes.

Coordination.

Review.
Assessment.

(5) Funds appropriated by this Act that are made available to promote democracy and human rights shall also be made available to support freedom of religion, especially in the Middle East and North Africa.

(i) PARTNER VETTING.—Funds appropriated in this Act or any prior Acts making appropriations for the Department of State, foreign operations, and related programs shall be used by the Secretary of State and the Administrator of the United States Agency for International Development (USAID), as appropriate, to support the development and implementation of a Partner Vetting System (PVS) pilot program: *Provided*, That such pilot program shall be implemented not later than September 30, 2012: *Provided further,* That the Secretary of State and the USAID Administrator shall jointly submit a report to the Committees on Appropriations not later than 30 days after completion of the pilot program on the estimated timeline and criteria for evaluating the PVS for expansion.

Deadline.
Reports.
Deadline.

(j) PROTECTIONS AND REMEDIES FOR EMPLOYEES OF DIPLOMATIC MISSIONS AND INTERNATIONAL ORGANIZATIONS.—The Secretary of State shall implement section 203(a)(2) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110–457): *Provided,* That in determining whether to suspend the issuance of A–3 or G–5 visas to applicants seeking to work for officials of a diplomatic mission or international organization, the Secretary shall consider whether a final court judgment has been issued against a current or former employee of such mission or organization (and the time period for a final appeal has expired) or whether the Department of State has requested that immunity of individual diplomats or family members be waived to permit criminal prosecution: *Provided further*, That the Secretary should continue to assist in obtaining payment of final court judgments awarded to A–3 and G–5 visa holders, including encouraging the sending states to provide compensation directly to victims: *Provided further*, That the Secretary shall include, in a manner the Secretary deems appropriate, all trafficking cases involving A–3 or G–5 visa holders in the Trafficking in Persons annual report for which a final civil judgment has been issued (and the time period for final appeal has expired) or the Department of Justice has determined that the United States Government would seek to indict the diplomat or a family member but for diplomatic immunity.

Implementation.

Determination.

22 USC 2378d.

(k) MODIFICATION OF AMENDMENT.—Section 620J of the Foreign Assistance Act of 1961 (Limitation on Assistance to Security Forces) is amended as follows:

(1) by redesignating the section as section 620M;

(2) in subsection (a), by striking "evidence" and inserting "information" and by striking "gross violations" and inserting "a gross violation";

(3) in subsection (b), by striking "measures" and inserting "steps"; and

(4) by adding the following subsection:

Procedures.

"(d) CREDIBLE INFORMATION.—The Secretary shall establish, and periodically update, procedures to—

"(1) ensure that for each country the Department of State has a current list of all security force units receiving United States training, equipment, or other types of assistance;

"(2) facilitate receipt by the Department of State and United States embassies of information from individuals and organizations outside the United States Government about gross violations of human rights by security force units;

"(3) routinely request and obtain such information from the Department of Defense, the Central Intelligence Agency, and other United States Government sources;

"(4) ensure that such information is evaluated and preserved;

"(5) ensure that when vetting an individual for eligibility to receive United States training the individual's unit is also vetted;

"(6) seek to identify the unit involved when credible information of a gross violation exists but the identity of the unit is lacking; and

"(7) make publicly available, to the maximum extent practicable, the identity of those units for which no assistance shall be furnished pursuant to subsection (a).".

22 USC 2292c, 2292f, 2292h–2292q.

(l) SECTIONS REPEALED.—Sections 494, 495, and 495B through 495K of the Foreign Assistance Act of 1961 are hereby repealed.

Applicability.

(m) EXTENSION OF AUTHORITIES.—

22 USC 214 note.

(1) Section 1(b)(2) of the Passport Act of June 4, 1920 (22 U.S.C. 214(b)(2)) shall be applied by substituting "September 30, 2012" for "September 30, 2010".

22 USC 4831 note.

(2) The authority provided by section 301(a)(3) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4831(a)(3)) shall remain in effect through September 30, 2012.

(3) The authority contained in section 1115(d) of Public Law 111–32 shall remain in effect through September 30, 2012.

22 USC 4064 note.

(4) Section 824(g) of the Foreign Service Act of 1980 (22 U.S.C. 4064(g)) shall be applied by substituting "September 30, 2012" for "October 1, 2010" in paragraph (2).

22 USC 2733 note.

(5) Section 61(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2733(a)) shall be applied by substituting "September 30, 2012" for "October 1, 2010" in paragraph (2).

22 USC 2385 note.

(6) Section 625(j)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2385(j)(1)) shall be applied by substituting "September 30, 2012" for "October 1, 2010" in subparagraph (B).

Extension.

(7) The authority contained in section 1603(a)(2) of Public Law 109–234, as amended, shall remain in effect through September 30, 2012.

(8) The authority provided by section 1113 of Public Law 111–32 shall remain in effect through September 30, 2012: *Provided*, That none of the funds appropriated or otherwise made available by this Act or any other Act making appropriations for the Department of State, foreign operations, and related programs may be used to implement phase 3 of such authority.

(n) REPORTS REPEALED.—Section 133(d) of Public Law 87–195; section 807 of Public Law 98–164; section 704(c) of Public Law 101–179; section 104 of Public Law 102–511; section 560(g) of Public Law 103–87; section 514(a) of Public Law 103–236; section 605(c) of Appendix G, Public Law 106–113; sections 3203 and 3204(f) of division B of Public Law 106–246; section 564(g)(4) of Public Law 106–429; sections 694(a), 694(b), 704 and 1321 of Public Law 107–228; and section 409(c) of Public Law 108–447 are hereby repealed.

22 USC 2152c, 4506, 5474, 5814 and note, 1928 note, 4865 note, 2656 note, 2291 note, 5952 note, 3927a.

(o) GOVERNMENT EXPENDITURES.—Funds appropriated under title III and under the heading "International Narcotics Control and Law Enforcement" in this Act should not be made available for assistance for any government for programs or activities in fiscal year 2013 if the Secretary of State or the Administrator of the United States Agency for International Development has credible information that such government is reducing its own expenditures for such programs or activities as a result of the assistance provided and for reasons that are inconsistent with the purposes of such assistance.

(p) INTERNATIONAL CHILD ABDUCTIONS.—The Secretary of State may withhold funds appropriated under title III of this Act for assistance for the central government of any country that the Secretary determines is not taking appropriate steps to comply with the Convention on the Civil Aspects of International Child Abductions, done at the Hague on October 25, 1980: *Provided*, That the Secretary shall report to the Committees on Appropriations within 15 days of making any such determination.

Reports. Deadline. Determination.

(q) REDESIGNATIONS.—

Deadlines. Appointments.

(1) The position of Advisor established pursuant to section 699B of division J of Public Law 110–161 shall, within 45 days of enactment of this Act and notwithstanding the requirements of such section, be moved to the United States Agency for International Development (USAID): *Provided*, That the Advisor shall hereafter be appointed by the USAID Administrator and shall report directly to the Administrator: *Provided further,* That the responsibilities of the Advisor enumerated in section 699B(b) shall remain in full force and effect.

(2) The position of Coordinator established pursuant to section 664 of division J of Public Law 110–161 shall, within 45 days of enactment of this Act and notwithstanding the requirements of such section, be moved to the United States Agency for International Development (USAID): *Provided*, That the Coordinator shall hereafter be appointed by the USAID Administrator and shall report directly to the Administrator: *Provided further,* That the responsibilities of the Coordinator enumerated in the first sentence of section 664(c) shall remain in full force and effect: *Provided further,* That the limitation in the second sentence of such section shall hereafter no longer apply to the Coordinator.

(r) EXTENSION OF AUTHORITY.—The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167) is amended—

(1) In section 599D (8 U.S.C. 1157 note)—

(A) in subsection (b)(3), by striking "and 2011" and inserting "2011, and 2012"; and

(B) in subsection (e), by striking "June 1, 2011" each place it appears and inserting "October 1, 2012"; and

(2) in section 599E (8 U.S.C. 1255 note) in subsection (b)(2), by striking "2011" and inserting "2012".

ARAB LEAGUE BOYCOTT OF ISRAEL

SEC. 7035. It is the sense of the Congress that—

(1) the Arab League boycott of Israel, and the secondary boycott of American firms that have commercial ties with Israel, is an impediment to peace in the region and to United States investment and trade in the Middle East and North Africa;

(2) the Arab League boycott, which was regrettably reinstated in 1997, should be immediately and publicly terminated, and the Central Office for the Boycott of Israel immediately disbanded;

(3) all Arab League states should normalize relations with their neighbor Israel;

(4) the President and the Secretary of State should continue to vigorously oppose the Arab League boycott of Israel and find concrete steps to demonstrate that opposition by, for example, taking into consideration the participation of any recipient country in the boycott when determining to sell weapons to said country; and

(5) the President should report to Congress annually on specific steps being taken by the United States to encourage Arab League states to normalize their relations with Israel to bring about the termination of the Arab League boycott of Israel, including those to encourage allies and trading partners of the United States to enact laws prohibiting businesses from complying with the boycott and penalizing businesses that do comply.

PALESTINIAN STATEHOOD

Determination. Certification.

SEC. 7036. (a) LIMITATION ON ASSISTANCE.—None of the funds appropriated under titles III through VI of this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that—

(1) the governing entity of a new Palestinian state—

(A) has demonstrated a firm commitment to peaceful co-existence with the State of Israel;

(B) is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures, and is cooperating with appropriate Israeli and other appropriate security organizations; and

(2) the Palestinian Authority (or the governing entity of a new Palestinian state) is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will

enable Israel and an independent Palestinian state to exist within the context of full and normal relationships, which should include—

(A) termination of all claims or states of belligerency;

(B) respect for and acknowledgment of the sovereignty, territorial integrity, and political independence of every state in the area through measures including the establishment of demilitarized zones;

(C) their right to live in peace within secure and recognized boundaries free from threats or acts of force;

(D) freedom of navigation through international waterways in the area; and

(E) a framework for achieving a just settlement of the refugee problem.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the governing entity should enact a constitution assuring the rule of law, an independent judiciary, and respect for human rights for its citizens, and should enact other laws and regulations assuring transparent and accountable governance.

(c) WAIVER.—The President may waive subsection (a) if the President determines that it is important to the national security interests of the United States to do so.

President. Determination.

(d) EXEMPTION.—The restriction in subsection (a) shall not apply to assistance intended to help reform the Palestinian Authority and affiliated institutions, or the governing entity, in order to help meet the requirements of subsection (a), consistent with the provisions of section 7040 of this Act ("Limitation on Assistance for the Palestinian Authority").

RESTRICTIONS CONCERNING THE PALESTINIAN AUTHORITY

SEC. 7037. None of the funds appropriated under titles II through VI of this Act may be obligated or expended to create in any part of Jerusalem a new office of any department or agency of the United States Government for the purpose of conducting official United States Government business with the Palestinian Authority over Gaza and Jericho or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles: *Provided*, That this restriction shall not apply to the acquisition of additional space for the existing Consulate General in Jerusalem: *Provided further*, That meetings between officers and employees of the United States and officials of the Palestinian Authority, or any successor Palestinian governing entity provided for in the Israel-PLO Declaration of Principles, for the purpose of conducting official United States Government business with such authority should continue to take place in locations other than Jerusalem: *Provided further*, That as has been true in the past, officers and employees of the United States Government may continue to meet in Jerusalem on other subjects with Palestinians (including those who now occupy positions in the Palestinian Authority), have social contacts, and have incidental discussions.

PROHIBITION ON ASSISTANCE TO THE PALESTINIAN BROADCASTING CORPORATION

SEC. 7038. None of the funds appropriated or otherwise made available by this Act may be used to provide equipment, technical

support, consulting services, or any other form of assistance to the Palestinian Broadcasting Corporation.

ASSISTANCE FOR THE WEST BANK AND GAZA

Deadline. Certification. Procedures.

SEC. 7039. (a) OVERSIGHT.—For fiscal year 2012, 30 days prior to the initial obligation of funds for the bilateral West Bank and Gaza Program, the Secretary of State shall certify to the Committees on Appropriations that procedures have been established to assure the Comptroller General of the United States will have access to appropriate United States financial information in order to review the uses of United States assistance for the Program funded under the heading "Economic Support Fund" for the West Bank and Gaza.

Terrorism.

(b) VETTING.—Prior to the obligation of funds appropriated by this Act under the heading "Economic Support Fund" for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity nor, with respect to private entities or educational institutions, those that have as a principal officer of the entity's governing board or governing board of trustees any individual that has been determined to be involved in, or advocating terrorist activity or determined to be a member of a designated foreign terrorist organization: *Provided*, That the Secretary of State shall, as appropriate, establish procedures specifying the steps to be taken in carrying out this subsection and shall terminate assistance to any individual, entity, or educational institution which the Secretary has determined to be involved in or advocating terrorist activity.

Determination.

(c) PROHIBITION.—

(1) None of the funds appropriated under titles III through VI of this Act for assistance under the West Bank and Gaza Program may be made available for the purpose of recognizing or otherwise honoring individuals who commit, or have committed acts of terrorism.

Reports.

(2) Notwithstanding any other provision of law, none of the funds made available by this or prior appropriations Acts, including funds made available by transfer, may be made available for obligation for security assistance for the West Bank and Gaza until the Secretary of State reports to the Committees on Appropriations on the benchmarks that have been established for security assistance for the West Bank and Gaza and reports on the extent of Palestinian compliance with such benchmarks.

(d) AUDITS.—

(1) The Administrator of the United States Agency for International Development shall ensure that Federal or non-Federal audits of all contractors and grantees, and significant subcontractors and sub-grantees, under the West Bank and Gaza Program, are conducted at least on an annual basis to ensure, among other things, compliance with this section.

(2) Of the funds appropriated by this Act up to $500,000 may be used by the Office of Inspector General of the United

States Agency for International Development for audits, inspections, and other activities in furtherance of the requirements of this subsection: *Provided*, That such funds are in addition to funds otherwise available for such purposes.

(e) Subsequent to the certification specified in subsection (a), the Comptroller General of the United States shall conduct an audit and an investigation of the treatment, handling, and uses of all funds for the bilateral West Bank and Gaza Program, including all funds provided as cash transfer assistance, in fiscal year 2012 under the heading "Economic Support Fund", and such audit shall address— Audit. Investigation.

(1) the extent to which such Program complies with the requirements of subsections (b) and (c); and

(2) an examination of all programs, projects, and activities carried out under such Program, including both obligations and expenditures.

(f) Funds made available in this Act for West Bank and Gaza shall be subject to the regular notification procedures of the Committees on Appropriations. Notification.

(g) Not later than 180 days after enactment of this Act, the Secretary of State shall submit a report to the Committees on Appropriations updating the report contained in section 2106 of chapter 2 of title II of Public Law 109–13. Deadline. Reports.

LIMITATION ON ASSISTANCE FOR THE PALESTINIAN AUTHORITY

SEC. 7040. (a) PROHIBITION OF FUNDS.—None of the funds appropriated by this Act to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 may be obligated or expended with respect to providing funds to the Palestinian Authority.

(b) WAIVER.—The prohibition included in subsection (a) shall not apply if the President certifies in writing to the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Committees on Appropriations that waiving such prohibition is important to the national security interests of the United States. President. Certification.

(c) PERIOD OF APPLICATION OF WAIVER.—Any waiver pursuant to subsection (b) shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

(d) REPORT.—Whenever the waiver authority pursuant to subsection (b) is exercised, the President shall submit a report to the Committees on Appropriations detailing the justification for the waiver, the purposes for which the funds will be spent, and the accounting procedures in place to ensure that the funds are properly disbursed: *Provided*, That the report shall also detail the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure. President.

(e) CERTIFICATION.—If the President exercises the waiver authority under subsection (b), the Secretary of State must certify and report to the Committees on Appropriations prior to the obligation of funds that the Palestinian Authority has established a single treasury account for all Palestinian Authority financing and all financing mechanisms flow through this account, no parallel financing mechanisms exist outside of the Palestinian Authority Reports.

treasury account, and there is a single comprehensive civil service roster and payroll.

(f) PROHIBITION TO HAMAS AND THE PALESTINE LIBERATION ORGANIZATION.—

(1) None of the funds appropriated in titles III through VI of this Act may be obligated for salaries of personnel of the Palestinian Authority located in Gaza or may be obligated or expended for assistance to Hamas or any entity effectively controlled by Hamas, any power-sharing government of which Hamas is a member, or that results from an agreement with Hamas and over which Hamas exercises undue influence.

President. Certification. Reports.

(2) Notwithstanding the limitation of subsection (1), assistance may be provided to a power-sharing government only if the President certifies and reports to the Committees on Appropriations that such government, including all of its ministers or such equivalent, has publicly accepted and is complying with the principles contained in section 620K(b)(1) (A) and (B) of the Foreign Assistance Act of 1961, as amended.

(3) The President may exercise the authority in section 620K(e) of the Foreign Assistance Act as added by the Palestinian Anti-Terrorism Act of 2006 (Public Law 109–446) with respect to this subsection.

Reports. Deadline.

(4) Whenever the certification pursuant to paragraph (2) is exercised, the Secretary of State shall submit a report to the Committees on Appropriations within 120 days of the certification and every quarter thereafter on whether such government, including all of its ministers or such equivalent are continuing to comply with the principles contained in section 620K(b)(1) (A) and (B) of the Foreign Assistance Act of 1961, as amended: *Provided*, That the report shall also detail the amount, purposes and delivery mechanisms for any assistance provided pursuant to the abovementioned certification and a full accounting of any direct support of such government.

(5) None of the funds appropriated under titles III through VI of this Act may be obligated for assistance for the Palestine Liberation Organization.

NEAR EAST

SEC. 7041. (a) EGYPT.—

Certification.

(1)(A) None of the funds appropriated under titles III and IV of this Act and in prior Acts making appropriations for the Department of State, foreign operations, and related programs may be made available for assistance for the central Government of Egypt unless the Secretary of State certifies to the Committees on Appropriations that such government is meeting its obligations under the 1979 Egypt-Israel Peace Treaty.

(B) Prior to the obligation of funds appropriated by this Act under the heading "Foreign Military Financing Program", the Secretary of State shall certify to the Committees on Appropriations that the Government of Egypt is supporting the transition to civilian government including holding free and fair elections; implementing policies to protect freedom of expression, association, and religion, and due process of law.

Waiver authority. Determination. Reports.

(C) The Secretary of State may waive the requirements of paragraphs (A) and (B) if the Secretary determines and

reports to the Committees on Appropriations that to do so is in the national security interest of the United States: *Provided*, That such determination and report shall include a detailed justification for such waiver.

Justification.

(2) The Secretary of State shall consult with the Committees on Appropriations prior to the transfer of funds appropriated by this Act under the heading "Foreign Military Financing Program" to an interest-bearing account for Egypt.

Consultation.

(3) Funds appropriated under the heading "Economic Support Fund" in this Act and prior Acts (including previously obligated funds), may be made available, notwithstanding any other provision of law, for an Egypt initiative, particularly for the specific costs referred to in the authorities referenced herein, for the purpose of improving the lives of the Egyptian people through education, investment in jobs and skills (including secondary and vocational education), and access to finance for small and medium enterprises with emphasis on expanding opportunities for women, as well as other appropriate market-reform and economic growth activities: *Provided*, That the provisions of title VI of Public Law 103–306 pertaining to funds for Jordan shall be deemed to apply to any such initiative and to funds available under this section to carry out such an initiative in the same manner as such cited provisions apply to Jordan, subject to the following provisos: *Provided further,* That subparagraph (b)(2) shall be deemed not to apply and the amount made available pursuant to this section as set forth in the joint explanatory statement accompanying this Act and incorporated herein shall be deemed to apply in lieu of the figure in subparagraph (b)(1): *Provided further,* That the authority to reduce debt shall include authority to exchange an outstanding obligation for a new obligation and to permit both principal and interest payments on new obligations to be deposited into a fund established for such purpose, to be used in accordance with purposes set forth in an agreement between the United States and Egypt: *Provided further,* That the authority of this paragraph shall only be made available after the Secretary of State certifies to the Committees on Appropriations that the Government of Egypt is implementing economic development policies consistent with the objectives of such initiative: *Provided further,* That funds made available for such initiative shall be subject to the regular notification procedures of the Committees on Appropriations.

Jordan.
Applicability.

Certification.

Notification.

(b) ENTERPRISE FUNDS.—Up to $60,000,000 of funds appropriated under the heading "Economic Support Fund" in this Act and prior acts making appropriations for the Department of State, foreign operations, and related programs (and including previously obligated funds), that are available for assistance for Egypt, up to $20,000,000 of such funds that are available for assistance for Tunisia, and up to $60,000,000 of such funds that are available for assistance for Jordan, respectively, may be made available notwithstanding any other provision of law, to establish and operate one or more enterprise funds for Egypt, Tunisia, and Jordan, respectively: *Provided*, That provisions contained in section 201 of the Support for East European Democracy (SEED) Act of 1989 (excluding the provisions of subsections (b), (c), (d)(3), and (f) of that section), shall be deemed to apply to any such fund or funds,

Applicability.

and to funds made available to such fund or funds, in order to enable such fund or funds to provide assistance for purposes of this section: *Provided further,* That section 7077 of division F of Public Law 111–117 shall apply to any such fund or funds established pursuant to this subsection: *Provided further,* That not more than 5 percent of the funds made available pursuant to this subsection should be available for administrative expenses of such fund or funds and not later than 1 year after the date of enactment of this Act, and annually thereafter until each fund is dissolved, each fund shall submit to the Committees on Appropriations a report detailing the administrative expenses of such fund: *Provided further,* That each fund shall be governed by a Board of Directors comprised of six private United States citizens and three private citizens of each country, respectively, who have had international business careers and demonstrated expertise in international and emerging markets investment activities: *Provided further,* That not later than 1 year after the entry into force of the initial grant agreement under this section and annually thereafter, each fund shall prepare and make available to the public on an Internet Web site administered by the fund a detailed report on the fund's activities during the previous year: *Provided further,* That the authority of any such fund or funds to provide assistance shall cease to be effective on December 31, 2022: *Provided further,* That funds made available pursuant to this section shall be subject to prior consultation with the Committees on Appropriations.

Applicability.

Deadlines. Reports.

Deadlines. Public information. Web site. Reports. Termination date.

Consultation.

(c) IRAN.—

(1) It is the policy of the United States to seek to prevent Iran from achieving the capability to produce or otherwise manufacture nuclear weapons, including by supporting international diplomatic efforts to halt Iran's uranium enrichment program, and the President should fully implement and enforce the Iran Sanctions Act of 1996, as amended (Public Law 104–172) as a means of encouraging foreign governments to require state-owned and private entities to cease all investment in, and support of, Iran's energy sector and all exports of refined petroleum products to Iran.

(2) None of the funds appropriated or otherwise made available in this Act under the heading "Export-Import Bank of the United States" may be used by the Export-Import Bank of the United States to provide any new financing (including loans, guarantees, other credits, insurance, and reinsurance) to any person that is subject to sanctions under paragraph (2) or (3) of section 5(a) of the Iran Sanctions Act of 1996 (Public Law 104–172).

Extension.

(3) The reporting requirements in section 7043(c) in division F of Public Law 111–117 shall continue in effect during fiscal year 2012 as if part of this Act: *Provided*, That the date in subsection (c)(1) shall be deemed to be "September 30, 2012".

(d) IRAQ.—

(1) Funds appropriated or otherwise made available by this Act for assistance for Iraq shall be made available in a manner that utilizes Iraqi entities to the maximum extent practicable, and in accordance with the cost-matching and other requirements in the Department of State's April 9, 2009 "Guidelines for Government of Iraq Financial Participation in United States Government-Funded Civilian Foreign Assistance Programs and Projects".

(2) None of the funds appropriated or otherwise made available by this Act may be used by the Government of the United States to enter into a permanent basing rights agreement between the United States and Iraq. Base rights.

(3) Funds appropriated by this Act under titles III and VI for assistance for Iraq may be made available notwithstanding any other provision of law, except for this subsection and section 620M of the Foreign Assistance Act of 1961, as amended by this Act.

(4) Funds appropriated by this Act for assistance for Iraq under the heading "Economic Support Fund" shall be made available for programs and activities for which policy justifications and decisions shall be the responsibility of the United States Chief of Mission in Iraq.

(5)(A) Of the funds appropriated under the heading "Diplomatic and Consular Programs" in title VIII of this Act that are made available for security and provincial operations for the Department of State in Iraq, 15 percent shall be withheld from obligation until the Secretary of State submits a report to the Committees on Appropriations detailing— Reports.

(i) an assessment of the security environment in Iraq with respect to facilities and personnel, and the anticipated impact of the withdrawal of United States Armed Forces in Iraq on such environment, on a facility-by-facility basis;

(ii) an assessment of the security requirements at each facility, and the estimated cost of sustaining such requirements over the next 3 fiscal years;

(iii) the types of military equipment to be used to meet the security requirements at each facility;

(iv) the number of United States Government personnel anticipated at each facility, a general description of the duties of such personnel, and the number and cost of contractors anticipated at each facility required for operational and other support; and

(v) a description of contingency plans, including evacuation, at each facility for United States Government personnel and contractors.

(B) The report required by this paragraph may be submitted in classified form, if necessary.

(e) LEBANON.—

(1) None of the funds appropriated by this Act may be made available for the Lebanese Armed Forces (LAF) if the LAF is controlled by a foreign terrorist organization, as defined by section 219 of the Immigration and Nationality Act.

(2) Funds appropriated by this Act under the heading "Foreign Military Financing Program" for assistance for Lebanon may be made available only to professionalize the LAF and to strengthen border security and combat terrorism, including training and equipping the LAF to secure Lebanon's borders, interdicting arms shipments, preventing the use of Lebanon as a safe haven for terrorist groups, and to implement United Nations Security Council Resolution 1701: *Provided*, That funds may not be made available for obligation until the Secretary of State submits a detailed spend plan to the Committees on Appropriations, except such plan may not be considered as meeting the notification requirements under section 7015 of this Act or under section 634A of the Foreign Assistance Spending plan. Deadline.

Act of 1961, and shall be submitted not later than September 1, 2012: *Provided further,* That the Secretary of State shall regularly consult with the Committees on Appropriations on the activities of the LAF and assistance provided by the United States: *Provided further,* That not later than 90 days after enactment of this Act, the Secretary of State shall submit a report to the Committees on Appropriations detailing the actions taken to ensure that equipment provided to the LAF is used for intended purposes.

Consultation.

Deadline.
Reports.

(3) Funds appropriated by this Act under titles III and VI for assistance for Lebanon may be made available notwithstanding any other provision of law, except for this subsection and section 620M of the Foreign Assistance Act of 1961, as amended by this Act.

(f) LIBYA.—Of the funds appropriated by this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs, up to $20,000,000 should be made available to promote democracy, transparent and accountable governance, human rights, transitional justice, and the rule of law in Libya, and for exchange programs between Libyan and American students and professionals: *Provided*, That such funds shall be made available, to the maximum extent practicable, on a cost matching basis: *Provided further,* That none of the funds appropriated by this Act may be made available for assistance for Libya for infrastructure projects, except on a loan basis with terms favorable to the United States, and only following consultation with the Committees on Appropriations.

Consultation.

Reports.

(g) MOROCCO.—Prior to the obligation of funds appropriated by this Act under the heading "Foreign Military Financing Program" for assistance for Morocco, the Secretary of State shall submit a report to the Committees on Appropriations on steps being taken by the Government of Morocco to—

(1) respect the right of individuals to peacefully express their opinions regarding the status and future of the Western Sahara and to document violations of human rights; and

(2) provide unimpeded access to human rights organizations, journalists, and representatives of foreign governments to the Western Sahara.

(h) SYRIA.—Funds appropriated by this Act shall be made available to promote democracy and protect human rights in Syria, a portion of which should be programmed in consultation with governments in the region, as appropriate.

(i) YEMEN.—None of the funds appropriated by this Act may be made available for the Armed Forces of Yemen if such forces are controlled by a foreign terrorist organization, as defined by section 219 of the Immigration and Nationality Act.

SERBIA

SEC. 7042. (a) Funds appropriated by this Act may be made available for assistance for the central Government of Serbia after May 31, 2012, if the Secretary of State has submitted the report required in subsection (c).

(b) After May 31, 2012, the Secretary of the Treasury should instruct the United States executive directors of the international financial institutions to support loans and assistance to the Government of Serbia subject to the condition in subsection (c).

(c) The report referred to in subsection (a) is a report by the Secretary of State to the Committees on Appropriations that the Government of Serbia is cooperating with the International Criminal Tribunal for the former Yugoslavia, including apprehending and transferring indictees and providing investigators access to witnesses, documents, and other information. Reports.

(d) This section shall not apply to humanitarian assistance or assistance to promote democracy.

AFRICA

SEC. 7043. (a) CONFLICT MINERALS.— Human rights.

(1) Funds appropriated by this Act under the heading "Foreign Military Financing Program" may be made available for assistance for Rwanda or Uganda unless the Secretary of State has credible information that the Government of Rwanda or the Government of Uganda is providing political, military or financial support to armed groups in the Democratic Republic of the Congo (DRC) that are involved in the illegal exportation of minerals out of the DRC or have violated human rights.

(2) The restriction in paragraph (1) shall not apply to assistance to improve border controls to prevent the illegal exportation of minerals out of the DRC by such groups, to protect humanitarian relief efforts, or to support the training and deployment of members of the Rwandan or Ugandan militaries in international peacekeeping operations or to conduct operations against the Lord's Resistance Army.

(b) COUNTERTERRORISM PROGRAMS.—Of the funds appropriated by this Act, not less than $52,800,000 should be made available for the Trans-Sahara Counter-terrorism Partnership program, and not less than $21,300,000 should be made available for the Partnership for Regional East Africa Counterterrorism program.

(c) CRISIS RESPONSE.—Notwithstanding any other provision of law, up to $10,000,000 of the funds appropriated by this Act under the heading "Global Health Programs" for HIV/AIDS activities may be transferred to, and merged with, funds appropriated under the headings "Economic Support Fund" and "Transition Initiatives" to respond to unanticipated crises in Africa, except that funds shall not be transferred unless the Secretary of State certifies to the Committees on Appropriations that no individual currently on antiretroviral therapy supported by such funds shall be negatively impacted by the transfer of such funds: *Provided*, That the authority of this subsection shall be subject to prior consultation with the Committees on Appropriations. Certification. Consultation.

(d) EXPANDED INTERNATIONAL MILITARY EDUCATION AND TRAINING.—

(1) Funds appropriated under the heading "International Military Education and Training" (IMET) in this Act that are made available for assistance for Angola, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Guinea and Zimbabwe may be made available only for training related to international peacekeeping operations and expanded IMET: *Provided*, That the limitation included in this paragraph shall not apply to courses that support training in maritime security for Angola and Cameroon.

(2) None of the funds appropriated under the heading "International Military Education and Training" in this Act

may be made available for assistance for Equatorial Guinea or Somalia.

(e) ETHIOPIA.—

Certification. Reports.

(1) Funds appropriated by this Act under the heading "Foreign Military Financing Program" that are available for assistance for Ethiopia shall not be made available unless the Secretary of State—

(A) certifies to the Committees on Appropriations that the Government of Ethiopia is implementing policies to respect due process and freedoms of expression and association, and is permitting access to human rights and humanitarian organizations to the Somalia region of Ethiopia; and

(B) submits a report to the Committees on Appropriations on the types and amounts of United States training and equipment proposed to be provided to the Ethiopian military including steps that will be taken to ensure that such assistance is not provided to military units or personnel that have violated human rights, and steps taken by the Government of Ethiopia to investigate and prosecute members of the Ethiopian military who have been credibly alleged to have violated such rights.

(2) The restriction in paragraph (1) shall not apply to assistance to Ethiopian military efforts in support of international peacekeeping operations, counterterrorism operations along the border with Somalia, and for assistance to the Ethiopian Defense Command and Staff College.

(f) SUDAN LIMITATION ON ASSISTANCE.—

(1) Notwithstanding any other provision of law, none of the funds appropriated by this Act may be made available for assistance for the Government of Sudan.

(2) None of the funds appropriated by this Act may be made available for the cost, as defined in section 502 of the Congressional Budget Act of 1974, of modifying loans and loan guarantees held by the Government of Sudan, including the cost of selling, reducing, or canceling amounts owed to the United States, and modifying concessional loans, guarantees, and credit agreements.

(3) The limitations of paragraphs (1) and (2) shall not apply to—

(A) humanitarian assistance;

(B) assistance for the Darfur region, Southern Kordofan/Nuba Mountains State, Blue Nile State, other marginalized areas and populations in Sudan, and Abyei; and

(C) assistance to support implementation of the Comprehensive Peace Agreement (CPA), mutual arrangements related to post-referendum issues associated with the CPA, or to promote peace and stability between Sudan and South Sudan, or any other internationally recognized viable peace agreement in Sudan.

(g) SOUTH SUDAN.—

(1) Funds appropriated by this Act should be made available for assistance for South Sudan including to increase agricultural productivity, expand educational opportunities especially for girls, strengthen democratic institutions and the rule of law, and enhance the capacity of the Federal Legislative

Assembly to conduct oversight over government revenues and expenditures.

(2) Not less than 15 days prior to the obligation of funds appropriated by this Act that are available for assistance for the Government of South Sudan, the Secretary of State shall submit a report to the Committees on Appropriations detailing the extent to which the Government of South Sudan is—

Deadline. Reports.

(A) supporting freedom of expression, the establishment of democratic institutions including an independent judiciary, parliament, and security forces that are accountable to civilian authority; and

(B) investigating and punishing members of security forces who have violated human rights.

(3) The Secretary of State shall seek to obtain regular audits of the financial accounts of the Government of South Sudan to ensure transparency and accountability of funds, including revenues from the extraction of oil and gas, and the timely, public disclosure of such audits: *Provided*, That the Secretary should assist the Government of South Sudan in conducting such audits, and by providing technical assistance to enhance the capacity of the National Auditor Chamber to carry out its responsibilities, and shall submit a report not later than 90 days after enactment of this Act to the Committees on Appropriations detailing the steps that will be taken by the Government of South Sudan, which are additional to those taken in the previous fiscal year, to improve resource management and ensure transparency and accountability of funds.

Audits. Public information.

Reports. Deadline.

(h) UGANDA.—Funds appropriated by this Act should be made available for programs and activities in areas affected by the Lord's Resistance Army.

(i) WAR CRIMES IN AFRICA.—

(1) The Congress reaffirms its support for the efforts of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) to bring to justice individuals responsible for war crimes and crimes against humanity in a timely manner.

(2) Funds appropriated by this Act may be made available for assistance for the central government of a country in which individuals indicted by the ICTR and the SCSL are credibly alleged to be living, if the Secretary of State determines and reports to the Committees on Appropriations that such government is cooperating with the ICTR and the SCSL, including the apprehension, surrender, and transfer of indictees in a timely manner: *Provided*, That this subsection shall not apply to assistance provided under section 551 of the Foreign Assistance Act of 1961 or to project assistance under title VI of this Act: *Provided further*, That the United States shall use its voice and vote in the United Nations Security Council to fully support efforts by the ICTR and the SCSL to bring to justice individuals indicted by such tribunals in a timely manner.

Determination. Reports.

(3) The prohibition in paragraph (2) may be waived on a country-by-country basis if the President determines that doing so is in the national security interest of the United States: *Provided*, That prior to exercising such waiver authority,

Waiver authority. President. Determination.

Reports.

the President shall submit a report to the Committees on Appropriations, in classified form if necessary, on—

(A) the steps being taken to obtain the cooperation of the government in apprehending and surrendering the indictee in question to the court of jurisdiction;

(B) a strategy, including a timeline, for bringing the indictee before such court; and

(C) the justification for exercising the waiver authority.

(j) ZIMBABWE.—

Loans. Grants. Determination. Reports. 22 USC 2151 note.

(1) The Secretary of the Treasury shall instruct the United States executive director of each international financial institution to vote against any extension by the respective institution of any loans or grants to the Government of Zimbabwe, except to meet basic human needs or to promote democracy, unless the Secretary of State determines and reports in writing to the Committees on Appropriations that the rule of law has been restored in Zimbabwe, including respect for ownership and title to property, freedom of speech and association.

(2) None of the funds appropriated by this Act shall be made available for assistance for the central Government of Zimbabwe, except for health, education, and macroeconomic growth assistance, unless the Secretary of State makes the determination required in paragraph (1).

ASIA

SEC. 7044. (a) TIBET.—

(1) The Secretary of the Treasury should instruct the United States executive director of each international financial institution to use the voice and vote of the United States to support projects in Tibet if such projects do not provide incentives for the migration and settlement of non-Tibetans into Tibet or facilitate the transfer of ownership of Tibetan land and natural resources to non-Tibetans; are based on a thorough needs-assessment; foster self-sufficiency of the Tibetan people and respect Tibetan culture and traditions; and are subject to effective monitoring.

(2) Notwithstanding any other provision of law, funds appropriated by this Act under the heading "Economic Support Fund" shall be made available to nongovernmental organizations to support activities which preserve cultural traditions and promote sustainable development and environmental conservation in Tibetan communities in the Tibetan Autonomous Region and in other Tibetan communities in China.

(b) BURMA.—

Loans. 50 USC 1701 note.

(1) The Secretary of the Treasury shall instruct the United States executive directors of the appropriate international financial institutions to vote against any loan, agreement, or other financial support for Burma.

(2) Funds appropriated by this Act under the heading "Economic Support Fund" may be made available for assistance for Burma notwithstanding any other provision of law, except no such funds shall be made available to the State Peace and Development Council, or its successor, and its affiliated organizations: *Provided*, That such funds shall be made available for programs along Burma's borders and for Burmese groups and organizations located outside Burma, and may be

made available to support programs in Burma: *Provided further,* That in addition to assistance for Burmese refugees appropriated under the heading "Migration and Refugee Assistance" in this Act, funds shall be made available for community-based organizations operating in Thailand to provide food, medical, and other humanitarian assistance to internally displaced persons in eastern Burma: *Provided further*, That any new program or activity initiated with funds made available by this Act shall be subject to prior consultation with the Committees on Appropriations, and all such funds shall be subject to the regular notification procedures of the Committees on Appropriations.

Thailand.

Consultation. Notification.

(c) CAMBODIA.—Funds made available in this Act for a United States contribution to a Khmer Rouge tribunal may only be made available if the Secretary of State certifies to the Committees on Appropriations that the United Nations and the Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the tribunal.

Certification.

(d) INDONESIA.—Of the funds appropriated by this Act under the heading "Foreign Military Financing Program" that are available for assistance for Indonesia, $2,000,000 may not be obligated until the Secretary of State submits to the Committees on Appropriations the report on Indonesia required under such heading in Senate Report 112–85.

Reports.

(e) NORTH KOREA.—None of the funds made available by this Act under the heading "Economic Support Fund" may be made available for energy-related assistance for North Korea.

(f) PEOPLE'S REPUBLIC OF CHINA.—

(1) None of the funds appropriated under the heading "Diplomatic and Consular Programs" in this Act may be obligated or expended for processing licenses for the export of satellites of United States origin (including commercial satellites and satellite components) to the People's Republic of China unless, at least 15 days in advance, the Committees on Appropriations are notified of such proposed action.

Exports and imports. Deadline. Notification.

(2) The terms and requirements of section 620(h) of the Foreign Assistance Act of 1961 shall apply to foreign assistance projects or activities of the People's Liberation Army (PLA) of the People's Republic of China, to include such projects or activities by any entity that is owned or controlled by, or an affiliate of, the PLA: *Provided*, That none of the funds appropriated or otherwise made available pursuant to this Act may be used to finance any grant, contract, or cooperative agreement with the PLA, or any entity that the Secretary of State has reason to believe is owned or controlled by, or an affiliate of, the PLA.

Applicability. People's Liberation Army.

(g) PHILIPPINES.—Of the funds appropriated by this Act under the heading "Foreign Military Financing Program" that are available for assistance for the Philippines, $3,000,000 may not be obligated until the Secretary of State submits to the Committees on Appropriations the report on the Philippines required under such heading in Senate Report 112–85.

Reports.

(h) VIETNAM.—Funds appropriated under the heading "Economic Support Fund" shall be made available for remediation of dioxin contaminated sites in Vietnam and may be made available for assistance for the Government of Vietnam, including the military, for such purposes, and funds under the heading "Development

Assistance" shall be made available for related health/disability activities.

WESTERN HEMISPHERE

SEC. 7045. (a) COLOMBIA.—

(1) Funds appropriated by this Act and made available to the Department of State for assistance to the Government of Colombia may be used to support a unified campaign against narcotics trafficking, illegal armed groups, and organizations designated as Foreign Terrorist Organizations and successor organizations, and to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations: *Provided*, That no United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available by this Act for Colombia: *Provided further*, That rotary and fixed wing aircraft supported with funds appropriated under the heading "International Narcotics Control and Law Enforcement" for assistance for Colombia may be used for aerial or manual drug eradication and interdiction including to transport personnel and supplies and to provide security for such operations: *Provided further*, That such aircraft may also be used to provide transport in support of alternative development programs and investigations by civilian judicial authorities: *Provided further*, That the President shall ensure that if any helicopter procured with funds in this Act or prior Acts making appropriations for the Department of State, foreign operations, and related programs, is used to aid or abet the operations of any illegal self-defense group, paramilitary organization, or other illegal armed group in Colombia, such helicopter shall be immediately returned to the United States: *Provided further*, That none of the funds appropriated by this Act or prior Acts making appropriations for the Department of State, foreign operations, and related programs may be made available for assistance for the Colombian Departamento Administrativo de Seguridad or successor organizations: *Provided further*, That none of the funds appropriated by this Act for assistance for Colombia shall be made available for the cultivation or processing of African oil palm, if doing so would contribute to significant loss of native species, disrupt or contaminate natural water sources, reduce local food security, or cause the forced displacement of local people: *Provided further*, That any complaints of harm to health or licit crops caused by aerial eradication shall be thoroughly investigated and evaluated, and fair compensation paid in a timely manner for meritorious claims: *Provided further*, That funds may not be made available for aerial eradication unless programs are being implemented by the United States Agency for International Development, the Government of Colombia, or other organizations, in consultation and coordination with local communities, to provide alternative sources of income in areas where security permits for small-acreage growers and communities whose illicit crops are targeted for aerial eradication: *Provided further*, That funds appropriated by this Act may not be used for aerial eradication in Colombia's national parks or reserves unless the Secretary of State certifies to

President.
Helicopters.

Certification.

the Committees on Appropriations that there are no effective alternatives and the eradication is in accordance with Colombian laws.

(2) COLOMBIAN ARMED FORCES.—Of the funds appropriated by this Act that are available for assistance for the Colombian Armed Forces, 25 percent may be obligated only after the Secretary of State consults with, and subsequently certifies and submits a report to, the Committees on Appropriations that the Government of Colombia and Colombian Armed Forces are meeting the conditions that appear under this section in the joint explanatory statement accompanying this Act: *Provided*, That the requirement to withhold funds from obligation shall not apply with respect to funds made available under the heading "International Narcotics Control and Law Enforcement" in this Act for continued support for the Critical Flight Safety Program or for any alternative development programs in Colombia administered by the Bureau of International Narcotics and Law Enforcement Affairs of the Department of State: *Provided further,* That not less than 30 days prior to making the certification the Secretary of State shall consult with Colombian and international human rights organizations.

Consultations. Certification.

(3) ILLEGAL ARMED GROUPS.—

(A) DENIAL OF VISAS.—Subject to paragraph (B), the Secretary of State shall not issue a visa to any alien who the Secretary determines, based on credible information—

(i) has willfully provided any support to or benefitted from the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), the United Self-Defense Forces of Colombia (AUC), or other illegal armed groups, including taking actions or failing to take actions which allow, facilitate, or otherwise foster the activities of such groups; or

(ii) has committed, ordered, incited, assisted, or otherwise participated in the commission of a violation of human rights in Colombia.

(B) WAIVER.—Paragraph (A) shall not apply if the Secretary of State certifies to the Committees on Appropriations, on a case-by-case basis, that the issuance of a visa to the alien is necessary to support the peace process in Colombia or for urgent humanitarian reasons.

Certification.

(b) GUATEMALA.—Funds appropriated by this Act under the headings "International Military Education and Training" (IMET) and "Foreign Military Financing Program" that are available for assistance for Guatemala may be made available only for the Guatemalan Air Force, Navy, and Army Corps of Engineers: *Provided*, That expanded IMET may be made available for assistance for the Guatemalan Army.

(c) HAITI.—The Government of Haiti shall be eligible to purchase defense articles and services under the Arms Export Control Act (22 U.S.C. 2751 et seq.) for the Coast Guard.

(d) HONDURAS.—Prior to the obligation of 20 percent of the funds appropriated by this Act that are available for assistance for Honduran military and police forces, the Secretary of State shall report in writing to the Committees on Appropriations that: the Government of Honduras is implementing policies to protect freedom of expression and association, and due process of law; and is investigating and prosecuting in the civilian justice system,

Reports.

in accordance with Honduran and international law, military and police personnel who are credibly alleged to have violated human rights, and the Honduran military and police are cooperating with civilian judicial authorities in such cases: *Provided*, That the restriction in this subsection shall not apply to assistance to promote transparency, anti-corruption and the rule of law within the military and police forces.

Reports.

(e) MEXICO.—Prior to the obligation of 15 percent of the funds appropriated by this Act that are available for assistance for Mexican military and police forces, the Secretary of State shall report in writing to the Committees on Appropriations that: the Government of Mexico is investigating and prosecuting in the civilian justice system, in accordance with Mexican and international law, military and police personnel who are credibly alleged to have violated human rights; is enforcing prohibitions on the use of testimony obtained through torture; and the Mexican military and police are cooperating with civilian judicial authorities in such cases: *Provided*, That the restriction in this subsection shall not apply to assistance to promote transparency, anti-corruption and the rule of law within the military and police forces.

(f) TRADE CAPACITY.—Of the funds appropriated by this Act, not less than $10,000,000 under the heading "Development Assistance" and not less than $10,000,000 under the heading "Economic Support Fund" shall be made available for labor and environmental capacity building activities relating to free trade agreements with countries of Central America, Peru and the Dominican Republic.

(g) AIRCRAFT OPERATIONS AND MAINTENANCE.—To the maximum extent practicable, the costs of operations and maintenance, including fuel, of aircraft funded by this Act should be borne by the recipient country.

SOUTH ASIA

SEC. 7046. (a) AFGHANISTAN.—

Consultation.
Certification.

(1) LIMITATION.—None of the funds appropriated or otherwise made available by this Act under the headings "Economic Support Fund" and "International Narcotics Control and Law Enforcement" may be obligated for assistance for the Government of Afghanistan until the Secretary of State, in consultation with the Administrator of the United States Agency for International Development (USAID), certifies to the Committees on Appropriations that—

(A) The funds will be used to design and support programs in accordance with the June 2011 "Administrator's Sustainability Guidance for USAID in Afghanistan".

(B) The Government of Afghanistan is—

(i) reducing corruption and improving governance, including by investigating, prosecuting, sanctioning or removing corrupt officials from office and implementing financial transparency and accountability measures for government institutions and officials (including the Central Bank) as well as conducting oversight of public resources;

(ii) taking credible steps to protect the human rights of Afghan women; and

(iii) taking significant steps to facilitate active public participation in governance and oversight.

(C) Funds will be used to support and strengthen the capacity of Afghan public and private institutions and entities to reduce corruption and to improve transparency and accountability of national, provincial and local governments.

(D) Representatives of Afghan national, provincial or local governments, and local communities and civil society organizations, including women-led organizations, will be consulted and participate in the design of programs, projects, and activities, including participation in implementation and oversight, and the development of specific benchmarks to measure progress and outcomes.

(2) ASSISTANCE AND OPERATIONS.—

Determination. Reports.

(A) Funds appropriated or otherwise made available by this Act for assistance for Afghanistan may be made available as a United States contribution to the Afghanistan Reconstruction Trust Fund (ARTF) unless the Secretary of State determines and reports to the Committees on Appropriations that the World Bank Monitoring Agent of the ARTF is unable to conduct its financial control and audit responsibilities due to restrictions on security personnel by the Government of Afghanistan.

(B) Funds appropriated under the headings "Economic Support Fund" and "International Narcotics Control and Law Enforcement" in this Act that are available for assistance for Afghanistan—

(i) shall be made available, to the maximum extent practicable, in a manner that emphasizes the participation of Afghan women, and directly improves the security, economic and social well-being, and political status, and protects the rights of, Afghan women and girls and complies with sections 7060 and 7061 of this Act, including support for the Afghan Independent Human Rights Commission, the Afghan Ministry of Women's Affairs, and women-led organizations;

(ii) may be made available for a United States contribution to an internationally managed fund to support the reconciliation with and disarmament, demobilization and reintegration into Afghan society of former combatants who have renounced violence against the Government of Afghanistan: *Provided,* That funds may be made available to support reconciliation and reintegration activities only if:

(I) Afghan women are participating at national, provincial and local levels of government in the design, policy formulation and implementation of the reconciliation or reintegration process, and such process upholds steps taken by the Government of Afghanistan to protect the human rights of Afghan women; and

(II) such funds will not be used to support any pardon or immunity from prosecution, or any position in the Government of Afghanistan or security forces, for any leader of an armed group responsible for crimes against humanity, war crimes, or acts of terrorism; and

(iii) may be made available for a United States contribution to the North Atlantic Treaty Organization/International Security Assistance Force Post-Operations Humanitarian Relief Fund.

Extension.
Applicability.

(C) The authority contained in section 1102(c) of Public Law 111–32 shall continue in effect during fiscal year 2012 and shall apply as if part of this Act.

(D)(i) Of the funds appropriated by this Act that are made available for assistance for Afghanistan, not less than $50,000,000 shall be made available for rule of law programs: *Provided*, That decisions on the uses of such funds shall be the responsibility of the Coordinator for Rule of Law, in consultation with the Interagency Planning and Implementation Team, at the United States Embassy in Kabul, Afghanistan: *Provided further,* That $250,000 of such funds shall be transferred to, and merged with, funds appropriated under the heading "Office of Inspector General" in title I of this Act for oversight of such programs and activities.

(ii) The Coordinator for Rule of Law at the United States Embassy in Kabul, Afghanistan shall be consulted on the use of all funds appropriated by this Act for rule of law programs in Afghanistan.

(E) None of the funds made available by this Act may be used by the United States Government to enter into a permanent basing rights agreement between the United States and Afghanistan.

(F) Any significant modification to the scope, objectives or implementation mechanisms of United States assistance programs in Afghanistan shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations, except that the prior consultation requirement may be waived in a manner consistent with section 7015(e) of this Act.

Deadline.
Reports.

(G) Not later than 90 days after enactment of this Act, the Secretary of State shall report to the Committees on Appropriations on the International Monetary Fund (IMF) country program for Afghanistan including actions requested by the IMF and taken by the Government of Afghanistan to address the Kabul Bank crisis and restore confidence in Afghanistan's banking sector.

(H) Funds appropriated under titles III through VI of this Act that are made available for assistance for Afghanistan may be made available notwithstanding section 7012 of this Act or any similar provision of law and section 660 of the Foreign Assistance Act of 1961.

Deadline.
Audit.
Inspection plan.

(3) OVERSIGHT.—The Special Inspector General for Afghanistan Reconstruction, the Inspector General of the Department of State and the Inspector General of USAID, shall jointly develop and submit to the Committees on Appropriations within 45 days of enactment of this Act a coordinated audit and inspection plan of United States assistance for, and civilian operations in, Afghanistan.

(b) NEPAL.—

Certification.

(1) Funds appropriated by this Act under the heading "Foreign Military Financing Program" may be made available for assistance for Nepal only if the Secretary of State certifies

to the Committees on Appropriations that the Nepal Army is—

(A) cooperating fully with investigations and prosecutions of violations of human rights by civilian judicial authorities; and

(B) working constructively to redefine the Nepal Army's mission and adjust its size accordingly, implement reforms including strengthening the capacity of the civilian ministry of defense to improve budget transparency and accountability, and facilitate the integration of former rebel combatants into the security forces including the Nepal Army, consistent with the goals of reconciliation, peace and stability.

(2) The conditions in paragraph (1) shall not apply to assistance for humanitarian relief and reconstruction activities in Nepal.

(c) PAKISTAN.—

(1) CERTIFICATION.—

(A) None of the funds appropriated or otherwise made available by this Act under the headings "Economic Support Fund", "International Narcotics Control and Law Enforcement", "Foreign Military Financing Program", and "Pakistan Counterinsurgency Capability Fund" for assistance for the Government of Pakistan may be made available unless the Secretary of State certifies to the Committees on Appropriations that the Government of Pakistan is—

(i) cooperating with the United States in counterterrorism efforts against the Haqqani Network, the Quetta Shura Taliban, Lashkar e-Tayyiba, Jaish-e-Mohammed, Al Qaeda and other domestic and foreign terrorist organizations, including taking steps to end support for such groups and prevent them from basing and operating in Pakistan and carrying out cross border attacks into neighboring countries;

(ii) not supporting terrorist activities against United States or coalition forces in Afghanistan, and Pakistan's military and intelligence agencies are not intervening extra-judicially into political and judicial processes in Pakistan;

(iii) dismantling improvised explosive device (IED) networks and interdicting precursor chemicals used in the manufacture of IEDs;

(iv) preventing the proliferation of nuclear-related material and expertise;

(v) issuing visas in a timely manner for United States visitors engaged in counterterrorism efforts and assistance programs in Pakistan; and

(vi) providing humanitarian organizations access to detainees, internally displaced persons, and other Pakistani civilians affected by the conflict.

(B) The Secretary of State may waive the requirements of paragraph (A) if to do so is in the national security interests of the United States. Waiver authority.

(2) ASSISTANCE.—

(A) Funds appropriated by this Act under the heading "Foreign Military Financing Program" for assistance for

Pakistan may be made available only to support counterterrorism and counterinsurgency capabilities in Pakistan, and are subject to section 620M of the Foreign Assistance Act of 1961, as amended by this Act.

(B) Funds appropriated by this Act under the heading "Economic Support Fund" for assistance for Pakistan should be made available to interdict precursor materials from Pakistan to Afghanistan that are used to manufacture improvised explosive devices, including calcium ammonium nitrate; to support programs to train border and customs officials in Pakistan and Afghanistan; and for agricultural extension programs that encourage alternative fertilizer use among Pakistani farmers.

(C) Of the funds appropriated by this Act under the heading "Economic Support Fund" for assistance for Pakistan, $10,000,000 shall be made available through the Bureau of Democracy, Human Rights and Labor, Department of State, for human rights and democracy programs in Pakistan, including training of government officials and security forces, and assistance for human rights organizations and the development of democratic political parties.

(D) Funds appropriated by this Act under the heading "Economic Support Fund" for assistance for Pakistan may be made available for the Chief of Mission Fund, as authorized by section 101(c)(5) of Public Law 111–73.

(E) Funds appropriated by this Act under the heading "Economic Support Fund" that are made available for assistance for infrastructure projects in Pakistan shall be implemented in a manner consistent with section 507(6) of the Trade Act of 1974 (19 U.S.C. 2467(6)).

(F) Funds appropriated by this Act under titles III and VI for assistance for Pakistan may be made available notwithstanding any other provision of law, except for this subsection and section 620M of the Foreign Assistance Act of 1961, as amended by this Act.

(3) REPORTS.—

(A)(i) The spend plan required by section 7078 of this Act for assistance for Pakistan shall include achievable and sustainable goals, benchmarks for measuring progress, and expected results regarding furthering development in Pakistan, countering extremism, and establishing conditions conducive to the rule of law and transparent and accountable governance: *Provided*, That such benchmarks may incorporate those required in title III of Public Law 111–73, as appropriate: *Provided further,* That not later than 6 months after submission of such spend plan, and each 6 months thereafter until September 30, 2013, the Secretary of State shall submit a report to the Committees on Appropriations on the status of achieving the goals and benchmarks in the spend plan.

(ii) The Secretary of State should suspend assistance for the Government of Pakistan if any report required by paragraph (A)(i) indicates that Pakistan is failing to make measurable progress in meeting these goals or benchmarks.

(B) Not later than 90 days after enactment of this Act, the Secretary of State shall submit a report to the

Committees on Appropriations detailing the costs and objectives associated with significant infrastructure projects supported by the United States in Pakistan, and an assessment of the extent to which such projects achieve such objectives.

(d) SRI LANKA.—

(1) None of the funds appropriated by this Act under the heading "Foreign Military Financing Program" may be made available for assistance for Sri Lanka, no defense export license may be issued, and no military equipment or technology shall be sold or transferred to Sri Lanka pursuant to the authorities contained in this Act or any other Act, unless the Secretary of State certifies to the Committees on Appropriations that the Government of Sri Lanka is— Certification.

(A) conducting credible, thorough investigations of alleged war crimes and violations of international humanitarian law by government forces and the Liberation Tigers of Tamil Eelam;

(B) bringing to justice individuals who have been credibly alleged to have committed such violations;

(C) supporting and cooperating with any United Nations investigation of alleged war crimes and violations of international humanitarian law;

(D) respecting due process, the rights of journalists, and the rights of citizens to peaceful expression and association, including ending arrest and detention under emergency regulations;

(E) providing access to detainees by humanitarian organizations; and

(F) implementing policies to promote reconciliation and justice including devolution of power.

(2) Paragraph (1) shall not apply to assistance for humanitarian demining and aerial and maritime surveillance.

(3) If the Secretary makes the certification required in paragraph (1), funds appropriated under the heading "Foreign Military Financing Program" that are made available for assistance for Sri Lanka should be used to support the recruitment and training of Tamils into the Sri Lankan military, Tamil language training for Sinhalese military personnel, and human rights training for all military personnel.

(4) The Secretary of the Treasury shall instruct the United States executive directors of the international financial institutions to vote against any loan, agreement, or other financial support for Sri Lanka except to meet basic human needs, unless the Secretary of State certifies to the Committees on Appropriations that the Government of Sri Lanka is meeting the requirements in paragraph (1)(D), (E), and (F) of this subsection. Certification.

(e) REGIONAL CROSS BORDER PROGRAMS.—Funds appropriated by this Act under the heading "Economic Support Fund" for assistance for Afghanistan and Pakistan may be provided notwithstanding any other provision of law that restricts assistance to foreign countries for cross border stabilization and development programs between Afghanistan and Pakistan or between either country and the Central Asian republics.

PROHIBITION OF PAYMENTS TO UNITED NATIONS MEMBERS

SEC. 7047. None of the funds appropriated or made available pursuant to titles III through VI of this Act for carrying out the Foreign Assistance Act of 1961, may be used to pay in whole or in part any assessments, arrearages, or dues of any member of the United Nations or, from funds appropriated by this Act to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, the costs for participation of another country's delegation at international conferences held under the auspices of multilateral or international organizations.

WAR CRIMES TRIBUNALS DRAWDOWN

President. Determination.

SEC. 7048. If the President determines that doing so will contribute to a just resolution of charges regarding genocide or other violations of international humanitarian law, the President may direct a drawdown pursuant to section 552(c) of the Foreign Assistance Act of 1961 of up to $30,000,000 of commodities and services for the United Nations War Crimes Tribunal established with regard to the former Yugoslavia by the United Nations Security Council or such other tribunals or commissions as the Council may establish or authorize to deal with such violations, without regard to the ceiling limitation contained in paragraph (2) thereof: *Provided,* That the determination required under this section shall be in lieu of any determinations otherwise required under section 552(c): *Provided further,* That funds made available pursuant to this section shall be made available subject to the regular notification procedures of the Committees on Appropriations.

Notification.

UNITED NATIONS

SEC. 7049. (a) TRANSPARENCY AND ACCOUNTABILITY.—

Determination. Reports.

(1) Of the funds appropriated under title I and under the heading "International Organizations and Programs" in title V of this Act that are available for contributions to any United Nations agency or to the Organization of American States, 15 percent shall be withheld from obligation for such agency or organization if the Secretary of State determines and reports to the Committees on Appropriations that the agency or organization is not taking steps to—

Public information. Web site.

(A) publish on a publicly available Web site, consistent with privacy regulations and due process, regular financial and programmatic audits of the agency or organization, and provide the United States Government with necessary access to such financial and performance audits; and

(B) implement best practices for the protection of whistleblowers from retaliation, including best practices for legal burdens of proof, access to independent adjudicative bodies, results that eliminate the effects of retaliation, and statutes of limitation for reporting retaliation.

Waiver authority.

(2) The Secretary may waive the restriction in this subsection if the Secretary determines and reports that to do so is in the national interest of the United States.

Terrorism.

(b) RESTRICTIONS ON UNITED NATIONS DELEGATIONS AND ORGANIZATIONS.—

(1) None of the funds made available under title I of this Act may be used to pay expenses for any United States delegation to any specialized agency, body, or commission of the United Nations if such commission is chaired or presided over by a country, the government of which the Secretary of State has determined, for purposes of section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), supports international terrorism.

(2) None of the funds made available under title I of this Act may be used by the Secretary of State as a contribution to any organization, agency, or program within the United Nations system if such organization, agency, commission, or program is chaired or presided over by a country, the government of which the Secretary of State has determined, for purposes of section 620A of the Foreign Assistance Act of 1961, section 40 of the Arms Export Control Act, section 6(j)(1) of the Export Administration Act of 1979, or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism.

(3) The Secretary of State may waive the restrictions in this subsection if the Secretary determines and reports to the Committees on Appropriations that to do so is in the national interest of the United States. Waiver authority.

(c) UNITED NATIONS HUMAN RIGHTS COUNCIL.—Funds appropriated by this Act may be made available for voluntary contributions or payment of United States assessments in support of the United Nations Human Rights Council if the Secretary of State determines and reports to the Committees on Appropriations that participation in the Council is in the national interest of the United States: *Provided*, That the Secretary of State shall report to the Committees on Appropriations not later than 30 days after the date of enactment of this Act, and every 180 days thereafter until September 30, 2012, on the resolutions considered in the United Nations Human Rights Council. Determination. Reports. Reports. Deadline.

(d) UNITED NATIONS RELIEF AND WORKS AGENCY.—The reporting requirements regarding the United Nations Relief and Works Agency contained in the joint explanatory statement accompanying the Supplemental Appropriations Act, 2009 (Public Law 111–32, House Report 111–151) under the heading "Migration and Refugee Assistance" in title XI shall apply to funds made available by this Act under such heading. Applicability.

(e) UNITED NATIONS CAPITAL MASTER PLAN.—None of the funds made available in this Act for the United Nations Capital Master Plan may be used for the design, renovation, or construction of the United Nations Headquarters in New York in excess of the United States payment for the assessment agreed upon pursuant to paragraph 10 of United Nations General Assembly Resolution 61/251.

(f) REPORTING REQUIREMENT.—Not later than 30 days after enactment of this Act, the Secretary of State shall submit a report to the Committees on Appropriation detailing the amount of funds available for obligation or expenditure in fiscal year 2012 under the headings "Contributions to International Organizations" and "International Organizations and Programs" that are withheld from obligation or expenditure due to any provision of law: *Provided*, That the Secretary of State shall update such report each time additional funds are withheld by operation of any provision of

Consultation.
Notification.

law: *Provided further,* That the reprogramming of any withheld funds identified in such report, including updates thereof, shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations.

COMMUNITY-BASED POLICE ASSISTANCE

SEC. 7050. (a) AUTHORITY.—Funds made available by titles III and IV of this Act to carry out the provisions of chapter 1 of part I and chapters 4 and 6 of part II of the Foreign Assistance Act of 1961, may be used, notwithstanding section 660 of that Act, to enhance the effectiveness and accountability of civilian police authority through training and technical assistance in human rights, the rule of law, anti-corruption, strategic planning, and through assistance to foster civilian police roles that support democratic governance including assistance for programs to prevent conflict, respond to disasters, address gender-based violence, and foster improved police relations with the communities they serve.

(b) NOTIFICATION.—Assistance provided under subsection (a) shall be subject to the regular notification procedures of the Committees on Appropriations.

ATTENDANCE AT INTERNATIONAL CONFERENCES

Deadline.

SEC. 7051. None of the funds made available in this Act may be used to send or otherwise pay for the attendance of more than 50 employees of agencies or departments of the United States Government who are stationed in the United States, at any single international conference occurring outside the United States, unless the Secretary of State reports to the Committees on Appropriations at least 5 days in advance that such attendance is important to the national interest: *Provided,* That for purposes of this section the term "international conference" shall mean a conference attended by representatives of the United States Government and of foreign governments, international organizations, or nongovernmental organizations.

Definition.

AIRCRAFT TRANSFER AND COORDINATION

SEC. 7052. (a) TRANSFER AUTHORITY.—Notwithstanding any other provision of law or regulation, aircraft procured with funds appropriated by this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs under the headings "Diplomatic and Consular Programs", "International Narcotics Control and Law Enforcement", "Andean Counterdrug Initiative" and "Andean Counterdrug Programs" may be used for any other program and in any region, including for the transportation of active and standby Civilian Response Corps personnel and equipment during a deployment: *Provided*, That the responsibility for policy decisions and justification for the use of such transfer authority shall be the responsibility of the Secretary of State and the Deputy Secretary of State and this responsibility shall not be delegated.

Applicability.
Determination.
Reports.

(b) PROPERTY DISPOSAL.—The authority provided in subsection (a) shall apply only after the Secretary of State determines and reports to the Committees on Appropriations that the equipment is no longer required to meet programmatic purposes in the designated country or region: *Provided*, That any such transfer shall

be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations.

(c) AIRCRAFT COORDINATION.—

(1) The uses of aircraft purchased or leased by the Department of State and the United States Agency for International Development (USAID) with funds made available in this Act or prior Acts making appropriations for the Department of State, foreign operations, and related programs shall be coordinated under the authority of the appropriate Chief of Mission: *Provided*, That such aircraft may be used to transport, on a reimbursable or non-reimbursable basis, Federal and non-Federal personnel supporting Department of State and USAID programs and activities: *Provided further*, That official travel for other agencies for other purposes may be supported on a reimbursable basis, or without reimbursement when traveling on a space available basis.

(2) The requirement and authorities of this subsection shall only apply to aircraft, the primary purpose of which is the transportation of personnel. Applicability.

PARKING FINES AND REAL PROPERTY TAXES OWED BY FOREIGN GOVERNMENTS

SEC. 7053. The terms and conditions of section 7055 of division F of Public Law 111–117 shall apply to this Act: *Provided*, That the date "September 30, 2009" in subsection (f)(2)(B) shall be deemed to be "September 30, 2011". Applicability.

LANDMINES AND CLUSTER MUNITIONS

SEC. 7054. (a) LANDMINES.—Notwithstanding any other provision of law, demining equipment available to the United States Agency for International Development and the Department of State and used in support of the clearance of landmines and unexploded ordnance for humanitarian purposes may be disposed of on a grant basis in foreign countries, subject to such terms and conditions as the Secretary of State may prescribe.

(b) CLUSTER MUNITIONS.—No military assistance shall be furnished for cluster munitions, no defense export license for cluster munitions may be issued, and no cluster munitions or cluster munitions technology shall be sold or transferred, unless—

(1) the submunitions of the cluster munitions, after arming, do not result in more than 1 percent unexploded ordnance across the range of intended operational environments; and

(2) the agreement applicable to the assistance, transfer, or sale of such cluster munitions or cluster munitions technology specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present or in areas normally inhabited by civilians.

PROHIBITION ON PUBLICITY OR PROPAGANDA

SEC. 7055. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes within the United States not authorized before the date of the enactment of this Act by the Congress: *Provided,* That not to exceed $25,000

may be made available to carry out the provisions of section 316 of Public Law 96–533.

LIMITATION ON RESIDENCE EXPENSES

SEC. 7056. Of the funds appropriated or made available pursuant to title II of this Act, not to exceed $100,500 shall be for official residence expenses of the United States Agency for International Development during the current fiscal year: *Provided*, That appropriate steps shall be taken to assure that, to the maximum extent possible, United States-owned foreign currencies are utilized in lieu of dollars.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT MANAGEMENT

(INCLUDING TRANSFER OF FUNDS)

22 USC 3948 note.

SEC. 7057. (a) AUTHORITY.—Up to $93,000,000 of the funds made available in title III of this Act to carry out the provisions of part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading "Assistance for Europe, Eurasia and Central Asia", may be used by the United States Agency for International Development (USAID) to hire and employ individuals in the United States and overseas on a limited appointment basis pursuant to the authority of sections 308 and 309 of the Foreign Service Act of 1980.

22 USC 3948 note.

(b) RESTRICTIONS.—

(1) The number of individuals hired in any fiscal year pursuant to the authority contained in subsection (a) may not exceed 175.

Expiration date.

(2) The authority to hire individuals contained in subsection (a) shall expire on September 30, 2013.

22 USC 3948 note.

(c) CONDITIONS.—The authority of subsection (a) should only be used to the extent that an equivalent number of positions that are filled by personal services contractors or other non-direct hire employees of USAID, who are compensated with funds appropriated to carry out part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading "Assistance for Europe, Eurasia and Central Asia", are eliminated.

22 USC 3948 note.

(d) PROGRAM ACCOUNT CHARGED.—The account charged for the cost of an individual hired and employed under the authority of this section shall be the account to which such individual's responsibilities primarily relate: *Provided*, That funds made available to carry out this section may be transferred to, and merged with, funds appropriated by this Act in title II under the heading "Operating Expenses".

22 USC 3948 note.

(e) FOREIGN SERVICE LIMITED EXTENSIONS.—Individuals hired and employed by USAID, with funds made available in this Act or prior Acts making appropriations for the Department of State, foreign operations, and related programs, pursuant to the authority of section 309 of the Foreign Service Act of 1980, may be extended for a period of up to 4 years notwithstanding the limitation set forth in such section.

Notification.

(f) DISASTER SURGE CAPACITY.—Funds appropriated under title III of this Act to carry out part I of the Foreign Assistance Act of 1961, including funds appropriated under the heading "Assistance for Europe, Eurasia and Central Asia", may be used, in addition

to funds otherwise available for such purposes, for the cost (including the support costs) of individuals detailed to or employed by USAID whose primary responsibility is to carry out programs in response to natural disasters, or man-made disasters subject to the regular notification procedures of the Committees on Appropriations.

(g) PERSONAL SERVICES CONTRACTORS.—Funds appropriated by this Act to carry out chapter 1 of part I, chapter 4 of part II, and section 667 of the Foreign Assistance Act of 1961, and title II of the Agricultural Trade Development and Assistance Act of 1954, may be used by USAID to employ up to 40 personal services contractors in the United States, notwithstanding any other provision of law, for the purpose of providing direct, interim support for new or expanded overseas programs and activities managed by the agency until permanent direct hire personnel are hired and trained: *Provided*, That not more than 15 of such contractors shall be assigned to any bureau or office: *Provided further*, That such funds appropriated to carry out title II of the Agricultural Trade Development and Assistance Act of 1954, may be made available only for personal services contractors assigned to the Office of Food for Peace.

(h) SMALL BUSINESS.—In entering into multiple award indefinite-quantity contracts with funds appropriated by this Act, USAID may provide an exception to the fair opportunity process for placing task orders under such contracts when the order is placed with any category of small or small disadvantaged business.

(i) SENIOR FOREIGN SERVICE LIMITED APPOINTMENTS.—Individuals hired pursuant to the authority provided by section 7059(o) of division F of Public Law 111–117 may be assigned to or support programs in Iraq, Afghanistan, or Pakistan with funds made available in this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs.

GLOBAL HEALTH ACTIVITIES

SEC. 7058. (a) IN GENERAL.—Funds appropriated by titles III and IV of this Act that are made available for bilateral assistance for child survival activities or disease programs including activities relating to research on, and the prevention, treatment and control of, HIV/AIDS may be made available notwithstanding any other provision of law except for provisions under the heading "Global Health Programs" and the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (117 Stat. 711; 22 U.S.C. 7601 et seq.), as amended: *Provided*, That of the funds appropriated under title III of this Act, not less than $575,000,000 should be made available for family planning/reproductive health, including in areas where population growth threatens biodiversity or endangered species.

(b) GLOBAL HEALTH MANAGEMENT.—

Deadlines.
Reports.

(1) Not later than 180 days after enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development (USAID), shall submit to the Committees on Appropriations an analysis of short and long-term costs, to include potential cost savings or increases, associated with transitioning the function, role, and duties of the Office of the United States Global AIDS Coordinator into USAID: *Provided*, That such

report shall also assess any programmatic advantages and disadvantages, including the ability to achieve results, of making such a transition.

(2)(A) Not later than 45 days after enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development (USAID), shall submit to the Committees on Appropriations a report on the status of the Quadrennial Diplomacy and Development Review (QDDR) decision to transition the leadership of the Global Health Initiative (GHI) to USAID, to include the following—

(i) the metrics developed to measure progress in meeting each benchmark enumerated in Appendix 2 of the QDDR and the method utilized to develop such metrics; and

(ii) the status of, and estimated completion date for, meeting each benchmark.

(B) Within 90 days of submitting the initial report required by subparagraph (A), and each 90 days thereafter until the GHI transition is completed, an update shall be provided to the Committees on Appropriations on the status of meeting each benchmark: *Provided*, That if as part of any such update it is determined that the QDDR target date of September 2012 will not be met, the Secretary of State, in consultation with the USAID Administrator, shall submit a detailed explanation of the delay and a revised target date for the transition to be completed.

(c) GLOBAL FUND REFORMS.—

Determination.
Reports.

(1) Of funds appropriated by this Act that are available for a contribution to the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund), 10 percent should be withheld from obligation until the Secretary of State determines and reports to the Committees on Appropriations that—

(A) the Global Fund is maintaining and implementing a policy of transparency, including the authority of the Global Fund Office of the Inspector General (OIG) to publish OIG reports on a public Web site;

(B) the Global Fund is providing sufficient resources to maintain an independent OIG that—

(i) reports directly to the Board of the Global Fund;

(ii) maintains a mandate to conduct thorough investigations and programmatic audits, free from undue interference; and

(iii) compiles regular, publicly published audits and investigations of financial, programmatic, and reporting aspects of the Global Fund, its grantees, recipients, sub-recipients, and Local Fund Agents; and

(C) the Global Fund maintains an effective whistleblower policy to protect whistleblowers from retaliation, including confidential procedures for reporting possible misconduct or irregularities.

(2) The withholding required by this subsection shall not be in addition to funds that are withheld from the Global Fund in fiscal year 2012 pursuant to the application of any other provision contained in this or any other Act.

President.
Determination.
Reports.

(d) PANDEMIC RESPONSE.—If the President determines and reports to the Committees on Appropriations that a pandemic virus

is efficient and sustained, severe, and is spreading internationally, funds made available under titles III, IV, and VIII in this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs may be made available to combat such virus: *Provided*, That funds made available pursuant to the authority of this subsection shall be subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations.

Consultation. Notification.

PROHIBITION ON PROMOTION OF TOBACCO

SEC. 7059. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

PROGRAMS TO PROMOTE GENDER EQUALITY

SEC. 7060. (a) Programs funded under title III of this Act shall include, where appropriate, efforts to improve the status of women, including through gender considerations in the planning, assessment, implementation, monitoring and evaluation of such programs.

(b) Funds appropriated under title III of this Act shall be made available to support programs to expand economic opportunities for poor women in developing countries, including increasing the number and capacity of women-owned enterprises, improving property rights for women, increasing women's access to financial services and capital, enhancing the role of women in economic decisionmaking at the local, national and international levels, and improving women's ability to participate in the global economy.

(c) Funds appropriated under title III of this Act shall be made available to increase political opportunities for women, including strengthening protections for women's personal status, increasing women's participation in elections, and enhancing women's positions in government and role in government decisionmaking.

(d) Funds appropriated under in title III of this Act for food security and agricultural development shall take into consideration the unique needs of women, and technical assistance for women farmers should be a priority.

(e) The Secretary of State, in consultation with the heads of other relevant Federal agencies, shall develop a National Action Plan in accordance with United Nations Security Council Resolution 1325 (adopted on October 31, 2000) to ensure the United States effectively promotes and supports the rights and roles of women in conflict-affected and post-conflict regions through clear, measurable commitments to—

National Action Plan.

(1) promote the active and meaningful participation of women in affected areas in all aspects of conflict prevention, management, and resolution;

(2) integrate the perspectives and interests of affected women into conflict-prevention activities and strategies;

(3) promote the physical safety, economic security, and dignity of women and girls;

(4) support women's equal access to aid distribution mechanisms and services; and

(5) monitor, analyze and evaluate implementation efforts and their impact.

(f) The Department of State and the United States Agency for International Development shall fully integrate gender into all diplomatic and development efforts through the inclusion of gender in strategic planning and budget allocations, and the development of indicators and evaluation mechanisms to measure the impact of United States policies and programs on women and girls in foreign countries.

GENDER-BASED VIOLENCE

SEC. 7061. (a) Funds appropriated under the headings "Global Health Programs", "Development Assistance", "Economic Support Fund", and "International Narcotics Control and Law Enforcement" in this Act shall be made available for gender-based violence prevention and response efforts, and funds appropriated under the headings "International Disaster Assistance", "Complex Crises Fund", and "Migration and Refugee Assistance" should be made available for such efforts.

(b) Programs and activities funded under titles III and IV of this Act to train foreign police, judicial, and military personnel, including for international peacekeeping operations, shall address, where appropriate, prevention and response to gender-based violence and trafficking in persons.

SECTOR ALLOCATIONS

SEC. 7062. (a) BASIC AND HIGHER EDUCATION.—

(1) BASIC EDUCATION.—

(A) Of the funds appropriated by title III of this Act, not less than $800,000,000 shall be made available for assistance for basic education, of which not less than $288,000,000 should be made available under the heading "Development Assistance".

(B) The United States Agency for International Development shall ensure that programs supported with funds appropriated for basic education in this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs are integrated, when appropriate, with health, agriculture, governance, and economic development activities to address the economic and social needs of the broader community.

(C) Funds appropriated by title III of this Act for basic education may be made available for a contribution to the Global Partnership for Education.

(2) HIGHER EDUCATION.—Of the funds appropriated by title III of this Act, not less than $200,000,000 shall be made available for assistance for higher education, of which $25,000,000 shall be to support such programs in Africa, including for partnerships between higher education institutions in Africa and the United States.

(b) DEVELOPMENT GRANTS PROGRAM.—Of the funds appropriated in title III of this Act, not less than $45,000,000 shall be made available for the Development Grants Program established

pursuant to section 674 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (division J of Public Law 110–161), primarily for unsolicited proposals, to support grants of not more than $2,000,000 to small nongovernmental organizations: *Provided*, That funds made available under this subsection are in addition to other funds available for such purposes including funds designated by this Act by subsection (f).

(c) ENVIRONMENT PROGRAMS.—

(1) IN GENERAL.—Of the funds appropriated by this Act, not less than $1,250,000,000 should be made available for programs and activities to protect the environment.

(2) CLEAN ENERGY PROGRAMS.—The limitation in section 7081(b) of division F of Public Law 111–117 shall continue in effect during fiscal year 2012 as if part of this Act: *Provided*, That the proviso contained in such section shall not apply. Extension.

(3) ADAPTATION PROGRAMS.—Funds appropriated by this Act may be made available for United States contributions to the Least Developed Countries Fund and the Special Climate Change Fund to support adaptation programs and activities.

(4) TROPICAL FOREST PROGRAMS.—Funds appropriated under title III of this Act for tropical forest programs shall be used to protect biodiversity, and shall not be used to support or promote the expansion of industrial scale logging into primary tropical forests: *Provided*, That funds that are available for the Central African Regional Program for the Environment and other tropical forest programs in the Congo Basin for the United States Fish and Wildlife Service (USFWS) shall be apportioned directly to the USFWS: *Provided further,* That funds made available for the Department of the Interior (DOI) for programs in the Guatemala Mayan Biosphere Reserve shall be apportioned directly to the DOI.

(5) AUTHORITY.—Funds appropriated by this Act to carry out the provisions of sections 103 through 106, and chapter 4 of part II, of the Foreign Assistance Act of 1961 may be used, notwithstanding any other provision of law except for the provisions of this section and subject to the regular notification procedures of the Committees on Appropriations, to support environment programs. Notification.

(6) CONSULTATION.—Funds made available pursuant to this subsection are subject to prior consultation with, and the regular notification procedures of, the Committees on Appropriations. Notification.

(7) EXTRACTION OF NATURAL RESOURCES.—

(A) Funds appropriated by this Act shall be made available to promote and support transparency and accountability of expenditures and revenues related to the extraction of natural resources, including by strengthening implementation and monitoring of the Extractive Industries Transparency Initiative, implementing and enforcing section 8204 of Public Law 110–246 and the Kimberley Process Certification Scheme, and providing technical assistance to promote independent audit mechanisms and support civil society participation in natural resource management.

(B)(i) The Secretary of the Treasury shall inform the managements of the international financial institutions and post on the Department of the Treasury's Web site that it is the policy of the United States to vote against any Web posting.

assistance by such institutions (including but not limited to any loan, credit, grant, or guarantee) for the extraction and export of a natural resource if the government of the country has in place laws or regulations to prevent or limit the public disclosure of company payments as required by section 1504 of Public Law 111–203, and unless such government has in place functioning systems in the sector in which assistance is being considered for:

(I) accurately accounting for and public disclosure of payments to the host government by companies involved in the extraction and export of natural resources;

(II) the independent auditing of accounts receiving such payments and public disclosure of the findings of such audits; and

(III) public disclosure of such documents as Host Government Agreements, Concession Agreements, and bidding documents, allowing in any such dissemination or disclosure for the redaction of, or exceptions for, information that is commercially proprietary or that would create competitive disadvantage.

(ii) The requirements of subparagraph (i) shall not apply to assistance for the purpose of building the capacity of such government to meet the requirements of this paragraph.

(C) The Secretary of the Treasury or the Secretary of State, as appropriate, shall instruct the United States executive director of each international financial institution and the United States representatives to all forest-related multilateral financing mechanisms and processes, that it is the policy of the United States to vote against the expansion of industrial scale logging into primary tropical forests.

22 USC 7909 note.

(8) CONTINUATION OF PRIOR LAW.—Section 7081(g)(2) and (4) of division F of Public Law 111–117 shall continue in effect during fiscal year 2012 as if part of this Act.

(d) FOOD SECURITY AND AGRICULTURE DEVELOPMENT.—Of the funds appropriated by title III of this Act, $1,170,000,000 should be made available for food security and agriculture development programs, of which $31,500,000 shall be made available for Collaborative Research Support Programs: *Provided*, That such funds may be made available notwithstanding any other provision of law to address food shortages, and may be made available for a United States contribution to the endowment of the Global Crop Diversity Trust pursuant to section 3202 of Public Law 110–246.

(e) MICROENTERPRISE AND MICROFINANCE.—Of the funds appropriated by this Act, not less than $265,000,000 should be made available for microenterprise and microfinance development programs for the poor, especially women.

(f) RECONCILIATION PROGRAMS.—(1) Of the funds appropriated by title III of this Act under the headings "Economic Support Fund" and "Development Assistance", $26,000,000 shall be made available to support people-to-people reconciliation programs which bring together individuals of different ethnic, religious and political backgrounds from areas of civil strife and war, of which $10,000,000 shall be made available for such programs in the Middle East: *Provided*, That the Administrator of the United States Agency for International Development shall consult with the Committees

Consultation.

on Appropriations, prior to the initial obligation of funds, on the uses of such funds.

(2) Of the funds appropriated by title III of this Act under the headings "Economic Support Fund" and "Development Assistance", $10,000,000 should be made available for a "New Generation in the Middle East" initiative to build understanding, tolerance, and mutual respect among the next generation of Israeli and Palestinian leaders.

(g) TRAFFICKING IN PERSONS.—Of the funds appropriated by this Act under the headings "Development Assistance", "Economic Support Fund", "International Narcotics Control and Law Enforcement", and "Assistance for Europe, Eurasia and Central Asia" not less than $36,000,000 shall be made available for activities to combat trafficking in persons internationally.

(h) WATER.—Of the funds appropriated by this Act, not less than $315,000,000 shall be made available for water and sanitation supply projects pursuant to the Senator Paul Simon Water for the Poor Act of 2005 (Public Law 109–121).

(i) WOMEN'S LEADERSHIP CAPACITY.—Of the funds appropriated by title III of this Act, not less than $20,000,000 shall be made available for programs to improve women's leadership capacity in recipient countries.

(j) NOTIFICATION REQUIREMENTS.—Authorized deviations from funding levels contained in this section shall be subject to the regular notification procedures of the Committees on Appropriations.

CENTRAL ASIA

Applicability. Waiver authority. Time periods. Termination date. Certification. Afghanistan.

SEC. 7063. The terms and conditions of sections 7075(a) through (d) and 7076(a) through (e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (division H of Public Law 111–8) shall apply to funds appropriated by this Act, except that the Secretary of State may waive the application of section 7076(a) for a period of not more than 6 months and every 6 months thereafter until September 30, 2013, if the Secretary certifies to the Committees on Appropriations that the waiver is in the national security interest and necessary to obtain access to and from Afghanistan for the United States, and the waiver includes an assessment of progress, if any, by the Government of Uzbekistan in meeting the requirements in section 7076(a): *Provided*, That the Secretary of State, in consultation with the Secretary of Defense, shall submit a report to the Committees on Appropriations not later than 180 days after enactment of this Act and 12 months thereafter, on all United States Government assistance provided to the Government of Uzbekistan and expenditures made in support of the Northern Distribution Network in Uzbekistan, including any credible information that such assistance or expenditures are being diverted for corrupt purposes: *Provided further*, That information provided in the report required by the previous proviso may be provided in a classified annex and such annex shall indicate the basis for such classification: *Provided further*, That for the purposes of the application of section 7075(c) to this Act, the report shall be submitted not later than October 1, 2012, and for the purposes of the application of section 7076(e) to this Act, the term "assistance" shall not include expanded international military education and training.

Reports. Deadline.

Reports. Deadline.

REQUESTS FOR DOCUMENTS

SEC. 7064. None of the funds appropriated or made available pursuant to titles III through VI of this Act shall be available to a nongovernmental organization, including any contractor, which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the United States Agency for International Development.

OVERSEAS PRIVATE INVESTMENT CORPORATION

(INCLUDING TRANSFER OF FUNDS)

President. Determination.

SEC. 7065. (a) Whenever the President determines that it is in furtherance of the purposes of the Foreign Assistance Act of 1961, up to a total of $20,000,000 of the funds appropriated under title III of this Act may be transferred to, and merged with, funds appropriated by this Act for the Overseas Private Investment Corporation Program Account, to be subject to the terms and conditions of that account: *Provided,* That such funds shall not be available for administrative expenses of the Overseas Private Investment Corporation: *Provided further,* That designated funding levels in this Act shall not be transferred pursuant to this section: *Provided further,* That the exercise of such authority shall be subject to the regular notification procedures of the Committees on Appropriations.

Notification.

Extension. 22 USC 2194 note.

(b) Notwithstanding section 235(a)(2) of the Foreign Assistance Act of 1961, the authority of subsections (a) through (c) of section 234 of such Act shall remain in effect until September 30, 2012.

INTERNATIONAL PRISON CONDITIONS

Deadline. Reports. Public information. Web posting.

SEC. 7066. (a) Not later than 180 days after enactment of this Act, the Secretary of State shall submit to the Committees on Appropriations a report, which shall also be made publicly available including on the Department of State's Web site, describing—

(1) conditions in prisons and other detention facilities in at least 25 countries whose governments receive United States assistance and which the Secretary determines raise serious human rights or humanitarian concerns; and

(2) the extent to which such governments are taking steps to eliminate such conditions.

(b) For purposes of each determination made pursuant to subsection (a), the Secretary shall consider the criteria listed in section 7085(b) (1) through (10) of division F of Public Law 111–117.

(c) Funds appropriated by this Act to carry out the provisions of chapters 1 and 11 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, and the Support for East European Democracy (SEED) Act of 1989, shall be made available, notwithstanding section 660 of the Foreign Assistance Act of 1961, for assistance to eliminate inhumane conditions in foreign prisons and other detention facilities.

PROHIBITION ON USE OF TORTURE

SEC. 7067. (a) None of the funds made available in this Act may be used to support or justify the use of torture, cruel or

inhumane treatment by any official or contract employee of the United States Government.

(b) Funds appropriated by this Act to carry out the provisions of chapters 1, 10, 11, and 12 of part I and chapter 4 of part II of the Foreign Assistance Act of 1961, and the Support for East European Democracy (SEED) Act of 1989, shall be made available, notwithstanding section 660 of the Foreign Assistance Act of 1961, for assistance to eliminate torture by foreign police, military or other security forces in countries receiving assistance from funds appropriated by this Act that are identified in the Department of State's most recent Country Reports on Human Rights Practices.

EXTRADITION

SEC. 7068. (a) None of the funds appropriated in this Act may be used to provide assistance (other than funds provided under the headings "International Narcotics Control and Law Enforcement", "Migration and Refugee Assistance", "Emergency Migration and Refugee Assistance", and "Nonproliferation, Anti-terrorism, Demining and Related Assistance") for the central government of a country which has notified the Department of State of its refusal to extradite to the United States any individual indicted for a criminal offense for which the maximum penalty is life imprisonment without the possibility of parole or for killing a law enforcement officer, as specified in a United States extradition request.

Applicability.

(b) Subsection (a) shall only apply to the central government of a country with which the United States maintains diplomatic relations and with which the United States has an extradition treaty and the government of that country is in violation of the terms and conditions of the treaty.

Waiver authority. Certification.

(c) The Secretary of State may waive the restriction in subsection (a) on a case-by-case basis if the Secretary certifies to the Committees on Appropriations that such waiver is important to the national interests of the United States.

COMMERCIAL LEASING OF DEFENSE ARTICLES

Notification. President. Determination.

SEC. 7069. Notwithstanding any other provision of law, and subject to the regular notification procedures of the Committees on Appropriations, the authority of section 23(a) of the Arms Export Control Act may be used to provide financing to Israel, Egypt and NATO and major non-NATO allies for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under such Act.

INDEPENDENT STATES OF THE FORMER SOVIET UNION

President. Determinations.

SEC. 7070. (a) None of the funds appropriated under the heading "Assistance for Europe, Eurasia and Central Asia" shall be made available for assistance for a government of an Independent State of the former Soviet Union if that government directs any

action in violation of the territorial integrity or national sovereignty of any other Independent State of the former Soviet Union, such as those violations included in the Helsinki Final Act: *Provided*, That such funds may be made available without regard to the restriction in this subsection if the President determines that to do so is in the national security interest of the United States.

(b)(1) Of the funds appropriated under the heading "Assistance for Europe, Eurasia and Central Asia" that are allocated for assistance for the Government of the Russian Federation, 60 percent shall be withheld from obligation until the President determines and certifies in writing to the Committees on Appropriations that the Government of the Russian Federation—

(A) has terminated implementation of arrangements to provide Iran with technical expertise, training, technology, or equipment necessary to develop a nuclear reactor, related nuclear research facilities or programs, or ballistic missile capability; and

(B) is providing full access to international non-government organizations providing humanitarian relief to refugees and internally displaced persons in Chechnya.

(2) Paragraph (1) shall not apply to—

(A) assistance to combat infectious diseases, child survival activities, or assistance for victims of trafficking in persons; and

(B) activities authorized under title V (Nonproliferation and Disarmament Programs and Activities) of the FREEDOM Support Act.

(c) Section 907 of the FREEDOM Support Act shall not apply to—

(1) activities to support democracy or assistance under title V of the FREEDOM Support Act and section 1424 of Public Law 104–201 or non-proliferation assistance;

(2) any assistance provided by the Trade and Development Agency under section 661 of the Foreign Assistance Act of 1961 (22 U.S.C. 2421);

(3) any activity carried out by a member of the United States and Foreign Commercial Service while acting within his or her official capacity;

(4) any insurance, reinsurance, guarantee or other assistance provided by the Overseas Private Investment Corporation under title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2191 et seq.);

(5) any financing provided under the Export-Import Bank Act of 1945; or

(6) humanitarian assistance.

INTERNATIONAL MONETARY FUND

Applicability.

SEC. 7071. (a) The terms and conditions of sections 7086(b)(1) and (2) and 7090(a) of division F of Public Law 111–117 shall apply to this Act.

(b) The Secretary of the Treasury shall instruct the United States Executive Director of the International Monetary Fund (IMF) to seek to ensure that any loan will be repaid to the IMF before other private creditors.

(c) The Secretary of the Treasury shall seek to ensure that the IMF is implementing best practices for the protection of whistleblowers from retaliation, including best practices for legal burdens of proof, access to independent adjudicative bodies, results that eliminate the effects of retaliation, and statutes of limitation for reporting retaliation.

REPRESSION IN THE RUSSIAN FEDERATION

Time period. Certification.

SEC. 7072. (a) None of the funds appropriated under the heading "Assistance for Europe, Eurasia and Central Asia" in this Act may be made available for the Government of the Russian Federation, after 180 days from the date of the enactment of this Act, unless the Secretary of State certifies to the Committees on Appropriations that the Government of the Russian Federation:

(1) has implemented no statute, Executive order, regulation or similar government action that would discriminate, or which has as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party;

(2) is honoring its international obligations regarding freedom of expression, assembly, and press, as well as due process;

(3) is investigating and prosecuting law enforcement personnel credibly alleged to have committed human rights abuses against political leaders, activists and journalists; and

(4) is immediately releasing political leaders, activists and journalists who remain in detention.

Waiver authority. Determination.

(b) The Secretary of State may waive the requirements of subsection (a) if the Secretary determines that to do so is important to the national interests of the United States.

PROHIBITION ON FIRST-CLASS TRAVEL

SEC. 7073. None of the funds made available in this Act may be used for first-class travel by employees of agencies funded by this Act in contravention of sections 301–10.122 through 301–10.124 of title 41, Code of Federal Regulations.

DISABILITY PROGRAMS

SEC. 7074. Funds appropriated by this Act under the heading "Economic Support Fund" shall be made available for programs and activities administered by the United States Agency for International Development to address the needs and protect and promote the rights of people with disabilities in developing countries, including initiatives that focus on independent living, economic self-sufficiency, advocacy, education, employment, transportation, sports, and integration of individuals with disabilities, including for the cost of translation, and shall also be made available to support disability advocacy organizations to provide training and technical assistance for disabled persons organizations in such countries: *Provided,* That of the funds made available by this section, up to 7 percent may be for management, oversight, and technical support.

ENTERPRISE FUNDS

President. Notifications. Distribution plan.

SEC. 7075. (a) Prior to the distribution of any assets resulting from any liquidation, dissolution, or winding up of an Enterprise Fund, in whole or in part, the President shall submit to the Committees on Appropriations, in accordance with the regular notification procedures of the Committees on Appropriations, a plan for the distribution of the assets of the Enterprise Fund.

(b) Funds made available under titles III through VI of this Act for Enterprise Funds shall be expended at the minimum rate necessary to make timely payment for projects and activities and no such funds may be available except through the regular notification procedures of the Committees on Appropriations.

CONSULAR AFFAIRS

Visas. Foreign countries.

SEC. 7076. (a) The Secretary of State shall implement the necessary steps, including hiring a sufficient number of consular officers to include limited non-career appointment officers, in the People's Republic of China, Brazil, and India to reduce the wait time to interview visa applicants who have submitted applications.

(b) The Secretary of State shall conduct a risk and benefit analysis regarding the extension of the expiration period for B–1 or B–2 visas for visa applicants before requiring a consular officer interview and, unless such analysis finds that risks outweigh benefits, develop a plan to extend such expiration period in a manner consistent with maintaining security controls.

(c) The Secretary of State may develop and conduct a pilot program for the processing of B–1 and B–2 visas using secure remote videoconferencing technology as a method for conducting visa interviews of applicants: *Provided*, That any such pilot should be developed in consultation with other Federal agencies that use such secure communications to help ensure security of the videoconferencing transmission and encryption: *Provided further,* That no pilot program should be conducted if the Secretary determines and reports to the Committees on Appropriations that such program poses an undue security risk and that it cannot be conducted in a manner consistent with maintaining security controls.

Determination. Reports.

PROCUREMENT REFORM

SEC. 7077. (a) LOCAL COMPETITION.—Notwithstanding any other provision of law, the Administrator of the United States Agency for International Development (USAID) may, with funds made available in this Act and prior Acts making appropriations for the Department of State, foreign operations, and related programs, award contracts and other acquisition instruments in which competition is limited to local entities if doing so would result in cost savings, develop local capacity, or enable the USAID Administrator to initiate a program or activity in appreciably less time than if competition were not so limited: *Provided,* That the authority provided in this section may not be used to make awards in excess of $5,000,000 and shall not exceed more than 10 percent of the funds made available to USAID under this Act for assistance programs: *Provided further,* That such authority shall be available to support a pilot program with such funds: *Provided further,* That the USAID Administrator shall consult with the Committees on

Consultation.

Appropriations and relevant congressional committees on the results of such pilot program.

(b) For the purposes of this section, local entity means an individual, a corporation, a nonprofit organization, or another body of persons that—

(1) is legally organized under the laws of;

(2) has as its principal place of business or operations in; and

(3) either is—

(A) majority owned by individuals who are citizens or lawful permanent residents of; or

(B) managed by a governing body the majority of whom are citizens or lawful permanent residents of;

a country receiving assistance from funds appropriated under title III of this Act.

(c) For purposes of this section, "majority owned" and "managed by" include, without limitation, beneficiary interests and the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the organization's managers or a majority of the organization's governing body by any means.

OPERATING AND SPEND PLANS

SEC. 7078. (a) OPERATING PLANS.—Not later than 30 days after the date of enactment of this Act, each department, agency or organization funded in titles I and II, and the Department of the Treasury and Independent Agencies funded in title III of this Act shall submit to the Committees on Appropriations an operating plan for funds appropriated to such department, agency, or organization in such titles of this Act, or funds otherwise available for obligation in fiscal year 2012, that provides details of the use of such funds at the program, project, and activity level. Deadline.

(b) SPEND PLANS.—Prior to the initial obligation of funds, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, shall submit to the Committees on Appropriations a detailed spend plan for the following—

(1) funds appropriated under the heading "Democracy Fund";

(2) funds made available in titles III and IV of this Act for assistance for Iraq, Haiti, Colombia, and Mexico, for the Caribbean Basin Security Initiative, and for the Central American Regional Security Initiative;

(3) funds made available for assistance for countries or programs and activities referenced in—

(A) section 7040;

(B) section 7041(a), (e), (f), and (i);

(C) section 7043(b);

(D) section 7046(a) and (c); and

(4) funds appropriated in title III for food security and agriculture development programs and for environment programs.

(c) NOTIFICATIONS.—The spend plans referenced in subsection (b) shall not be considered as meeting the notification requirements under section 7015 of this Act or under section 634A of the Foreign Assistance Act of 1961.

RESCISSIONS

SEC. 7079. (a) Of the funds appropriated in prior Acts making appropriations for the Department of State, foreign operations, and related programs under the heading "Diplomatic and Consular Programs", $13,700,000 are rescinded, of which $8,000,000 shall be from funds for Worldwide Security Protection: *Provided,* That no amounts may be rescinded from amounts that were designated by Congress as an emergency requirement pursuant to a concurrent resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) Of the unexpended balances available under the heading "Export and Investment Assistance, Export-Import Bank of the United States, Subsidy Appropriation" from prior Acts making appropriations for the Department of State, foreign operations, and related programs, $400,000,000 are rescinded.

(c) Of the unexpended balances available to the President for bilateral economic assistance under the heading "Economic Support Fund" from prior Acts making appropriations for the Department of State, foreign operations, and related programs, $100,000,000 are rescinded: *Provided,* That no amounts may be rescinded from amounts that were designated by Congress as an emergency requirement pursuant to a concurrent resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

Consultation. Deadline.

(d) The Secretary of State, as appropriate, shall consult with the Committees on Appropriations at least 15 days prior to implementing the rescissions made in this section.

SPECIAL DEFENSE ACQUISITION FUND

(INCLUDING LIMITATION ON OBLIGATIONS)

SEC. 7080. (a) TRANSFER.—Of the funds made available pursuant to the last proviso in the second paragraph under the heading "Foreign Military Financing Program" in this Act, up to $100,000,000 of such funds may be transferred to the Special Defense Acquisition Fund pursuant to section 51 of the Arms Export Control Act.

(b) LIMITATION ON OBLIGATIONS.—Not to exceed $100,000,000 may be obligated pursuant to section 51(c)(2) of the Arms Export Control Act for the purposes of the Special Defense Acquisition Fund (Fund), to remain available for obligation until September 30, 2015: *Provided*, That the provision of defense articles and defense services to foreign countries or international organizations from the Fund shall be subject to the concurrence of the Secretary of State.

Concurrence.

AUTHORITY FOR CAPITAL INCREASES

SEC. 7081. (a) INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT.—The Bretton Woods Agreements Act, as amended (22 U.S.C. 286 et seq.), is further amended by adding at the end thereof the following new sections:

"SEC. 69. ACCEPTANCE OF AN AMENDMENT TO THE ARTICLES OF AGREEMENT OF THE BANK TO INCREASE BASIC VOTES. 22 USC 286uu.

"The United States Governor of the Bank may accept on behalf of the United States the amendment to the Articles of Agreement of the Bank as proposed in resolution No. 596, entitled 'Enhancing Voice and Participation of Developing and Transition Countries,' of the Board of Governors of the Bank that was approved by such Board on January 30, 2009.

"SEC. 70. CAPITAL STOCK INCREASES. 22 USC 286vv.

"(a) INCREASES AUTHORIZED.—The United States Governor of the Bank is authorized—

"(1)(A) to vote in favor of a resolution to increase the capital stock of the Bank on a selective basis by 230,374 shares; and

"(B) to subscribe on behalf of the United States to 38,459 additional shares of the capital stock of the Bank, as part of the selective increase in the capital stock of the Bank, except that any subscription to such additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts;

"(2)(A) to vote in favor of a resolution to increase the capital stock of the Bank on a general basis by 484,102 shares; and

"(B) to subscribe on behalf of the United States to 81,074 additional shares of the capital stock of the Bank, as part of the general increase in the capital stock of the Bank, except that any subscription to such additional shares shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

"(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

"(1) In order to pay for the increase in the United States subscription to the Bank under subsection (a)(2)(B), there are authorized to be appropriated, without fiscal year limitation, $9,780,361,991 for payment by the Secretary of the Treasury.

"(2) Of the amount authorized to be appropriated under paragraph (2)(A)—

"(A) $586,821,720 shall be for paid in shares of the Bank; and

"(B) $9,193,540,271 shall be for callable shares of the Bank.".

(b) INTERNATIONAL FINANCE CORPORATION.—The International Finance Corporation Act, Public Law 84–350, as amended (22 U.S.C. 282 et seq.), is further amended by adding at the end thereof the following new section:

"SEC. 17. SELECTIVE CAPITAL INCREASE AND AMENDMENT OF THE ARTICLES OF AGREEMENT. 22 USC 282o.

"(a) VOTE AUTHORIZED.—The United States Governor of the Corporation is authorized to vote in favor of a resolution to increase the capital stock of the Corporation by $130,000,000.

"(b) AMENDMENT OF THE ARTICLES OF AGREEMENT.—The United States Governor of the Corporation is authorized to agree to and accept an amendment to Article IV, Section 3(a) of the Articles of Agreement of the Corporation that achieves an increase in basic votes to 5.55 percent of total votes.".

(c) INTER-AMERICAN DEVELOPMENT BANK.—The Inter-American Development Bank Act, Public Law 86–147, as amended (22 U.S.C. 283 et seq.), is further amended by adding at the end thereof the following new section:

22 USC 283z–13.

"SEC. 41. NINTH CAPITAL INCREASE.

"(a) VOTE AUTHORIZED.—The United States Governor of the Bank is authorized to vote in favor of a resolution to increase the capital stock of the Bank by $70,000,000,000 as described in Resolution AG–7/10, 'Report on the Ninth General Capital Increase in the resources of the Inter-American Development Bank' as approved by Governors on July 21, 2010.

"(b) SUBSCRIPTION AUTHORIZED.—

"(1) The United States Governor of the Bank may subscribe on behalf of the United States to 1,741,135 additional shares of the capital stock of the Bank.

"(2) Any subscription by the United States to the capital stock of the Bank shall be effective only to such extent and in such amounts as are provided in advance in appropriations Acts.

"(c) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

"(1) In order to pay for the increase in the United States subscription to the Bank under subsection (b), there are authorized to be appropriated, without fiscal year limitation, $21,004,064,337 for payment by the Secretary of the Treasury.

"(2) Of the amount authorized to be appropriated under paragraph (1)—

"(A) $510,090,175 shall be for paid in shares of the Bank; and

"(B) $20,493,974,162 shall be for callable shares of the Bank.".

(d) AFRICAN DEVELOPMENT BANK.—The African Development Bank Act, Public Law 97–35, as amended (22 U.S.C. 290i et seq.), is further amended by adding at the end thereof the following new section:

22 USC 290i–11.

"SEC. 1344. SIXTH CAPITAL INCREASE.

"(a) SUBSCRIPTION AUTHORIZED.—

"(1) The United States Governor of the Bank may subscribe on behalf of the United States to 289,391 additional shares of the capital stock of the Bank.

"(2) Any subscription by the United States to the capital stock of the Bank shall be effective only to such extent and in such amounts as are provided in advance in appropriations Acts.

"(b) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

"(1) In order to pay for the increase in the United States subscription to the Bank under subsection (a), there are authorized to be appropriated, without fiscal year limitation, $4,322,228,221 for payment by the Secretary of the Treasury.

"(2) Of the amount authorized to be appropriated under paragraph (1)—

"(A) $259,341,759 shall be for paid in shares of the Bank; and

"(B) $4,062,886,462 shall be for callable shares of the Bank.".

22 USC 290*l*–9.

(e) EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.—The European Bank for Reconstruction and Development

Act, Section 562(c) of Public Law 101–513, as amended (22 U.S.C. 290l et seq.), is further amended by adding at the end thereof the following new paragraph:

"(12) CAPITAL INCREASE.—

"(A) SUBSCRIPTION AUTHORIZED.—

"(i) The United States Governor of the Bank may subscribe on behalf of the United States up to 90,044 additional callable shares of the capital stock of the Bank in accordance with Resolution No. 128 as adopted by the Board of Governors of the Bank on May 14, 2010.

"(ii) Any subscription by the United States to additional capital stock of the Bank shall be effective only to such extent and in such amounts as are provided in advance in appropriations Acts.

"(B) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—In order to pay for the increase in the United States subscription to the Bank under subsection (A), there are authorized to be appropriated, without fiscal year limitation, up to $1,252,331,952 for payment by the Secretary of the Treasury.".

REFORMS RELATED TO GENERAL CAPITAL INCREASES

Reports.

SEC. 7082. (a) REFORMS.—Funds appropriated by this Act may not be disbursed for a United States contribution to the general capital increases of the International Bank for Reconstruction and Development (World Bank), the African Development Bank (AfDB), or the Inter-American Development Bank (IDB) until the Secretary of the Treasury reports to the Committees on Appropriations that such institution, as appropriate, is making substantial progress toward the following—

(1) implementing specific reform commitments agreed to by the World Bank and the AfDB as described in the Pittsburgh Leaders' Statement issued at the Pittsburgh G20 Summit in September 2009 concerning sound finances, effective management and governance, transparency and accountability, focus on core mission, and results;

(2) implementing specific reform commitments agreed to by the IDB in Resolution AG–7/10 "Report on the Ninth General Capital Increase in the resources of the Inter-American Development Bank" as approved by the Governors on July 12, 2010, including transfers of at least $200,000,000 annually to a grant facility for Haiti;

(3) implementing procurement guidelines that maximize international competitive bidding in accordance with sound procurement practices, including transparency, competition, and cost-effective results for borrowers;

(4) implementing best practices for the protection of whistleblowers from retaliation, including best practices for legal burdens of proof, access to independent adjudicative bodies, results that eliminate the effects of retaliation, and statutes of limitation for reporting retaliation;

(5) requiring that each candidate for budget support or development policy loans provide an assessment of reforms needed to budgetary and procurement processes to encourage

transparency, including budget publication and public scrutiny, prior to loan approval;

Public information.

(6) making publicly available external and internal performance and financial audits of such institution's projects on the institution's Web site;

(7) adopting policies concerning the World Bank's proposed Program for Results (P4R) to: limit P4R to no more than 5 percent of annual World Bank lending as a pilot for a period of not less than two years; require that projects with potentially significant adverse social or environmental impacts and projects that affect indigenous peoples are either excluded from P4R or subject to the World Bank's own policies; require that at the close of the pilot there will be a thorough, independent evaluation, with input from civil society and the private sector, to provide guidance concerning next steps for the pilot; and fully staff the World Bank Group's Integrity Vice Presidency, with agreement from Borrowers on the World Bank's jurisdiction and authority to investigate allegations of fraud and corruption in any of the World Bank's lending programs including P4R; and

(8) concerning the World Bank, strengthening the public availability of information regarding International Finance Corporation (IFC) subprojects when the IFC is funding a financial intermediary, including—

(A) requiring that higher-risk subprojects comply with the relevant Performance Standard requirements; and

(B) agreeing to periodically disclose on the IFC Web site a listing of the name, location, and sector of high-risk subprojects supported by IFC investments through private equity funds.

(b) REPORT.—Not later than 180 days after enactment of this Act and every 6 months thereafter until September 30, 2013, the Secretary of the Treasury shall submit to the Committees on Appropriations a report detailing the extent to which each institution has continued to make progress on each policy goal listed in subsection (a).

AUTHORITY FOR REPLENISHMENTS

SEC. 7083. (a) INTERNATIONAL DEVELOPMENT ASSOCIATION.—The International Development Association Act, Public Law 86–565, as amended (22 U.S.C. 284 et seq.), is further amended by adding at the end thereof the following new sections:

22 USC 284x.

"SEC. 26. SIXTEENTH REPLENISHMENT.

"(a) The United States Governor of the International Development Association is authorized to contribute on behalf of the United States $4,075,500,000 to the sixteenth replenishment of the resources of the Association, subject to obtaining the necessary appropriations.

"(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $4,075,500,000 for payment by the Secretary of the Treasury.

22 USC 284y.

"SEC. 27. MULTILATERAL DEBT RELIEF.

"(a) The Secretary of the Treasury is authorized to contribute, on behalf of the United States, not more than $474,000,000 to

the International Development Association for the purpose of funding debt relief cost under the Multilateral Debt Relief Initiative incurred in the period governed by the sixteenth replenishment of resources of the International Development Association, subject to obtaining the necessary appropriations and without prejudice to any funding arrangements in existence on the date of the enactment of this section.

"(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, not more than $474,000,000 for payment by the Secretary of the Treasury.

"(c) In this section, the term 'Multilateral Debt Relief Initiative' means the proposal set out in the G8 Finance Ministers' Communiqué entitled 'Conclusions on Development', done at London, June 11, 2005, and reaffirmed by G8 Heads of State at the Gleneagles Summit on July 8, 2005.".

(b) AFRICAN DEVELOPMENT BANK.—The African Development Fund Act, Public Law 94–302, as amended (22 U.S.C. 290g et seq.), is further amended by adding at the end thereof the following new sections:

"SEC. 221. TWELFTH REPLENISHMENT. 22 USC 290g–20.

"(a) The United States Governor of the Fund is authorized to contribute on behalf of the United States $585,000,000 to the twelfth replenishment of the resources of the Fund, subject to obtaining the necessary appropriations.

"(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, $585,000,000 for payment by the Secretary of the Treasury.

"SEC. 222. MULTILATERAL DEBT RELIEF. 22 USC 290g–21.

"(a) The Secretary of the Treasury is authorized to contribute, on behalf of the United States, not more than $60,000,000 to the African Development Fund for the purpose of funding debt relief costs under the Multilateral Debt Relief Initiative incurred in the period governed by the twelfth replenishment of resources of the African Development Fund, subject to obtaining the necessary appropriations and without prejudice to any funding arrangements in existence on the date of the enactment of this section.

"(b) In order to pay for the United States contribution provided for in subsection (a), there are authorized to be appropriated, without fiscal year limitation, not more than $60,000,000 for payment by the Secretary of the Treasury.

"(c) In this section, the term 'Multilateral Debt Relief Initiative' means the proposal set out in the G8 Finance Ministers' Communiqué entitled 'Conclusions on Development', done at London, June 11, 2005, and reaffirmed by G8 Heads of State at the Gleneagles Summit on July 8, 2005.".

AUTHORITY FOR THE FUND FOR SPECIAL OPERATIONS

SEC. 7084. Up to $36,000,000 of funds appropriated for the account "Department of the Treasury, Debt Restructuring" by the Full-Year Continuing Appropriations Act, 2011 (Public Law 112–10, Division B) may be made available for the United States share of an increase in the resources of the Fund for Special Operations of the Inter-American Development Bank in furtherance of debt

relief provided to Haiti in view of the Cancun Declaration of March 21, 2010.

UNITED NATIONS POPULATION FUND

SEC. 7085. (a) CONTRIBUTION.—Of the funds made available under the heading "International Organizations and Programs" in this Act for fiscal year 2012, $35,000,000 shall be made available for the United Nations Population Fund (UNFPA).

(b) AVAILABILITY OF FUNDS.—Funds appropriated by this Act for UNFPA, that are not made available for UNFPA because of the operation of any provision of law, shall be transferred to the "Global Health Programs" account and shall be made available for family planning, maternal, and reproductive health activities, subject to the regular notification procedures of the Committees on Appropriations.

(c) PROHIBITION ON USE OF FUNDS IN CHINA.—None of the funds made available by this Act may be used by UNFPA for a country program in the People's Republic of China.

(d) CONDITIONS ON AVAILABILITY OF FUNDS.—Funds made available by this Act for UNFPA may not be made available unless—

(1) UNFPA maintains funds made available by this Act in an account separate from other accounts of UNFPA and does not commingle such funds with other sums; and

(2) UNFPA does not fund abortions.

(e) REPORT TO CONGRESS AND DOLLAR-FOR-DOLLAR WITHHOLDING OF FUNDS.—

(1) Not later than 4 months after the date of enactment of this Act, the Secretary of State shall submit a report to the Committees on Appropriations indicating the amount of funds that the UNFPA is budgeting for the year in which the report is submitted for a country program in the People's Republic of China.

(2) If a report under paragraph (1) indicates that the UNFPA plans to spend funds for a country program in the People's Republic of China in the year covered by the report, then the amount of such funds the UNFPA plans to spend in the People's Republic of China shall be deducted from the funds made available to the UNFPA after March 1 for obligation for the remainder of the fiscal year in which the report is submitted.

LIMITATIONS

Waiver authority.

SEC. 7086. (a)(1) None of the funds appropriated under the heading "Economic Support Fund" in this Act may be made available for assistance for the Palestinian Authority if the Palestinians obtain, after the date of enactment of this Act, the same standing as member states or full membership as a state in the United Nations or any specialized agency thereof outside an agreement negotiated between Israel and the Palestinians.

Certification.

(2) The Secretary of State may waive the restriction in paragraph (1) if the Secretary certifies to the Committees on Appropriations that to do so is in the national security interest of the United States, and submits a report to such Committees detailing how the waiver and the continuation of assistance would assist in furthering Middle East peace.

(b)(1) The President may waive the provisions of section 1003 of Public Law 100–204 if the President determines and certifies in writing to the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Committees on Appropriations that the Palestinians have not, after the date of enactment of this Act, obtained in the United Nations or any specialized agency thereof the same standing as member states or full membership as a state outside an agreement negotiated between Israel and the Palestinians.

President. Determination. Certification.

(2) Not less than 90 days after the President is unable to make the certification pursuant to subsection (b)(1), the President may waive section 1003 of Public Law 100–204 if the President determines and certifies in writing to the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Committees on Appropriations that the Palestinians have entered into direct and meaningful negotiations with Israel: *Provided,* That any waiver of the provisions of section 1003 of Public Law 100–204 under paragraph (1) of this subsection or under previous provisions of law must expire before the waiver under the preceding sentence may be exercised.

(3) Any waiver pursuant to this subsection shall be effective for no more than a period of 6 months at a time and shall not apply beyond 12 months after the enactment of this Act.

Effective date. Time periods.

USE OF FUNDS IN CONTRAVENTION OF THIS ACT

SEC. 7087. If the Executive Branch makes a determination not to comply with any provision of this Act on constitutional grounds, the head of the relevant Federal agency shall notify the Committees on Appropriations in writing within 5 days of such determination, the basis for such determination and any resulting changes to program and policy.

Determination. Notification.

TITLE VIII

OVERSEAS CONTINGENCY OPERATIONS/ GLOBAL WAR ON TERRORISM

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For an additional amount for "Diplomatic and Consular Programs", $4,389,064,000, to remain available until September 30, 2013, of which $236,201,000 is for Worldwide Security Protection and shall remain available until expended: *Provided,* That the Secretary of State may transfer up to $230,000,000 of the total funds made available under this heading to any other appropriation of any department or agency of the United States, upon the concurrence of the head of such department or agency, to support operations in and assistance for Afghanistan and to carry out the provisions of the Foreign Assistance Act of 1961: *Provided further,* That such amount is designated by the Congress for Overseas

Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

CONFLICT STABILIZATION OPERATIONS

For an additional amount for "Conflict Stabilization Operations", $8,500,000, to remain available until expended: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $67,182,000, to remain available until September 30, 2013, of which $19,545,000 shall be for the Special Inspector General for Iraq Reconstruction for reconstruction oversight, and $44,387,000 shall be for the Special Inspector General for Afghanistan Reconstruction for reconstruction oversight: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

For an additional amount for "Educational and Cultural Exchange Programs", as authorized, $15,600,000, to remain available until expended: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

EMBASSY SECURITY, CONSTRUCTION, AND MAINTENANCE

For an additional amount for "Embassy Security, Construction, and Maintenance", $33,000,000, to remain available until expended: *Provided,* That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

INTERNATIONAL ORGANIZATIONS

CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

For an additional amount for "Contributions to International Organizations", $101,300,000: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RELATED AGENCY

BROADCASTING BOARD OF GOVERNORS

INTERNATIONAL BROADCASTING OPERATIONS

For an additional amount for "International Broadcasting Operations", $4,400,000: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

RELATED PROGRAMS

UNITED STATES INSTITUTE OF PEACE

For an additional amount for "United States Institute of Peace", $8,411,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

FUNDS APPROPRIATED TO THE PRESIDENT

OPERATING EXPENSES

For an additional amount for "Operating Expenses", $255,000,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $4,500,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL DISASTER ASSISTANCE

For an additional amount for "International Disaster Assistance", $150,000,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TRANSITION INITIATIVES

For an additional amount for "Transition Initiatives", $6,554,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

COMPLEX CRISES FUND

For an additional amount for "Complex Crises Fund", $30,000,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

ECONOMIC SUPPORT FUND

For an additional amount for "Economic Support Fund", $2,761,462,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

DEPARTMENT OF STATE

MIGRATION AND REFUGEE ASSISTANCE

For an additional amount for "Migration and Refugee Assistance", $229,000,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

DEPARTMENT OF THE TREASURY

INTERNATIONAL AFFAIRS TECHNICAL ASSISTANCE

For an additional amount for "International Affairs Technical Assistance", $1,552,000, to remain available until September 30, 2013, which shall be available notwithstanding any other provision of law: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

INTERNATIONAL SECURITY ASSISTANCE

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL AND LAW ENFORCEMENT

For an additional amount for "International Narcotics Control and Law Enforcement", $983,605,000, to remain available until September 30, 2013: *Provided*, That such amount is designated

by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

NONPROLIFERATION, ANTI-TERRORISM, DEMINING AND RELATED PROGRAMS

For an additional amount for "Nonproliferation, Anti-terrorism, Demining and Related Programs", $120,657,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PEACEKEEPING OPERATIONS

For an additional amount for "Peacekeeping Operations", $81,000,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

FUNDS APPROPRIATED TO THE PRESIDENT

FOREIGN MILITARY FINANCING PROGRAM

For an additional amount for "Foreign Military Financing Program", $1,102,000,000, to remain available until September 30, 2013: *Provided*, That such amount is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PAKISTAN COUNTERINSURGENCY CAPABILITY FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the provisions of chapter 8 of part I and chapters 2, 5, 6, and 8 of part II of the Foreign Assistance Act of 1961 and section 23 of the Arms Export Control Act, $850,000,000, to remain available until September 30, 2013, for the purpose of providing assistance for Pakistan to build and maintain the counterinsurgency capability of Pakistani security forces (including the Frontier Corps), to include program management, training in civil-military humanitarian assistance, human rights training, and the provision of equipment, supplies, services, training, and facility and infrastructure repair, renovation, and construction: *Provided*, That notwithstanding any other provision of law except section 620M of the Foreign Assistance Act of 1961, as amended by this Act, such funds shall be available to the Secretary of State, with the concurrence of the Secretary of Defense: *Provided further,* That such funds may be transferred by the Secretary of State to the Department of Defense or other Federal departments or agencies to support counterinsurgency operations and may be merged with, and be available, for the same purposes and for the same time period as the appropriation or fund to which transferred or may be transferred pursuant to the authorities

Deadline. Notification.

contained in the Foreign Assistance Act of 1961: *Provided further,* That the Secretary of State shall, not fewer than 15 days prior to making transfers from this appropriation, notify the Committees on Appropriations, in writing, of the details of any such transfer: *Provided further,* That the Secretary of State shall submit not later than 30 days after the end of each fiscal quarter to the Committees on Appropriations a report in writing summarizing, on a project-by-project basis, the uses of funds under this heading: *Provided further*, That upon determination by the Secretary of State, with the concurrence of the Secretary of Defense, that all or part of the funds so transferred from this appropriation are not necessary for the purposes herein, such amounts may be transferred by the head of the relevant Federal department or agency back to this appropriation and shall be available for the same purposes and for the same time period as originally appropriated: *Provided further,* That any required notification or report may be submitted in classified form: *Provided further,* That the amount in this paragraph is designated by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Deadlines. Reports.

Determination.

GENERAL PROVISIONS

SEC. 8001. Notwithstanding any other provision of law, funds appropriated in this title are in addition to amounts appropriated or otherwise made available in this Act for fiscal year 2012.

SEC. 8002. Unless otherwise provided for in this Act, the additional amounts appropriated by this title to appropriations accounts in this Act shall be available under the authorities and conditions applicable to such appropriations accounts.

SEC. 8003. Funds appropriated by this title under the headings "International Disaster Assistance", "Transition Initiatives", "Complex Crises Fund", "Economic Support Fund", "Migration and Refugee Assistance", "International Narcotics Control and Law Enforcement", "Nonproliferation, Anti-terrorism, Demining, and Related Programs", "Peacekeeping Operations", "Foreign Military Financing Program", and "Pakistan Counterinsurgency Capability Fund", may be transferred to, and merged with, funds appropriated by this title under such headings: *Provided*, That such transfers shall be subject to the regular notification procedures of the Committees on Appropriations: *Provided further,* That the transfer authority in this section is in addition to any transfer authority otherwise available under any other provision of law, including section 610 of the Foreign Assistance Act which may be exercised by the Secretary of State for the purposes of this title.

Notification.

Transfer authority.

SEC. 8004. If authorized during fiscal year 2012, there shall be established in the Treasury of the United States the "Global Security Contingency Fund" (the Fund): *Provided*, That notwithstanding any provision of law, during the current fiscal year, not to exceed $50,000,000 from funds appropriated under the headings "International Narcotics Control and Law Enforcement", "Foreign Military Financing Program", and "Pakistan Counterinsurgency Capability Fund" under title VIII of this Act may be transferred to the Fund: *Provided further,* That this transfer authority is in addition to any other transfer authority available to the Department

Transfer authority. Consultation.

of State, and shall be subject to prior consultation with the Committees on Appropriations: *Provided further,* That the Secretary of State shall, not later than 15 days prior to making any such transfer, notify the Committees on Appropriations in accordance with the regular notification procedures of the Committees on Appropriations, including the source of funds and a detailed justification, implementation plan, and timeline for each proposed project: *Provided further,* That, notwithstanding any provision of law, the requirements of this section, including the amount and source of transferred funds, shall apply to any transfer or other authority relating to the Fund enacted subsequent to the enactment of this Act unless such subsequently enacted provision of law specifically references this section.

Deadline.
Notification.

Applicability.

This division may be cited as the "Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012".

Approved December 23, 2011.

LEGISLATIVE HISTORY—H.R. 2055:

HOUSE REPORTS: No. 112–94 (Comm. on Appropriations) and 112–331 (Comm. of Conference).
SENATE REPORTS: No. 112–29 (Comm. on Appropriations).
CONGRESSIONAL RECORD, Vol. 157 (2011):
June 2, 13, 14, considered and passed House.
July 14, 18–20, considered and passed Senate, amended.
Dec. 16, House agreed to conference report.
Dec. 17, Senate agreed to conference report.
DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2011):
Dec. 23, Presidential statement.

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