

Today, the authorization for emergency unemployment insurance expires.

For the 15 million Americans who are struggling to put food on the table as they look for work during this Great Recession, the Republicans are demanding that we cancel the extra assistance we have provided since the economic crisis began.

The Democrats will fight to ensure that this assistance to struggling middle class families continues through the holidays and through next year.

Even as emergency unemployment assistance expires, the Republicans are demanding that the Bush-era tax cuts be extended for everyone.

Most importantly for them, the Republicans are demanding that the wealthiest people in America receive a massive tax cut, on top of the hundreds of billions of dollars of tax cuts they have already pocketed over the last 10 years.

The Republicans don't think a \$6,300 tax cut per year is good enough for millionaires. They are demanding that millionaires receive \$100,000 in tax cuts every single year—and if not, no one should receive anything.

The cost for permanently extending the Bush tax cuts for people making over \$250,000? About \$700 billion over the next 10 years alone. Plus interest.

Meanwhile, the Republicans oppose extending emergency assistance to the unemployed, supposedly because it costs too much.

The cost for extending emergency unemployment assistance for 1 year? About \$60 billion.

Just as importantly, the Republicans are demanding that we spend another \$700 billion on what CBO has determined is one of the weakest options we have for spurring job growth.

The wealthy don't spend extra money they receive. That doesn't drive up demand for goods and services. Employers don't hire more people if they can't sell more things.

At the same time, the Republicans oppose spending \$60 billion on what CBO has determined is one of the strongest options we have for spurring job growth.

The unemployed spend every extra penny they receive as they buy the bare necessities, so aggregate demand gets a boost. Employers hire more people when they can sell more things.

Democrats oppose spending \$700 billion we don't have on tax cuts that don't help people get back to work.

We support spending less than 10 percent of that amount—\$60 billion—on assistance to the unemployed that does help people get back to work.

We have seen this movie before, of course.

Republicans opposed extending the TANF Jobs program, which helped create 250,000 new jobs and which even some Republican Governors applauded as an example of smart government. That program expired at the end of September.

They oppose extending the Obama tax provisions from the Recovery Act which benefit middle-class Americans, including the earned-income tax credit, the child tax credit, and the making work pay credit. Those provisions expire at the end of the year.

We can't afford those, they say. But we can afford to give another \$700 billion to the wealthiest 2 percent of Americans, according to the Republicans.

We have the money for the equivalent of another economic recovery bill but we can't afford a small fraction of that cost to help middle-class families who need a helping hand.

The difference between the Republicans and Democrats couldn't be more clear.

Republicans won't allow tax cuts for anyone unless the rich get a far bigger share, and won't allow those looking for work to receive any continued emergency assistance.

The Democrats, on the other hand, want to give 98 percent of Americans a tax cut, and want to help the unemployed keep food on the table for their children while they compete with the other 15 million unemployed Americans in looking for work.

The PRESIDING OFFICER. The Senator from Washington.

RED FLAG PROGRAM CLARIFICATION ACT OF 2010

Mrs. MURRAY. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3987, introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant editor of the Daily Digest read as follows:

A bill (S. 3987) to amend the Fair Credit Reporting Act with respect to the applicability of identify theft guidelines to creditors.

There being no objection, the Senate proceeded to consider the bill.

DEFINITION OF CREDITOR

Mr. THUNE. Madam President, I wish to engage my colleagues Senator DODD and Senator BEGICH in colloquy.

I rise today in support of S. 3987, the Red Flag Program Clarification Act of 2010, legislation that Senator BEGICH and I have introduced to narrow the scope of section 114 of the Fair and Accurate Credit Transactions Act of 2003—the FACT Act. This section of the FACT Act directed financial regulatory agencies, including the Federal Trade Commission, FTC, to promulgate rules requiring “creditors” and “financial institutions” to implement programs to detect and respond to red flags—patterns, practices, or specific activities—that could indicate identity theft.

The purpose of the Red Flag Program Clarification Act of 2010 is to identify and limit the type of “creditor” that must be covered. If the FTC's final red flags rule is implemented, this rule could require small businesses to un-

dertake costly, burdensome measures to prevent identity theft in industries where it poses little threat. Identity theft is a serious problem, but the definition of “creditor” for purposes of the FTC's red flags rule is too broad and would cover small businesses that pose little risk to consumers.

Under the legislation that Senator BEGICH and I are proposing, only a “creditor” that regularly and in the ordinary course of its business obtains or uses consumer reports in connection with a credit transaction, furnishes information to consumer reporting agencies in connection with a credit transaction, or advances funds would be required to develop and implement a written identity theft prevention and detection program.

So, for example, an accountant would not become a creditor simply for obtaining a consumer report—with the permission of any consumer whose report is obtained—in order to examine the integrity of a company's management.

And the legislation makes clear that an advance of funds does not include a creditor's payment in advance for fees, materials, or services that are incidental to the creditor's ability to provide another service that a person initiated or requested, such as the advance payment of expert witness fees by a lawyer to support the representation of a client.

Any other type of creditor may only be covered through a rulemaking based upon an agency's determination that these types of creditors offer or maintain accounts that pose a reasonably foreseeable risk of identity theft. Such creditors would receive notice that they could be covered by a rule, and there would be a public airing of the issues when the proposed rule is published for notice and comment.

Could Senator DODD, as chairman of the committee of jurisdiction, the Senate Banking Committee, provide us with some context regarding the legislation under which the FTC's rule was promulgated?

Mr. DODD. Gladly. The FTC's red flags rule implementing section 114 of the FACT Act became effective on January 1, 2008. The rule applied to “creditors,” defined under the FACT Act the same way as in the Equal Credit Opportunity Act, ECOA, to include any person that sells a product or service for which the consumer can pay later.

After the red flags rule became final, many businesses and other entities indicated that they were not aware that they would be covered by this rule. At first, the FTC delayed enforcement of the rule several times to allow these entities time to come into compliance with the rule. Then, a number of professional organizations, including the American Bar Association and the American Medical Association, sued the FTC for taking the position that professionals were “creditors” when they allowed consumers to pay later, and would have to comply with its red

flags rule. On May 28, 2010, the FTC announced that it would delay enforcing its red flags rule through December 31, 2010, and asked Congress to pass legislation that would resolve any questions about which entities should be covered as “creditors” and to obviate the need for further enforcement delays.

Mr. BEGICH. I thank the Senator. Unless this bipartisan bill becomes law, many small businesses for which identity theft is not a threat could be required to spend time and effort to comply with the red flags rule implementing the FACT Act. This could require them to take time away from growing their businesses and creating jobs. Small businesses are the economic driver of our country, and in a time of high unemployment and stagnant economic growth, businesses should be focused on job creation, and should not have to spend the money to comply with regulatory burdens disproportionate to the scope of the identity theft problem.

This bill would address what the chairman of the FTC, Jon Leibowitz, called “the unintended consequences of the legislation establishing the red flags rule.” While this list isn’t exclusive, many small businesses such as doctor’s and dentist’s offices, pharmacies, veterinary clinics, accounting offices, and other types of health care providers and other service providers were classified as “creditors” because they sometimes let clients pay after they provide their services. This legislation makes clear that these small businesses should not be swept under the red flags rule in the future just because they allow payment to be deferred, when they don’t offer or maintain accounts that pose a reasonably foreseeable risk of identity theft.

I would ask the chairman of the Banking Committee if he agrees with my description of what the Red Flag Program Clarification Act of 2010 will accomplish?

Mr. DODD. Yes, I agree that this bill narrows the applicability of the red flag identity theft provisions of the FACT Act to cover those creditors where identity thieves can do the most harm—creditors that use consumer reports, furnish information to consumer reporting agencies, and other creditors that loan money, such as payday lenders, that do not necessarily use consumer reports or furnish information to consumer reporting agencies.

The legislation also makes clear that lawyers, doctors, dentists, orthodontists, pharmacists, veterinarians, accountants, nurse practitioners, social workers, other types of health care providers and other service providers will no longer be classified as “creditors” for the purposes of the red flags rule just because they do not receive payment in full from their clients at the time they provide their services, when they don’t offer or maintain accounts that pose a reasonably foreseeable risk of identity theft.

Mr. THUNE. I applaud the FTC’s cooperation in delaying implementation

of their red flags rule to wait for congressional clarification on this issue and thank Senator DODD for his assistance in drafting this legislation. I am confident that our efforts to provide a legislative solution that protects consumers and businesses alike can be achieved through this legislation.

Mrs. MURRAY. Madam President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements be printed in the RECORD.

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

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3987

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 “Red Flag Program Clarification Act of 2010”.

SEC. 2. SCOPE OF CERTAIN CREDITOR REQUIREMENTS.

(a) AMENDMENT TO FCRA.—Section 615(e) of the Fair Credit Reporting Act (15 U.S.C. 1681m(e)) is amended by adding at the end the following:

“(4) DEFINITIONS.—As used in this subsection, the term ‘creditor’—

“(A) means a creditor, as defined in section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a), that regularly and in the ordinary course of business—

“(i) obtains or uses consumer reports, directly or indirectly, in connection with a credit transaction;

“(ii) furnishes information to consumer reporting agencies, as described in section 623, in connection with a credit transaction; or

“(iii) advances funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person;

“(B) does not include a creditor described in subparagraph (A)(iii) that advances funds on behalf of a person for expenses incidental to a service provided by the creditor to that person; and

“(C) includes any other type of creditor, as defined in that section 702, as the agency described in paragraph (1) having authority over that creditor may determine appropriate by rule promulgated by that agency, based on a determination that such creditor offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of enactment of this Act.

The PRESIDING OFFICER. The Senator from Washington.

UNEMPLOYMENT INSURANCE REAUTHORIZATION

Mrs. MURRAY. Madam President, I came to the floor this afternoon to speak on behalf of thousands of families in my home State of Washington who stand to lose everything they have because a few Republican Senators continue to put politics ahead of policy. Men and women in my State from Seattle to Spokane, who lost their jobs through no fault of their own, get up

every single day; they scour the want ads; they send out their resumes and desperately try to find work in an economy that continues to struggle. These workers do not want to be where they are. They would like nothing more than to be back on the job doing what many of them have been doing for years—working hard and adding value to their companies and contributing to their communities and providing for their families.

But while they struggle to find work, many of them depend on the unemployment insurance programs we put in place to keep their heads above water. This support has allowed these families to put food on the table, to stay in their homes, and to pay for their children’s health care. These programs are not extravagant. But for a lot of our workers today, they made all the difference.

Workers such as a woman named Judy Curtis, who lives in Mill Creek, WA, wrote to my office urging us to do everything we could to reauthorize this program. She is a single mom who worked hard her whole life to support herself and her developmentally disabled son Sean. She told me she has been laid off twice since this downturn began and has been looking for a new job every day but without any luck.

Her unemployment insurance is going to be cut off on January 15 unless we reauthorize it. She does not know how she and her son are going to make it if that happens. So it is because of stories like hers that I am so disappointed we are once again throwing families into a state of uncertainty and turmoil by allowing these emergency unemployment programs to expire today. It does not make any sense.

Our economy still has a long way to go on the road to recovery. There are five job seekers for every open position today. The unemployment rate stands at 9.6 percent, and Senate Republicans think now is a good time to cut families off from the support on which they depend? We cannot allow this to happen. We cannot sit on the sidelines while more families are pushed into bankruptcy and lose their health care and their homes are foreclosed on. We cannot stand by and watch as our working families who have already been pushed to the brink by this financial crisis—that they did not create by the way—are now shoved to the edge through no fault of their own. It is wrong and it does not make sense. It does not make sense to pull billions of dollars out of our economy. It does not make sense to remove purchasing power from so many families. And it does not make sense to lose the multiplier effect of these funds that keep millions of workers on the job. It certainly does not make any sense to do this right before the holidays.

I have to say, I find it very interesting that some of the Senators who oppose extending this support for middle-class families are the very same ones who have no problem extending