AMENDMENT NO. 749

At the request of Mr. MCCAIN, the names of the Senator from Massachusetts (Mr. BROWN), the Senator from Massachusetts (Mr. KERRY), the Senator from Idaho (Mr. CRAPO), the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from New Hampshire (Ms. AYOTTE) were added as cosponsors of amendment No. 749 intended to be proposed to H.R. 2112, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

AMENDMENT NO. 757

At the request of Ms. COLLINS, the name of the Senator from Alaska (Ms. MURKOWSKI) was withdrawn as a cosponsor of amendment No. 757 intended to be proposed to H.R. 2112, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

At the request of Ms. COLLINS, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of amendment No. 757 intended to be proposed to H.R. 2112, supra.

AMENDMENT NO. 758

At the request of Mr. VITTER, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of amendment No. 758 intended to be proposed to H.R. 2112, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

AMENDMENT NO. 759

At the request of Mr. VITTER, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of amendment No. 759 intended to be proposed to H.R. 2112, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

AMENDMENT NO. 774

At the request of Mr. DEMINT, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of amendment No. 774 intended to be proposed to H.R. 2112, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself and Mr. UDALL of New Mexico):

S. 1730. A bill to permit Mexican nationals who legally enter the United States with a valid border Crossing Card through specific ports of entry in New Mexico to remain in southern New Mexico for up to 30 days, to the Committee on the Judiciary.

Mr. BINGAMAN. Mr. President, I rise today to introduce legislation, along with Senator TOM UDALL, aimed at increasing economic activity in New Mexico communities situated along the U.S.-Mexico border.

Currently, Mexican nationals holding biometric Border Crossing Cards, also known as Laser Visas, may travel up to 25 miles into the United States for a period of up to 30 days. The purpose of this initiative is to promote border commerce by allowing frequent, low-risk visitors to travel to U.S. border communities to conduct business, visit family, and shop.

Unfortunately, New Mexico has not benefited under this program to the extent that other border states have. The three largest cities along the New Mexico border—Las Cruces, Lordsburg, and Deming—are all outside of the current 25-mile geographical limit, and Mexican nationals with BCCs must acquire additional permits to visit these cities.

In order to address a similar situation, an exception was made for Arizona in 1999 to allow BCC holders to travel to Tucson. This change resulted in increased economic activity without in any way jeopardizing security. Tailoring the program to maximize its impact in the respective border states is the right approach, and I fail to see why a similar modification should not be made for New Mexico.

The legislation we are introducing today, the Southern New Mexico Economic Development Act, would expand the geographic limit from 25 miles to 75 miles to permit visitors coming to New Mexico to reach the larger cities in the southern part of the state. This change would facilitate economic activity at a crucial time as border communities are looking to increase tourism and create growth.

Changing this regulation wouldn't cost taxpayer money, it will increase economic activity in communities that have been hit hard by the economic downturn, and will do so in a manner consistent with our border security efforts.

I look forward to working with my colleagues to pass this legislation.

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. 1730

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 ''Southern New Mexico Economic Development Act''.

SEC. 2. TEMPORARY ADMITTANCE OF MEXICAN NATIONALS WITH BORDER CROSSING CARDS.

The Secretary of Homeland Security shall permit a national of Mexico, who enters the United States with a valid Border Crossing Card (as described in section 212.1(c)(1)(i) of title 8, Code of Federal Regulations, as in effect on the date of the enactment of this Act), and who is admitted to the United States at the Columbus, Santa Teresa, or Antelope Wells port of entry in New Mexico, to remain in New Mexico (within 75 miles of the international border between the United States and Mexico) for a period not to exceed 30 days.

Mr. UDALL of New Mexico. Mr. President, I rise today to join Senator BINGAMAN in introducing the Southern New Mexico Economic Development Act, legislation that will bring additional business from Mexico to cities and towns in southern New Mexico.

Our bill would increase economic opportunities for southern New Mexico businesses by extending the distance that Mexicans who are issued Border Crossing Cards, BCC, by the U.S. State Department can travel in New Mexico without the need to obtain a Form I–94 and pay an additional fee.

The BCC is a credit card-style document with many security features and 10-year validity. BCCs are only issued to applicants who are citizens and residents of Mexico. Applicants must meet the eligibility standards for B1/B2 visas and undergo fingerprinting and an interview at the U.S. Consulate and they must demonstrate that they have ties to Mexico that would compel them to return after a temporary stay in the United States.

Currently, BCC holders who are authorized to enter into the United States can remain up to 30 days and travel no more than 25 miles beyond the border, except in Arizona where they can travel up to 75 miles. Those who wish to travel farther or remain longer must request an I–94 form, arrival/departure record, at the port of entry and pay a small fee. Our bill would extend the distance BCC holders who enter the United States from New Mexico ports of entry can travel within the State from 25 miles to 75 miles.

Arizona provides a precedent for making this change. In 1999, the border zone in Arizona was extended from 25 miles to 75 miles because there were no large Arizona cities within 25 miles of the border. This was done through the Federal rulemaking process. The extension was designed to specifically include Tucson within the zone so that it could get the economic benefit of BCC holders entering Arizona. Tucson conducted a study indicating that, after implementation of this rule, the commercial gain from Mexican visitors was estimated to reach $56.3 million a year.

However, in Texas, New Mexico, and California, the border zone limit remains 25 miles. This doesn't hurt Texas and California since El Paso, San Diego, and many smaller towns in those states are within the 25 mile zone. However, like Arizona, New Mexico does not have a city within 25 miles of the border. This means BCC holders cannot travel to southern New Mexico cities like Las Cruces, Deming, and Lordsburg without additional paperwork and paying a fee. Because of this, many visitors face the inconvenience

of having to drive all the way to Juarez and enter the U.S. at an El Paso port of entry, despite living closer to a port of entry in New Mexico.

Extending the zone can be done through rulemaking, as it was with Arizona, and I am happy to work with Secretary Napolitano and CBP Commissioner Bersin to make that happen. However, if we are unable to resolve this issue through rulemaking, I believe it will be necessary to push for passage of the legislation we are introducing today.

There is strong support from elected officials and the business community in southern New Mexico for extending the border zone to 75 miles. Just recently, Luna County Commissioner Jay Spivey worked with State Senator John Arthur Smith and Representative Dona Irwin to introduce a Joint Memorial calling on DHS to extend the border zone to 75 miles. The Memorial unanimously passed both houses of the New Mexico state legislature in September.

This is fundamentally an issue of fairness—New Mexico should have the same opportunities the other three Border States enjoy because of the economic benefits of BCC holders visiting their cities.

By Mr. AKAKA:

S. 1732. A bill to amend section 552a of title 5, United States Code (commonly referred to as the Privacy Act), the E-Government Act of 2002 (Public Law 107–347), and chapters 35 and 36 of title 44, United States Code, and other provisions of law to modernize and improve Federal privacy laws; to the Committee on Homeland Security and Governmental Affairs.

Mr. AKAKA. Mr. President, today I am introducing the Privacy Act Modernization for the Information Age Act of 2011.

In 1974, Congress enacted the Privacy Act to protect Americans' personal information from improper disclosure by the Federal government. Broadly, the Privacy Act requires that government agencies allow individuals to see any records an agency keeps on him or her, with some exceptions for security and law enforcement, limits the extent to which the government may share data with and agencies and third parties, allows individuals to access and correct their records, requires agencies to provide notice of what data is collected and how it is used and to keep records of disclosures, and provides individuals the ability to enforce their rights under the act.

With the expansion of technology and the proliferation of personally identifiable information in the hands of government agencies, the risk of losing, abusing, or misusing information has grown exponentially. In particular, over the last 10 years security needs have created pressure on agencies to use existing personal information in new ways, not contemplated when the information was collected. The growth in the business of buying and selling individuals' information also raises new questions about the extent to which the Privacy Act applies to these sources of data on individuals used by the government. Meanwhile, there have been few updates to the Privacy Act, leaving it better suited to file cabinets and clunky 30 year old databases than the modern information technology systems in use at agencies today.

In 2008, the Government Accountability Office, GAO, released a report that I requested entitled, ''Privacy: Alternatives Exist for Enhancing Protection of Personally Identifiable Information'', GAO–08–536. GAO later testified about its findings at a Homeland Security and Governmental Affairs Committee hearing where it identified issues in three main areas that could be enhanced: applying privacy protections consistently to all Federal collection and use of personal information; ensuring that collection and use of personally identifiable information is limited to a stated purpose; and establishing effective mechanisms for informing the public about privacy protections.

After examining these recommendations and consulting with outside privacy experts, working groups, and privacy and civil liberties advocates, I am introducing the Privacy Act Modernization for the Information Age Act of 2011. This bill addresses the issues raised by GAO, adds stronger privacy leadership at the Office of Management and Budget to ensure effective execution of the Privacy Act, and extends authority for privacy officers to investigate possible violations of privacy laws.

This bill updates the Privacy Act in several ways. It simplifies some of the definitions to apply them to modern information technology management ideas that were in their infancy in 1974. It also tightens requirements for agency controls and maintenance of records to ensure their use is authorized, and that personally identifiable information is not misused.

Agencies would also be more accountable to the public in protecting information. Notifications of systems with personally identifiable information would be more relevant, transparent, and accessible, allowing Americans to know which agencies may have what information about them and in what systems. Importantly, the bill would create a centralized privacy website containing System of Records Notices and other related privacy information.

If civil or criminal violations of the Privacy Act do occur, the penalties have been updated to reflect similar penalties in other laws. The bill would also clarify Congress's intent in the statutory damages provision in the Privacy Act by overturning Doe v. Chao, in which the Supreme Court, I believe wrongly, held that an individual has to show actual damages resulted from an intentional or willful improper disclosure of personal information in order to receive an award.

My bill also builds on important new privacy protections introduced in the E-Government Act of 2002, which established a requirement for a Privacy Impact Assessment on certain new systems developed at agencies that contain personally identifiable information. It also codifies the term ''personally identifiable information,'' which has been defined by the Office of Management and Budget, OMB, for years in conjunction with the Privacy Act. This will let us focus on protecting personally identifiable information rather than defining it.

The Privacy Act Modernization for the Information Age Act of 2011 would expand a successful tool given to the Department of Homeland Security, DHS, Chief Privacy Officer, CPO, to other major agency CPOs. In 2008, I championed the POWER Act, which gave the DHS CPO the authority to investigate possible violations of privacy laws if an Inspector General declines to investigate. I am pleased to say this authority has not been abused, and in fact has been used only once at DHS where its Inspector General inadvertently experienced a minor data breach, and the CPO investigated the issue. This is a useful tool that I believe other privacy offices overseeing massive amounts of personally identifiable information could benefit from.

Finally, my bill would create a strong Federal Chief Privacy Officer, FCPO, at OMB as well as a government-wide Chief Privacy Officers Council, to fill the wide gaps in government-wide privacy leadership and ensure consistent development of policies and guidance on the Privacy Act across agencies. The FCPO position existed under President Clinton, but it has not been replicated by subsequent administrations. I have been impressed with DHS's leadership on privacy issues, thanks to tools we have put into law and the resources we have provided. It is equally important to enhance government-wide leadership through the FCPO and the Chief Privacy Officers Council, which will create a better environment to share ideas across agencies.

This bill would be an important step forward in modernizing how government agencies execute their obligations to protect the personal information provided to them by all Americans. With the proliferation of data about every one of us online, and possibly creeping into government databases, we need more transparency so the average person has a place to go to learn about what information the government is keeping and how they can access that information. I urge my colleagues to support this effort and to continue to work with me and the Homeland Security and Governmental Affairs Committee to produce legislation to improve Federal privacy before this Congress adjourns.

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. 1732

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 ''Privacy Act Modernization for the Information Age Act of 2011''.

SEC. 2. AMENDMENTS TO THE PRIVACY ACT.

(a) DEFINITIONS.—Section 552a (a) of title 5, United States Code, (commonly referred to as the Privacy Act), is amended—

(1) in paragraph (4), by striking ''that is maintained by an agency, including, but not limited to, his'' and inserting '', including'';

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

''(5) the term 'system of records' means a group of any records maintained by, or otherwise under the control of any agency that is used for any authorized purpose by or on behalf of the agency;''.

(3) by striking paragraph (7) and inserting the following:

''(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which, as determined by the agency, is compatible with the purpose for which it was collected and is appropriate and reasonably necessary for the efficient and effective conduct of Government;''.

(4) in paragraph (8)(A)(i)—

(A) by striking ''two or more automated systems of records or a system of records with non-Federal records'' and inserting ''data from a system of records'';

(B) in subclause (I), by inserting ''or State'' after ''Federal''; and

(C) in subclause (II), by inserting ''or State'' after ''Federal''.

(b) CONDITIONS OF DISCLOSURE.—Section 552a(b) of title 5, United States Code, is amended—

(1) in paragraph (1), by inserting ''that is consistent with, and related to, any purpose described under subsection (e)(2)(D) of this section'' before the semicolon;

(2) in paragraph (3), by striking ''(e)(4)(D)'' and inserting ''(e)(2)(D)(iv) or subsection (v)'';

(3) in paragraph (6), by inserting ''or for records management inspections authorized by statute'' before the semicolon;

(4) in paragraph (7), by inserting '', notwithstanding any requirements of a routine use as defined under subsection (a)(7),'' before ''to another agency'';

(5) in paragraph 8, by striking ''upon such disclosure notification is transmitted to the last known address of such individual'' and inserting ''a reasonable attempt to notify the individual is made promptly after the disclosure''; and

(6) by striking paragraph (9) and inserting the following:

''(9)(A) to either House of Congress;

''(B) to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee; or

''(C) to the office of a Member of Congress when that office is requesting records about a specific individual on behalf of that individual in response to a written request for assistance by that individual;''.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Section 552a(c) of title 5, United States Code, is amended by inserting ''whether in an electronic or other format'' after ''system of records under its control''.

(d) AGENCY REQUIREMENTS.—Section 552a of title 5, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) AGENCY REQUIREMENTS.—

''(1) AUTHORIZED PURPOSE.—No agency shall use a record except for an authorized purpose and as maintained in a system of records under this section.

''(2) REQUIREMENTS.—Each agency shall—

''(A) maintain in its records only such information about an individual as is relevant and necessary to accomplish any specified purpose of the agency required to be accomplished by statute or by executive order of the President, and only retain such information as long as is necessary to fulfill that purpose or as otherwise required by law;

''(B) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges;

''(C) inform each individual whom it asks to supply information creating a record, at the time the information is requested—

''(i) the authority (whether granted by statute or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is voluntary or required to receive a right, benefit, or privilege;

''(ii) the principal purpose or purposes for which the information is intended to be used;

''(iii) the routine uses which may be made of the information, as published under subparagraph (D)(iv);

''(iv) any effects on that individual of not providing all or any part of the requested information;

''(v) the procedures and contact information for accessing or correcting such information; and

''(vi) a reference to learning how such information will be used or disclosed, including the simplest access to the current system of records notice;

''(D) subject to the provisions of subparagraph (K), publish in the Federal Register, make broadly accessible to the public through a centralized website maintained by the Office of Management and Budget, and link to such centralized website from each agency's website, upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

''(i) the name and location of the system;

''(ii) the categories of individuals on whom records are maintained in the system;

''(iii) the categories of records maintained in the system;

''(iv) any purpose for which the information is intended to be used, including each routine use;

''(v) the legal authority for any purpose for which the information is utilized granted by statute, executive order, or other authorization;

''(vi) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

''(vii) the title and business address of the agency official who is responsible for the system of records;

''(viii) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him, how he can gain access to such a record, or contest its content; and

''(ix) the sources of records in the system;

''(E) to the greatest extent practicable, ensure that all records, including records from a third party source, which are used by the agency in making any determination about an individual are of such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination, and upon request of the individual, provide documentation of the same;

''(F) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

''(G) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to, and within the scope of, an authorized law enforcement activity;

''(H) make reasonable efforts to notify an individual as promptly as practicable after the agency receives compulsory legal process for any record on the individual, unless that notification is prohibited by law or court order;

''(I) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

''(J) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

''(K) in regards to the establishment or revision of a system of records under subparagraph (D)—

''(i) at least 30 days prior to creation or modification of a system of records, publish the entire text of the proposed system of records notice in the Federal Register and on the centralized website established under subparagraph (D);

''(ii) provide an opportunity for interested persons to submit written or electronic data, views, or arguments to the agency regarding the proposed system of records notice;

''(iii) within 180 days after publication of a proposed system of records notice, publish on the centralized website established under subparagraph (D), a response to the comments received, along with notice of whether the system of records notice as published has taken effect; and

''(iv) provide a link to the centralized website from the website of the agency,

unless the Director of the Office of Management and Budget, through the Federal Chief Privacy Officer grants an exception, and that exception is published promptly in the Federal Register and on the centralized website established under subparagraph (D), including a link from the agency's website;

''(L) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision;

''(M) shall—

''(i) maintain an inventory on the number and scope of the systems of records of that agency in a manner that clearly and fairly describes activities of the agency to individuals; and

''(ii) ensure that the inventory—

''(I) is annually updated and published in the Federal Register, on the website established under subparagraph (D), and on the agency's website; and

''(II) does not contain any information that would be exempted from disclosure under this section or section 522 of this title; and

''(N) make reasonable efforts to limit disclosure from a system of records to minimum information necessary to accomplish the purpose of the disclosure.''.

(e) AGENCY RULES.—Section 552a(f) of title 5, United States Code, is amended in the last sentence—

(1) by striking ''biennially'' and inserting ''annually'';

(2) by striking ''subsection (e)(4)'' and inserting ''subsection (e)(2)(D)(iv)''; and

(3) by striking ''at low cost'' and inserting ''electronically, or at low cost physically''.

(f) CIVIL REMEDIES.—Section 552a(g)(4) is amended—

(1) by inserting ''and in which the complainant has substantially prevailed'' after ''the agency acted in a manner which was intentional or willful''; and

(2) in subparagraph (A), by striking '', but in no case shall a person entitled to recovery receive less than the sum of $1,000'' and inserting ''or the sum of $1,000, whichever is greater, except that in a class action the minimum for each individual shall be reduced as necessary to ensure that the total recovery in any class action or series of class actions arising out of the same refusal or failure to comply by the same agency shall not be greater than $10,000,000''.

(g) CRIMINAL PENALTIES.—Section 552a(i) of title 5, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting ''(A)'' before ''Any officer or employee''; and

(B) by adding at the end the following:

''(B) A person who commits the offense described under subparagraph (A) with the intent to sell, transfer, or use an agency record for commercial advantage, personal gain, or malicious harm shall be fined not more than $250,000, imprisoned for not more than 10 years, or both.''; and

(2) in paragraph (3), by striking ''misdemeanor and fined not more than $5,000'' and inserting ''felony and fined not more than $100,000, imprisoned for not more than 5 years, or both''.

(h) GENERAL EXEMPTIONS.—Section 552a(j) of title 5, United States Code, is amended by striking ''The head of any agency'' and inserting ''Notwithstanding any requirements of a routine use as defined under subsection (a)(7), the head of any agency''.

(i) SPECIFIC EXEMPTIONS.—Section 552a(k) of title 5, United States Code, is amended by striking ''The head of any agency'' and inserting ''Notwithstanding any requirements of a routine use as defined under subsection (a)(7), the head of any agency''.

(j) ARCHIVAL RECORDS.—Section 552a(l) of title 5, United States Code, is amended in paragraphs (2) and (3) by striking ''National Archives of the United States'' each place that term appears and inserting ''National Archives and Records Administration''.

(k) GOVERNMENT CONTRACTORS.—Section 552(m)(1) of title 5, United States Code, is amended by striking ''for the operation by or on behalf of the agency of a system of records to accomplish an agency function'' and inserting ''or other agreement, including with another agency, for the maintenance of a system of records to accomplish an agency function on behalf of the agency''.

(l) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.—Section 552a(v) of title 5, United States Code, is amended—

(1) in paragraph (1), by striking ''and'' after the semicolon;

(2) in paragraph (2), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(3) establish and update a list of recommended standard routine uses.''.

SEC. 3. AMENDMENTS TO THE E-GOVERNMENT ACT OF 2002.

Section 208 of the E-Government Act of 2002 (44 U.S.C. 3501 note; Public Law 107–347) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A)—

(i) by striking clause (i) and inserting the following:

''(i) developing, procuring, or otherwise making use of information technology that collects, maintains, or disseminates personally identifiable information; or'';

(ii) in clause (ii)(II)—

(I) by striking ''information in an identifiable form'' and inserting ''personally identifiable information''; and

(II) by striking '', other than agencies, instrumentalities, or employees of the Federal Government.'' and inserting ''; and''; and

(iii) by adding at the end the following:

''(iii) using personally identifiable information purchased, or subscribed to for a fee, from a commercial data source.''; and

(B) in paragraph (2)(B)—

(i) in clause (i), by striking ''information that is in an identifiable form'' and inserting ''personally identifiable information''; and

(ii) in clause (ii)—

(I) in subclause (VI), by striking ''and'' at the end;

(II) in subclause (VII), by striking the period and inserting ''; and''; and

(III) by adding at the end the following:

''(VIII) to what extent risks to privacy protection are created by the use of the information and what steps have been taken to mitigate such risks.''; and

(2) by striking subsection (d) and inserting the following:

''(d) DEFINITION.—In this section, the term 'personally identifiable information' means any information about an individual maintained by an agency, including—

''(1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; or

''(2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.''.

SEC. 4. AMENDMENTS TO CHAPTERS 35 AND 36 OF TITLE 44, UNITED STATES CODE.

(a) OFFICE OF MANAGEMENT AND BUDGET.—Section 3504 of title 44, United States Code, is amended—

(1) in subsection (a)(1)(A)—

(A) in clause (iv), by inserting ''and'' after the semicolon;

(B) by striking clause (v); and

(C) by redesignating clause (vi) as clause (v);

(2) by striking subsection (g); and

(3) by redesignating subsection (h) as subsection (g).

(b) FEDERAL INFORMATION PRIVACY POLICY.—

(1) IN GENERAL.—Chapter 35 of title 44, United States Code, is amended by adding at the end the following:

''SUBCHAPTER IV—FEDERAL INFORMATION PRIVACY POLICY

''§ 3561. Purposes

''The purposes of this subchapter are to—

''(1) ensure the consistent application of privacy protections to personally identifiable information collected, maintained, and used by all agencies;

''(2) strengthen the responsibility and accountability of the Office of Management and Budget for overseeing privacy protection in agencies;

''(3) improve agency responses to privacy breaches to better inform and protect the public from the misuse of personally identifiable information;

''(4) strengthen the responsibility and accountability of agency officials for ensuring effective implementation of privacy protection requirements; and

''(5) ensure that agency use of commercial sources of information and information system services provides adequate information security and privacy protections.

''§ 3562. Definitions

''(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

''(b) ADDITIONAL DEFINITIONS.—In this subchapter—

''(1) the term 'Council' means the Chief Privacy Officers Council established under section 3567;

''(2) the term 'personally identifiable information' means any information about an individual maintained by an agency, including—

''(A) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and

''(B) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information; and

''(3) the term 'data broker' means a person or entity that for a fee regularly engages in the practice of collecting, transmitting, or providing access to personally identifiable information concerning more than 5,000 individuals who are not the customers or employees of that person or entity (or an affiliated entity) primarily for the purposes of providing such information to non-affiliated third parties on an interstate basis.

''§ 3563. Authority and functions of the Director

''(a) In fulfilling the responsibility to administer the functions assigned under subchapter I, the Director of the Office of Management and Budget shall comply with this subchapter with respect to the specific matters covered by this subchapter.

''(b) The Director shall oversee agency privacy protection policies and practices, including by—

''(1) developing and overseeing the implementation of policies, principles, standards, and guidelines on privacy protection;

''(2) providing direction and overseeing privacy, confidentiality, security, disclosure, and sharing of information;

''(3) overseeing agency compliance with laws relating to privacy protection, including the requirements of this subchapter, section 552a of title 5 (commonly referred to as the Privacy Act), and section 208 of the E-Government Act of 2002;

''(4) coordinating privacy protection policies and procedures with related information resources management policies and procedures, including through ensuring that privacy protection considerations are taken into account in managing the collection of information and the control of paperwork as provided under subchapter I; and

''(5) appointing a Federal Chief Privacy Officer under section 3564.

''§ 3564. Specific responsibilities of the Federal Chief Privacy Officer

''(a) FEDERAL CHIEF PRIVACY OFFICER.—

''(1) DEFINITIONS.—In this section—

''(A) the term 'Senior Executive Service position' has the meaning given under section 3132(a)(2) of title 5; and

''(B) the term 'noncareer appointee' has the meaning given under section 3132(a)(7) of title 5;

''(2) ESTABLISHMENT.—There is established the position of the Federal Chief Privacy Officer within the Office of Management and Budget. The position shall be a Senior Executive Service position. The Director shall appoint a noncareer appointee to the position. The primary responsibilities of the position shall be the responsibilities under subsection (b).

''(3) QUALIFICATIONS.—The individual appointed to be the Federal Chief Privacy Officer shall posses demonstrated expertise in privacy protection policy and Government information.

''(b) RESPONSIBILITIES.—The Federal Chief Privacy Officer shall—

''(1) carry out the responsibilities of the Director under this subchapter;

''(2) provide overall direction, consistent with the Office of Management and Budget guidance, section 552a of title 5 (commonly referred to as the Privacy Act), and section 208 of the E-Government Act of 2002, of privacy policy governing the Federal Government's collection, use, sharing, disclosure, transfer, storage, security, and disposition of personally identifiable information;

''(3) to the extent that the Federal Chief Privacy Officer considers appropriate, establish procedures to review and approve privacy documentation before public dissemination;

''(4) serve as the principal advisor for Federal privacy policy matters to the Executive Office of the President, including the President, the Director, the National Security Council, the Homeland Security Council, and the Office of Science and Technology Policy;

''(5) coordinate with the Privacy and Civil Liberties Oversight Board established under section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (5 U.S.C. 601 note); and

''(6) every 2 years submit a report to Congress on the protection of privacy by the United States Government, including the status of implementation of requirements under this subchapter and other privacy related laws and policies.

''§ 3565. Privacy breach requirements

''The Director shall establish and oversee policies and procedures for agencies to follow in the event of a breach of information security involving the disclosure of personally identifiable information and for which harm to an individual could reasonably be expected to result, including—

''(1) a requirement for timely notice to be provided to those individuals whose personally identifiable information could be compromised as a result of such breach, except no notice shall be required if the breach does not create a reasonable risk of identity theft, fraud, or other unlawful conduct regarding such individual;

''(2) guidance on determining how timely notice is to be provided;

''(3) guidance regarding whether additional actions are necessary and appropriate, including data breach analysis, fraud resolution services, identity theft insurance, and credit protection or monitoring services; and

''(4) requirements for timely reporting by the agencies of such breaches to the director and the Federal information security incident center referred to in section 3546.

''§ 3566. Agency responsibilities

''(a) IN GENERAL.—In addition to requirements under section 1062 of the National Security Intelligence Reform Act of 2004, and in fulfilling the responsibilities under section 3506(g), the head of each agency shall ensure compliance with laws relating to privacy protection, including the requirements of this subchapter, section 552a of title 5 (commonly referred to as the Privacy Act), and section 208 of the E-Government Act of 2002.

''(b) CHIEF PRIVACY OFFICERS.—In the case of an agency that has not designated a Chief Privacy Officer under section 522 of the Transportation, Treasury, Independent Agencies and General Government Appropriations Act, 2005 (42 U.S.C. 2000ee–2), the head of each agency shall—

''(1) designate a senior official to be the chief privacy officer of that agency; and

''(2) provide to the chief privacy officer such information as the officer considers necessary.

''(c) RESPONSIBILITIES OF AGENCY CHIEF PRIVACY OFFICER.—Each chief privacy officer shall have primary responsibility for assuring the adequacy of privacy protections for personally identifiable information collected, used, or disclosed by the agency, including—

''(1) ensuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information, including through the conduct of privacy impact assessments as provided by section 208 of the E-Government Act of 2002;

''(2) ensuring that personal information is handled in full compliance with fair information practices under section 552a of title 5 (commonly referred to as the Privacy Act) and other applicable laws and policies;

''(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personally identifiable information;

''(4) coordinating with the chief information officer to ensure that privacy is adequately addressed in the agency information security program, established under section 3544;

''(5) coordinating with other senior officials to ensure programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations addressed in an integrated and comprehensive manner; and

''(6) reporting periodically to the head of the agency on agency privacy protection activities.

''§ 3567. Chief Privacy Officers Council

''(a) ESTABLISHMENT.—There is established in the executive branch a Chief Privacy Officers Council.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The members of the Council shall be as follows:

''(A) The Federal Chief Privacy Officer, who shall serve as chairperson of the Council.

''(B) Chief Privacy Officers established under section 522 of division H of the Consolidated Appropriations Act, 2005 (42 U.S.C. 2000 ee–2; Public Law 108–447).

''(C) The chairperson of the Privacy and Civil Liberties Oversight Board.

''(D) As designated by the chairperson of the Council, any senior agency official designated to be a chief privacy officer under section 3566.

''(E) The Administrator of the Office of Electronic Government, as an ex-officio member.

''(F) The Administrator of the Office of Information and Regulatory Affairs, as an ex-officio member.

''(G) Any other officer or employee of the United States designated by the chairperson.

''(2) EX-OFFICIO MEMBERS.—An ex-officio member may not vote in Council proceedings.

''(c) ADMINISTRATIVE SUPPORT.—The Administrator of the General Services shall provide administrative and other support for the Council.

''(d) FUNCTIONS.—The Council shall—

''(1) be an interagency forum for establishing best practices for agency privacy policy;

''(2) share, and promote the development of, best practices to assure that the use of technologies sustains, and does not erode, privacy protections relating to the use, collection, and disclosure of personal information; assure that personal information contained in systems of records are handled in full compliance with fair information practices; and evaluate legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government; and

''(3) submit proposed improvements to privacy practices to the Director.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 35 of title 44, United States Code, is amended by adding at the end the following:

''SUBCHAPTER IV—FEDERAL INFORMATION PRIVACY POLICY

(c) ELECTRONIC GOVERNMENT.—Section 3602(d) of title 44, United States Code, is amended by inserting ''and the Federal Chief Privacy Officer'' after ''Information and Regulatory Affairs''.

SEC. 5. AMENDMENTS TO SECTION 1062 OF THE NATIONAL INTELLIGENCE REFORM ACT OF 2004.

Section 1062 of the National Intelligence Reform Act of 2004 (42 U.S.C. 2000ee–1) is amended—

(1) by redesignating subsection (d) through (h) as subsections (e) through (i); and

(2) by striking subsection (c) and inserting the following:

''(c) AUTHORITY TO INVESTIGATE.—

''(1) IN GENERAL.—Each privacy officer or civil liberties officer described under subsection (a) or (b) may—

''(A) have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to the Department, agency, or element of the executive branch that relate to programs and operations with respect to the responsibilities of the senior official under this section;

''(B) make such investigations and reports relating to the administration of the programs and operations of the Department, agency, or element of the executive branch as are, in the senior official's judgment, necessary or desirable;

''(C) subject to the approval of the Secretary or head of the agency or element of the executive branch, require by subpoena the production, by any person other than a Federal agency, of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to performance of the responsibilities of the senior official under this section; and

''(D) administer to or take from any person an oath, affirmation, or affidavit, whenever necessary to performance of the responsibilities of the senior official under this section.

''(2) ENFORCEMENT OF SUBPOENAS.—Any subpoena issued under paragraph (1)(C) shall, in the case of contumacy or refusal to obey, be enforceable by order of any appropriate United States district court.

''(3) EFFECT OF OATHS.—Any oath, affirmation, or affidavit administered or taken

under paragraph (1)(D) by or before an employee of the Privacy Office designated for that purpose by the senior official appointed under subsection (a) shall have the same force and effect as if administered or taken by or before an officer having a seal of office.

''(d) SUPERVISION AND COORDINATION.—

''(1) IN GENERAL.—Each privacy officer or civil liberties officer described under subsection (a) or (b) shall—

''(A) report to, and be under the general supervision of, the Secretary; and

''(B) coordinate activities with the Inspector General of the Department in order to avoid duplication of effort.

''(2) COORDINATION WITH THE INSPECTOR GENERAL.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the senior official appointed under subsection (a) may investigate any matter relating to possible violations or abuse concerning the administration of any program or operation of the Department, agency, or element of the executive branch relevant to the purposes under this section.

''(B) COORDINATION.—

''(i) REFERRAL.—Before initiating any investigation described under subparagraph (A), the senior official shall refer the matter and all related complaints, allegations, and information to the Inspector General of the Department, agency, or element of the executive branch.

''(ii) DETERMINATIONS AND NOTIFICATIONS BY THE INSPECTOR GENERAL.—Not later than 30 days after the receipt of a matter referred under clause (i), the Inspector General shall—

''(I) make a determination regarding whether the Inspector General intends to initiate an audit or investigation of the matter referred under clause (i); and

''(II) notify the senior official of that determination.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 296—COMMEMORATING THE 50TH ANNIVERSARY OF THE COMBINED FEDERAL CAMPAIGN

Mr. AKAKA (for himself, Mr. LIEBERMAN, Mr. LEVIN, and Mr. CARPER) submitted the following resolution; which was referred to the Committee on Homeland Security and Governmental Affairs:

S. RES. 296

Whereas the Combined Federal Campaign was established pursuant to Executive Order 10927 (26 Fed. Reg. 2383) signed by President John F. Kennedy on March 18, 1961;

Whereas the Combined Federal Campaign is the only authorized charitable fundraising campaign for Federal employees, employees of the United States Postal Service, and members of the armed forces;

Whereas the Combined Federal Campaign operates in more than 119 localities throughout the United States, Puerto Rico, the United States Virgin Islands, and overseas military installations;

Whereas more than 20,000 nonprofit charitable organizations participate annually in the Combined Federal Campaign;

Whereas the men and women of the Federal Government, the United States Postal Service, and the Armed Forces have contributed approximately $7,000,000,000 to local, national, and international charities over the past 50 years, making the Combined Federal Campaign the largest and most successful workplace charitable drive in the world; and

Whereas commemorating the 50th anniversary of the Combined Federal Campaign will thank public servants whose generous contributions over the years have helped to feed hungry children, cure disease, comfort the sick and dying, protect the environment and natural resources of the United States, and offered hope to people and communities across the United States and worldwide: Now, therefore, be it

Resolved, That the Senate:

(1) commemorates the 50th anniversary of the Combined Federal Campaign;

(2) commends public servants of the United States for their unyielding dedication, generosity, and spirit of charitable giving;

(3) calls upon the new generation of Federal employees, employees of the United States Postal Service, and members of the Armed Forces to participate annually in the Combined Federal Campaign;

(4) encourages all Federal employees, employees of the United States Postal Service, and members of the Armed Forces to continue their philanthropic efforts for the betterment of the less fortunate; and

(5) urges the people of the United States to observe the 50th anniversary of the Combined Federal Campaign with appropriate ceremonies and activities.

Mr. AKAKA. Mr. President, I rise today to commemorate the 50th anniversary of the Combined Federal Campaign, CFC. In 1961, President John F. Kennedy established the CFC, which has grown over the last 50 years to become the world's largest and most successful workplace charity campaign. Pledging to donate through the CFC gives charities steady streams of revenue throughout the next year, lowers overhead costs so more money goes directly to the charity's work, and is a convenient way for Federal employees to donate to their charities of choice.

Federal employees have dedicated their lives to serving and protecting the American people, and that call to service extends far beyond their professional lives. Each year, Federal employees together give millions of dollars through the CFC to help support the work of over 20,000 non-profit, charitable organizations in the United States and around the world. Since 1961, Federal civilian, military, and Postal employees have donated nearly $7 billion through the CFC, including $282 million in 2010.

In today's economy, contributions through the CFC are essential to many organizations that receive them. A great number of these organizations have seen an increase in the need for the important services they provide, while fewer Americans are able to give the financial support on which these organizations rely. I applaud the generosity of our Federal community and encourage each of you to consider what you can pledge to give in the upcoming year. Our combined efforts can ensure that Americans and others across the globe have access to the important support and services that these charities provide. The 50th anniversary CFC campaign season has already begun and runs until December 15.

I thank my colleagues Senators LIEBERMAN, LEVIN and CARPER for cosponsoring this legislation and I encourage my colleagues to join me in celebrating the 50th anniversary of the CFC and highlighting the support these contributions bring to non-profit, charitable organizations throughout the world.

SENATE RESOLUTION 297—CONGRATULATING THE CORPORATION FOR SUPPORTIVE HOUSING ON THE 20TH ANNIVERSARY OF ITS FOUNDING

Mr. MENENDEZ (for himself and Mr. PORTMAN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 297

Whereas the Corporation for Supportive Housing was founded in 1991 with a mission of ending homelessness through the creation of permanent housing connected to quality supportive services;

Whereas the Corporation for Supportive Housing has been an industry leader in advancing the supportive housing model;

Whereas supportive housing is a proven solution for ending homelessness among various populations including individuals, families, veterans, youth aging out of foster care, Native Americans, those re-entering communities following incarceration, and the chronically homeless;

Whereas targeting supportive housing to frequent users of publicly funded emergency systems is a highly cost-effective use of public funds;

Whereas the Corporation for Supportive Housing is a Community Development Financial Institution approved by the Treasury Department;

Whereas the Corporation for Supportive Housing has committed more than $300,000,000 in grants and low-interest loans to support the development of supportive housing;

Whereas the Ohio office of Corporation for Supportive Housing has invested more than $11,000,000 to further the development of approximately 1,500 units of supportive housing in the State of Ohio and the New Jersey office of Corporation for Supportive Housing has invested more than $40,000,000 to further the development of approximately 3,800 units of supportive housing in the State of New Jersey;

Whereas the Corporation for Supportive Housing has engaged in lending, grant making, and project-specific assistance resulting in approximately 50,000 new units of supportive housing for the homeless that have either been developed since the founding of the Corporation for Supportive Housing, or are in development;

Whereas approximately 32,727 formerly homeless adults and children live in supportive housing units directly supported by the Corporation for Supportive Housing; and

Whereas the Corporation for Supportive Housing has staff located in 14 States and has worked in every State in the United States to help further the creation of supportive housing to prevent and end homelessness: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the Corporation for Supportive Housing on the 20th anniversary of its founding;

(2) supports the Corporation for Supportive Housing's mission of preventing and ending homelessness in the United States; and

(3) encourages the staff of the Corporation for Supportive Housing to continue their tireless efforts on behalf of the people in the United States without a home.