

Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 11; Correction" (RIN0648-AX05) received in the Office of the President of the Senate on March 27, 2012; to the Committee on Commerce, Science, and Transportation.

EC-5510. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic" (RIN0648-XB031) received in the Office of the President of the Senate on March 27, 2012; to the Committee on Commerce, Science, and Transportation.

EC-5511. A communication from the Director, Bureau of Economic Analysis, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "International Services Surveys: BE-150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions" (RIN0691-AA79) received in the Office of the President of the Senate on March 22, 2012; to the Committee on Commerce, Science, and Transportation.

EC-5512. A communication from the Associate Administrator, Human Exploration and Operations Mission Directorate, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled "Revision to the Tracking and Data Relay Satellite System (TDRSS) Rates for Non-U.S. Government Customers" (RIN2700-AD72) received in the Office of the President of the Senate on March 21, 2012; to the Committee on Commerce, Science, and Transportation.

EC-5513. A communication from the Deputy General Counsel, Office of the General Counsel, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled "Claims for Patent and Copyright Infringement" (RIN2700-AD63) received in the Office of the President of the Senate on March 21, 2012; to the Committee on Commerce, Science, and Transportation.

EC-5514. A communication from the Under Secretary for Industry and Security, Department of Commerce, transmitting, pursuant to law, a report entitled "Report to Congress: Export and Reexport License Requirements to Temporarily Control Items that Provide at Least a Significant Military or Intelligence Advantage to the United States or for Foreign Policy Reasons"; to the Committee on Commerce, Science, and Transportation.

EC-5515. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska" (RIN0648-XB004) received in the Office of the President of the Senate on March 27, 2012; to the Committee on Commerce, Science, and Transportation.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KERRY, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 80. A resolution condemning the Government of Iran for its state-sponsored persecution of its Baha'i minority and its continued violation of the International Covenants on Human Rights.

By Mr. KERRY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and with an amended preamble:

S. Res. 344. A resolution supporting the democratic aspirations of the Nicaraguan people and calling attention to the deterioration of constitutional order in Nicaragua.

By Mr. KERRY, from the Committee on Foreign Relations, without amendment and with an amended preamble:

S. Res. 356. A resolution expressing support for the people of Tibet.

S. Res. 391. A resolution condemning violence by the Government of Syria against journalists, and expressing the sense of the Senate on freedom of the press in Syria.

S. Res. 395. A resolution expressing the sense of the Senate in support of the North Atlantic Treaty Organization and the NATO summit to be held in Chicago, Illinois from May 20 through 21, 2012.

By Mr. KERRY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and with an amended preamble:

S. Res. 397. A resolution promoting peace and stability in Sudan, and for other purposes.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. THUNE (for himself, Mr. RUBIO, Mr. BOOZMAN, Mr. LUGAR, Mr. VITTER, Mr. ISAKSON, Mr. KYL, Mr. HELLER, Mr. MORAN, Mr. ROBERTS, Mr. INHOFE, Mr. ENZI, Mr. GRASSLEY, Mr. LEE, Mr. PAUL, Mr. BLUNT, Mr. MCCAIN, Mr. BARRASSO, Mr. CORNYN, Mr. MCCONNELL, Mr. CRAPO, Mr. HOEVEN, Mr. KIRK, Mr. WICKER, Mr. HUTCHISON, Mr. COCHRAN, Mr. BURR, Mr. SESSIONS, Mr. TOOMEY, Ms. AYOTTE, Mr. RISCH, Mr. COBURN, Mr. JOHANNES, Mr. DEMINT, and Mr. COATS):

S. 2242. A bill to amend the Internal Revenue Code of 1986 to repeal the estate and generation-skipping transfer taxes, and for other purposes; to the Committee on Finance.

By Mr. WYDEN (for himself and Mr. PORTMAN):

S. 2243. A bill to establish a program to provide incentive payments to participating Medicare beneficiaries who voluntarily establish and maintain better health; to the Committee on Finance.

By Mr. PORTMAN (for himself and Mr. BEGICH):

S. 2244. A bill to direct the Secretary of Veterans Affairs to assist in the identification of unclaimed and abandoned human remains to determine if any such remains are eligible for burial in a national cemetery, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. BARRASSO (for himself, Mr. INHOFE, Mr. SESSIONS, Mr. HELLER, Mr. VITTER, Mr. BOOZMAN, Mr. CRAPO, Mr. MCCONNELL, Mr. ROBERTS, Mr. WICKER, Mr. RISCH, Mr. GRASSLEY, Mr. CORNYN, Mr. COBURN, Mr. THUNE, Mr. LUGAR, Mr. BLUNT, Mr. RUBIO, Mr. ENZI, Mr. KYL, Mr. TOOMEY, Mr. COATS, Mr. PAUL, Mr. JOHANNES, Mr. CHAMBLISS, Mr. HOEVEN, Mr. MORAN, Mr. ISAKSON, Mr. JOHNSON of Wisconsin, and Mr. COCHRAN):

S. 2245. A bill to preserve existing rights and responsibilities with respect to waters of

the United States; to the Committee on Environment and Public Works.

By Mr. BOOZMAN (for himself, Mr. BEGICH, and Mr. RUBIO):

S. 2246. A bill to direct the Secretary of Labor to provide off-base transition training, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. LEE:

S. 2247. A bill to amend the Federal Reserve Act to improve the functioning and transparency of the Board of Governors of the Federal Reserve System and the Federal Open Market Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. INHOFE (for himself, Mr. MURKOWSKI, Mr. VITTER, Mr. SESSIONS, Mr. CORNYN, Mr. RISCH, Mr. HOEVEN, and Mr. LEE):

S. 2248. A bill to clarify that a State has the sole authority to regulate hydraulic fracturing on Federal land within the boundaries of the State; to the Committee on Energy and Natural Resources.

By Mr. AKAKA:

S. 2249. A bill to provide for the reform of the Senior Executive Service; to the Committee on Homeland Security and Governmental Affairs.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BURR (for himself, Mr. LANDRIEU, Mrs. HUTCHISON, and Mrs. HAGAN):

S. Res. 408. A resolution supporting the goals and ideals of Take Our Daughters and Sons To Work Day; considered and agreed to.

By Mr. AKAKA (for himself, Mr. ENZI, Mr. BAUCUS, Mr. BLUNT, Mr. CARDIN, Mr. CARPER, Mr. COCHRAN, Mr. COONS, Mr. CRAPO, Mr. DURBIN, Mrs. HAGAN, Mr. INOUE, Mr. JOHNSON of South Dakota, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. MENENDEZ, Mrs. MURRAY, Mr. WICKER, and Mr. BROWN of Ohio):

S. Res. 409. A resolution designating April 2012 as "Financial Literacy Month"; considered and agreed to.

By Mr. MENENDEZ (for himself, Mr. REID, Ms. STABENOW, Mr. AKAKA, Mr. DURBIN, Mr. UDALL of New Mexico, Mr. LEAHY, Mr. BROWN of Ohio, Mrs. BOXER, Mr. BINGAMAN, Mrs. GILLIBRAND, Mr. MERKLEY, Mr. UDALL of Colorado, and Mr. SCHUMER):

S. Res. 410. A resolution honoring the accomplishments and legacy of Cesar Estrada Chavez; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INHOFE (for himself, Mr. MURKOWSKI, Mr. VITTER, Mr. SESSIONS, Mr. CORNYN, Mr. RISCH, Mr. HOEVEN, and Mr. LEE):

S. 2248. A bill to clarify that a State has the sole authority to regulate hydraulic fracturing on Federal land within the boundaries of the State; to the Committee on Energy and Natural Resources.

Mr. INHOFE. Mr. President, I rise to introduce S. 2248, a bill that would clarify the States' sole authority to regulate the process of hydraulic fracturing at the State level as opposed to the Federal level.

I am pleased to be joined by Senators MURKOWSKI, VITTER, SESSIONS, CORNYN, RISCH, HOEVEN, and LEE as cosponsors.

The reason for this bill is the State jurisdiction of a process called hydraulic fracturing, which has taken place since 1949. In 1949, the first hydraulic fracturing well took place in Duncan, OK. It is interesting that there has not been one documented case, in over a million wells using this process—in 60 years—of groundwater contamination.

As a matter of fact, numerous studies, including reports by the Groundwater Protection Council, the EPA, and recently the Energy Institute at the University of Texas at Austin, have found no evidence of hydraulic fracturing posing a risk to water wells or groundwater. A lot of people believe—and I am among them—that the reason to take it over at the Federal level is to do away with hydraulic fracturing. It is interesting that, recently, with some of the shale deposits and discoveries that have been made in the United States, we have been able to get in there, using this process, and come up with huge reserves and start producing these reserves.

In every case, without exception—in fact, I will go so far as to say you cannot get one cubic foot of natural gas out of a type formation without using hydraulic fracturing. The process is and will continue to be a safe process. Despite the evidence, in President Obama's recent campaign rhetoric, this administration continues to wage an all-out war on domestic oil and gas development. During the State of the Union Message—it was interesting because, apparently, now because of the high price of gas at the pump, the President is feeling political pressure, so he is coming out and saying: No, I am not against all fossil fuels, even though he has been for 4 years. And he started talking about clean, plentiful, cheap natural gas. I agreed with that; that is what it is. However, at the same time, if he could have that rhetoric and be able to make the case that the Federal Government needs to take over the process of hydraulic fracturing to be under his control and he can stop that process, he can cut off almost all production altogether.

According to the nonpartisan Congressional Research Service—and this is one that came out this month—since 2007, “about 96 percent of the [oil production] increase took place on non-federal lands.”

A recent study also found that 93 percent of shale oil and gas wells are on private and State lands. The Department of Interior is in the process of issuing rules which will further discourage production on Federal lands and federally regulate disclosure of fracking fluids, well integrity, and waste water. According to Secretary of Interior Ken Salazar, these are rules which they hope will serve as a model for future regulation of State lands.

The Obama EPA alone is looking to regulate hydraulic fracturing through its offices of Water, Air, and Toxics.

What does this legislation do? It is simple. It makes clear that the States have the sole authority to regulate hydraulic fracturing on any land within their borders. This would include Federal lands within the borders of a State.

It also requires hydraulic fracturing on Federal lands to comply with the State laws of which the Federal lands are located.

Activities related to hydraulic fracturing are already regulated at the Federal level under a variety of environmental statutes, including portions of the Clean Water Act, Safe Drinking Water Act, and the Clean Air Act.

States better understand their unique geologies and interests. I happen to be from Oklahoma, which is an oil State, and it varies from State to State. Louisiana deposits are found at a different level than ours in Oklahoma. Recently, people think of all these deposits being located in the West. However, the Marcellus discoveries that have been made are actually in New York State and Pennsylvania, so their local regulations are much more applicable than it would be if you did it at the Federal level.

I invite cosponsors. Here we are in the United States with more recoverable reserves in oil, gas, and coal than any other country in the world. We can be completely self-sufficient from the Mid Eastern oil if we get politics out of the way and use our own resources. We are the only country in the world that doesn't develop its own resources. This is the answer to the problem—the answer to the price of gas at the pump. It is one more option. We need to get out of the way of this process called hydraulic fracturing.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2248

*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 “Fracturing Regulations are Effective in State Hands Act”.

#### SEC. 2. FINDINGS.

Congress finds that—

(1) hydraulic fracturing is a commercially viable practice that has been used in the United States for more than 60 years in more than 1,000,000 wells;

(2) the Ground Water Protection Council, a national association of State water regulators that is considered to be a leading groundwater protection organization in the United States, released a report entitled “State Oil and Natural Gas Regulations Designed to Protect Water Resources” and dated May 2009 finding that the “current State regulation of oil and gas activities is environmentally proactive and preventive”;

(3) that report also concluded that “[a]ll oil and gas producing States have regulations which are designed to provide protection for water resources”;

(4) a 2004 study by the Environmental Protection Agency, entitled “Evaluation of Im-

pacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs”, found no evidence of drinking water wells contaminated by fracture fluid from the fracked formation;

(5) a 2009 report by the Ground Water Protection Council, entitled “State Oil and Natural Gas Regulations Designed to Protect Water Resources”, found a “lack of evidence” that hydraulic fracturing conducted in both deep and shallow formations presents a risk of endangerment to ground water;

(6) a January 2009 resolution by the Interstate Oil and Gas Compact Commission stated “The states, who regulate production, have comprehensive laws and regulations to ensure operations are safe and to protect drinking water. States have found no verified cases of groundwater contamination associated with hydraulic fracturing.”;

(7) on May 24, 2011, before the Oversight and Government Reform Committee of the House of Representatives, Lisa Jackson, the Administrator of the Environmental Protection Agency, testified that she was “not aware of any proven case where the fracking process itself has affected water”;

(8) in 2011, Bureau of Land Management Director Bob Abbey stated, “We have not seen evidence of any adverse effect as a result of the use of the chemicals that are part of that fracking technology.”;

(9)(A) activities relating to hydraulic fracturing (such as surface discharges, wastewater disposal, and air emissions) are already regulated at the Federal level under a variety of environmental statutes, including portions of—

(i) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(ii) the Safe Drinking Water Act (42 U.S.C. 300f et seq.); and

(iii) the Clean Air Act (42 U.S.C. 7401 et seq.); but

(B) Congress has continually elected not to include the hydraulic fracturing process in the underground injection control program under the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(10) in 2011, the Secretary of the Interior announced the intention to promulgate new Federal regulations governing hydraulic fracturing on Federal land; and

(11) a February 2012 study by the Energy Institute at the University of Texas at Austin, entitled “Fact-Based Regulation for Environmental Protection in Shale Gas Development”, found that “[n]o evidence of chemicals from hydraulic fracturing fluid has been found in aquifers as a result of fracturing operations”.

#### SEC. 3. DEFINITION OF FEDERAL LAND.

In this Act, the term “Federal land” means—

(1) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702));

(2) National Forest System land;

(3) land under the jurisdiction of the Bureau of Reclamation; and

(4) land under the jurisdiction of the Corps of Engineers.

#### SEC. 4. STATE AUTHORITY.

(a) IN GENERAL.—A State shall have the sole authority to promulgate or enforce any regulation, guidance, or permit requirement regarding the underground injection of fluids or propping agents pursuant to the hydraulic fracturing process, or any component of that process, relating to oil, gas, or geothermal production activities on or under any land within the boundaries of the State.

(b) FEDERAL LAND.—The underground injection of fluids or propping agents pursuant to the hydraulic fracturing process, or any components of that process, relating to oil, gas, or geothermal production activities on

Federal land shall be subject to the law of the State in which the land is located.

By Mr. AKAKA:

S. 2249. A bill to provide for the reform of the Senior Executive Service; to the Committee on Homeland Security and Governmental Affairs.

Mr. AKAKA. Mr. President, today I am introducing the Senior Executive Service Reform Act of 2012, a bill to strengthen the Federal Government's senior leadership corps.

In this time of fiscal constraint, agencies and Federal employees are being asked to do more with less, and they are rising to meet this challenge. Leading the way in efforts to cut costs without compromising agency missions are members of the Senior Executive Service, SES, who are responsible for driving management priorities and promoting efficiency within agencies and across the Government.

Each year, Presidential Rank Awards are given to outstanding Senior Executives in recognition of their innovation and management expertise that save taxpayers billions of dollars. This is no small feat in an era of shrinking budgets and limited resources. I am proud that such talented people have chosen to join the Federal Government, and believe that America has benefitted as a result of their commitment to public service.

Last year, I chaired a hearing entitled, "Strengthening the Senior Executive Service: A Review of Challenges Facing the Government's Leadership Corps." Witnesses testified about shortcomings in Senior Executive Service candidate development, diversity, and training. Testimony also focused on disincentives for applying to the SES, including increased workload and responsibilities compared to General Schedule, GS, positions with little additional compensation and fewer workers' rights. This bill addresses many of the challenges my hearing brought to light.

A recent report from the Congressional Budget Office concluded that Federal employees with professional degrees are paid 23 percent less than their counterparts in the private sector. The Senior Executive Service is made up of these highly-educated professionals who often find themselves not only making less than those in the private sector, but also other Federal workers. In 2004, Congress enacted reforms linking SES pay to Congressional pay, which has not kept pace with the GS. As a result, the GS pay scale overlaps substantially with the lower end of the SES. This means that a Senior Executive may be paid less than employees he or she supervises. This bill would mitigate the overlap—often referred to as pay compression—by having Senior Executive pay more closely pace the pay of those they supervise.

Performance-based pay is an integral part of the Senior Executive Service. The legislation would strengthen SES

performance management and further address disincentives for joining the SES by including performance awards as base pay for the purpose of retirement calculations. Additionally, it would increase transparency in SES performance ratings by requiring an explanation for why a rating is lowered from an initial recommendation. Quotas in performance pay adjustments also would be prohibited.

Restoration of career leadership and career development are important components of this legislation. A Senior Executive Service Resource Office would be established to collect data on the SES and oversee candidate development, management, and training.

Finally, the bill would encourage diversity in the SES by requiring agencies to include ethnic minorities, women, and those with disabilities as part of the SES hiring process whenever practicable. This language closely mirrors the Senior Executive Service Diversity Assurance Act, which I introduced with Congressman Danny Davis of Illinois in the 110 and 111 Congresses.

The time has come to reframe the discussion surrounding our Nation's civil servants. We must invest in our Government's senior leaders and recognize the critical role they play in making our agencies and the Federal Government more efficient and effective.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2249

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

#### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Senior Executive Service Reform Act of 2012".

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

Sec. 1. Short title and table of contents.

#### TITLE I—RESTORATION OF CAREER LEADERSHIP

Sec. 101. Senior Executive Service agency appointments.

Sec. 102. Career reserved position designation for certain administrative or management positions.

#### TITLE II—SENIOR EXECUTIVE SERVICE PAY AND PERFORMANCE MANAGEMENT IMPROVEMENT

Sec. 201. Annual adjustment for senior executives and other senior employees at the fully successful level or higher.

Sec. 202. Inclusion of executive performance awards and bonuses in basic pay for retirement annuities.

Sec. 203. Certification of agency performance appraisal systems.

Sec. 204. Transparency of ratings for performance appraisals and rating reductions of senior executives.

Sec. 205. Transparency of Senior Executive Service rankings and pay.

Sec. 206. Effective dates.

#### TITLE III—SENIOR EXECUTIVE SERVICE CAREER DEVELOPMENT

Sec. 301. Senior Executive Service Resource Office.

Sec. 302. Senior Executive Service executive development plans.

Sec. 303. Senior executive onboarding programs.

Sec. 304. Senior Executive Service rotation programs.

Sec. 305. Effective date.

#### TITLE IV—SENIOR EXECUTIVE SERVICE DIVERSITY ASSURANCE

Sec. 401. Career appointments.

Sec. 402. Encouraging a more diverse Senior Executive Service.

#### TITLE I—RESTORATION OF CAREER LEADERSHIP

##### SEC. 101. SENIOR EXECUTIVE SERVICE AGENCY APPOINTMENTS.

Section 3134 of title 5, United States Code, is amended—

(1) in subsection (b)—

(A) by inserting "(1)" after "(b)"; and

(B) by adding at the end the following:

"(2) The total number of Senior Executive Service positions used to determine the 10-percent limitation under paragraph (1) for available positions for noncareer appointees shall be based on filled Senior Executive Service positions at the start of each fiscal year, not total authorized positions.";

(2) in subsection (d)(1), by striking "25 percent" and inserting "15 percent";

(3) by redesignating subsection (e) as subsection (f); and

(4) by inserting after subsection (d) the following:

"(e)(1) The total number of Senior Executive Service positions used to determine the 15-percent limitation under subsection(d)(1) for available positions for noncareer appointees shall be based on filled Senior Executive Service positions at the start of each fiscal year, not total authorized positions.".

##### SEC. 102. CAREER RESERVED POSITION DESIGNATION FOR CERTAIN ADMINISTRATIVE OR MANAGEMENT POSITIONS.

(a) IN GENERAL.—Chapter 14 of title 5, United States Code, is amended by adding at the end the following:

##### "§ 1403. Career reserved position designation for certain administrative or management positions

"(a)(1) The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall establish a position which is, or is comparable to, an assistant secretary for administration or management.

"(2) Each agency assistant secretary for administration or management, or incumbent of a comparable position shall—

"(A) be appointed in accordance with the law, or if no law provides for that appointment, by the head of the agency;

"(B) be a member of the career Senior Executive Service;

"(C) be appointed or designated, as applicable, from among individuals who possess demonstrated ability in general management of, and knowledge of, and extensive practical experience in areas such as procurement, human capital, information technology, and related matters; and

"(D) perform such duties as the head of the agency shall prescribe.

"(b) If the individual serving in any position of assistant secretary or in any comparable position in an agency described under subsection (a) is not a career appointee as defined under section 3132(a)(4), the head of that agency shall appoint a career appointee to the position of the principal deputy to that assistant secretary or the officer in that comparable position.

"(c) The head of each agency shall appoint a career appointee to the positions which entail direct responsibility for agency-wide programs or functions in the following occupational disciplines:

- “(1) Acquisition.
- “(2) Information Technology.
- “(3) Human Resources.”.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 14 of title 5, United States Code, is amended by inserting after the item relating to section 1402 the following:

“Sec. 1403. Career reserved position designation for certain administrative or management positions.”.

(c) **REGULATIONS.**—The Office of Personnel Management shall prescribe regulations to carry out this section.

## **TITLE II—SENIOR EXECUTIVE SERVICE PAY AND PERFORMANCE MANAGEMENT IMPROVEMENT**

### **SEC. 201. ANNUAL ADJUSTMENT FOR SENIOR EXECUTIVES AND OTHER SENIOR EMPLOYEES AT THE FULLY SUCCESSFUL LEVEL OR HIGHER.**

(a) **PROHIBITION ON QUOTAS AND FORCED DISTRIBUTIONS.**—Section 4314 of title 5, United States Code, is amended by adding at the end the following:

“(d) Any determination under this section shall be made without the use of quotas or forced distribution of ratings.”.

(b) **PAY FOR CERTAIN SENIOR-LEVEL POSITIONS.**—Section 5376(b) of title 5, United States Code, is amended by striking paragraph (2) and inserting the following:

“(2)(A) Subject to paragraph (1), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of pay under the General Schedule, each rate of pay established under this section for positions within an agency shall be adjusted, in the case of an employee in such a position whose most recent performance appraisal rating is the equivalent of fully successful or higher, by the total average adjustment in rates of pay authorized by section 5303 and 5304.

“(B) Subject to paragraph (1), subparagraph (A) of this paragraph shall not limit the authorization of an annual adjustment based on performance or contribution to agency mission that is greater than the amount provided for in this section.”.

(c) **SETTING SENIOR EXECUTIVE PAY.**—Section 5383 of title 5, United States Code, is amended by striking subsection (c) and inserting the following:

“(c)(1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 and 5304 in the rates of pay under the General Schedule, each rate of pay established under this section for positions within an agency shall be adjusted, in the case of an employee in such a position whose most recent performance appraisal rating is the equivalent of fully successful or higher, by the total average adjustment in rates of pay authorized by section 5303 and 5304.

“(2) Subject to paragraph (1) this subsection shall not limit the authorization of an annual adjustment based on performance or contribution to agency mission that is greater than the amount provided for in this section.

“(3) This subsection shall comply with any requirement established under section 5382.

“(4) Except as provided under paragraph (3), this subsection shall not limit the head of an agency from authorizing an annual adjustment that is greater than the amount provided for in this section.”.

(d) **SETTING INDIVIDUAL SENIOR-LEVEL PAY.**—Section 5383(e) of title 5, United States Code, is amended by adding at the end the following:

“(3)(A) In this paragraph the term ‘covered appointee’ means—

“(i) an appointee to a senior level position described under section 5376(a)(1) or (2); or

“(ii) an appointee to the FBI-DEA Senior Executive Service established under section 3151.

“(B) Paragraphs (1) and (2) shall apply to covered appointees—

“(i) by substituting ‘covered appointee’ for ‘career appointee’; and

“(ii) by substituting ‘a career position as a covered appointee’ for ‘a career reserved position in the Senior Executive Service’.”.

### **SEC. 202. INCLUSION OF EXECUTIVE PERFORMANCE AWARDS AND BONUSES IN BASIC PAY FOR RETIREMENT ANNUITIES.**

(a) **DEFINITION OF BASIC PAY.**—Section 8331(3) of title 5, United States Code, is amended—

(1) in subparagraph (G), by striking “and” after the semicolon;

(2) in the matter following subparagraph (H), by striking “subparagraphs (B) through (H)” and inserting “subparagraphs (B) through (J)”;

(3) by inserting after subparagraph (H) the following:

“(I) with respect to a member of the Senior Executive Service, performance awards under section 5384; and

“(J) with respect to a senior executive as defined under section 3132(a)(3), a member of the FBI-DEA Senior Executive Service established under section 3151, and senior level positions compensated under section 5376—

“(i) agency awards under section 4503;

“(ii) performance awards under section 4505a;

“(iii) bonuses under section 5754; and

“(iv) bonuses under section 5753.”.

(b) **APPLICATION.**—The amendments made by this section only apply to bonuses and awards granted to an employee after the date of enactment of this Act.

### **SEC. 203. CERTIFICATION OF AGENCY PERFORMANCE APPRAISAL SYSTEMS.**

Section 5307(d)(3) of title 5, United States Code, is amended—

(1) in subparagraph (A), by striking “and the Office of Management and Budget jointly”;

(2) in subparagraph (B), by striking “not to exceed 24 months” and inserting “of 36 months”;

(3) in subparagraph (C), by striking “, with the concurrence of the Office of Management and Budget,”; and

(4) by adding at the end the following:

“(D)(i) The Office of Personnel Management may annually review the information provided by agencies under section 4314(c)(6) to determine whether the agency meets minimum certification requirements.

“(ii) At the discretion of the Office, the Office may review the certification of an agency and request the agency to submit information to support certification at any time during the certification period.

“(E)(i) An agency that has received certification from the Office of Personnel Management shall not make changes to that agency’s performance appraisal system without approval from the Office of Personnel Management.

“(ii) The Office of Personnel Management shall review annual performance plans to ensure agency compliance and implementation.

“(F) The termination of certification during the certification period shall be preceded by—

“(i) notification from the Office of Personnel Management to an agency about what the agency is required to do to continue its certification; and

“(ii) a reasonable period of time following the notification referred to under clause (i) to take corrective action.”.

### **SEC. 204. TRANSPARENCY OF RATINGS FOR PERFORMANCE APPRAISALS AND RATING REDUCTIONS OF SENIOR EXECUTIVES.**

Section 4314(c) of title 5, United States Code, is amended—

(1) in paragraph (2)—

(A) by inserting “(A)” after “(1)”; and

(B) by adding at the end the following:

“(B) When recommending a lower rating than was assigned in the initial appraisal of a senior executive’s performance, a written explanation providing reasons for the lower rating shall be provided to the senior executive by the board not later than the date the recommendation is made.”;

(2) in paragraph (3), by inserting “Not later than 30 days after an appraisal and rating is made for a senior executive, the agency shall provide the senior executive with notification of that appraisal and rating, including, as applicable, a written explanation of reasons why a lower rating is assigned than is recommended by the board.” after the period; and

(3) by adding at the end the following:

“(6)(A)(i) Each agency, having 10 or more career appointees, shall annually publish on the agency website the overall number of ratings awarded to members of the Senior Executive Service at each performance rating level, including—

“(I) the average overall salary adjustment at each level;

“(II) the minimum and maximum adjustment at each level;

“(III) the percentage of senior executives at each rating level who received the minimum and maximum salary adjustment; and

“(IV) the number of senior executives who received performance awards under section 5384 and the average amount of those awards.

“(ii) Rating levels and salary adjustment information under clause (i) shall be provided separately for career and noncareer senior executives in agencies having 10 or more noncareer senior executives.

“(B) Each agency shall annually publish on the agency website an internal plan which describes a system for determining Senior Executive Service salary and bonus amounts.”.

### **SEC. 205. TRANSPARENCY OF SENIOR EXECUTIVE SERVICE RANKINGS AND PAY.**

(a) **IN GENERAL.**—Chapter 43 of title 5, United States Code, is amended—

(1) by redesignating section 4315 as section 4316;

(2) in section 4312(c)(3), by striking “4315” and inserting “4316”; and

(3) by inserting after section 4314 the following:

#### **“§ 4315. Survey on the transparency of Senior Executive Service performance management and pay**

“In consultation with the organization representing the largest number of senior executives, the Merit Systems Protection Board shall every 2 years conduct and publish the results of a survey of career appointees relating to—

“(1) the level of transparency and availability of agency performance appraisal systems and compensation policies to career appointees;

“(2) the use or perceived use of quotas or forced distribution in the application of the agency performance appraisal system;

“(3) any actual or perceived irregularities with the administration of the Senior Executive Service performance appraisal system; and

“(4) such other factors as the Merit Systems Protection Board shall determine are necessary and appropriate.”.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 43 of

title 5, United States Code, is amended by striking the item relating to section 4315 and inserting the following:

“Sec. 4315. Survey on the transparency of Senior Executive Service performance management and pay.”

“Sec. 4316. Regulations.”.

#### SEC. 206. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided under subsection (b), this title shall take effect 180 days after the date of enactment of this Act.

(b) CERTIFICATION OF AGENCY PERFORMANCE APPRAISAL SYSTEMS.—Section 203 shall take effect on the date of enactment of this Act.

### TITLE III—SENIOR EXECUTIVE SERVICE CAREER DEVELOPMENT

#### SEC. 301. SENIOR EXECUTIVE SERVICE RESOURCE OFFICE.

(a) DEFINITIONS.—In this section—

(1) the term “Director” means the Director of the Office of Personnel Management;

(2) the term “Senior Executive Service” has the meaning given under section 2101a of title 5, United States Code;

(3) the terms “agency” and “career reserved position” have the meanings given under section 3132 of title 5, United States Code; and

(4) the term “SES Resource Office” means the Senior Executive Service Resource Office established under subsection (b).

(b) ESTABLISHMENT.—The Director shall establish within the Office of Personnel Management an office to be known as the Senior Executive Service Resource Office.

(c) MISSION.—The mission of the SES Resource Office shall be to—

(1) improve the efficiency, effectiveness, and productivity of the Senior Executive Service through policy formulation and oversight;

(2) advance the professionalism of the Senior Executive Service; and

(3) seek to achieve a Senior Executive Service reflective of the Nation’s diversity.

(d) FUNCTIONS.—

(1) IN GENERAL.—The functions of the SES Resource Office are to—

(A) make recommendations to the Director with respect to regulations; and

(B) provide guidance to agencies, concerning the structure, management, and diverse composition of the Senior Executive Service.

(2) SPECIFIC FUNCTIONS.—In order to carry out the purposes of this section, the SES Resource Office shall—

(A) take such actions as the SES Resource Office considers necessary to manage and promote an efficient, elite, and diverse corps of senior executives by providing oversight of the onboarding, performance, structure, composition, and candidate development of the Senior Executive Service, including the Senior Executive Service Federal Candidate Development Program;

(B) be responsible for coordinating, promoting, and monitoring programs for the advancement and training of senior executives, including mentoring programs;

(C) be responsible for the policy development, management, and oversight of the Senior Executive Service pay and performance management system;

(D) develop standards for certification of each agency’s Senior Executive Service performance management system and evaluate all agency applications for certification;

(E) provide oversight of, and guidance to, agency executive resources boards;

(F) be responsible for the administration of the qualifications review board;

(G) establish and maintain annual statistics (in a form that renders such statistics useful to appointing authorities and candidates) on—

(i) the total number of career reserved positions at each agency;

(ii) the total number of vacant career reserved positions at each agency;

(iii) the amount of time it takes to hire a candidate into a career reserved position;

(iv) the number of individuals who have been certified in accordance with section 3393(c) of title 5, United States Code, and the composition of that group of individuals with regard to race, ethnicity, sex, age, and individuals with disabilities;

(v) the composition of the Senior Executive Service with regard to race, ethnicity, sex, age, and individuals with disabilities;

(vi) the composition of executive resources boards with regard to race, ethnicity, sex, and individuals with disabilities; and

(vii) the composition of qualifications review boards with regard to race, ethnicity, sex, and individuals with disabilities;

(H) make available to the public through the official public Internet site of the Office of Personnel Management, the data collected under subparagraph (G);

(I) conduct a continuing program for the recruitment of women, members of racial and ethnic minority groups, and individuals with disabilities for Senior Executive Service positions, with special efforts directed at recruiting from educational institutions, professional associations, and other sources;

(J) advise agencies on the best practices for an agency in utilizing or consulting with an agency’s equal employment or diversity office or official (if the agency has such an office or official) with regard to the agency’s Senior Executive Service appointments process; and

(K) administer an online survey to all individuals leaving a position in the Senior Executive Service to better understand the reasons for the departure—

(i) which shall—

(I) at a minimum request information regarding—

(aa) the reason for departure;

(bb) plans for subsequent employment; and

(cc) suggestions for improving the effectiveness of senior executives within the agency in which the individual serves and the Federal Government; and

(II) be incorporated into strategic planning by agencies, in coordination with the Office of Personnel Management; and

(ii) the results of which shall be made available to the public on a semi-annual basis through the official public Internet site of the Office of Personnel Management.

(e) PROTECTION OF INDIVIDUALLY IDENTIFIABLE INFORMATION.—For purposes of subparagraphs (H) and (K)(ii) of subsection (d)(2), the SES Resource Office shall combine data for any agency that is not named in section 901(b) of chapter 31, United States Code, to protect individually identifiable information.

(f) COOPERATION OF AGENCIES.—The head of each agency shall provide the Office of Personnel Management with such information as the SES Resource Office may require in order to carry out subsection (d)(2)(G).

#### SEC. 302. SENIOR EXECUTIVE SERVICE EXECUTIVE DEVELOPMENT PLANS.

(a) EXECUTIVE DEVELOPMENT PLANS.—Section 3396 of title 5, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

“(c)(1) Upon appointment into the Senior Executive Service, each senior executive shall create an executive development plan that includes continuing development, training, and mentoring goals. The plan shall be submitted to the head of the agency for approval. Each senior executive shall update their executive development plan on a regular basis.

“(2) The Office shall establish standards for multi-year executive development plans.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3151(a)(7) of title 5, United States Code, is amended by striking “section 3396(c)” and inserting “section 3396(d)”.

#### SEC. 303. SENIOR EXECUTIVE ONBOARDING PROGRAMS.

Section 3396 of title 5, United States Code, (as amended by section 302) is further amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

“(d)(1) In consultation with the Office of Personnel Management, the head of each agency shall oversee the establishment of an onboarding program for newly appointed career appointees and noncareer appointees.

“(2)(A) Except as provided in subparagraph (B), not later than 180 days after the date of an initial appointment, each career appointee or noncareer appointee shall be required to successfully complete an onboarding program established under this subsection.

“(B)(i) A position described under section 5312 or 5313 may be exempt from the requirement under subparagraph (A).

“(ii) In addition to positions described in clause (i), the head of an agency may exempt appointees in very senior positions at the agency from the requirement under subparagraph (A).

“(C) The Office of Personnel Management shall establish criteria for determining which positions are very senior for purposes of this paragraph.

“(3) Each agency onboarding program shall include—

“(A) an overview of the mission, priorities, and strategic plan of the agency;

“(B) the role and responsibilities for each new appointee;

“(C) a review of individual performance objectives and goal setting;

“(D) goals for mentoring candidates for the Senior Executive Service;

“(E) an overview of the rules and regulations governing the Senior Executive Service; and

“(F) other components the head of the agency or the Office determines necessary.”.

#### SEC. 304. SENIOR EXECUTIVE SERVICE ROTATION PROGRAMS.

Section 3396 of title 5, United States Code, (as amended by sections 301 and 302) is further amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (d) the following:

“(e)(1)(A) In consultation with the Office of Personnel Management, an agency may establish a program to provide for inter-agency, inter-governmental, and inter-sector rotation programs for career appointees and potential career appointees in the Senior Executive Service, senior positions, and managers showing leadership potential. The rotation programs established under this section shall adhere to the principles of the Senior Executive Service by strengthening collaboration and building interagency relationships.

“(B)(i) In consultation with the Chief Privacy Officer of the Office of Personnel Management, the Office shall establish a centralized database for agencies establishing rotation programs under subparagraph (A) that—

“(I) contains information on each senior executive as defined under section 3132, including information on education, experience, training, and professional development interests; and

“(II) shall serve as a profile registry to be used by agencies and senior executives in making rotation decisions.

“(ii) The Office shall prescribe regulations to carry out this subparagraph, including regulations to establish the database and provide for oversight, management, and administration of the database.

“(C) Each agency shall allow a senior executive the right of return from a temporary rotation detail or assignment that is not a reassignment or transfer without a loss of status and seniority.

“(2) Senior Executive Service rotations may be accomplished through the use of—

“(A) extended details;

“(B) task force assignments and inter-agency projects;

“(C) sabbaticals to the private sector in accordance with subsection (c);

“(D) programs established under the Inter-governmental Personnel Act of 1970 (42 U.S.C. 4701 note);

“(E) the Information Technology Exchange Program; or

“(F) other exchange programs as established by agencies.

“(3) Any career appointee in an agency may be granted a detail or sabbatical under this subsection if the appointee agrees, as a condition of accepting the detail or sabbatical, to serve in the civil service upon the completion of the detail or sabbatical for a period equal to the period of the detail or sabbatical.

“(4) The Office shall publish guidelines for specific objectives and desired results that should be obtained by a senior executive who receives a rotation assignment.

“(5)(A) Except as provided under subparagraph (B), an agency may not require participation in a rotation program as a precondition for an appointment to a career reserved position as defined under section 3132.

“(B) Subparagraph (A) shall not apply if the agency, under regulations prescribed by the Office—

“(i) provides adequate notice of a requirement to participate in a rotation program to candidates within the agency;

“(ii) makes opportunities under a rotation program available to those candidates; and

“(iii) provides a phase-in period for candidates to meet the rotation requirement.

“(C) The Office shall prescribe regulations to carry out this paragraph.”.

#### SEC. 305. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this Act.

### TITLE IV—SENIOR EXECUTIVE SERVICE DIVERSITY ASSURANCE

#### SEC. 401. CAREER APPOINTMENTS.

(a) PROMOTING DIVERSITY IN THE CAREER APPOINTMENTS PROCESS.—Section 3393(b) of title 5, United States Code, is amended by inserting after the first sentence the following: “In establishing an executive resources board, the head of the agency shall, to the extent practicable, ensure diversity of the board and of any subgroup thereof or other evaluation panel related to the merit staffing process for career appointees, by including members of racial and ethnic minority groups, women, and individuals with disabilities.”.

(b) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, the Director shall promulgate regulations to implement subsection (a).

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Director shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report evaluating agency efforts to improve diversity in executive resources boards based on the information collected by the SES Resource Office under section 301(d)(2)(G)(vi) and (vii).

#### SEC. 402. ENCOURAGING A MORE DIVERSE SENIOR EXECUTIVE SERVICE.

(a) SENIOR EXECUTIVE SERVICE DIVERSITY PLANS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, each agency, in consultation with the Office of Personnel Management and the Chief Human Capital Officers Council, shall submit to the Office of Personnel Management a plan to enhance and maximize opportunities for the advancement and appointment of minorities, women, and individuals with disabilities in the agency to the Senior Executive Service. Agency plans shall be reflected in the strategic human capital plan.

(2) CONTENTS.—Agency plans shall address how the agency is identifying and eliminating barriers that impair the ability of minorities, women, and individuals with disabilities to obtain appointments to the Senior Executive Service and any actions the agency is taking to provide advancement opportunities, including—

(A) conducting outreach to minorities, women, and individuals within the agency and outside the agency;

(B) establishing and maintaining training and education programs to foster leadership development;

(C) identifying career enhancing opportunities for agency employees;

(D) assessing internal availability of candidates for Senior Executive Service positions; and

(E) conducting an inventory of employee skills and addressing current and potential gaps in skills and the distribution of skills.

(3) UPDATE OF AGENCY PLANS.—Agency plans shall be updated at least every 2 years during the 10 years following enactment of this Act. An agency plan shall be reviewed by the Office of Personnel Management and, if determined to provide sufficient assurances, procedures, and commitments to provide adequate opportunities for the advancement and appointment of minorities, women, and individuals with disabilities to the Senior Executive Service, shall be approved by such Office. An agency may, in updating its plan, submit to the Office of Personnel Management an assessment of the impacts of the plan.

(b) SUMMARY AND EVALUATION.—Not later than 180 days after the deadline for the submission of any report or update under subsection (a), the Director shall transmit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report summarizing and evaluating the agency plans or updates (as the case may be) so submitted.

(c) COORDINATION.—The Office of Personnel Management shall, in carrying out subsection (a), evaluate existing requirements under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) and section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and determine how agency reporting can be performed so as to be consistent with, but not duplicative of, such sections and any other similar requirements.

### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 408—SUPPORTING THE GOALS AND IDEALS OF TAKE OUR DAUGHTERS AND SONS TO WORK DAY

Mr. BURR (for himself, Ms. LANDRIEU, Mrs. HUTCHISON, and Mrs. HAGAN) submitted the following resolution;

which was considered and agreed to:

S. RES. 408

Whereas the Take Our Daughters To Work Day program was created in New York City as a response to research that showed that, by the 8th grade, many girls were dropping out of school, had low self-esteem, and lacked confidence;

Whereas, in 2003, the name of the program was changed to “Take Our Daughters and Sons To Work Day” so that boys who face many of the same challenges as girls could also be involved in the program;

Whereas the mission of the program, to develop “innovative strategies that empower girls and boys to overcome societal barriers to reach their full potential”, now fully reflects the addition of boys;

Whereas the Take Our Daughters and Sons To Work Foundation, a nonprofit organization, has grown to become one of the largest public awareness campaigns, with more than 37,000,000 participants annually in more than 3,000,000 organizations and workplaces in every State;

Whereas, in 2007, the Take Our Daughters To Work program transitioned to Elizabeth City, North Carolina, became known as the Take Our Daughters and Sons To Work Foundation, and received national recognition for the dedication of the Foundation to future generations;

Whereas every year, mayors, governors, and other private and public officials sign proclamations and lend their support to Take Our Daughters and Sons To Work;

Whereas the fame of the Take Our Daughters and Sons To Work program has spread overseas, with requests and inquiries being made from around the world on how to operate the program;

Whereas 2012 marks the 20th anniversary of the Take Our Daughters and Sons To Work program;

Whereas Take Our Daughters and Sons To Work Day will be observed on Thursday, April 26, 2012; and

Whereas Take Our Daughters and Sons To Work is intended to continue helping millions of girls and boys on an annual basis through experienced activities and events to examine their opportunities and strive to reach their fullest potential: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the goals of introducing our daughters and sons to the workplace; and

(2) commends all the participants in Take Our Daughters and Sons To Work for their ongoing contributions to education, and for the vital role the participants play in promoting and ensuring a brighter, stronger future for the United States.

#### SENATE RESOLUTION 409—DESIGNATING APRIL 2012 AS “FINANCIAL LITERACY MONTH”

Mr. AKAKA (for himself, Mr. ENZI, Mr. BAUCUS, Mr. BLUNT, Mr. CARDIN, Mr. CARPER, Mr. COCHRAN, Mr. COONS, Mr. CRAPO, Mr. DURBIN, Mrs. HAGAN, Mr. INOUE, Mr. JOHNSON of South Dakota, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. MENENDEZ, Mrs. MURRAY, Mr. WICKER, and Mr. BROWN of Ohio) submitted the following resolution; which was considered and agreed to:

S. RES. 409

Whereas according to the Federal Deposit Insurance Corporation, at least 25.6 percent of households in the United States, or close