be proposed to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 169. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 170. Mr. GREGG (for himself, Mr. SUNUNU, and Mr. ISAKSON) submitted an amendment intended to be proposed by him to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 171. Mr. GREGG (for himself, Mr. SUNUNU, and Mr. ISAKSON) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS and Mr. HARKIN) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 172. Mr. ROBERTS submitted an amendment intended to be proposed by him to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 173. Mr. KERRY submitted an amendment intended to be proposed to amendment SA 112 submitted by Mr. SUNUNU to the amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 174. Mr. KERRY submitted an amendment intended to be proposed by him to the bill H.R. 2, supra; which was ordered to lie on the table.

SA 175. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 111. Mr. SUNUNU submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. PUBLIC HOUSING AGENCY PLANS FOR CERTAIN QUALIFIED PUBLIC HOUSING AGENCIES.

(a) Short Title.—This section may be cited as the “Small Public Housing Authorities Paperwork Reduction Act”.

(b) In General.—Section 5(a) of the United States Housing Act of 1937 (42 U.S.C. 1437c(a)) is amended by adding at the end the following:

“(3) Exemption of certain phas from filing requirement.—

“(A) In General.—Notwithstanding paragraph 6(b)(1) of this Act, the requirement under paragraph (1) shall not apply to any qualified public housing agency.

“(B) Exception.—For purposes of this subsection, the term ‘qualified public housing agency’ means a public housing agency that—

“(i) administers—

“(II) any number of vouchers under section 8(o) of this Act; and

“(II) is not designated under section 6(j)(2) as a troubled public housing agency.

“(c) Resident Participation.—Section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c-1) is amended—

“(1) in subsection (b) by inserting after paragraph (3) the following:

“(4) QUALIFIED PUBLIC HOUSING AGENCIES.—

“(A) In General.—Except as provided in subparagraph (B), nothing in this section may be construed to exempt a qualified public housing agency from the requirement under paragraph (1) to establish 1 or more resident advisory boards.

“(B) Administration of the requirement under this paragraph.—Notwithstanding that qualified public housing agencies are exempt under subsection (b)(3)(A) from the requirement under paragraph (1) to establish resident advisory boards, each qualified public housing agency shall consult with, and consider the recommendations of, the resident advisory boards for the agency, at the annual public hearing required under subsection (f)(5), regarding any changes to the goals, objectives, and policies of that agency.

“(d) Application of waiver authority.—A resident advisory board for a qualified public housing agency may waive any requirement described in paragraph (1) or (2) if that member of the advisory board—

“(A) is a resident of the area served by such public housing agency;

“(B) is an active participant in the activities of that board; and

“(C) by a vote of at least 2 of the 3 members of the board, is regarded by the agency as actively participating in the work of the board.

“(e)(4)(B), any reference in this section or any other provision of law to a ‘public housing agency’ shall not be considered to refer to any qualified public housing agency, to the extent such reference applies to the requirement to submit an annual public housing plan under section 6(a) or 6(b).

“(f) Expiration.—Subsection (e)(4) of the United States Housing Act of 1937 (42 U.S.C. 1437c-1(e)) is amended by striking out ‘3 years’ and inserting ‘5 years’.

“(g) Definition.—For purposes of this section, the term ‘qualified public housing agency’ means a public housing agency that—

“(1) administers—

“(I) 500 or fewer public housing dwelling units on

“(II) any number of vouchers under section 8(o) of this Act; and

“(III) is not designated under section 6(j)(2) as a troubled public housing agency.

“(h) Application of waiver authority.—A resident advisory board for a qualified public housing agency may waive any requirement described in paragraph (1) or (2) if that member of the advisory board—

“(1) administers—

“(I) 500 or fewer public housing dwelling units on

“(II) any number of vouchers under section 8(o) of this Act; and

“(III) is not designated under section 6(j)(2) as a troubled public housing agency.

“(i) Resident Participation.—Section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c-1) is amended—

“(1) in subsection (b) by inserting after paragraph (3) the following:

“(4) QUALIFIED PUBLIC HOUSING AGENCIES.—

“(A) In General.—Except as provided in subparagraph (B), nothing in this section may be construed to exempt a qualified public housing agency from the requirement under paragraph (1) to establish 1 or more resident advisory boards. Notwithstanding that qualified public housing agencies are exempt under subsection (b)(3)(A) from the requirement under paragraph (1) to establish resident advisory boards, each qualified public housing agency shall consult with, and consider the recommendations of, the resident advisory boards for the agency, at the annual public hearing required under subsection (f)(5), regarding any changes to the goals, objectives, and policies of that agency.

“(B) Administration of the requirement under this paragraph.—Notwithstanding that qualified public housing agencies are exempt under subsection (b)(3)(A) from the requirement under paragraph (1) to establish resident advisory boards, each qualified public housing agency shall consult with, and consider the recommendations of, the resident advisory boards for the agency, at the annual public hearing required under subsection (f)(5), regarding any changes to the goals, objectives, and policies of that agency.

“(c) Resident Participation.—A resident advisory board for a qualified public housing agency may waive any requirement described in paragraph (1) or (2) if that member of the advisory board—

“(1) administers—

“(I) 500 or fewer public housing dwelling units on

“(II) any number of vouchers under section 8(o) of this Act; and

“(III) is not designated under section 6(j)(2) as a troubled public housing agency.

“(d) Application of waiver authority.—A resident advisory board for a qualified public housing agency may waive any requirement described in paragraph (1) or (2) if that member of the advisory board—

“(1) administers—

“(I) 500 or fewer public housing dwelling units on

“(II) any number of vouchers under section 8(o) of this Act; and

“(III) is not designated under section 6(j)(2) as a troubled public housing agency.

“(e)(4)(B), any reference in this section or any other provision of law to a ‘public housing agency’ shall not be considered to refer to any qualified public housing agency, to the extent such reference applies to the requirement to submit an annual public housing plan under section 6(a) or 6(b).

“(f) Expiration.—Subsection (e)(4) of the United States Housing Act of 1937 (42 U.S.C. 1437c-1(e)) is amended by striking out ‘3 years’ and inserting ‘5 years’.

“(g) Definition.—For purposes of this section, the term ‘qualified public housing agency’ means a public housing agency that—

“(1) administers—

“(I) 500 or fewer public housing dwelling units on

“(II) any number of vouchers under section 8(o) of this Act; and

“(III) is not designated under section 6(j)(2) as a troubled public housing agency.

“SECTION 925.—RENEWAL GRANTS FOR WOMEN’S BUSINESS CENTERS.

Section 29 of the Small Business Act (15 U.S.C. 656) is amended by adding at the end the following:

“(m) Continued Funding for Centers.—

“(1) IN GENERAL.—A nonprofit organization described in paragraph (2) shall be eligible to receive, subject to paragraph (3), a 3-year grant under this subsection.

“(2) APPLICABILITY.—A nonprofit organization described in paragraph (2) is a nonprofit organization that—

“(A) has received funding under subsections (b) and (l); and

“(B) is not eligible under the programs under such subsections for the first fiscal year after the end of the period of financial assistance under such subsection.

“(3) APPLICATION AND APPROVAL CRITERIA.—

“(A) CRITERIA.—The Administrator shall develop and publish criteria for the consideration and approval of applications by nonprofit organizations under this subsection.

“(B) NOTIFICATION.—Not later than 60 days after the date of the deadline to submit applications for each fiscal year, the Administrator shall approve or deny any application under this subsection and notify the applicant for such application.

“(A) AWARD OF GRANTS.—

“(A) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall make a grant for the Federal share of the cost of activities described in the application to each applicant approved under this subsection.

“(B) AMOUNT.—A grant under this subsection shall be for not less than $30,000 and not more than $150,000, for each year of that grant.

“(C) FEDERAL SHARE.—The Federal share under this subsection shall be not more than 50 percent.

“(D) PRIORITY.—In allocating funds made available for grants under this section, the Administrator shall give applications under this subsection priority over first-time applications under subsection (b).

“(5) RENEWAL.—The Administrator may renew a grant under this subsection for additional 3-year periods, if the nonprofit organization submits an application for such renewal at such time, in such manner, and according to such regulations as the Administrator may establish.”.

SA 113. Mr. SMITH submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 3. PERMANENT EXTENSION OF CERTAIN EDUCATION-RELATED TAX INCENTIVES.

(a) REPEAL OF SUNSET ON AFFORDABLE EDUCATION PROVISIONS.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to title IV of such Act (relating to affordable education provisions).


SA 114. Mr. THUNE (for himself and Mr. VITTER) submitted an amendment
intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**TITLE—SMALL BUSINESS HEALTH COVERAGE**

**SEC. 01. SHORT TITLE.**

This title may be cited as the ‘‘Small Business Health Improvement Act of 2007’’.

**SEC. 02. RULES GOVERNING ASSOCIATION HEALTH PLANS.**

(a) *In General.—*Subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) shall be modified as follows:

*PART VIII—RULES GOVERNING ASSOCIATION HEALTH PLANS* [insert new part]

**SEC. 801. ASSOCIATION HEALTH PLANS.**

(a) *In General.—*For purposes of this part, the term ‘‘association health plan’’ means a health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

(b) *SPONSOR.—*The sponsor of a group health plan is described in this subsection if such sponsor

- (1) in general,

- (2) is established as a permanent entity or other means demonstrated by such plan in connection with plans in such class and payment of the prescribed fee under section 807(a),

- (3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependent employees, and does not condition such dues or payments on the basis of group health plan participation.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), and (3) shall be deemed to be a sponsor described in this subsection.

**SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH PLANS.**

(a) *In General.—*The applicable authority shall prescribe by regulation a procedure under which, subject to subsection (b), the applicable authority shall certify association health plans which apply for certification as meeting the requirements of this part.

(b) *STANDARDS.—*Under the procedure prescribed pursuant to subsection (a), in the case of an association health plan that provides at least one benefit option which does not consist of health insurance coverage, the applicable authority shall certify association health plans which apply for certification as meeting the requirements of this part only if the applicable authority is satisfied that the applicable requirements of this part are met with respect to the plan (with respect to the date on which the plan is to commence operations, will be met) with respect to the plan.

(c) *REQUIREMENTS APPLICABLE TO CERTIFIED PLANS.—*An association health plan with respect to which certification under this part is in effect shall meet the applicable requirements of this part on the date of certification (or, if later, on the date on which the plan is to commence operation).

(d) *REQUIREMENTS FOR CONTINUED CERTIFICATION.—*The applicable authority may provide by regulation for continued certification of association health plans under this part.

(e) *CLASS CERTIFICATION FOR FULLY INSURED PLANS.—*The applicable authority shall establish a class certification procedure for association health plans under which all benefits consist of health insurance coverage. Under such procedure, the applicable authority may authorize the granting of certification under this part to the plans in each class of such association health plans upon appropriate filing under such procedure in connection with plans in such class and payment of the prescribed fee under section 807(a).

(f) *CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—*An association health plan which offers one or more benefit options which do not consist of health insurance coverage shall be certified under this part only if such plan consists of any of the following:

- (1) a plan which offered such coverage on the date of the Small Business Health Improvement Act of 2007,

- (2) a plan under which the sponsor does not restrict membership to one or more industries and whose eligible participating employers represent a broad cross-section of trades and businesses or industries, or

- (3) a plan which eligible participating employers represent one or more trades or businesses, or one or more industries, consisting of any of the following: agriculture; equipment and automobile dealerships; barbering and cosmetology; certified public accounting practices; child care; construction; dance, theatrical and orchestra productions; disinfesting and pest control; financial services; fishing; foodservice establishments; hospitals; labor organizations; logging; manufacturing (metals); mining; medical and dental practices; motor vehicle repair and sales; professional consulting services; sanitary services; transportation (local and freight); warehousing; wholesaling/distributing; or any other trade or industry which has been indicated as having average or above-average risk or health claims experience by reason of State rate filings, denials of coverage, proposed premium rate levels, or other means demonstrated by such plan in accordance with regulations.

**SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND BOARDS OF TRUSTEES.**

(a) *SPONSOR.—*The requirements of this subsection are met with respect to an association health plan if the sponsor has met or is deemed under this part to have met the requirements of section 801(b) for a continuous period of not less than 3 years ending with the date of the application for certification under this part.

(b) *BOARD OF TRUSTEES.—*The requirements of this subsection are met with respect to an association health plan if the following requirements are met:

- (1) *FISCAL CONTROL.—*The plan is operated, pursuant to a trust agreement, by a board of trustees which has complete fiscal control over the plan and which is responsible for all operations of the plan.

- (2) *RULES OF OPERATION AND FINANCIAL CONTROLS.—*The rules of operation and financial controls in effect rules of operation and financial controls, based on a 3-year plan of operation, adequate to carry out the terms of the plan and to meet all requirements of this title applicable to the plan.

(c) *RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—*

- (A) *BOARD MEMBERSHIP.—*

- (1) *In General.—*Except as provided in clauses (ii) and (iii), no member of the board of trustees is a sponsor which is in existence on the date of the enactment of the Small Business Health Improvement Act of 2007.

- (ii) *LICENSED SPONSOR.—*Except as provided in subclauses (ii) and (iii), no member of the board of trustees is a sponsor which is in existence on the date of the enactment of the Small Business Health Improvement Act of 2007.

- (B) *SOLICITATION.—*The board has sole authority to negotiate and enter into agreements with service providers for participation in the plan and to contract with a service provider to administer the day-to-day affairs of the plan.

(c) *TREATMENT OF FRANCHISE NETWORKS.—*In the case of a group health plan which is established and maintained by a franchisor for a franchise network consisting of its franchisees—

- (1) the requirements of subsection (a) shall be deemed met, except that, in the case of a sponsor which is a professional association or other individual related association, any one of the officers, directors, or employees of an employer, or at least one of the individuals who is a representative of the franchisees.

**SEC. 804. PARTICIPATION AND COVERAGE REQUIREMENTS.**

(a) *COVERED EMPLOYERS AND INDIVIDUALS.—*The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan—

- (1) each participating employer must be—

- (A) a member of the sponsor,

- (B) the sponsor, or

- (C) an affiliated member of the sponsor with respect to which the requirements of subsection (b) are met.

- (2) the requirements of section 804(a)(1) shall be deemed met.

The Secretary may by regulation define for purposes of this subsection the terms ‘‘franchiser’’, ‘‘franchise network’’, and ‘‘franchisee’’.
who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include 

"(2) all individuals commencing coverage under the plan after certification under this part must be—

"(A) active or retired employees (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

"(B) the beneficiaries of individuals described in subparagraph (A)."

"(b) COVERAGE OF PREVIOUSLY UNINSURED EMPLOYEES.—(1) In general.—Subject to paragraphs (2) and (3) of this subsection, if a group health plan in existence on the date of the enactment of the Small Business Health Improvement Act of 2007, an affiliated member of the sponsor or of a participating employer may be offered coverage under the plan as a participating employer only if—

"(1) the affiliated member was an affiliated member on the date of certification under this part; or

"(2) during the 12-month period preceding the date of the offering of such coverage, the affiliated member did not maintain or contributed to a group health plan with respect to any of its employees who would otherwise be eligible to participate in such association health plan.

"(c) INDIVIDUAL MARKET UNAFFINDED.—The requirements of this subsection are met with respect to an association health plan if, under such plan, no participating employer may provide health insurance coverage in the individual market for any employee not covered under the plan which is similar in the coverage contemporaneously provided to employees of the employer under the plan, if such exclusion of the employee from the plan is based on health status-related factor with respect to the employee and such employee would, but for such exclusion on such basis, be eligible for coverage under the plan.

"(d) PROHIBITION OF DISCRIMINATION AGAINST EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—The requirements of this subsection are met with respect to an association health plan if—

"(1) under the terms of the plan, all employers meeting the preceding requirements of this subsection are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution of the type referred to in section 7211 of the Public Health Service Act are not met;

"(2) upon request, any employer eligible to participate is furnished information regarding all coverage options available under the plan; and

"(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

"SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS FOR SOLVENCY FOR PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

"(a) IN GENERAL.—(1) the requirements of this section are met with respect to an association health plan if—

"(i) the benefits under the plan consist solely of health insurance coverage; or

"(ii) the plan provides any additional benefit options which do not consist of health insurance coverage, the plan—

"(A) establishes and maintains reserves with respect to such additional benefit options, in amounts recommended by the qualified actuary, consisting of—

"(I) a reserve sufficient for unearned contributions on such basis, be eligible for such adjustments in the required reserves in the required levels of excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan’s qualified actuary. The applicable authority may by regulation provide for upward adjustment of such percentage in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

"(ii) the plan shall secure specific excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan’s qualified actuary. The applicable authority may by regulation provide for adjustments in the required levels of such insurance coverage, the plan, State-licensed insurance agents—

"(i) the plan shall secure aggregate excess/specific excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan’s qualified actuary. The applicable authority may by regulation provide for adjustments in the required levels of such insurance coverage, the plan—

"(ii) the plan shall secure specific excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan’s qualified actuary. The applicable authority may by regulation provide for adjustments in the required levels of such insurance coverage, the plan—

"(iii) the plan shall secure indemnification insurance for any claims which the plan is unable to satisfy by reason of a plan termination. Any person issuing to a plan insurance described in clause (1), (ii), or (iii) of subparagraph (b) shall notify the Secretary of any failure of premium payment meriting cancellation of the policy prior to undertaking such a cancellation. Any regulations prescribed by the applicable authority pursuant to clause (i) or (ii) of paragraph (a) may allow for such adjustments in the required levels of excess/stop loss insurance as the applicable authority may determine, taking into account the specific circumstances of the plan.

"(b) MINIMUM SUPPLIES IN ADDITION TO CASH RESERVES.—In the case of any association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan establishes and maintains supplies with respect to such additional benefit options, in amounts recommended by the qualified actuary, considering the level of aggregate and specific excess/stop loss insurance provided with
respect to such plan and other factors related to solvency risk, such as the plan's projected levels of participation or claims, the nature of the plan's liabilities, and the types of investments available to assure that such liabilities are met.

(c) Additional Requirements.—In the case of any association health plan described in subsection (a), the applicable authority may provide such additional requirements relating to reserves, excess/stop loss insurance, and indemnification insurance. The applicable authority considers appropriate. Such requirements may be provided by regulation with respect to any such plan or any class of plans to take into account excess/stop loss insurance provided with respect to such plan or plans.

(d) Adjustments for Excess/Stop Loss Insurance.—The applicable authority may provide for adjustments to the levels of reserves and indemnification insurance as the applicable authority considers appropriate. Such requirements may be provided by regulation with respect to any such plan or any class of plans to take into account excess/stop loss insurance provided with respect to such plan or plans.

(e) Alternative Means of Compliance.—The applicable authority may permit an association health plan described in subsection (a)(2) to substitute, for all or part of the requirements of this section (except subsection (a)(2)(B)(iii)), such security, guarantee, hold-harmless arrangement, or other financial arrangement as the applicable authority determines to be adequate to enable the plan to meet all its financial obligations on a timely basis and is otherwise no less protective of the interests of participants and beneficiaries than the requirements for which it is substituted. The applicable authority may take into account, for purposes of this subsection, evidence provided by the plan or sponsor which demonstrates an assumption of liability with respect to the plan. Such evidence may take any form, including a certificate or other indication of indemnification, lien, bonding, insurance, letter of credit, recourse under applicable terms of the plan in the form of assessments of participating employers, security, or other financial arrangement.

(1) Measures to Ensure Continued Payment of Benefits by Certain Plans in Disaster.—

(1) Payments by Certain Plans to Association Health Plan Funds.—

(A) General.—In the case of an association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan makes payments into the Association Health Plan Fund at the time determined by the Secretary. The amount of such payments shall be determined by reason of the termination of such coverage. The Secretary shall, to the extent provided in advance in appropriation Acts, pay such amounts so determined to the insurer designated by the Secretary.

(B) Association Health Plan Fund.—

(i) In General.—There is established on the books of the Treasury a fund to be known as the ‘Association Health Plan Fund’. The Fund shall be available for making payments pursuant to paragraph (2). The Fund shall be credited with payments received pursuant to subparagraph (A), penalties received pursuant to paragraph (1)(B), and earnings on investments of amounts of the Fund.

(ii) B) Investment.—Whenever the Secretary determines that the moneys of the fund are less than such amounts as the Secretary determines advisable by the Secretary of Treasury in obligations issued or guaranteed by the United States. The Fund shall be available for making payments pursuant to paragraph (2). The Fund shall be credited with payments received pursuant to paragraph (1)(A), penalties received pursuant to paragraph (1)(B); and earnings on investments of amounts of the Fund.

(iii) Excess/Stop Loss Insurance.—For purposes of this section—

(1) Aggregate Excess/Stop Loss Insurance. The term ‘aggregate excess/stop loss insurance’ means, in connection with an association health plan, a contract—

(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to aggregate claims under the plan in excess of an amount or amounts specified in such contract;

(B) which is guaranteed renewable; and

(C) which allows for payment of premiums by any third party on behalf of the insured plan.

(2) Specific Excess/Stop Loss Insurance. The term ‘specific excess/stop loss insurance’ means, in connection with an association health plan, a contract—

(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan in connection with a covered individual in excess of an amount or amounts specified in such contract;

(B) which is guaranteed renewable; and

(C) which allows for payment of premiums by any third party on behalf of the insured plan.

(2) Indemnification Insurance. For purposes of this section, the term ‘indemnification insurance’ means, in connection with an association health plan, a contract—

(1) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan which the plan is unable to pay as a result of a termination pursuant to section 809(b) (related to mandatory termination);

(2) which is guaranteed renewable and noncancelable; and

(3) which allows for payment of premiums by any third party on behalf of the insured plan.

(3) Solvency Standards Working Group.—(1) In General.—Within 90 days after the date of the enactment of the Small Business Health Improvement Act of 2007, the applicable authority shall establish a Solvency Standards Working Group. In prescribing the initial regulations under this section, the applicable authority shall take into account the recommendations of such Working Group.

(2) Membership.—The Working Group shall consist of not more than 15 members appointed by the applicable authority. The applicable authority shall include among members persons invited to membership on the Working Group at least one of each of the following:

(A) A representative of the National Association of Insurance Commissioners;

(B) A representative of the American Academy of Actuaries;

(C) A representative of the State governments, or their interests;

(D) A representative of existing self-insured arrangements, or their interests;

(E) A representative of associations of the type referred to in section 3801(b)(1), or their interests; and

(F) A representative of multipayer plans that are group health plans, or their interests.

Sec. 807. Requirements for Application and Related Requirements.

(1) Filing Fee.—Under the procedure prescribed pursuant to section 802(a), an association health plan shall pay to the applicable authority the filing fee at the time of filing an application for certification under this part. The applicable authority shall establish a fee in the amount of $5,000, which shall be available in the case of any application by a plan in order to extend the time provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to association health plans that are insurance plans. The applicable authority may reduce the filing fee described in this subsection, in a manner and form which shall be prescribed by the applicable authority by regulation, at least the following information:

(1) Identifying Information.—The names and addresses of—

(A) the sponsor; and

(B) the members of the board of trustees of the plan.

(2) States in Which Plan Intends to Do Business.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

(3) Bonding Requirements.—Evidence provided by the board of trustees that the bonding requirements of section 412 will be met as of the date of the application or (if later) commencement of operations.

(4) Plan Documents.—A copy of the documents governing the plan (including any bylaws and trust agreements), the summary plan description, and other material describing the benefits that will be provided to participants and beneficiaries under the plan.

(5) Agreements with Service Providers.—A copy of any agreements between the plan and contract administrators and other service providers.
(6) **FUNDING REPORT.**—In the case of association health plans providing benefits options in addition to health insurance coverage, a report setting forth information with respect to the additional benefit options determined as of a date within the 120-day period ending with the date of the application, including the following:

(A) the plan, certified by the board of trustees of the plan, and a statement of actuarial opinion, signed by a qualified actuary, that all applicable requirements of section 806 are met.

(B) **ADJUDICATION OF CONTRIBUTION RATES.**—A statement of the actuarial opinion, signed by a qualified actuary, which sets forth a description of the extent to which contribution rates are adequate to provide for the payment of all obligations and the maintenance of required reserves under the plan for the 12-month period beginning with such date within such 120-day period, taking into account the expected coverage and experience of the plan. If the contribution rates are not fully adequate, the statement of actuarial opinion shall indicate the extent to which the rates are inadequate and the changes needed to ensure adequacy.

(C) **CURRENT AND PROJECTED VALUE OF ASSETS AND LIABILITIES.**—A statement of actuarial opinion, signed by a qualified actuary, which sets forth the current value of the assets and liabilities accumulated under the plan and a projection of the assets, liabilities, income, and expenses of the plan for the 12-month period referred to in subpara (B). The income statement shall identify separately the plan’s administrative expenses, claims processing expenses, and other expenses included.

(D) **COSTS OF COVERAGE TO BE CHARGED AND OTHER EXPENSES.**—A statement of the costs of coverage to be charged, including an itemization of expenses for such coverage, costs of reserves, and other expenses associated with the operation of the plan.

(E) **OTHER INFORMATION.**—Any other information as may be determined by the applicable authority, by regulation, as necessary to carry out the purposes of this part.

(c) **FILING NOTICE OF CERTIFICATION WITH STATES.**—A certification granted under this part to an association health plan shall not be effective unless written notice of such certification is filed with the State authority of each State in which at least 25 percent of the participants and beneficiaries under the plan are located. For purposes of this section, an individual shall be considered to be located in the State in which a known address of such individual is located or in which such individual is employed.

(d) **NOTICE OF MATERIAL CHANGES.**—In the case of any association health plan certified under this part, any changes in any information which was required to be submitted with the application for the certification under this part shall be filed in such manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation such interim reports as it considers appropriate.

(f) **ENGAGEMENT OF QUALIFIED ACTUARY.**—The board of trustees of each association health plan certified under this part shall, in addition to health insurance coverage and which is applying for certification under this part, or is certified under this part shall engage, or cause to be engaged, one or more qualified actuaries who shall be responsible for the preparation of the materials comprising information necessary to be submitted as part of, the annual report. The qualified actuary shall utilize such assumptions and techniques as are necessary to enable such actuary to form an opinion as to whether the contents of the matters reported under this part—

1. are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

2. represent such actuary’s best estimate of anticipated experience under the plan.

The opinion by the qualified actuary shall be accompanied with a statement which shall be made a part of the annual report:

sec. 808. **NOTICE REQUIREMENTS FOR VOLUNTARY PLANS.**—Except as provided in section 809(b), an association health plan which is or has been certified under this part may terminate (upon or at any time after cessation of association health plan operations and benefit liabilities), only if the board of trustees, not less than 60 days before the proposed termination date—

1. provides to the participants and beneficiaries a written statement stating that such termination is intended and the proposed termination date;

2. develops a plan for winding up the affairs of the plan within a manner which will result in timely payment of all benefits which for which the plan is obligated; and

3. submits such plan in writing to the applicable authority.

Actions required under this section shall be taken in such form and manner as may be prescribed by the applicable authority by regulation.

sec. 809. **CORRECTIVE ACTIONS AND MANDATORY TERMINATION.**—

(a) **Actions to Avoid Depletion of Reserves.**—An association health plan which is certified under this part and which provides benefits other than health insurance coverage, shall continue to meet the requirements of section 806, irrespective of whether such certification continues in effect. The board of trustees of such plan shall determine quarterly whether the requirements of section 806 are met. In any case in which the board determines that there is reason to believe that there is or will be a failure to meet any requirement, the applicable authority shall make such a determination and so notifies the board, the board shall immediately notify the qualified actuary engaged by the plan, and, if at the end of the next following month, make such recommendations to the board for corrective action as the actuary determines necessary to ensure compliance with section 806. Not later than 30 days after receiving from the actuary recommendations for corrective actions, the board shall notify the applicable authority in writing whether (if any) that the board has taken or plans to take in response to such recommendations.

The board shall thereafter report to the applicable authority, in such form and frequency as the applicable authority may require, the corrective action taken by the board and the requirements of section 806 are met.

(b) **Mandatory Termination.**—In any case in which—

1. the applicable authority has been notified under subsection (a) (or by an insurer of excess/stop loss insurance or indemnity insurance pursuant to sections 806(a) and 806(b) of this title, or other applicable provisions of law) of a failure of an association health plan which is or has been certified under this part and is described in section 808(a)(2) to meet the requirements of sections 806 and has been notified by the board of trustees of the plan that corrective action has restored compliance with such requirements; and

2. the applicable authority does not determine that there is a reasonable expectation that the plan will continue to fail to meet the requirements of section 806,

the board of trustees of the plan shall, at the direction of the applicable plan, apply, terminate the plan and, in the course of the termination, take such actions as the applicable authority may require, including satisfactory referral of such plan to another plan certified under this part or providing for the assumption of the assets and liabilities of such plan by the applicable authority, in such form and frequency as the applicable authority may prescribe by regulation such interim reports as are necessary to enable such actuary to form an opinion as to whether the contents of the matters reported under this part—

1. are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

2. represent such actuary’s best estimate of anticipated experience under the plan.

The opinion by the qualified actuary shall be accompanied with a statement which shall be made a part of the annual report:

sec. 810. **TRUSTEEHIP OF THE SECRETARY OF INSOLVENT ASSOCIATION HEALTH PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.**

(a) **APPOINTMENT OF SECRETARY AS TRUSTEE FOR INSOLVENT PLAN.**—When the Secretary determines that an association health plan which is or has been certified under this part and which is described in section 808(a)(2) will be unable to provide benefits when due or is otherwise in a financially hazardous condition, as shall be defined by the Secretary, the Secretary shall appoint as trustee under section 806(a)(2) a qualified actuary to administer the plan for the duration of the trusteeship.

(b) **POWERS AS TRUSTEE.**—The Secretary, upon appointment as trustee under subsection (a), shall have the power—

1. to do any act authorized by the plan, this title, or other applicable provisions of law to be done by the plan administrator or any trustee of the plan;

2. to require the transfer of all (or any part) of the assets and records of the plan to the Secretary as trustee;

3. to invest any assets of the plan which the Secretary holds in accordance with the provisions of the plan, regulations prescribed by the Secretary, and applicable provisions of law;

4. to require the sponsor, the plan administrator, any participating employer, and any other person to furnish any information with respect to the plan which the Secretary as

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trustee may reasonably need in order to administer the plan.

(5) to collect for the plan any amounts due the plan and to recover reasonable expenses incurred in the collection of such amounts.

(6) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;

(7) to publish, or file such notices, statements, and reports as may be required by the Secretary by regulation or required by any order of the court;

(8) to terminate the plan (or provide for its termination in accordance with section 809(b)) and liquidate the plan assets, to store the plan to the responsibility of the sponsor, and to dispose of the plan's remaining assets;

(9) to provide for the enrollment of plan participants and beneficiaries under appropriate coverage options; and

(10) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries and provide for the prompt and efficient administration of the plan.

(3) NOTICE OF APPOINTMENT.—As soon as practicable after the Secretary's appointment of a trustee, the Secretary shall give notice of such appointment to—

(1) the sponsor and plan administrator;

(2) each participant;

(3) each participating employer; and

(4) if applicable, each employee organization which, for purposes of collective bargaining, represents plan participants.

(4) RULES OF CONSTRUCTION.—Except to the extent inconsistent with the provisions of this title, or as may be otherwise ordered by the court, the Secretary, upon appointment as trustee under this section, shall be subject to the same duties as those of a trustee under section 704 of title 11, United States Code, and shall be subject to the same rules of a fiduciary for purposes of this title.

(e) OTHER PROCEEDINGS.—An application by the Secretary under this subsection may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) JURISDICTION OF COURT.—

(1) IN GENERAL.—Upon the filing of an application for the appointment as trustee or the issuance of a decree under this section, the court in which such application is filed shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11, United States Code. Pending an adjudication under this section such court shall stay, and upon appointment by it of the Secretary as trustee, such court shall continue the stay of any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan, the sponsor, or property of such plan or sponsor, and any other suit against any receiver, conservator, or trustee of the plan, the sponsor, or property of the plan or sponsor. Pending such adjudication and upon the appointment by it of the Secretary as trustee, the court may stay any proceeding to enforce a lien against property of the plan or the sponsor or any other suit against the plan or the sponsor.

(2) VENUE.—An action under this section may be brought in any judicial district where the sponsor or the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue and serve process with respect to such action in any other judicial district.

(4) PERSONNEL.—In accordance with regulations which shall be prescribed by the Secretary, the Secretary shall appoint, retain, and compensate accountants, actuaries, and such other qualified personnel as may be necessary in connection with the Secretary's service as trustee under this section.

SEC. 811. STATE ASSESSMENT AUTHORITY.

(a) In General.—Notwithstanding section 511, a State may by law contribute to an association health plan described in section 806(b)(2), if the plan commenced operations in such State after the date of the enactment of the Small Business Health Improvement Act of 2007.

(b) Contribution Tax.—For purposes of this section, the term ‘contribution tax’ imposed by a State on an association health plan means any tax imposed by such State if—

(1) such tax is computed by applying a rate to the amount of premiums or contributions, with respect to individuals covered under the plan who are residents of such State, which are received by the plan from participating employers located in such State or from such individuals;

(2) the rate of such tax does not exceed the rate of an such tax on premiums or contributions received by insurers or health maintenance organizations for health insurance coverage offered in such State in connection with a group health plan;

(3) such tax is otherwise nondiscriminatory; and

(4) the amount of any such tax assessed on the plan is reduced by the amount of any tax or assessment otherwise imposed by the State on premiums, contributions, or both received by insurers or health maintenance organizations for health insurance coverage, aggregate excess/stop loss insurance (as defined in section 806(g)(1)), specific excess/stop loss insurance (as defined in section 806(g)(2)), other insurance related to the provision of medical care under the plan, or any combination thereof provided by such insurers or health maintenance organizations in such State in connection with such plan.

SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.

(a) Definitions.—For purposes of this part—

(1) GROUP HEALTH PLAN.—The term ‘group health plan’ has the meaning provided in section 733(a)(2).

(2) HEALTH INSURANCE ISSUER.—The term ‘health insurance issuer’ has the meaning provided in section 733(b)(1).

(3) HEALTH INSURANCE COVERAGE.—The term ‘health insurance coverage’ has the meaning provided in section 733(b)(1).

(4) HEALTH STATUS-RELATED FACTOR.—The term ‘health status-related factor’ means, in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

(5) STATE EXCEPTION.—(i) The term ‘state’ has the meaning provided in section 732(d)(3) for the purposes of this title and, for purposes of this section, regulations prescribed by the Secretary shall be considered as carried over from section 732(d)(3) for the purposes of this title.

(ii) State Exception.—(A) In General.—If the Secretary determines that a State, if its laws regulated the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 701A) is regulated in such State, then the term ‘state’ as defined in section 732(d)(3) shall include such individuals.

(B) Participating Employer.—The term ‘participating employer’ means, in connection with such an association health plan, any employer, if any individual who is an employee of such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

(C) Applicable State Authority.—The term ‘applicable State authority’ means, with respect to a health insurance issuer in a State, the State insurance commissioner of such State or any other State or local governmental authority designated by the Secretary under this subsection as carrying out such State insurance laws for the purpose of regulating the coverage described in such clause in the same manner and to the same extent as coverage in the small group market is regulated in such State.

(D) Participating Member.—The term ‘participating member’ means, in connection with such an association health plan, any employer, if any individual who is an employee of such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

(E) Affiliated Member.—The term ‘affiliated member’ means, in connection with a sponsor—

(A) a person who is otherwise eligible to be a member of the sponsor but who elects an affiliated status with the sponsor;

(B) in the case of any association or any group or organization of associations which consist of associations, a person who is a member of any such association and elects an affiliated status with the sponsor; or

(C) in the case of a health maintenance organization in existence on the date of the enactment of the Small Business Health Improvement Act of 2007, a person eligible to be a member of the sponsor or one of its member associations.

(F) Large Employer.—The term ‘large employer’ means, in connection with a group health plan with respect to a plan year, an employer who employs an average of at least 51 employees on business days during the plan year if the plan is calculated to employ at least 2 employees on the first day of the plan year.

(G) Small Employer.—The term ‘small employer’ means, in connection with a group health plan with respect to a plan year, an employer who is not a large employer.

(H) Rules of Construction.—

(1) Employers and Employees.—For purposes of determining whether a plan, fund, or program established by an association or organization for health insurance, or any other purpose, is an employee benefit plan, any organization for health insurance, or any other purpose, is an employee benefit plan, any person described in section 514(g)(1) shall be considered as not having been treated as an employer or employee for any purpose for purposes of applying this title in connection with such plan, fund, or program so determined to be an employee benefit plan.

(2) Partnerships.—(A) In General.—The term ‘partnership’ means, in connection with a plan, any association or any group or organization of associations which consist of associations, a person who is a member of any such association and elects an affiliated status with the sponsor, or

(B) in the case of any employer, if any individual who is an employee of such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

(C) In the case of a health maintenance organization in existence on the date of the enactment of the Small Business Health Improvement Act of 2007, a person eligible to be a member of the sponsor or one of its member associations.
was established or is maintained for the purpose of providing medical care (through the purchase of insurance or otherwise) for employees (or their dependents) covered thereunder. This section demonstrates to the insur- 

(b) CONFORMING AMENDMENTS TO PREEMP- 

(1) Section 514(b)(6) of such Act (29 U.S.C. 

section (a)(2)(B) and (b) of section 805. 

(ii) In any case in which the benefit re- 

(2) Section 514 of such Act (29 U.S.C. 1144) is amended— 

1144(b)(6)) is amended by adding at the end the 

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(3) Section 514(b)(6)(A) of such Act (29 U.S.C. 1144(b)(6)(A)) is amended— 

(a) by inserting after the item relating to sec- 

(b) by adding at the end the following new 

(c) by adding at the end the following new 

(d) Except as provided in subsection 

(e) SAVINGS CLAUSE. 

...section (a)(2)(B) and (b) of section 805, “(B) by inserting ‘and’ and inserting 

(2) Disclosure of Solvency Protections Related to Self-Insured and Fully Insured Options Under Association Health Plans.—Section 102(b) of such Act (29 U.S.C. 102(b)) is amended by adding the following: ‘‘(a) No provision of this title, except by amend, modify, invalidate, impair, or super-

(3) Section 514(e) of such Act (as redesign- 

in subparagraph (A) and inserting the following: ‘‘(1) Except as provided in paragraph (2), 

(b) Except as provided in paragraph (4) and 

(c) Except as provided in subsection 

(d) Except as provided in subsection 

(b) by striking ‘‘subject to subparagraph (C) if the number of uninsured individuals. 

(3) Section 514(b)(6)(A) of such Act (29 U.S.C. 1144(b)(6)(A)) is amended— 

(A) providing solvency standards or simi- 

(2) Nothing in any other provision of law 

(3) Nothing in any other provision of law 

...section 801(a), and the terms and conditions under which the issuer is permitted to charge, or which are applicable to a group health plan, fund, or program shall be treated for purposes of this title as an employee welfare benefit plan on and after the date of such amendment.

(2) Nothing in any other provision of law 

(3) Nothing in any other provision of law 

...section 801(a), and the terms and conditions under which the issuer is permitted to charge, or which are applicable to a group health plan, fund, or program shall be treated for purposes of this title as an employee welfare benefit plan on and after the date of such amendment.

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under part 8 and is not operating in accord-
ger, registered, or otherwise approved for
more than 5 years, be fined under title 18,
shall, upon conviction, be imprisoned not
the plan or arrangement under similar provisions of
State public employee relations laws; or
negotiations under similar provisions of
the National Labor Relations Act (29 U.S.C.
paragraph Fourth) or which
in section 8(d) of the National Labor Rela-
tions Act (29 U.S.C. 158(d)) or paragraph
pursuant to collective bargaining described
that
sections 503 and 504 to enforce the requirements
for certification and
shall be deemed met with respect to any par-
ticular association health plan, as the State
with which consultation is required. In car-
r

SEC. 06. EFFECTIVE DATE AND TRANSI-
TIONAL AND OTHER RULES.
(a) EFFECTIVE DATE.—The amendments
made by this title shall take effect one year
after the date of the enactment of this Act.
(b) TREATMENT OF CERTAIN EXISTING
HEALTH BENEFITS PROGRAMS.—
(1) In general.—In any case in which, as of
the date of the enactment of this Act, an
arrangement is maintained in a State for
the purpose of providing benefits consisting of
medical care for the employees and bene-

SA 115. Mr. KYL proposed an amend-
ment to amendment SA 100 proposed by
Mr. BURR, and Mr. ISAKSON) submitted
an amendment to the bill H.R. 2, to amend the Fair Labor Stan-
ards Act of 1938 to provide for an in-
crease in the Federal minimum wage;
as follows:
On page 4, line 21, strike “April 1, 2008” and
insert “January 1, 2009”.

SA 116. Mr. ALLARD submitted an amend-
ment intended to be proposed by
him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938
to provide for an increase in the Federal minimum wage; which was ordered to
lie on the table; as follows:
At the end of section 2, add the following:
(c) STATE FLEXIBILITY.—Section 6 of the
206) is amended by adding at the end the fol-
lowing:
“(h) STATE FLEXIBILITY.—Notwithstanding
any other provision of this section, an em-
ployer shall not be required to pay an
employee a wage that is greater than the min-
imum wage provided for by the law of the
State in which the employee is employed and
not less than the minimum wage in effect in
that State on January 1, 2007.”.

SA 117. Mr. CHAMBLISS (for himself,
Mr. BURR, and Mr. ISAKSON) submitted
an amendment in substance proposed by
him to the bill H.R. 2, to amend the
Fair Labor Standards Act of 1938 to
provide for an increase in the Federal
minimum wage; as follows:
At the appropriate place, add the following
next section:
SEC. 07. WAGES FOR AGRICULTURAL WORKERS.
Section 6(a)(5) of the Fair Labor Stan-
dards Act of 1938 (29 U.S.C. 206(a)(5)) is amend-
ed to read as follows:
“(5) If such employee is employed to
provide agriculture labor or services—
“(A) not less than the minimum wage rate in
effect under paragraph (1) after December
31, 1977; or
“(B) pursuant to the provisions of section
218 of the Immigration and Nationality Act
(8 U.S.C. 1186), not less than the greater of—
“(i) the minimum wage rate in effect under
paragraph (1) after December 31, 1977; or
“(ii) the prevailing wage established by the
Occupational Employment Statistics pro-
gram, or other wage survey, conducted by
the Bureau of Labor Statistics in the county
of intended employment, for entry level
workers who are employed in agriculture in
the area of the work to be performed.”.

SA 118. Mr. CHAMBLISS (for himself,
Mr. ISAKSON, and Mr. BURR) submitted
an amendment intended to be proposed
at such time after the date of the en-
court the Federal minimum wage; and
shall be deemed met with respect to any par-
ticular association health plan, as the State
in which the employee is employed and
not less than the minimum wage in effect in
that State on January 1, 2007.”.

SEC. 05. COOPERATION BETWEEN FEDERAL
FOUR AUTHORITIES.
Section 506 of the Employee Retirement
1136) is amended by adding at the end the following new subsection:
“(d) CONSULTATION WITH STATES WITH
RESPECT TO ASSOCIATION PLANS.—
(A) AGREEMENTS WITH STATES.—The Sec-

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ment to amendment SA 100 proposed by
Mr. BURR, and Mr. ISAKSON) submitted
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effect under paragraph (1) after December
31, 1977; or
“(B) pursuant to the provisions of section
218 of the Immigration and Nationality Act
(8 U.S.C. 1186), not less than the greater of—
“(i) the minimum wage rate in effect under
paragraph (1) after December 31, 1977; or
“(ii) the prevailing wage established by the
Occupational Employment Statistics pro-
gram, or other wage survey, conducted by
the Bureau of Labor Statistics in the county
of intended employment, for entry level
workers who are employed in agriculture in
the area of the work to be performed.”.

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an amendment intended to be proposed
at such time after the date of the en-
court the Federal minimum wage; and
shall be deemed met with respect to any par-
ticular association health plan, as the State
in which the employee is employed and
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SEC. 05. COOPERATION BETWEEN FEDERAL
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crease in the Federal minimum wage;
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ment intended to be proposed by
him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938
to provide for an increase in the Federal minimum wage; which was ordered to
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imum wage provided for by the law of the
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not less than the minimum wage in effect in
that State on January 1, 2007.”.

SA 117. Mr. CHAMBLISS (for himself,
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an amendment in substance proposed by
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“(i) the minimum wage rate in effect under
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“(ii) the prevailing wage established by the
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gram, or other wage survey, conducted by
the Bureau of Labor Statistics in the county
of intended employment, for entry level
workers who are employed in agriculture in
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Mr. ISAKSON, and Mr. BURR) submitted
an amendment intended to be proposed
at such time after the date of the en-
court the Federal minimum wage; and
shall be deemed met with respect to any par-
ticular association health plan, as the State
in which the employee is employed and
not less than the minimum wage in effect in
that State on January 1, 2007.”.
by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. WAGES FOR AGRICULTURAL WORKERS.
Section 6(a)(5) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(5)) is amended to read as follows:

"(B) the prevailing wage established by the Occupational Employment Statistics program, or other wage survey, conducted by the Bureau of Labor Statistics in the county of intended employment, for entry level workers who are employed in agriculture in the area of work to be performed."

SA 119. Mr. BUNNING submitted an amendment intended to be proposed by him to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

At the appropriate place insert the following:

SEC. REPEAL OF 1993 INCOME TAX INCREASE ON SOCIAL SECURITY BENEFITS.

(a) RESTORATION OF PRIOR LAW FORMULA.—
Subsection (a) of section 86 (relating to social security and tier 1 railroad retirement benefits) is amended to read as follows:

"(1) the minimum wage rate in effect under paragraph (1) after December 31, 1977, or
"(2) the prevailing wage established by the Occupational Employment Statistics program, or other wage survey, conducted by the Bureau of Labor Statistics in the county of intended employment, for entry level workers who are employed in agriculture in the area of work to be performed.".

SA 120. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 201. EXTENSION AND MODIFICATIONS OF INCREASED EXPensing FOR SMALL BUSINESSES.

(a) EXTENSION.—Section 179 (relating to election to expense certain depreciable business assets) is amended by striking "2010" each place it appears and inserting "2011".

(b) INCREASE IN LIMIT AND PHASEOUT WHICH PHASEOUT BEGINS.—

Paragraph (1) of section 179(b) of such Code (relating to reduction in limitation), as amended by subsection (a), is amended by striking 

"$25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2011)" and inserting "$25,000 ($150,000 in the case of taxable years beginning after 2002 and before 2011)".

"(2) INCREASE IN LIMIT AND PHASEOUT WHICH PHASEOUT BEGINS.—

Paragraph (2) of section 179(b) of such Code (relating to reduction in limitation), as amended by subsection (a), is amended by striking 

"$250,000 ($400,000 in the case of taxable years beginning after 2002 and before 2011)" and inserting "$250,000 ($500,000 in the case of taxable years beginning after 2002 and before 2011)".

"(3) INCREASE IN LIMIT AND PHASEOUT WHICH PHASEOUT BEGINS.—

Paragraph (3) of section 179(b) of such Code (relating to reduction in limitation), as amended by subsection (a), is amended by striking 

"(i) the $100,000 and $400,000 amounts", and inserting "(i) the $150,000 and $500,000 amounts", and

"(ii) the $200,000 ($400,000 in the case of taxable years beginning after 2002 and before 2011)" and inserting "(ii) the $200,000 ($500,000 in the case of taxable years beginning after 2002 and before 2011)".

"(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2007.

SA 121. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 201A. QUALIFIED SMALL BUSINESSES ELECTED TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

(a) IN GENERAL.—Part I of subchapter E of chapter 1 (relating to accounting periods) is amended by inserting after section 444 the following new section:

"SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTED TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

"(a) GENERAL RULE.—A qualified small business may elect to have a taxable year, other than the required taxable year, which ends on the last day of any of the months of January 23, 2007 CONGRESSIONAL RECORD — SENATE
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April through November (or at the end of an equivalent annual period (varying from 52 to 53 weeks)).

“(b) YEARS FOR WHICH ELECTION EFFECTIVE.—An election under subsection (a)—

“(1) shall be made not later than the due date (including extensions thereof) for filing the return of tax for the first taxable year of the qualified small business, and

“(2) shall be effective for such first taxable year or period and for all succeeding taxable years of such qualified small business until such election is terminated under subsection (c).

“(c) TERMINATION.—

“(1) IN GENERAL.—An election under subsection (a) shall be terminated on the earliest of—

“(A) the first day of the taxable year following the taxable year for which the election fails to meet the gross receipts test,

“(B) the date on which the election fails to qualify as an S corporation, or

“(C) the date on which the election terminates.

“(2) GROSS RECEIPTS TEST.—For purposes of paragraph (1)(B), an entity fails to meet the gross receipts test if the entity fails to meet the gross receipts test of section 448(c).

“(3) EFFECT OF TERMINATION.—An entity with respect to which an election is terminated under this subsection shall determine its taxable year for subsequent taxable years under any other method that would be permitted under subtitle A.

“(4) INCOME INCLUSION AND DEDUCTION RULES FOR PERIOD AFTER TERMINATION.—If the termination of an election under subsection (a) results in the designation of a person to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTED OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

“(a) IN GENERAL.—Part I of subchapter E of chapter 1 (relating to accounting periods) is amended by inserting after section 444 the following new section:

“SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTED OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

“(1) QUALIFIED SMALL BUSINESS.—The term ‘qualified small business’ means an entity—

“(A) which conducts an active trade or business or which would qualify for an election to amortize start-up expenditures under section 195, and

“(B) which is a start-up business.

“(2)оБ the entity fails to qualify as an S corporation, or

“(C) which is a start-up business.

“(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SA 123. Ms. SNOWE (for herself and Mrs. LINCOLN) submitted an amendment intended to be proposed by her to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTED OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

“(a) IN GENERAL.—Part I of subchapter E of chapter 1 (relating to accounting periods) is amended by inserting after section 444 the following new section:

“SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTED OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

“(1) QUALIFIED SMALL BUSINESS.—The term ‘qualified small business’ means an entity—

“(A) which conducts an active trade or business or which would qualify for an election to amortize start-up expenditures under section 195, and

“(B) which is a start-up business.

“(2) EFFECT OF TERMINATION.—An election under subsection (a)—

“(A) shall be made not later than the due date (including extensions thereof) for filing the return of tax for the first taxable year of the qualified small business, and

“(B) shall be effective for such first taxable year or period and for all succeeding taxable years of such qualified small business until such election is terminated under subsection (c).

“(c) TERMINATION.—

“(1) IN GENERAL.—An election under subsection (a) shall be terminated on the earliest of—

“(A) the first day of the taxable year following the taxable year for which the election fails to meet the gross receipts test,

“(B) the date on which the election fails to qualify as an S corporation, or

“(C) the date on which the election terminates.

“(2) GROSS RECEIPTS TEST.—For purposes of paragraphs (1) and (2), an election fails to meet the gross receipts test if the entity fails to meet the gross receipts test of section 448(c).

“(3) EFFECT OF TERMINATION.—An entity with respect to which an election is terminated under this subsection shall determine its taxable year for subsequent taxable years under any other method that would be permitted under subtitle A.

“(4) INCOME INCLUSION AND DEDUCTION RULES FOR PERIOD AFTER TERMINATION.—If the termination of an election under paragraph (1) results in the designation of a person to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTED OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

“(a) IN GENERAL.—Part I of subchapter E of chapter 1 (relating to accounting periods) is amended by inserting after section 444 the following new section:

“SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTED OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

“(1) QUALIFIED SMALL BUSINESS.—The term ‘qualified small business’ means an entity—

“(A) which conducts an active trade or business or which would qualify for an election to amortize start-up expenditures under section 195, and

“(B) which is a start-up business.

“(2) EFFECT OF TERMINATION.—An election under subsection (a)—

“(A) shall be made not later than the due date (including extensions thereof) for filing the return of tax for the first taxable year of the qualified small business, and

“(B) shall be effective for such first taxable year or period and for all succeeding taxable years of such qualified small business until such election is terminated under subsection (c).

“(c) TERMINATION.—

“(1) IN GENERAL.—An election under subsection (a) shall be terminated on the earliest of—

“(A) the first day of the taxable year following the taxable year for which the election fails to meet the gross receipts test,

“(B) the date on which the election fails to qualify as an S corporation, or

“(C) the date on which the election terminates.

“(2) GROSS RECEIPTS TEST.—For purposes of paragraphs (1) and (2), an election fails to meet the gross receipts test if the entity fails to meet the gross receipts test of section 448(c).

“(3) EFFECT OF TERMINATION.—An entity with respect to which an election is terminated under this subsection shall determine its taxable year for subsequent taxable years under any other method that would be permitted under subtitle A.

“(4) INCOME INCLUSION AND DEDUCTION RULES FOR PERIOD AFTER TERMINATION.—If the termination of an election under paragraph (1) results in the designation of a person to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTED OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

“(a) IN GENERAL.—Part I of subchapter E of chapter 1 (relating to accounting periods) is amended by inserting after section 444 the following new section:

“SEC. 444A. QUALIFIED SMALL BUSINESSES ELECTED OF TAXABLE YEAR ENDING IN A MONTH FROM APRIL TO NOVEMBER.

“(1) QUALIFIED SMALL BUSINESS.—The term ‘qualified small business’ means an entity—

“(A) which conducts an active trade or business or which would qualify for an election to amortize start-up expenditures under section 195, and

“(B) which is a start-up business.

“(2) EFFECT OF TERMINATION.—An election under subsection (a)—

“(A) shall be made not later than the due date (including extensions thereof) for filing the return of tax for the first taxable year of the qualified small business, and

“(B) shall be effective for such first taxable year or period and for all succeeding taxable years of such qualified small business until such election is terminated under subsection (c).

“(c) TERMINATION.—

“(1) IN GENERAL.—An election under subsection (a) shall be terminated on the earliest of—

“(A) the first day of the taxable year following the taxable year for which the election fails to meet the gross receipts test,

“(B) the date on which the election fails to qualify as an S corporation, or

“(C) the date on which the election terminates.

“(2) GROSS RECEIPTS TEST.—For purposes of paragraphs (1) and (2), an election fails to meet the gross receipts test if the entity fails to meet the gross receipts test of section 448(c).

“(3) EFFECT OF TERMINATION.—An entity with respect to which an election is terminated under this subsection shall determine its taxable year for subsequent taxable years under any other method that would be permitted under subtitle A.

“(4) INCOME INCLUSION AND DEDUCTION RULES FOR PERIOD AFTER TERMINATION.—If
(b) SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.—

(1) IN GENERAL.—An eligible employer maintaining a cafeteria plan with respect to which the requirements of this subsection are met for any year shall be treated as meeting any applicable nondiscrimination requirements with respect to benefits provided under the plan during such year.

(2) SIMPLE CAFETERIA PLAN.—For purposes of this subsection, the term ‘simple cafeteria plan’ means a cafeteria plan—

(A) which is established and maintained by an eligible employer, and

(B) with respect to which the contribution requirements of paragraphs (3), and the eligibility and participation requirements of paragraph (4), are met.

(3) CONTRIBUTIONS REQUIREMENTS.—

(A) IN GENERAL.—The requirements of this paragraph are met if, under the plan—

(i) the employer makes matching contributions on behalf of each employee who is eligible to participate in the plan and who is not a highly compensated or key employee, and is eligible to participate in the plan in an amount equal to the elective plan contributions of the employee to the plan to the extent the employee’s elective plan contributions do not exceed 2% of the employee’s compensation, or

(ii) the employer is required, without regard to whether an employee makes any elective plan contribution, to make a contribution to the plan on behalf of each employee who is not a highly compensated or key employee and who is eligible to participate in the plan in an amount equal to at least 2% of the employee’s compensation.

(B) MATCHING CONTRIBUTIONS ON BEHALF OF HIGHLY COMPENSATED AND KEY EMPLOYEES.—The requirements of subparagraph (A)(i) shall not be treated as met if, under the plan, the rate of matching contribution with respect to any elective plan contributions of a highly compensated or key employee at any rate of contribution is greater than that with respect to an employee who is not a highly compensated or key employee.

(C) SPECIAL RULES.—

(i) TIME FOR MAKING CONTRIBUTIONS.—An employer shall not be treated as failing to meet the requirements of this subsection as to any person as payment for providing benefits offered under the plan.

(ii) FORM OF CONTRIBUTIONS.—Employer contributions required under this paragraph may be made either to the plan to provide benefits to the person or to any person as payment for providing benefits offered under the plan.

(iii) ADDITIONAL CONTRIBUTIONS.—Subject to subparagraph (B), nothing in this paragraph shall be treated as prohibiting an employer from making contributions to the plan in addition to contributions required under subparagraph (A).

(D) DEFINITIONS.—For purposes of this paragraph—

(i) ELECTIVE PLAN CONTRIBUTION.—The term ‘elective plan contribution’ means any amount which is contributed at the election of the employee and which is not includable in gross income by reason of this section.

(ii) ELIGIBLE EMPLOYEE.—The term ‘highly compensated employee’ has the meaning given such term by section 414(q).

(iii) KEY EMPLOYEE.—The term ‘key employee’ has the meaning given such term by section 416(l).

(iv) MINIMUM ELIGIBILITY AND PARTICIPATION REQUIREMENTS.—(A) IN GENERAL.—The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

(i) all employees who had at least 1,000 hours of service in the calendar year in which the plan year are eligible to participate, and

(ii) each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan.

(B) CERTAIN EMPLOYEES MAY BE EXCLUDED.—For purposes of subparagraph (A)(i), an eligible employer may elect to exclude under the plan employees—

(i) who have less than 1 year of service with the employer as of any day during the plan year,

(ii) who have not attained the age of 21 before the close of a plan year,

(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if effective, with respect to any elective plan contributions of any compensation, or employer contributions under the plan.

(iv) who are described in section 410(b)(3)(C) (relating to nonresident aliens working outside the United States).

A plan may provide a shorter period of service or younger age for purposes of clause (i) or (ii).

(E) ELIGIBLE EMPLOYER.—For purposes of this subsection—

(A) IN GENERAL.—The term ‘eligible employer’ means, with respect to any year, any employer if such employer employed an average of 100 or fewer employees on business days during either of the 2 preceding years.

(B) MATCHING CONTRIBUTIONS ON BEHALF OF HIGHLY COMPENSATED AND KEY EMPLOYEES.—(i) the employer makes matching contributions on behalf of each employee who is eligible to participate in the plan and who is not a highly compensated or key employee, and is eligible to participate in the plan in an amount equal to the elective plan contributions of the employee to the plan to the extent the employee’s elective plan contributions do not exceed 2% of the employee’s compensation, or

(ii) the employer is required, without regard to whether an employee makes any elective plan contribution, to make a contribution to the plan on behalf of each employee who is not a highly compensated or key employee and who is eligible to participate in the plan in an amount equal to at least 2% of the employee’s compensation.

(C) SPECIAL RULES.—

(i) TIME FOR MAKING CONTRIBUTIONS.—An employer shall not be treated as failing to meet the requirements of this paragraph as to any person as payment for providing benefits offered under the plan.

(ii) FORM OF CONTRIBUTIONS.—Employer contributions required under this paragraph have the meaning given such term by section 414(q).

(iii) KEY EMPLOYEE.—The term ‘key employee’ has the meaning given such term by section 416(l).

(iv) MINIMUM ELIGIBILITY AND PARTICIPATION REQUIREMENTS.—(A) IN GENERAL.—The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

(i) all employees who had at least 1,000 hours of service in the calendar year in which the plan year are eligible to participate, and

(ii) each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan.

(B) CERTAIN EMPLOYEES MAY BE EXCLUDED.—For purposes of subparagraph (A)(i), an eligible employer may elect to exclude under the plan employees—

(i) who have less than 1 year of service with the employer as of any day during the plan year,

(ii) who have not attained the age of 21 before the close of a plan year,

(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if effective, with respect to any elective plan contributions of any compensation, or employer contributions under the plan.

(iv) who are described in section 410(b)(3)(C) (relating to nonresident aliens working outside the United States).

A plan may provide a shorter period of service or younger age for purposes of clause (i) or (ii).

(E) ELIGIBLE EMPLOYER.—For purposes of this subsection—

(A) IN GENERAL.—The requirements of this paragraph are met if, under the plan—

(i) the employer makes matching contributions on behalf of each employee who is eligible to participate in the plan and who is not a highly compensated or key employee, and is eligible to participate in the plan in an amount equal to the elective plan contributions of such employee to the plan, if such employee earned more than that with respect to an employee who is not a highly compensated or key employee at any rate of contribution is greater than that with respect to an employee who is not a highly compensated or key employee.

(C) SPECIAL RULES.—

(i) TIME FOR MAKING CONTRIBUTIONS.—An employer shall not be treated as failing to meet the requirements of this paragraph as to any person as payment for providing benefits offered under the plan.

(ii) FORM OF CONTRIBUTIONS.—Employer contributions required under this paragraph may be made either to the plan to provide benefits to the person or to any person as payment for providing benefits offered under the plan.

(iii) ADDITIONAL CONTRIBUTIONS.—Subject to subparagraph (B), nothing in this paragraph shall be treated as prohibiting an employer from making contributions to the plan in addition to contributions required under subparagraph (A).

(D) DEFINITIONS.—For purposes of this paragraph—

(i) ELECTIVE PLAN CONTRIBUTION.—The term ‘elective plan contribution’ means any amount which is contributed at the election of the employee and which is not includable in gross income by reason of this section.

(ii) ELIGIBLE EMPLOYEE.—The term ‘highly compensated employee’ has the meaning given such term by section 414(q).

(iii) KEY EMPLOYEE.—The term ‘key employee’ has the meaning given such term by section 416(l).

(iv) MINIMUM ELIGIBILITY AND PARTICIPATION REQUIREMENTS.—(A) IN GENERAL.—The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

(i) all employees who had at least 1,000 hours of service in the calendar year in which the plan year are eligible to participate, and

(ii) each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan.

(B) CERTAIN EMPLOYEES MAY BE EXCLUDED.—For purposes of subparagraph (A)(i), an eligible employer may elect to exclude under the plan employees—

(i) who have less than 1 year of service with the employer as of any day during the plan year,

(ii) who have not attained the age of 21 before the close of a plan year,

(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if effective, with respect to any elective plan contributions of any compensation, or employer contributions under the plan.

(iv) who are described in section 410(b)(3)(C) (relating to nonresident aliens working outside the United States).

A plan may provide a shorter period of service or younger age for purposes of clause (i) or (ii).

(E) ELIGIBLE EMPLOYER.—For purposes of this subsection—

(A) IN GENERAL.—The term ‘eligible employer’ means, with respect to any year, any employer if such employer employed an average of 100 or fewer employees on business days during either of the 2 preceding years. For purposes of this subparagraph, a year may only be taken into account if the employer was in existence throughout the preceding year.

(B) EMPLOYERS NOT IN EXISTENCE DURING PRECEDING YEAR.—If an employer was not in existence throughout the preceding year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current year.

(C) GROWING EMPLOYERS RETAIN TREATMENT AS SIMPLE CAFETERIA PLAN.—(i) an employer was an eligible employer for any year (a ‘qualified year’), and

(ii) such employer establishes a simple cafeteria plan for its employees for such year,

then, notwithstanding the fact the employer fails to meet the requirements of subparagraph (A) for any subsequent year, such employer shall be treated as an eligible employer with respect to any employee who is not a highly compensated or key employee at any rate of contribution is greater than that with respect to an employee who is not a highly compensated or key employee.

(D) SPECIAL RULES.—The rules of section 220(c)(4)(D) shall apply for purposes of this paragraph.

(E) APPLICABLE NONDISCRIMINATION REQUIREMENT.—For purposes of this subsection, the term ‘applicable nondiscrimination requirement’ means any requirement under subsections (d), section 79(q), section 105(h), or paragraph (2), (3), (4), or (8) of section 129(d).

(F) COMPENSATION.—The term ‘compensation’ has the meaning given such term by section 41(e).

(G) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2006.
may be made either to the plan to provide benefits offered under the plan or to any person as payment for providing benefits offered under the plan.

(III) EMPLOYER CONTRIBUTIONS.—Subject to subparagraph (B), nothing in this paragraph shall be treated as prohibiting an employer from making contributions to the plan in addition to contributions required under subparagraph (A).

(D) DEFINITIONS.—For purposes of this paragraph—

(1) ELIGIBLE PLAN CONTRIBUTION.—The term ‘‘eligible plan contribution’’ means any amount which is contributed at the election of the employer which is not includible in gross income by reason of this section.

(II) HIGHLY COMPENSATED EMPLOYEE.—The term ‘‘highly compensated employee’’ has the meaning given such term by section 416(i).

(III) KEY EMPLOYEE.—The term ‘‘key employee’’ has the meaning given such term by section 416(i).

(4) MINIMUM ELIGIBILITY AND PARTICIPATION REQUIREMENTS.—

(A) IN GENERAL.—The requirements of this paragraph shall be treated as met with respect to any employee who has been employed by the employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any trade or business which was covered by the plan during any qualified year. This subparagraph shall cease to apply if the employer terminates, or any such year, of 200 more employees on business days during any year preceding any such subsequent year.

(D) SPECIAL RULES.—The rules of section 220(c)(2)(D) shall apply for purposes of this paragraph.

(6) APPLICABLE NONDISCRIMINATION REQUIREMENTS.—In subsection (b) of this section, the term ‘‘applicable nondiscrimination requirement’’ means any requirement under subparagraph (b) of this section, section 79(d), section 105(b), paragraph (2), (3), (4), or (8) of section 129(c).

(7) COMPENSATION.—The term ‘‘compensation’’ has the meaning given such term by section 414(q).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2006.

SA 126. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 329. WORKFORCE INVESTMENT PROGRAM.

Section 121 of the Workforce Investment Act of 1998 (29 U.S.C. 2801) is amended by adding at the end the following:

(e) HEALTH PROFESSIONS TRAINING DEMONSTRATION PROJECT.

Section 171 of the Workforce Investment Act of 1998 (29 U.S.C. 2801) is amended by adding after the end the following:

(f) APPROPRIATIONS.

Section 110 of the Workforce Investment Act of 1998 (29 U.S.C. 2810) is amended by striking in its place the following:

(g) HEALTH CARE AS SMALL EMPLOYER.

RELATING TO SMALL EMPLOYER.

RELATING TO DISABILITY.

RELATING TO SICK LEAVE.

RELATING TO EMPLOYMENT AT HOME.

RELATING TO DUAL CITIZENSHIP.

RELATING TO WORKERS' COMPENSATION.

RELATING TO UNEMPLOYMENT.

RELATING TO EMPLOYMENT AT HOME.

RELATING TO WORKERS' COMPENSATION.

RELATING TO UNEMPLOYMENT.

RELATING TO EMPLOYMENT AT HOME.

RELATING TO WORKERS' COMPENSATION.

RELATING TO UNEMPLOYMENT.

RELATING TO EMPLOYMENT AT HOME.

RELATING TO WORKERS' COMPENSATION.

RELATING TO UNEMPLOYMENT.

RELATING TO EMPLOYMENT AT HOME.
and the activities to be carried out with the funds:

(1) information demonstrating that the entity meets the requirements of paragraph (4); and

(2) with respect to training programs carried out by the applicant, information—

(i) on the graduation rates of the programs involved;

(ii) on the retention measures carried out by the applicant; and

(iii) on the length of time necessary to complete the training programs of the applicant; and

(iv) on the number of qualified trainees that participate in the training programs because of lack of capacity.

(6) SELECTION.—In making grants under paragraph (3), the Secretary, after consultation with the Secretary of Health and Human Services, shall—

(A) consider the date submitted by the applicant under paragraph (5)(E); and

(B) select—

(i) eligible entities submitting applications that meet such criteria as the Secretary of Labor determines to be appropriate; and

(ii) among such entities, the eligible entities serving the covered communities with the greatest potential to benefit from the grants.

(7) USE OF FUNDS.—

(A) In General.—An entity receiving a grant under this subsection shall use the funds available through the grant for training and support services that meet the needs described in the application submitted under paragraph (5), which may include—

(i) increasing class capacity, subject to subparagraph (B)(i), at an educational institution or training center to train individuals for employment as health professionals, such as—

(I) expanding a facility, subject to subparagraph (B)(ii);

(II) expanding course offerings;

(III) hiring faculty;

(IV) providing a student loan repayment program for the faculty;

(V) establishing or expanding clinical education opportunities;

(VI) purchasing equipment, such as computers, books, clinical supplies, or a patient simulator; or

(VII) conducting research; or

(ii) providing support services for covered workers participating in the training, such as—

(I) providing tuition assistance;

(II) establishing or expanding distance education programs;

(III) providing transportation assistance; or

(IV) providing child care.

(B) LIMITATION.—To be eligible to use the funds to expand a facility, the eligible entity shall demonstrate to the Secretary in an application submitted under paragraph (5) that the entity can increase the capacity described in subparagraph (E)(iv) of such facility only by expanding the facility.

(8) FUNDING.—Of the amounts appropriated to, and available at the discretion of, the Secretary or the Secretary of Health and Human Services for programmatic and administrative expenditures, a total of $25,000,000 shall be used to establish and carry out the demonstration project described in paragraph (2) in accordance with this subsection.

SA 127. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. 4. ANNUAL REPORT ON ACQUISITIONS OF ARTICLES, MATERIALS, AND SUPPLIES MANUFACTURED OUTSIDE THE UNITED STATES.

Section 2 of the Buy American Act (41 U.S.C. 31a) is amended by adding at the end the following:

(1) by striking “Notwithstanding” and inserting the following:

(a) In General.—Notwithstanding; and

(b) by adding at the end the following:

(b) REPORTS.—

(1) In General.—Not later than 180 days after the end of each fiscal year, the head of each Federal department shall report to Congress the amount of the acquisitions made by the head of each Federal department for articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States in that fiscal year.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall separately include—

(A) the dollar value of any articles, materials, or supplies that were manufactured outside the United States;

(B) an itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act, and a citation to the relevant sections of Federal law under which each waiver was granted; and

(C) if any articles, materials, or supplies were acquired from entities that manufacture articles, materials, or supplies outside of the United States, the specific exception under this section that was used to purchase such articles, materials, or supplies; and

(D) a summary of—

(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available to the maximum extent practicable.

(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component thereof, of the intelligence community as specified in, or designated under, section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SA 128. Mr. KERRY (for himself and Ms. SNOWE) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 5. SMALL BUSINESS REGULATORY ASSISTANCE PILOT PROGRAM.

(a) PURPOSE.—The purpose of this section is to establish a 4-year pilot program to—

(1) provide confidential assistance to small businesses concerning;

(2) provide small business concerns with the information necessary to improve their rate of compliance with Federal and State regulations derived from Federal law;

(3) create a partnership among Federal agencies to increase outreach efforts to small business concerns with respect to regulatory compliance assistance;

(4) provide a mechanism for unbiased feedback to Federal agencies on the regulatory environment for small business concerns; and

(5) expand the services delivered by the Small Business Development Centers under section 21(c)(d)(ii) of the Small Business Act to improve access to programs to assist small business concerns with regulatory compliance.

(b) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ADMINISTRATION.—The term “Administration” means the Small Business Administration.

(2) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Administration, acting through the Associate Administrator for Small Business Development Centers.

(3) ASSOCIATION.—The term “association” means the association established pursuant to section 21(a)(3)(A) of the Small Business Act (15 U.S.C. 638a(3)(A)) representing a majority of Small Business Development Centers.

(4) PARTICIPATING SMALL BUSINESS DEVELOPMENT CENTER.—The term “participating Small Business Development Center” means a Small Business Development Center participating in the pilot program established under this section.

(5) REGULATORY COMPLIANCE ASSISTANCE.—The term “regulatory compliance assistance” means assistance provided by a Small Business Development Center to a small business concern to assist and facilitate the concern in complying with Federal and State regulatory requirements derived from Federal law.


(7) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam.

(8) SMALL BUSINESS REGULATORY ASSISTANCE PILOT PROGRAM.—

(a) AUTHORITY.—In accordance with this section, the Administrator shall establish a pilot program to provide regulatory compliance assistance to small business concerns through participating Small Business Development Centers.

(b) SMALL BUSINESS DEVELOPMENT CENTERS.—

(A) IN GENERAL.—In carrying out the pilot program established under this section, the Administrator shall enter into arrangements with participating Small Business Development Centers under which such Centers shall—

(1) provide access to information and resources, including current Federal and State nonpunitive compliance and technical assistance programs similar to those established under section 907 of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601); and

(ii) conduct training and educational activities;

(iii) offer confidential, free-of-charge, one-on-one, in-depth counseling to the owners and operators of small business concerns regarding compliance with Federal and State regulations derived from Federal law, provided that such counseling is not considered to be the practice of law in a State in which a Small Business Development Center is located or in which such counseling is conducted;

(iv) provide technical assistance;

(g) give referrals to experts and other providers of compliance assistance who meet such standards for both technical and professional competency as are established by the Administrator; and
(vi) form partnerships with Federal compliance programs.

(B) REPORTS.—Each participating Small Business Development Center shall transmit to the Administrator, the Chief Counsel for Advocacy of the Administration, as the Administrator may direct, a quarterly report that includes—

(i) a summary of the regulatory compliance assistance provided by the Center under the pilot program;

(ii) the number and small business concerns assisted under the pilot program; and

(iii) for every fourth report, any regulatory compliance information based on Federal law that the State agency has provided to the Center during the preceding year and requested that it be disseminated to small business concerns.

(3) Eligibility.—A Small Business Development Center shall be eligible to receive assistance under the pilot program established under this section only if such Center is certified under section 21(k)(2) of the Small Business Act (15 U.S.C. 648(k)(2)).

(4) SELECTION OF PARTICIPATING STATE PROGRAMS.—(A) GROUPINGS.—

(i) CONSULTATION.—In consultation with the association, and giving substantial weight to the recommendations of the association, the Administrator shall select the Small Business Development Center Programs of 2 States from each of the groups of States described in clauses (i) through (x) to participate in the pilot program established under this section.

(ii) GROUP 1.—Group 1 shall consist of Maine, Massachusetts, New Hampshire, Connecticut, Vermont, and Rhode Island.

(iii) GROUP 2.—Group 2 shall consist of New York, New Jersey, Puerto Rico, and the Virgin Islands.

(iv) GROUP 3.—Group 3 shall consist of Pennsylvania, Maryland, West Virginia, Virginia, the District of Columbia, and Delaware.

(v) GROUP 4.—Group 4 shall consist of Georgia, Alabama, North Carolina, South Carolina, Mississippi, Florida, Kentucky, and Tennessee.

(vi) GROUP 5.—Group 5 shall consist of Illinois, Ohio, Michigan, Indiana, Wisconsin, and Minnesota.

(vii) GROUP 6.—Group 6 shall consist of Texas, New Mexico, Arkansas, Oklahoma, and Louisiana.

(viii) GROUP 7.—Group 7 shall consist of Missouri, Iowa, Nebraska, and Kansas.

(ix) GROUP 8.—Group 8 shall consist of Colorado, Wyoming, North Dakota, South Dakota, Montana, and South Dakota.

(x) GROUP 9.—Group 9 shall consist of California, Arizona, American Samoa, Hawaii, Nevada, and Arizona.

(x) GROUP 10.—Group 10 shall consist of Washington, Alaska, Idaho, and Oregon.

(B) DEADLINE FOR SELECTION.—The Administrator shall make selections under this paragraph no later than 60 days after the date of publication of final regulations under subsection (d).

(C) COORDINATION TO AVOID DUPLICATION WITH OTHER PROGRAMS.—In selecting Small Business Development Center Programs under this paragraph, the Administrator shall give a preference to any such program that has a plan for consulting with Federal and State agencies to ensure that any assistance provided under this section is not duplicated by a Federal or State program.

(5) STANDARDS.—Subparagraphs (A) and (B) of section 21(a)(4) of the Small Business Act (15 U.S.C. 648(a)(4)) shall apply to assistance made available under the pilot program established under this section.

(6) GRANT AMOUNTS.—Each State program selected to receive a grant under paragraph (4) shall be eligible to receive a grant in an amount equal to—

(A) not less than $150,000 per fiscal year; and

(B) not more than $300,000 per fiscal year.

(7) EVALUATION AND REPORT.—The Comptroller General of the United States shall—

(A) not later than 30 months after the date of disbursement of the first grant under the pilot program established under this section, initiate an evaluation of the pilot program; and

(B) not later than 6 months after the date of the initiation of the evaluation under subparagraph (A), transmit to the Administrator, the Committee on Small Business and Entrepreneurship, and the Committee on Small Business of the House of Representatives, a report containing—

(i) the results of the evaluation; and

(ii) any recommendations as to whether the pilot program, with or without modification, should be extended to include the participation of all Small Business Development Centers.

(8) AUTHORIZATION OF APPROPRIATIONS.—(A) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(i) $5,000,000 for the first fiscal year beginning after the date of enactment of this Act; and

(ii) $5,000,000 for each of the 3 fiscal years following the fiscal year described in clause (i).

(B) LIMITATION ON USE OF OTHER FUNDS.—

(i) The Administrator may carry out the pilot program established under this section only with amounts appropriated in advance specifically to carry out this section.

(ii) TERMINATION.—The Small Business Regulatory Assistance Pilot Program established under this section shall terminate 4 years after the date of disbursement of the first grant under the pilot program.

(iii) RULEMAKING.—After providing notice and an opportunity for comment, and after consulting with the association (but not later than 180 days after the date of enactment of this Act), the Administrator shall promulgate final regulations to carry out this section, including regulations that establish—

(I) priorities for the types of assistance to be provided under the pilot program established under this section;

(II) standards relating to the educational, technical, and support services to be provided by participating Small Business Development Centers; and

(III) standards relating to any national service delivery and support function to be provided by the association under the pilot program.

(iv) standards relating to any work plan that the Administrator may require a participating Small Business Development Center to develop; and

(v) standards relating to the educational, technical, and professional competency of any expert or other assistance provider to whom a small business concern may be referred for compliance assistance under the pilot program.

SEC. 129. MR. INHOFE submits an amendment intended to be proposed to amendment SA 129, Mr. Reid (for Mr. Baucus) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage, which was ordered to lie on the table; as follows:

(A) IN GENERAL.—(a) Paragraph (11) of the Internal Revenue Code of 1986 is amended by striking “or” at the end of subparagraph (C) and inserting “and” therefor.

(b) The amendment made by this section shall take effect as if included in the amendment made by section 1112(a) of the Safe, Accountable, Flexible, Effective Transportation Equity Act: A Legacy for Users.

(c) The amendment made by this section shall be effective on the date it is enacted.

SEC. 130. Mr. Voinovich submitted an amendment intended to be proposed to the amendment made by the amendment of Mr. Voinovich to the amendment of Mr. Baucus to section 405 of the Internal Revenue Code of 1986 by section 1112(a) of the Safe, Accountable, Flexible, Effective Transportation Equity Act: A Legacy for Users.

(d) SELECTION OF PARTICIPATING STATE PROGRAMS.—(A) GROUPINGS.—

(i) CONSULTATION.—In consultation with the association, and giving substantial weight to the recommendations of the association, the Administrator shall select the Small Business Development Center Programs of 2 States from each of the groups of States described in clauses (i) through (x) to participate in the pilot program established under this section.

(ii) GROUP 1.—Group 1 shall consist of Maine, Massachusetts, New Hampshire, Connecticut, Vermont, and Rhode Island.

(iii) GROUP 2.—Group 2 shall consist of New York, New Jersey, Puerto Rico, and the Virgin Islands.

(iv) GROUP 3.—Group 3 shall consist of Pennsylvania, Maryland, West Virginia, Virginia, the District of Columbia, and Delaware.

(v) GROUP 4.—Group 4 shall consist of Georgia, Alabama, North Carolina, South Carolina, Mississippi, Florida, Kentucky, and Tennessee.

(vi) GROUP 5.—Group 5 shall consist of Illinois, Ohio, Michigan, Indiana, Wisconsin, and Minnesota.

(vii) GROUP 6.—Group 6 shall consist of Texas, New Mexico, Arkansas, Oklahoma, and Louisiana.

(viii) GROUP 7.—Group 7 shall consist of Missouri, Iowa, Nebraska, and Kansas.

(ix) GROUP 8.—Group 8 shall consist of Colorado, Wyoming, North Dakota, South Dakota, Montana, and South Dakota.

(x) GROUP 9.—Group 9 shall consist of California, Arizona, American Samoa, Hawaii, Nevada, and Arizona.

(x) GROUP 10.—Group 10 shall consist of Washington, Alaska, Idaho, and Oregon.

(B) DEADLINE FOR SELECTION.—The Administrator shall make selections under this paragraph no later than 60 days after the date of publication of final regulations under subsection (d).

(C) COORDINATION TO AVOID DUPLICATION WITH OTHER PROGRAMS.—In selecting Small Business Development Center Programs under this paragraph, the Administrator shall give a preference to any such program that has a plan for consulting with Federal and State agencies to ensure that any assistance provided under this section is not duplicated by a Federal or State program.

(5) STANDARDS.—Subparagraphs (A) and (B) of section 21(a)(4) of the Small Business Act (15 U.S.C. 648(a)(4)) shall apply to assistance made available under the pilot program established under this section.

(6) GRANT AMOUNTS.—Each State program selected to receive a grant under paragraph (4) shall be eligible to receive a grant in an amount equal to—

(A) not less than $150,000 per fiscal year; and

(B) not more than $300,000 per fiscal year.

(7) EVALUATION AND REPORT.—The Comptroller General of the United States shall—

(A) not later than 30 months after the date of disbursement of the first grant under the pilot program established under this section, initiate an evaluation of the pilot program; and

(B) not later than 6 months after the date of the initiation of the evaluation under subparagraph (A), transmit to the Administrator, the Committee on Small Business and Entrepreneurship, and the Committee on Small Business of the House of Representatives, a report containing—

(i) the results of the evaluation; and

(ii) any recommendations as to whether the pilot program, with or without modification, should be extended to include the participation of all Small Business Development Centers.

(8) AUTHORIZATION OF APPROPRIATIONS.—(A) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(i) $5,000,000 for the first fiscal year beginning after the date of enactment of this Act; and

(ii) $5,000,000 for each of the 3 fiscal years following the fiscal year described in clause (i).

(B) LIMITATION ON USE OF OTHER FUNDS.—

(i) The Administrator may carry out the pilot program established under this section only with amounts appropriated in advance specifically to carry out this section.

(ii) TERMINATION.—The Small Business Regulatory Assistance Pilot Program established under this section shall terminate 4 years after the date of disbursement of the first grant under the pilot program.

(iii) RULEMAKING.—After providing notice and an opportunity for comment, and after consulting with the association (but not later than 180 days after the date of enactment of this Act), the Administrator shall promulgate final regulations to carry out this section, including regulations that establish—

(I) priorities for the types of assistance to be provided under the pilot program established under this section;

(II) standards relating to the educational, technical, and support services to be provided by participating Small Business Development Centers; and

(III) standards relating to any national service delivery and support function to be provided by the association under the pilot program.

(4) standards relating to any work plan that the Administrator may require a participating Small Business Development Center to develop; and

(5) standards relating to the educational, technical, and professional competency of any expert or other assistance provider to whom a small business concern may be referred for compliance assistance under the pilot program.

SEC. 341. MODIFICATION OF DETERMINATION OF EXCLUSION FOR TRACTORS WEIGHING NOT MORE THAN 19,500 POUNDS FROM FEDERAL EXCISE TAX ON HEAVY TRUCKS AND TRAILERS.—(a) IN GENERAL.—(1) Subparagraph (B) of section 68(a)(4) is amended to read as follows:

(2) The amendment made by this section shall be effective on the date it is enacted.
(C) NONAPPLICATION TO QUALIFIED RESTAURANT EMPLOYEES.—Subparagraphs (A) and (B) shall not apply to an individual described in subsection (d)(1)."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after the date of the enactment of this Act.

SA 131. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. 6. EXPANSION OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUAL.

(a) In GENERAL.—Subparagraph (C) of section 64(c)(2) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs for self-employed individuals) is amended to read as follows:

"(C) the taxpayer, the taxpayer’s spouse, or the taxpayer’s dependents,"

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SA 132. Mr. SMITH (for himself and Mr. SCHUMER) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. 7. REPEAL OF FEDERAL UNEMPLOYMENT SURREX.

(a) In GENERAL.—Section 3301 (relating to rate of Federal unemployment tax) is amended by striking "or" at the end of paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (3) the following new paragraph:

"(2) in the case of wages paid in calendar year 2007—"

"(A) 6.2 percent in the case of wages for any portion of the year ending before April 1, and"

"(B) 6.0 percent in the case of wages for any portion of the year beginning after March 31; or"

(b) CONFORMING AMENDMENT.—Section 3301(1) of such Code is amended by striking "2007" and inserting "2006".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid after December 31, 2006.

SA 136. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. 8. REPEAL OF FEDERAL UNEMPLOYMENT SURREX.

(a) In GENERAL.—Section 3301 (relating to rate of Federal unemployment tax) is amended by striking "or" at the end of paragraph (1), by redesigning paragraph (2) as paragraph (3), and by inserting after paragraph (3) the following new paragraph:

"(2) in the case of wages paid in calendar year 2007—"

"(A) 6.2 percent in the case of wages for any portion of the year ending before April 1, and"

"(B) 6.0 percent in the case of wages for any portion of the year beginning after March 31; or"

(b) CONFORMING AMENDMENT.—Section 3301(1) of such Code is amended by striking "2007" and inserting "2006".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid after December 31, 2006.
Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

SA 138. Mr. CORYN submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. EMPLOYER-PROVIDED OFF-PREMISES HEALTH CLUB SERVICES.

(a) Treatment as Fringe Benefit.—Subparagraph (A) of section 132(j)(4) of the Internal Revenue Code of 1986 (relating to on-premises gyms and other athletic facilities) is amended to read as follows:

"(A) IN GENERAL.—Gross income shall not include—";

"(i) the value of any on-premises athletic facility provided by an employer to its employees, and"

"(ii) in the case of any taxable year beginning in 2007, so much of the fees, dues, or membership expenses paid by an employer to an athletic or fitness facility described in subparagraph (C) on behalf of its employees as does not exceed $900 per employee per year.");

(b) Athletic Facilities Described.—Paragraph (4) of section 132(j)(1) of the Internal Revenue Code of 1986 (relating to special rules) is amended by adding at the end the following new subparagraph:

"(C) CERTAIN ATHLETIC OR FITNESS FACILITIES DESCRIBED.—For purposes of subparagraph (A)(ii), an athletic or fitness facility described in this subparagraph is a facility—"

"(i) which provides instruction in a program of physical exercise, offers facilities for the preservation, maintenance, encouragement, or development of physical fitness, or is the site of such a program of a State or local government;

"(ii) which is not a private club owned and operated by its members,

"(iii) which does not offer golf, hunting, sailing, or riding facilities,

"(iv) whose health or fitness facility is not incidental to its overall function and purpose, and

"(v) which is fully compliant with the State of jurisdiction and Federal anti-discrimination laws.");

(c) Exclusion Applies to Highly Compensated Employees Only If No Discrimination.—Section 132(j)(1) of the Internal Revenue Code of 1986 is amended—

"(1) by striking paragraphs (1) and (2) of subsection (a) and inserting "Subsections (a)(1), (a)(2), and (j)(4),"; and

"(2) by striking the heading thereof through " horrifying " and inserting " CERTAIN EXCLUSIONS APPLY.");

(d) Employer Deduction for Dues to Certain Athletic Facilities.—

(1) In General.—Paragraph (3) of section 274(a) of the Internal Revenue Code of 1986 (relating to denial of deduction for club dues) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to so much of the fees, dues, or membership expenses paid in any taxable year beginning in 2007 to athletic or fitness facilities (within the meaning of section 132(j)(4)(C)) as does not exceed $900 per employee per year.");

(2) Conforming Amendment.—The last sentence of section 274(e)(4) of such Code is amended by inserting "the first sentence of before "subsection (a)(3)."

(e) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SA 139. Mr. CORYN submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. REPEAL OF EGTRRA AND JGTRRA SUN- SETS.

(a) EGTRRA.—The Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking title IX.

(b) JGTRRA.—Title III of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking section 303.

SA 140. Mr. CORYN submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. REPEAL OF EGTRRA AND JGTRRA SUN- SETS.

(a) EGTRRA.—The Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking title IX.

(b) JGTRRA.—Title III of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking section 303.

SA 141. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. RESPONSIBLE EMPLOYER REQUIRE- MENTS.

(a) Penalties for Unlawful Employment of Aliens.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

"(1) in subsection (e)(4)—

"(A) in subparagraph (A)(i), by striking "not less than $250 and not more than $2,000" and inserting "not less than $500 and not more than $7,500";

"(B) in subparagraph (A)(ii), by striking "not less than $2,000 and not more than $5,000" and inserting "not less than $10,000 and not more than $15,000"; and

"(C) in subparagraph (A)(iii), by striking "not less than $3,000 and not more than $10,000" and inserting "not less than $25,000 and not more than $40,000";

"(2) in subsection (e)(5)—

"(A) by inserting ", subject to paragraph (10)," after "in an amount";

"(B) by striking "$100 and not more than $1,000" and inserting "$1,000 and not more than $25,000"; and

"(C) by adding at the end the following sentence:

"(10) EXEMPTION FROM PENALTY FOR EMPLOY- ERS PARTICIPATING IN THE BASIC PIPER PROGRAM.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment of an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for
hiring or recruitment or referral by a person or entity, the penalty otherwise imposed shall be waived if the violator establishes that it was voluntarily participating in the basic pilot electronic verification program at the time of the offense.”;

(4) by amending paragraph (1) of subsection (f) to read as follows:

“(i) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of paragraph (1) or (2) of subsection (a) shall be fined not less than $3,000 and not more than $5,000, for each unauthorized alien with respect to which such a violation occurs, imprisoned for not more than one year, and debarred from the receipt of any other Federal law relating to fines.”; and

(5) in subsection (f)(2), by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”.

(b) RETENTION AND USE OF EMPLOYMENT ELIGIBILITY VERIFICATION DOCUMENTS.—

(1) RETENTION.—Section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended by striking paragraph (4) and inserting the following:

“(4) COPIING AND RETENTION OF DOCUMENTATION.—

“(A) IN GENERAL.—A person or entity required to retain documentation described in subparagraph (B), (C), or (D) of paragraph (1) or (2) of subsection (a) shall, not less than 5 years after the date of such hiring, or recruiting or referring for a fee, of an individual, 5 years after the date of the recruiting or referring for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referring for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referring for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referring for a fee (without hiring) of an individual, 5 years after the date of such hiring, and shall submit to each member of the Committee on the Judiciary of the House of Representatives immediate notice of such violation or limitation.

“(B) OTHER RECORDS.—Such person or entity shall retain written records of any such violation or limitation described in clause (i), the Administrator of General Services, the Secretary of Labor, or the Attorney General, debarment, limited, or take alternative action under this clause shall not be judicially reviewed.

“(C) EXEMPTION FROM PENALTY FOR EMPLOYERS PARTICIPATING IN THE BASIC PILOT PROGRAM.—In the case of imposition on an employer of a debarment from the receipt of a Federal contract, grant, or cooperative agreement under subparagraph (A) or (B), that penalty shall be waived if the employer establishes that the employer voluntarily participated in the basic pilot program under section 274A of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) at the time of the violations of this section that resulted in the debarment.”.

SA 142. MR. SESSIONS submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. Reid (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 1. RESPONSIBLE EMPLOYER REQUIREMENTS.

(a) PENALTIES FOR UNLAWFUL EMPLOYMENT OF ALIENS.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in subsection (e)(4)—

(A) in subparagraph (A)(i), by striking “not less than $250 and not more than $2,000” and inserting “not less than $500 and not more than $7,500”;

(B) in subparagraph (A)(ii), by striking “not less than $2,000 and not more than $5,000,” and inserting “not less than $10,000 and not more than $15,000”; and

(C) in subparagraph (A)(iii), by striking “not less than $3,000 and not more than $10,000” and inserting “not less than $25,000 and not more than $40,000”;

(2) in subsection (e)(5)—

(A) by inserting “; subject to paragraph (10);” after “in an amount”; and

(B) by striking “$100 and not more than $1,000” and inserting “$1,000 and not more than $25,000”; and

(3) by adding at the end the following sentence: “Providing information to the basic pilot program described in section 409(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A) and not qualify for the exemption provided by (e)(10).”; and

(c) EXTENSION OF THE BASIC PILOT PROGRAM.—Section 409(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by adding at the end the following new paragraph:

“(5) INDIVIDUALS COVERED.—Notwithstanding availability of this title, any person or other entity that elects to participate in the basic pilot program shall follow the procedures described in paragraphs (1) through (5) with respect to the person or entity that elects to participate in the basic pilot program.”

Section 274A(e) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)) is amended by adding at the end the following new paragraph:

“(10) PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS, AND AGREEMENTS.—

“(A) EMPLOYERS WITH NO CONTRACTS, GRANTS, OR AGREEMENTS.—

“(1) IN GENERAL.—Subject to clause (ii) and subparagraph (C), if an employer who does not hold a Federal contract, grant, or cooperative agreement is determined to have violated paragraph (1) or (2) of subsection (a), the administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 7 years.

“(B) EMPLOYERS PARTICIPATING IN THE BASIC PILOT PROGRAM.—

(1) IN GENERAL.—The Administrator of General Services, in consultation with the Secretary of Homeland Security or the Attorney General shall advise the Administrator of General Services of the debarment of an employer under clause (i) and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 7 years.

“(2) WAIVER.—

“(A) AUTHORITY.—The Administrator of General Services, in consultation with the Secretary of Homeland Security or the Attorney General, may waive operation of clause (i) or may limit the duration or scope of a debarment under clause (i) if such waiver or limitation is necessary to national defense or in the interest of national security.

“(B) GENERAL.—No such waiver or limitation shall be granted unless the Administrator of General Services, in consultation with the Secretary of Homeland Security or the Attorney General, debarment, limited, or take alternative action under this clause shall not be judicially reviewed.

“(C) EXEMPTION FROM PENALTY FOR EMPLOYERS PARTICIPATING IN THE BASIC PILOT PROGRAM.—In the case of imposition on an employer of a debarment from the receipt of a Federal contract, grant, or cooperative agreement under subparagraph (A) or (B), that penalty shall be waived if the employer establishes that the employer voluntarily participated in the basic pilot program under section 274A of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) at the time of the violations of this section that resulted in the debarment.”.

After consideration of the amendment provided by (e)(10).

Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) IN GENERAL.—Subject to clause (ii) and subparagraph (C), if an employer who holds a Federal contract, grant, or cooperative agreement is determined to have violated this section shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 10 years.

“(2) NOTICE TO AGENCIES.—Prior to debar-
civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under subsection (a)(3) for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed shall be waived if the violator establishes that it was voluntarily participating in the basic pilot electronic verification program at the time of the offense.

(4) in subsection (f)(2), by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security";

(b) USE OF EMPLOYMENT ELIGIBILITY VERIFICATION DOCUMENTS.

(1) RETENTION.—Section 274a(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended by striking paragraph (2) and inserting the following:

"(4) COPYING AND RETENTION OF DOCUMENTATION.—

"(A) IN GENERAL.—A person or entity required to examine a document described in subparagraph (B), (C), or (D) of paragraph (1) or receive an attestation described in paragraph (2) shall retain a paper, microfiche, microfilm, or electronic version of each such document and attestation, indicate that each copy is an authentic copy, which shall be made available for inspection by an officer of the Department of Homeland Security or any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor during the period beginning on the time of the offense.

"(B) RETAINED DOCUMENTS.—A person or entity required to retain versions of documents or attestations or maintain records under paragraph (4) shall use any such version, attestation, or record only for the purposes of complying with the requirements of this section except as otherwise permitted under law."

(c) EXTENSION OF THE BASIC PILOT PROGRAM.—Section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by adding at the end the following new paragraph:

"(5) INDIVIDUALS COVERED.—Notwithstanding any other provision of this title, a person or other entity that elects to participate in the basic pilot following the procedures described in paragraphs (1) through (4) for each individual who the person or entity hires (or recruits or refers) for employment and for each individual who is employed by the person or entity."

SEC. 2. RESPONSIBLE GOVERNMENT CONTRACT REQUIREMENTS.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended by adding at the end the following new paragraph:

"(10) FORBID PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS, AND AGREEMENTS.—

"(A) EMPLOYERS WITH NO CONTRACTS, GRANTS, OR AGREEMENTS.—

"(i) IN GENERAL.—Subject to clause (ii) and subparagraph (C), if an employer who does not hold a Federal contract, grant, or cooperative agreement is determined to have violated this section, the employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 7 years.

"(ii) PLACEMENT ON EXCLUDED LIST.—The Secretary of Homeland Security, in consultation with the Attorney General, may place on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 7 years.

"(B) EMPLOYERS WITH CONTRACTS, GRANTS, OR AGREEMENTS.—

"(i) IN GENERAL.—Subject to clause (ii) and subparagraph (C), if an employer who holds a Federal contract, grant, or cooperative agreement is determined to have violated this section, the employer shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 10 years.

"(ii) NOTICE TO AGENCIES.—Prior to debarring an employer, the Secretary of Homeland Security, in cooperation with the Administrator of General Services, shall advise any agency or department holding a Federal contract, grant, or cooperative agreement with the employer of the Government's intention to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 10 years.

"(iii) WAIVER.—

"(I) AUTHORITY.—After consideration of the record of any agency that holds a contract, grant, or cooperative agreement with the employer, the Administrator of General Services, in consultation with the Secretary of Homeland Security and in cooperation with the Attorney General, may waive operation of clause (i) or may limit the duration or scope of the debarment under clause (i) if such waiver or limitation is necessary to the national defense or in the interest of national security.

"(II) NOTIFICATION TO CONGRESS.—If the Administrator grants a waiver or limitation described in clause (i), the Administrator shall notify the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such waiver or limitation.

"(III) PROHIBITION ON JUDICIAL REVIEW.—The decision of whether to debar or take alternative action under this clause shall not be judicially reviewed.

"(B) EMPLOYERS PARTICIPATING IN THE BASIC PILOT PROGRAM.—In the case of imposition on a foreign employer of a debarment from the receipt of a Federal contract, grant, or cooperative agreement under subparagraph (A) or (B), that penalty shall be waived if the employer agrees to participate in the voluntary participating in the basic pilot program under section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) at the time of the violations of this section that resulted in the debarment.

SA 143. Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage, which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE II—UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 201. UNLAWFUL EMPLOYMENT OF ALIENS.

(a) IN GENERAL.—Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended to read as follows:

"(1) IN GENERAL.—It is unlawful for an employer, after lawfully hiring an alien for employment, to continue to employ the alien unless such employer meets the requirements of subsections (c) and (d).

"(2) CONTINUING EMPLOYMENT.—It is unlawful for an employer, after lawfully hiring an unauthorized alien, to continue to employ the alien in the United States knowing that the alien is an unauthorized alien with respect to such employment; or

"(A) to hire, or to recruit or refer for a fee, an alien for employment in the United States knowing, or with reckless disregard, that the alien is an unauthorized alien with respect to such employment; or

"(B) to hire, or to recruit or refer for a fee, an employer in the United States in an industry unless such employer meets the requirements of subsections (c) and (d).

"(3) USE OF LABOR THROUGH CONTRACT.—

"(A) IN GENERAL.—An employer who uses a contract, subcontract, or exchange to obtain the labor of an alien in the United States knowing, or with reckless disregard, that the alien is an unauthorized alien with respect to such employment.

"(B) EXCEPTION.—If the alien is an unauthorized alien with respect to performing such labor, shall be considered to have hired the alien in violation of this paragraph (1), it shall be a violation of paragraph (1) if such employer fails to comply with the requirements of
subsections (c) and (d) shall be considered to have hired the alien in violation of paragraph (1)(B)."

(ii) INFORMATION SHARING.—The person hiring the alien, the employer, who obtains the labor of the alien, the employer identification number assigned to such person by the Commissioner of Internal Revenue shall be considered a recordkeeping violation under subsection (e)(4)(B)."

(C) REPORTING REQUIREMENT.—The employer or class of employers shall report to the Secretary for good cause, at the request of the employer, who obtains the labor of an alien from another person, where such person hiring such alien fails to comply with the requirements of subsections (c) and (d)."

(4) DEFENSE.—

(A) IN GENERAL.—Subject to subparagraph (B), an employer that establishes that the employer is in compliance with the requirements of subsections (c) and (d) has established an affirmative defense that the employer has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(B) EXCEPTION.—Until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (d) or is participating in such System on a voluntary basis, the employer may establish an affirmative defense under subparagraph (A) by complying with the requirements of subsection (c).

(5) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

(1) AUTHORITY TO REQUIRE CERTIFICATION.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that the employer is in compliance with this section, or has instituted policies and procedures to come into compliance.

(2) CONTENT OF CERTIFICATION.—Not later than 60 days after the date an employer receives a request for a certification under paragraph (1), the employer shall certify under penalty of perjury that—

(A) the employer is in compliance with the requirements of subsections (c) and (d); or

(B) the employer has instituted a program to come into compliance with such requirements.

(3) PENALTY.—The 60-day period referred to in paragraph (2), may be extended by the Secretary for good cause, at the request of the employer.

(4) VERIFICATION.—The Secretary is authorized to publish in the Federal Register standards or methods for certification under paragraph (1) and for specific recordkeeping practices related to such certification, and procedures for the audit of any records related to such certification.

(5) DOCUMENT VERIFICATION REQUIREMENTS.—An employer hiring, or recruiting or referring for a fee, an individual for employment in the United States shall verify that the individual is eligible for such employment by meeting the following requirements:

(i) ATTESTATION BY EMPLOYER.—

(A) IN GENERAL.—The employer shall attest, under penalty of perjury and on a form prescribed by the Secretary, that the employer has verified the identity and eligibility for employment of the individual by examining a document described in subparagraph (B).

(B) SIGNATURE REQUIREMENTS.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

(C) STANDARDS FOR EXAMINATION.—The employer has complied with the requirement of this paragraph with respect to examination of documentation personnel would conclude that the document examined is genuine and relates to the individual, and the individual is a national of the United States, is a permanent resident card, as specified in subparagraph (A), an alien lawfully admitted for permanent residence, or an alien who is authorized to work in the United States, a permanent resident card, as specified in subparagraph (A), a document designated as copied documents.

(D) ENFORCEMENT.—The Secretary shall implement procedures to utilize the information obtained under subparagraphs (B) and (C) to identify employers who use a contract, subcontract, or exchange to obtain the labor of an alien from another person, where such person hiring such alien fails to comply with the practices of subsections (c) and (d).

(6) PENALTIES.—

(A) RETENTION OF DOCUMENTS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance, use, or establishment of a national identification card.

(B) ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—

(i) REQUIREMENT FOR SYSTEM.—The Secretary, in cooperation with the Commissioner of Social Security, shall implement the Electronic Employment Verification System (referred to in this subsection as the ‘‘System’’) to determine whether—
“(A) the identifying information submitted by an individual is consistent with the information maintained by the Secretary or the Commissioner of Social Security; and
“(B) the individual is eligible for employment in the United States.

“(2) REQUIREMENT FOR PARTICIPATION.—The Secretary shall require all employers in the United States, or classes of employers, to participate in the System, with respect to all employees hired by the employer on or after the date that is 18 months after the date that not less than $400,000,000 has been appropriated to make available to implement this subsection.

“(3) OTHER PARTICIPATION IN SYSTEM.—Notwithstanding paragraph (2), the Secretary has the authority—
“(A) to permit any employer that is not required to participate in the System under paragraph (2) to participate in the System on a voluntary basis; and
“(B) to require any employer or class of employers to participate on a priority basis in the System with respect to individuals employed as of, or hired after, the date of enactment of the Fair Minimum Wage Act of 2007.

“(1) If the Secretary designates such employer or class of employers as a critical employer based on an assessment of homeland security or national security needs; or
“(2) has reasonable cause to believe that the employer has engaged in material violations of paragraph (1), (2), or (3) of subsection (a).

“(4) REQUIREMENT TO NOTIFY.—The Secretary shall notify the employer or class of employers in writing regarding the requirement for participation in the System under paragraph (3) not less than 60 days prior to the effective date of such requirement.

“(5) REGISTRATION OF EMPLOYERS.—An employer shall register the employer’s participation in the System in the manner prescribed by the Secretary prior to the date the employer is required or permitted to submit information with respect to an employee under this subsection.

“(6) ADDITIONAL GUIDANCE.—A registered employer shall be permitted to utilize any technology that is consistent with this section and with any regulation or guidance from the Secretary to streamline the procedures to facilitate compliance with—
“(A) the attestation requirement in subsection (a); and
“(B) the employment eligibility verification requirements in this subsection.

“(7) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required to participate in the System and fails to comply with the requirements of the System with respect to an employee—
“(A) such failure shall be treated as a violation of subsection (a)(1); and
“(B) a rebuttable presumption is created that the employer has violated subsection (a)(1). The rebuttable presumption shall not apply to a prosecution under subsection (f)(1).

“(8) DESIGN AND OPERATION OF SYSTEM.—In general.—The Secretary shall, through the System—
“(i) respond to each inquiry made by a registered employer through the Internet or other electronic medium or over a toll-free telephone line regarding an individual’s identity and eligibility for employment in the United States; and
“(ii) maintain a record of each such inquiry and the information provided in response to such inquiry.

“(B) INITIAL INQUIRY.—“(i) REQUIREMENT.—A registered employer shall, with respect to the hiring, or recruiting or referring for a fee, any individual for employment in the United States, obtain from the individual and record on the form described in subsection (c)(1)(A)(i)—
“(I) the individual’s name and date of birth and, if the individual is employed as of, or hired after, the date in the United States, the State in which such individual was born;
“(II) the individual’s social security account number;
“(III) the employment identification number of the individual’s employer during any one of the 5 most recently completed calendar years for which the employer is required or permitted to submit information; and
“(IV) in the case of an individual who does not attest that the individual is a national of the United States, the State in which such individual was not employed in the United States during any of the 5 most recently completed calendar years for which the employer is required or permitted to submit information, a certification that the System is unable to correctly issue, within the period described in subparagraph (E)(iii), a final notice to indicate the individual’s identity and eligibility for employment in the United States.

“(B) SUBMISSION TO SYSTEM.—A registered employer shall submit an inquiry through the System to seek confirmation of the individual’s identity and eligibility for employment in the United States—
“(I) not later than 3 days after the date of the hiring, or recruiting or referring for a fee, of the individual (as the case may be); or
“(II) in the case of an employee hired by a critical employer designated by the Secretary under paragraph (3)(B) at such time as the Secretary shall specify.

“(C) REQUIREMENT TO PROVIDE.—An employer shall provide the employer identification number issued by the System to an individual who requests to contest such notice under the procedures established in subparagraph (E)(iii) not less than 10 days after receiving the notice from the individual’s employer.

“(D) REQUIREMENT TO AFFIRMATIVELY STATE A LACK OF RECENT EMPLOYMENT.—An individual providing information under clause (i)(III) who was not employed in the United States during any of the 5 most recently completed calendar years shall affirmatively state on the form described in subsection (c)(1)(A)(i) that no employer identification number is provided because the individual was not employed in the United States during such period.

“(E) INITIAL RESPONSE.—Not later than 10 days after an employer submits an inquiry to the System regarding an individual, the Secretary shall provide, through the System, to the employer—
“(I) if the System is able to confirm the individual’s identity and eligibility for employment in the United States, a confirmation notice, including the appropriate codes on such notice, in the case of an alien authorized to work in the United States, the State in which such individual was not employed in the United States during any of the 5 most recently completed calendar years for which the employer is required or permitted to submit information; and
“(ii) if the System is unable to confirm the individual’s identity or eligibility for employment in the United States, and after a reasonable manual investigation has been conducted, a tentative nonconfirmation notice, including the appropriate codes on such tentative nonconfirmation notice.

“(F) CONFIRMATION UPON INITIAL INQUIRY.—“(I) CONFIRMATION UPON INITIAL INQUIRY.—If an employer receives a confirmation notice under paragraph (C)(i) for an individual, the employer shall, in the case of an alien authorized to work in the United States, the State in which such individual was not employed in the United States during any of the 5 most recently completed calendar years, affirmatively state on the form described in subsection (c)(1)(A)(i), the appropriate code provided in such notice.

“(II) TENTATIVE NONCONFIRMATION.—If an employer receives a tentative nonconfirmation notice under paragraph (C)(ii) for an individual, the employer shall inform such individual of the issuance of such notice in writing, on a form prescribed by the Secretary not later than 3 days after receiving such notice. Such individual shall acknowledge receipt of such notice in writing on the form prescribed in subsection (c)(1)(A)(i).

“(III) NO CONTEST.—If the individual does not contest the tentative nonconfirmation notice within 10 days of receiving notice through the System, the notice shall become final and the employer shall record on the form described in subsection (1)(A)(ii), the appropriate code provided through the System to indicate the individual did not contest the tentative nonconfirmation. An individual’s failure to contest a tentative nonconfirmation notice shall not be considered an admission of guilt with respect to any violation of this Act or any other provision of law.

“(G) EFFECTIVE PERIOD OF TENTATIVE NONCONFIRMATION NOTICE.—A tentative nonconfirmation notice shall remain in effect until such notice becomes final under clause (iii), or the earlier of—
“(i) a final confirmation notice or final nonconfirmation notice is issued through the System; or
“(ii) 30 days after the individual contests a tentative nonconfirmation under clause (iv).

“(H) AUTOMATIC FINAL NOTICE.—“(I) IN GENERAL.—If a final confirmation notice or final nonconfirmation notice is not issued within the 30-day period described in clause (v)(II), the Secretary shall automatically provide to the employer, through the System, the appropriate code indicating a final notice.

“(II) PERIOD PRIOR TO INITIAL CERTIFICATION.—During the period beginning on the date of the enactment of the Fair Minimum Wage Act of 2007 and ending on the date the Secretary submits the initial report described in subparagraph (E)(ii), an automatic notice issued under subclause (I) shall be a final confirmation notice.

“(III) PERIOD AFTER INITIAL CERTIFICATION.—After the date that the Secretary submits the initial report described in subparagraph (E)(ii), an automatic notice issued under subclause (I) shall be a final confirmation notice unless the most recent such report includes a certification that the System is able to correctly issue, within the period beginning on the date an employer submits an inquiry to the System and ending on the date an automatic default notice would be issued by the System, a final notice in at least 99 percent of the cases in which the notice relates to an individual who is eligible for employment in the United States. If the most recent such report includes such a certification, the automatic notice issued under subclause (I) shall be a final nonconfirmation notice.

“(I) ADDITIONAL AUTHORITY.—Notwithstanding the second sentence of subclause (III), the Secretary shall have the authority to issue a final confirmation notice for an individual who would be subject to a final nonconfirmation notice under such sentence. In such a case, the Secretary shall determine the individual’s eligibility for employment in the United States and record the results of such determination in the System within 12 business days.

“(J) EFFECTIVE PERIOD OF FINAL NOTICE.—A final confirmation notice issued under this paragraph for an individual shall remain in effect—
“(i) during any continuous period of employment of such individual by such employer, unless the Secretary determines the final confirmation was the result of identity fraud; and
“(ii) in the case of an alien authorized to be employed in the United States for a temporary period, during such period.

“(K) PROHIBITION ON TERMINATION.—An employer may not terminate the employment of an individual based on a tentative nonconfirmation.
nonconfirmation notice until such notice becomes final under clause (iii) or a final nonconfirmation notice is issued for the individual by the System. Nothing in this clause shall affect any determination of employment for any reason other than such tentative nonconfirmation.

(ii) RECORDING OF CONSENT PROVISION.—The employer shall record on the form described in subsection (c)(1)(A)(i) the appropriate code that is provided through the System to indicate a final confirmation notice or final nonconfirmation notice.

(iii) CONSEQUENCES OF NONCONFIRMATION.—If the employer has received a final nonconfirmation notice for an individual in the United States (excluding an individual who is eligible for employment in the United States for the District of Columbia), and the employer fails to take action as described in subparagraph (D)(v)(II), the individual shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System.

(iv) TRAINING MATERIALS.—The Secretary shall make available to the employer any appropriate training materials to facilitate compliance with this subsection, and section 922(b)(1)(A)(ii).

(v) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security, with respect to the System, are set out in section 205(c)(2) of the Social Security Act.

(vi) PROTECTION FROM LIABILITY.—No employer, participating in the System shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System.

(vii) ADMINISTRATIVE REVIEW.—

(A) IN GENERAL.—An individual who is terminated from employment as a result of a final nonconfirmation notice may, not later than 60 days after the date of such termination, file an appeal of such notice.

(B) PROCEDURES.—The Secretary and Commissioner of Social Security shall develop procedures to review appeals filed under subparagraph (A) and to make final determinations on such appeals.

(C) REVIEW FOR ERROR.—If a final determination on an appeal filed under subparagraph (A) results in a confirmation of an individual’s eligibility to work in the United States, the administrative review process shall require the Secretary to determine if the final nonconfirmation notice issued for the individual was terminated from employment as a result of the System, and in no case shall the data provided by the System be used for any purpose other than as permitted by the System.

(i) an error or negligence on the part of the employer; or

(ii) the individual was not determined to be authorized to be employed, or

(iii) erroneous system information that was not the result of acts or omissions of the individual.

(D) COMPENSATION FOR ERROR.—

(i) IN GENERAL.—If the Secretary makes a determination under subparagraph (C) that an individual was terminated from employment as a result of an error or negligence on the part of the employer, or that erroneous system information was not the result of acts or omissions of the individual, the Secretary shall compensate the individual for wages lost.

(ii) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work scheduled that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the administrative review process described in this paragraph or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first.

(E) LIMITATION ON COLLECTION OF USE OF DATA.—

(A) LIMITATION ON COLLECTION OF DATA.—

(i) IN GENERAL.—The System shall collect and maintain only the minimum data necessary to facilitate the successful operation of the System, and in no case shall the data be other than—

(1) information necessary to register employers under paragraph (5); and

(2) information necessary to initiate and respond to inquiries or contests under paragraph (5).

(ii) information necessary to establish and enforce compliance with paragraphs (5) and (8); and

(iii) information necessary to detect and prevent employment-related identity fraud; and

(iv) other information the Secretary determines is necessary, subject to a 180 day notice and comment period in the Federal Register.

(B) LIMITATION ON USE OF DATA.—Whoever willfully and knowingly accesses, discloses, or uses any information obtained or maintained by the System shall be guilty of a misdemeanor and fined not more than $1,000 for each violation.

(C) PENALTIES.—Any officer, employee, or contractor who willfully and knowingly collects and maintains data in the System other than data described in clause (i) shall be guilty of a misdemeanor and fined not more than $5,000 for each violation.

(D) LIMITATION ON USE OF DATA.—Whoever willfully and knowingly accesses, discloses, or uses any information obtained or maintained by the System shall be guilty of a misdemeanor and fined not more than $1,000 for each violation.
shall be guilty of a felony and upon conviction shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

(2) MODIFICATION AUTHORITY. —The Secretary, after notice is submitted to Congress and published in the Federal Register, is authorized to modify the requirements of this subsection with respect to the collection of documents, signatures, methods of transmitting information, and other operational and technical aspects to improve the efficiency, accuracy, and security of the System.

(3) ANNUAL GAO STUDY AND REPORT. —(A) REQUIREMENT. —The Comptroller General of the United States shall conduct an annual study of the System.

(B) PURPOSE. —The study shall evaluate the accuracy, efficiency, integrity, and impact of the System.

(C) REPORT. —Not later than the date that is 24 months after the date that not less than $600,000,000 have been appropriated and made available, the Comptroller General shall submit to Congress a report containing the findings of the study conducted under this paragraph. Each such report shall include, at a minimum, the following:

(i) An assessment of the annual report and certification described in paragraph (8)(E)(ii)

(ii) An assessment of System performance with respect to the manner in which individuals who are eligible for employment in the United States are accurately approved within each of the periods specified in paragraph (8), including a separate assessment of such rate for nationals and aliens.

(iii) An assessment of the privacy and security of the System and its effects on identity theft or the misuse of personal data.

(iv) An assessment of the effects of the System on the employment of unauthorized aliens.

(v) An assessment of the effects of the System, including the effects of tentative confirmations, on unfair immigration-related employment practices and employment discrimination based on national origin or citizenship status.

(vi) An assessment of whether the Secretary and the Commissioner of Social Security ensure compliance of the System and its effects on identity theft or the misuse of personal data.

(4) COMPLAINT.—(A) COMPLAINTS AND INVESTIGATIONS. —The Secretary shall establish procedures for filing complaints regarding potential violations of subsection (a).

(B) INVESTIGATION.—For the investigation of such complaints, the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with any requirements, including violations of cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a future violation, and, in appropriate cases, the criminal penalty described in subsection (e).

(5) FEES. —In any appeal brought under paragraph (4) or brought pursuant to paragraph (5), the Attorney General may file suit to enforce compliance with the final determination, not earlier than 46 days and not later than 180 days after the date the final determination is issued, in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final determination shall not be subject to review.

(6) RECOVERY OF COSTS AND ATTORNEY'S FEES.—In any appeal brought under paragraph (4) or brought pursuant to paragraph (5) of this section the employer shall be entitled to recover from the Secretary reasonable costs and attorney's fees if such employer substantially prevails in the case. Such an award of attorney's fees may not exceed $25,000. Any such costs and attorney's fees assessed against the Secretary shall be charged against the operating expenses of the Department for the fiscal year in which the assessment is made, and may not be reimbursed from any other source.

(7) CRIMINAL PENALTIES AND INJURIOUS FOR PATTERN OR PRACTICE VIOLATIONS.—(A) CRIMINAL PENALTY. —An employer who engages in a pattern or practice of knowing violations of subsections (a), (c), and (d), or 2007, Jkt 059060 PO 00000 Frm 00074 Fmt 0624 Sfmt 0634 E:\RECORD07\S23JA7.REC S23JA7pwalker on PROD1PC69 with CONG-REC-ONLINE
more than 3 years for the entire pattern or practice, or both."

"(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—If the Secretary or the Attorney General is unable to establish that an employer is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (B) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting a permanent or temporary injunction, restraining orders of a lesser degree of intensity, or other equitable relief, or other appropriate relief, or other appropriate relief, as the Secretary deems necessary.

"(3) ADJUSTMENT FOR INFLATION.—All penalties on the recovery of costs and attorney's fees in this section shall be increased every 4 years beginning January 2010 to reflect the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) for the 48 month period ending with September of the year preceding the year such adjustment is made. Any adjustment under this subparagraph shall be rounded to the nearest dollar.

"(a) PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS, AND AGREEMENTS.—

"(1) EMPLOYERS WITH NO CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—If an employer who does not hold a Federal contract, grant, or cooperative agreement is determined by the Secretary or the Attorney General to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

"(B) WAIVER.—The Administrator of General Services, in consultation with the Secretary and the Attorney General, may waive operation of this section or may limit the duration or scope of the debarment.

"(2) EMPLOYERS WITH CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—An employer who holds a Federal contract, grant, or cooperative agreement and is determined by the Secretary or the Attorney General to be a repeat violator of this section or is convicted of a crime under this section shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

"(B) WAIVER.—Prior to debarring the employer under subparagraph (A), the Secretary, in cooperation with the Administrator of General Services, shall advise any affected holder of the contract, grant, or cooperative agreement with the employer of the Government's intention to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

"(C) WAIVER.—After consideration of the views of the parties in a proceeding that holds a contract, grant, or cooperative agreement with the employer, the Secretary may, in lieu of debarring the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years, waive operation of this subsection, limit the duration or scope of the debarment, or take alternate action under this subsection. The decision of whether to debar the employer, for what duration, and under what penalties and limitations on the recovery of costs and attorney's fees in this section shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

"(3) MISCELLANEOUS PROVISIONS.—

"(a) DOCUMENTATION.—In providing documentation or certification of aliens eligible to be employed in the United States, the Secretary shall provide that any limitations with respect to the period or type of employment or employer may be consecutively stated on the documentation or certification (other than aliens lawfully admitted for permanent residence) issued by the Secretary or the Attorney General to be a repeat violator of this section or convicted of a crime under this section and the employer's social security number or other identification number under the System by an employer is consistent with such information maintained by the Commissioner; that the alien is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (B), or otherwise engaged in violation of this section.

"(b) PROHIBITION OF INDEMNITY BONDS.—No indemnity bond or other security shall be required to limit the authority of the Secretary of Homeland Security to allow the participation of employers who are described in section 218A of the Immigration and Nationality Act (8 U.S.C. 1324a note) in the Electronic Employment Verification System established pursuant to such subsection.

"(c) TECHNICAL AMENDMENTS.—

"(1) DEFINITION OF UNAUTHORIZED ALIEN.—The term 'unauthorized alien' as used in sections 1227(a)(1)(B), 1227(d)(2)(A)(i), and 1252 of the Immigration and Nationality Act (8 U.S.C. 1182(a)(1)(B), 1227(d)(2)(A)(i), and 1252(a)(1) (8 U.S.C. 1182(a)(1)(B), 1227(d)(2)(A)(i), and 1252(a)(1)) is amended by striking '274(a)(b)\'' and inserting '274a'.

"(2) DOCUMENT REQUIREMENTS.—Section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) is amended—

(A) In subsections (a)(6) and (g)(2)(B), by striking '274a(b)' and inserting '274a(c) and (d)'; and

(B) In subsection (g)(2)(B)(ii), by striking '274a(b)(5)' and inserting '274a(c)'.

"(3) SUSPENSION.—Indictments for violations of this section or in subsection (d) of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a note) are repealed.

"(d) INJUNCTION OF PATTERN OR PRACTICE.—

"(1) EMPLOYERS WITH NO CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—If an employer who does not hold a Federal contract, grant, or cooperative agreement is determined by the Secretary or the Attorney General to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

"(B) WAIVER.—The Administrator of General Services, in consultation with the Secretary and the Attorney General, may waive operation of this section or may limit the duration or scope of the debarment.

"(2) EMPLOYERS WITH CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—An employer who holds a Federal contract, grant, or cooperative agreement and is determined by the Secretary or the Attorney General to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

"(B) WAIVER.—The Administrator of General Services, in consultation with the Secretary and the Attorney General, may waive operation of this section or may limit the duration or scope of the debarment.
the maximum extent practicable, assign such numbers by employing the enumeration procedure administered jointly by the Commissioner, the Secretary of State, and the Secretary of Homeland Security.

(e) Disclosure of Certain Taxpayer Identity Information.—

(1) General.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(22) Disclosure of Certain Taxpayer Identity Information by Social Security Administration to Department of Homeland Security.—

(1) Disclosures of Employer-No-Match Notices.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 during calendar year 2006, 2007, or 2008 which contains:

(1) more than 100 names and taxpayer identifying numbers of employees (within the meaning of such section) that did not match the records maintained by the Commissioner of Social Security, or

(2) more than 10 names of employers (within the meaning of such section) with the same taxpayer identifying number.

(2) Disclosure of Information Regarding Use of Duplicate Employer Taxpayer Identifying Information.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of identity fraud due to the multiple use of the same taxpayer identifying number (assigned under section 6109) of an employee (within the meaning of section 6051).

(iii) Disclosure of Information Regarding New Employers of Nonparticipating Employers.—Taxpayer identity information of all employees (within the meaning of section 6051) hired after the date a person identified in clause (ii) is required to participate in the system under section 274A(d)(2) or section 274A(d)(3)(B) of the Immigration and Nationality Act.

(iv) Disclosure of Information Regarding Employers of Certain Designated Employers.—Taxpayer identity information of all employees (within the meaning of section 6051) of each person who is required to participate in the system under section 274A(d)(1) of the Immigration and Nationality Act.

(v) Disclosure of New Hire Taxpayer Identity Information.—Taxpayer identity information concerning participation in the system and taxpayer identity information of all employees (within the meaning of section 6051) of such person hired during the period beginning with the later of—

(i) the date such person begins to participate in the System, or

(ii) the date the request, immediately preceding the most recent request under this clause, ending with the date of the most recent request under the system and taxpayer identity information under this paragraph;/(A) for purposes of, and to the extent necessary in—

(i) establishing and enforcing employer participation in the System,

(ii) carrying out, including through civil administrative or civil judicial proceedings, of sections 212, 217, 235, 237, 238, 274A, 274B, and 274C of the Immigration and Nationality Act, and

(iv) the civil operation of the Alien Terrorist Removal Court.

(C) Reimbursement.—The Commissioner of Social Security shall prescribe a reasonable fee schedule for furnishing taxpayer identity information under this paragraph and collect such fees in advance from the Secretary of Homeland Security.

(ii) The provisions of subparagraph (A) shall not apply to any request made after the date which is 3 years after the date of the enactment of this Act.

(2) Compliance by DHS Contractors with Confidentiality Safeguards.—(A) In General.—Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

"(9) Disclosure to DHS Contractors.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor of the Department of Homeland Security unless such contractor, to the satisfaction of the Secretary—

(A) has requirements in effect which require each such contractor which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4) to protect the confidentiality of such returns or return information,

(B) agrees to conduct an on-site review every 1 or more years of each contractor (or civil contracts or agreements of less than 1 year in duration) of each contractor to determine compliance with such requirements,

(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E), and

(D) is subject to the availability of appropriations for the most recent annual period that such contractor is in compliance with all such requirements.

The certification required by subparagraph (A) shall include the name and address of each contractor, a description of the contract, and the duration of such contract or agreement.

(3) Conforming Amendments.—(A) Section 6103(a)(3) of such Code is amended by striking "(20)" and inserting "(20), or (21)".

(B) Section 6103(p)(3)(A) of such Code is amended by adding at the end the following new sentence: "The Commissioner of Social Security may disclose any taxpayer identity information as the Secretary may require in carrying out this paragraph with respect to return information inspected or disclosed under this subsection (l)(1)(B)."

(C) Section 6103(p)(4) of such Code is amended—

(i) by striking "or (17)" both places it appears and inserting "(17), (21), and"

(ii) by striking "or (20)" each place it appears and inserting "(20), or (21)".

(D) Section 6103(p)(8)(B) of such Code is amended by inserting "and paragraph (9) after "subparagraph (A)"

(E) Section 7212(a)(2) of such Code is amended by striking "or (20)" and inserting "(20), or (21)"

(f) Authorization of Appropriations.—(1) In General.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as are necessary to carry out the amendments made by this section.

(2) Limitation on Verification Responsibilities of Commissioner of Social Security.—The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner’s responsibilities under subsection (a) of this amendment made by this title, except that the extent the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner’s full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

(g) Effective Dates.—(1) In General.—The amendments made by subsections (a), (b), (c), (d), (e), (f) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(2) Subsection (c).—The amendments made by subsection (e) shall apply to disclosures made after the date of the enactment of this Act.

(3) Subsection (d).—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (e)(2), shall be made with respect to calendar year 2008.

SEC. 202. EMPLOYER COMPLIANCE FUND.

Section 236 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding after the end the following section:

"(w) Employer Compliance Fund.—

"(1) In General.—There is established in the general fund of the Treasury, a separate account, which shall be known as the ‘Employer Compliance Fund’ (hereinafter in this subsection referred to as the ‘Fund’).

"(2) Deposits.—There shall be deposited into the Fund—

(A) such amounts as the Secretary of Homeland Security such sums as are necessary to carry out the amendments made by this title, except that the extent the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner’s full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

(g) Effective Dates.—(1) In General.—The amendments made by subsections (a), (b), (c), (d), (e), (f) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(2) Subsection (c).—The amendments made by subsection (e) shall apply to disclosures made after the date of the enactment of this Act.

(3) Subsection (d).—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (e)(2), shall be made with respect to calendar year 2008.

SEC. 203. ADDITIONAL WORKSITE ENFORCEMENT AND FRAUD DETECTION AGENTS.

(a) Increase in Number of Personnel.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, annually increase, by not less than 2,200, the number of personnel of the Bureau of Immigration and Customs Enforcement during the 5-year period beginning on the date of the enactment of this Act.

(b) Use of Personnel.—The Secretary of Homeland Security shall ensure that not less than 25 percent of all the hours expended by personnel of the Bureau of Immigration and Customs Enforcement to enforce compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324c) are used for the purpose of appropriating to the Secretary of Homeland Security for each
of the fiscal years 2008 through 2012 such sums as may be necessary to carry out this section.

SEC. 204. CLARIFICATION OF INELIGIBILITY FOR IMMIGRATION BENEFITS


SEC. 205. ANTIDISCRIMINATION PROTECTIONS.

(a) APPLICATION OF PROHIBITION OF DISCRIMINATION TO VERIFICATION SYSTEM.—Section 274B(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(1)), is amended by inserting “, the verification of the individual’s work authorization through the Electronic Employment Verification System described in section 274A(d),” after “the individual for employment”.

(b) CLASSES OF ALIENS AS PROTECTED INDIVIDUALS.—Section 274B(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)(B)) is amended to read as follows:

“(B) an alien who—

(1) lawfully admitted for permanent residence;

(2) has been granted asylum under section 207;

(3) has been granted an individual temporary protected status under section 244;

(4) has been granted parole under section 212(d)(5).

(c) REQUIREMENTS FOR ELECTRONIC EMPLOYMENT VERIFICATION.—Section 274B(a) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)) is amended by adding at the end the following:

“(7) ANTIDISCRIMINATION REQUIREMENTS OF THE ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—It is an unfair immigration-related employment practice for a person or other entity, in the course of the electronic verification process described in section 274A(d)—

(A) to terminate or undertake any adverse employment action due to a tentative nonconfirmation;

(B) to use the verification system for screening of an applicant prior to an offer of employment;

(C) to act as described in section 274A(d)(3)(B), to use the verification system for a current employee after the first 3 days of employment, or for the reemployment of an employee after the employee has satisfied the process described in section 274A(d); or

(D) to require an individual to make an inquiry under the self-verification procedures established in section 274A(d)(8)(E)(iii)(I).

(d) INCREASE IN CIVIL MONEY PENALTIES.—Section 274B(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1324b(c)(2)) is amended—

(1) in subparagraph (B)(iv)—

(A) in clause (I), by striking “$250 and not more than $1,000” and inserting “$1,000 and not more than $1,000”; and

(B) in clause (II), by striking “$2,000 and not more than $5,000” and inserting “$4,000 and not more than $10,000”;

(2) in clause (III), by striking “$3,000 and not more than $10,000” and inserting “$6,000 and not more than $20,000”; and

(3) by striking “$4,000 and not more than $10,000” and inserting “$500 and not more than $5,000”;

(e) INCREASED FUNDING OF INFORMATION CAMPAIGNS.—Section 274B(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1324b(c)(3)) is amended by inserting “and an additional $40,000,000 for each of fiscal years 2008 through 2010” before the period at the end.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act and shall apply to violations occurring on or after such date.

SA 144. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. RAITER, for the purpose of striking out after H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE II—UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 201. UNLAWFUL EMPLOYMENT OF ALIENS.

(a) IN GENERAL.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended to read as follows:

“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.

(a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

(1) IN GENERAL.—It is unlawful for an employer—

(A) to hire, or to recruit or refer for a fee, an alien for employment in the United States knowing, or with reckless disregard, that the alien is an unauthorized alien with respect to such employment; or

(B) to hire, or to recruit or refer for a fee, for employment in the United States an individual unless such employer meets the requirements of subsections (c) and (d).

(2) CONTINUING EMPLOYMENT.—It is unlawful for an employer, after lawfully hiring an alien, to continue to employ the alien in the United States knowing that the alien is (or has become) an unauthorized alien with respect to such employment.

(b) USE OF LABOR THROUGH CONTRACT.—

(A) IN GENERAL.—An employer who uses a contract, subcontract, or exchange to obtain the labor of an alien in the United States knowing, or with reckless disregard—

(i) that the alien is an unauthorized alien with respect to performing such labor, shall be considered to have hired the alien in violation of paragraph (1)(A); or

(ii) that the person hiring such alien failed to comply with the requirements of paragraphs (c) and (d) shall be considered to have hired the alien in violation of paragraph (1)(B).

(b) INFORMATION SHARING.—The person employing an alien to perform services for an employer, who obtains the labor of the alien, the employer identification number assigned to such person by the Commissioner of Internal Revenue, shall be considered a recordkeeper under subsection (e)(4)(B).

(c) REPORTING REQUIREMENTS.—The employer shall report any violation of paragraphs (a)(1)(A) or (B) to the Secretary.

(d) ENFORCEMENT.—The Secretary shall implement procedures to utilize the information obtained under subparagraphs (B) and (C) to identify employers who use a contract, subcontract, or exchange to employ an individual who is an unauthorized alien with respect to such employment.

(2) REQUIREMENT.—The employer shall report any violation of paragraphs (a)(1)(A) or (B) to the Secretary.

SEC. 202. INCREASED FUNDING OF INFORMATION CAMPAIGNS.

(a) IN GENERAL.—Section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) is amended to read as follows:

“SEC. 274B. INCREASED FUNDING OF INFORMATION CAMPAIGNS.

(a) INCREASED FUNDING.—Section 274B(c)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1324b(c)(1)(C)) is amended by adding—

‘‘(D) to require an individual to make an inquiry under the self-verification procedures established in section 274A(d)(8)(E)(iii)(I),’’.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that an employer has not violated paragraph (1)(A) or (B) with respect to such hiring, recruiting, or referring.

(2) EXCEPTION.—Until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (d) or is participating in such System on a voluntary basis, the employer may establish an affirmative defense under paragraph (a) by complying with the requirements of subsection (c).

(b) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

(1) AUTHORITY TO REQUIRE CERTIFICATION.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that the employer is in compliance with this section, or has instituted a program to come into compliance.

(2) CONTENT OF CERTIFICATION.—Not later than 60 days after the date an employer receives a request for a certification under paragraph (1) the employer shall certify under penalty of perjury that—

(A) the employer is in compliance with the requirements of subsections (c) and (d); or

(B) that the employer has instituted a program to come into compliance with such requirements.

(3) EXTENSION.—The 60-day period referred to in paragraph (2), may be extended by the Secretary for good cause, at the request of the employer.

(c) PUBLICATION.—The Secretary is authorized to publish in the Federal Register standards or methods for certification under paragraph (1) and a notice of any certification practices with respect to such certification, and procedures for the audit of any records related to such certification.

(d) DOCUMENT VERIFICATION REQUIREMENTS.—An employer hiring, or recruiting or referring for a fee, an individual for employment in the United States shall verify that the individual is eligible for such employment by meeting the following requirements:

(1) ATTESTATION BY EMPLOYER.—

(A) REQUIREMENTS.—

(i) IN GENERAL.—The employer shall attest, under penalty of perjury and on a form prescribed by the Secretary, that the employer has verified the identity and eligibility for employment of the individual by examining a document described in subparagraph (B).

(ii) SIGNATURE REQUIREMENTS.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

(2) STANDARDS FOR EXAMINATION.—The employer has complied with the requirement of this paragraph with respect to examination of documentation submitted by a person if the employer would conclude that the document examined is genuine and relates to the individual whose identity and eligibility for employment in the United States is being verified.

If the individual provides a document sufficient to meet the requirements of this paragraph, nothing in this paragraph shall be construed to require the employer to solicit any other document or as requiring the individual to produce any other document.

(B) IDENTIFICATION DOCUMENTS.—A document described in this paragraph shall mean—

(i) a United States passport; or

(ii) if the individual is a United States national, a driver’s license or identification card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying
possession of the United States that satisfies the requirements of division B of Public Law 109–13 (119 Stat. 302);

(ii) in the case of an alien lawfully admitted for temporary stay in the United States, a permanent resident card, as specified by the Secretary;

(iii) in the case of an alien who is authorized under this Act or the Secretary to be employed in the United States, an employment authorization card, as specified by the Secretary that—

(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use;

(iv) in the case of an individual who is unable to obtain a document described in clause (i), (ii), or (iii), a document designated by the Secretary that—

(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use;

(v) until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (d) or is participating in such System on a voluntary basis, a document, or a combination of documents, of such type that, as of the date of the enactment of the Fair Minimum Wage Act of 2007, the Secretary had established by regulation were sufficient for purposes of this section.

(C) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.

(i) AUTHORITY.—If the Secretary finds that a document or class of documents described in paragraph (2) is not reliable to establish identity or is being used fraudulently to an unacceptable degree, the Secretary shall prohibit, or impose conditions, on the use of such document or class of documents for purposes of this subsection.

(ii) REQUIREMENT FOR PUBLICATION.—The Secretary shall publish notice of any findings under the (i) R EQUIREMENT FOR SYSTEM .

(A) REQUIREMENTS .

(I) IN GENERAL.—The individual shall attest, under penalty of perjury on the form described in subsection (c)(1)(A)(i), that the individual is a national of the United States, an alien lawfully admitted for permanent residence in the United States, an alien who is not lawfully admitted for permanent residence who is subject to the jurisdiction of the Department of Homeland Security, any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices, the Secretary of Labor, or the Secretary of Homeland Security, or a document described in paragraph (2) is not reliable to establish identity or is being used fraudulently to an unacceptable degree, the Secretary shall prohibit, or impose conditions, on the use of such document or class of documents for purposes of this subsection.

(B) INITIAL INQUIRY.

The Secretary shall, in cooperation with the Commissioner of Social Security, shall implement an Electronic Employment Verification System (referred to in this subsection as the ‘System’) to determine whether—

(A) the identifying information submitted by an individual is consistent with the information in the records of the Secretary or the Commissioner of Social Security; and

(B) such individual is eligible for employment in the United States.

(2) OTHER PARTICIPATION IN SYSTEM.—The Secretary shall require all employers in the United States to participate in the System, with respect to all employees hired by the employer after the date that is 18 months after the date that not less than $400,000,000 have been appropriated and made available to implement this subsection.

(3) RETENTION OF ATTESTATION.—The employer shall retain a paper, microfiche, microfilm, or electronic version of the attestations made under paragraph (1) and (2) and make such attestations available for inspection by the Department of Homeland Security, any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices, the Secretary of Labor, or the Secretary of Homeland Security, or the Secretary of Labor during a period beginning on the date of the hiring, or recruit-
"(II) in the case of an employee hired by a critical employer designated by the Secretary under paragraph (3)(B) at such time as the Secretary shall specify.

(ii) BINDING EFFECT—

(I) REQUIREMENT TO PROVIDE.—An employer shall provide the employer identification number issued to such employer by the individual, for purposes of providing the information under clause (i)(III).

(II) REQUIREMENT TO AFFIRMATIVELY STATE A LACK OF RECENT EMPLOYMENT.—An individual must provide the information under clause (i)(III) who was not employed in the United States during any of the 5 most recently completed calendar years shall affirmatively state such lack of employment in the United States, a confirmation notice shall remain in effect until the date that is 24 months after the date that less than $400,000,000 have been appropriated and made available to the Secretary to implement this subsection, and annually thereafter, the Secretary shall submit to Congress a report that includes—

(1) an assessment of whether the System is able to correctly issue, within the period described in subparagraph (D)(vii), a final notice in at least 99 percent of the cases in which the final notice relates to an individual who is eligible for employment in the United States. If the most recent such report includes such a certification, the automatic notice issued under subparagraph (I) shall be a final nonconfirmation notice.

(II) TENTATIVE NONCONFIRMATION.—If the Secretary submits the initial report described in subparagraph (E)(ii), an automatic notice issued under subclause (I) shall be a final confirmation notice.

(III) PERIOD AFTER INITIAL CERTIFICATION.—If the Secretary submits the initial report described in subparagraph (E)(ii), an automatic notice issued under subclause (I) shall be a final confirmation notice.

(IV) ADDITIONAL AUTHORITY.—Notwithstanding the provisions of subparagraph (III), the Secretary shall have the authority to issue a confirmation notice for an individual who would be subject to a final nonconfirmation notice under such sentence. In such a case, the Secretary shall determine the individual’s eligibility for employment in the United States and record the results of such determination in the System within 12 months.

(VII) EFFECTIVE PERIOD OF FINAL NOTICE.—A final confirmation notice issued under this paragraph for an individual shall remain in effect—

(1) during any continuous period of employment of such individual by such employer, unless the Secretary determines the final confirmation was the result of identity fraud; or

(2) in the case of an alien authorized to be employed in the United States for a temporary period, during such period.

(VIII) PROHIBITION ON TERMINATION.—An employer may not terminate the employment of an individual based on a tentative nonconfirmation notice unless such notice becomes final under clause (iii) or a final nonconfirmation notice is issued for the individual by the System. Nothing in this clause shall prohibit the termination of employment for any reason other than such tentative nonconfirmation notice.

(X) CONSEQUENCES OF NONCONFIRMATION.—If the employer has received a final nonconfirmation regarding an individual, the employer shall terminate the employment, recruitment, or referral of the individual. Such employer shall provide to the Secretary any information relating to the individual that the Secretary determines would assist the Secretary in enforcing or administering the Wage Act of 2007 and ending on the date the Secretary submits the initial report described in subparagraph (E)(ii), an automatic notice issued under subclause (I) shall be a final confirmation notice.

(E) RESPONSIBILITIES OF THE SECRETARY.—

(I) IN GENERAL.—The Secretary shall establish a reliable, secure method to provide through the System, within the time periods required by this subsection, a determination of whether the individual is authorized to be employed in the United States.

(II) ANNUAL REPORT AND CERTIFICATION.—Not later than 10 days after receiving the notice; or

(I) IN GENERAL.—If a final notice is not issued within the 30-day period described in clause (v)(II), the Secretary shall automatically provide to the employer, through the System, the appropriate code indicating a final notice.

(II) PERIOD PRIOR TO INITIAL CERTIFICATION.—During the period beginning on the date of such a determination and ending on the date of such a determination, the Secretary shall conduct, a tentative nonconfirmation notice, or seeks to verify the individual’s own employment eligibility prior to obtaining or changing employment, to contact the appropriate agency and, in a timely manner, correct or update the information used by the System.

(V) INFORMATION TO EMPLOYER.—The Secretary shall develop a written form for employers to provide to individuals who receive a tentative or final notice notice; and

(VII) EFFECTIVE PERIOD OF FINAL NOTICE.—A final confirmation notice issued under this paragraph for an individual shall remain in effect—

(1) during any continuous period of employment of such individual by such employer, unless the Secretary determines the final confirmation was the result of identity fraud; or

(2) in the case of an alien authorized to be employed in the United States for a temporary period, during such period.

(III) CONTEST AND SELF-VERIFICATION.—The Secretary in consultation with the Commissioner of Social Security, shall establish procedures to permit an individual who contests a tentative or final nonconfirmation notice, or seeks to verify the individual’s own employment eligibility prior to obtaining or changing employment, to contact the appropriate agency and, in a timely manner, correct or update the information used by the System.

(IV) INFORMATION TO EMPLOYER.—The Secretary shall require an employer that participates in the System shall—

(V) TRAINING MATERIALS.—The Secretary shall make available or provide to the employer, upon request, not later than 60 days after submitting the initial report described in subparagraph (C)(ii), the appropriate training materials to facilitate compliance with this subsection, and sections 274(a)(7) and 274(c).

(9) PROTECTION FROM LIABILITY.—No employer that participates in the System shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System.

(10) ADMINISTRATIVE REVIEW.—

(9) PROTECTION FROM LIABILITY.—No employer that participates in the System shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System.

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(9) PROTECTION FROM LIABILITY.—No employer that participates in the System shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System.

(10) ADMINISTRATIVE REVIEW.—

(9) PROTECTION FROM LIABILITY.—No employer that participates in the System shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System.
than 60 days after the date of such termination, file an appeal of such notice.

(2) Procedures.—The Secretary and Commissioner of Social Security shall develop the administrative review process described in subparagraph (A) and to make final determinations on such appeals.

(3) Review for Errors.—If a final determination of the System, including the evidences upon which the determination is based, is not made within 60 days after the date of such determination, or such further time as the Secretary may allow.

(4) Compensation for Error.—(i) In General.—In cases in which such judicial review reverses the final determination of the Secretary made under paragraph (10), the court shall compensate the individual for wages lost beginning on the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first.

(ii) Limitation on Collection and Use of Data.—(A) Limitation on Collection of Data.—(i) In General.—The System shall collect and maintain only the minimum data necessary to facilitate the successful operation of the System, and in no case shall the data be other than—

(iii) Information Necessary to Register Employers under Paragraph (5).—(ii) Information Necessary to Establish and Enforce Compliance with Paragraphs (5) and (8).—(iii) Information Necessary to Detect and Prevent Employment Related Identity Fraud; and

(iv) Any other information the Secretary determines is necessary, subject to a 180 day notice and comment period in the Federal Register.

(5) Penalties.—Any officer, employee, or contractor who willfully and knowingly collects, uses, or provides any information obtained or maintained by the System, and in no case shall the data be other than—

(i) Information Necessary to Register Employers under Paragraph (5).—(ii) Information Necessary to Establish and Enforce Compliance with Paragraphs (5) and (8).—(iii) Information Necessary to Detect and Prevent Employment Related Identity Fraud; and

(iv) Any other information the Secretary determines is necessary, subject to a 180 day notice and comment period in the Federal Register.

(6) Failure to Cooperate.—In case of refusal to obey a subpoena, and any failure to obey an order requiring compliance with such subpoena, may be punished by such court as contempt.

(7) Department of Labor.—The Secretary of Labor shall have reasonable access to examine evidence regarding any employer being investigated; and

(8) Authority in Investigations.—(A) In General.—In conducting investigations and hearings under this subsection, officers and employees of the Department of Homeland Security, and the Commissioner of Social Security, may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection.

(B) Failure to Cooperate.—In case of refusal to obey a subpoena lawfully issued under subparagraph (A)(ii), the subpoena may be enforced by the Attorney General of the United States in an appropriate district court of the United States as provided by the Federal Rules of Civil Procedure.
‘(ii) specify the laws and regulations allegedly violated;

‘(iii) specify the amount of fines or other penalties to be imposed;

‘(iv) state the material facts which establish the alleged violation; and

‘(v) inform such employer that the employer shall have a reasonable opportunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

‘(B) REMISSION OR MEDITATION OF PENALTIES.

‘(1) REVIEW BY SECRETARY.—If the Secretary determines that such fine or other penalty is unreasonable, or determines the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate such fine or other penalty on the terms and conditions as the Secretary determines are reasonable and just, or order termination of any proceedings related to the notice.

‘(2) APPLICABILITY.—This subparagraph may not apply to an employer that has or is engaged in a pattern or practice of violations of paragraphs (1), (2), or (3) of subsection (a) or of any other requirements of this section.

‘(C) PENALTY CLAIM.—After considering evidence and representations offered by the employer, the Secretary shall determine whether there was a violation and promptly issue a written final determination setting forth the findings of fact and conclusions of law. Such the determination is based on the appropriate penalty.

‘(D) CIVIL PENALTIES.—

‘(II) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates any provision of paragraph (1), (2), or (3) of subsection (a) shall pay civil penalties as follows:

‘(i) Pay a civil penalty of not less than $500 and not more than $4,000 for each unauthorized alien with respect to each such violation.

‘(ii) If the employer has previously been fined 1 time during the 12-month period preceding the violation under this subparagraph, pay a civil penalty of not less than $1,000 and not more than $10,000 for each unauthorized alien with respect to each such violation.

‘(iii) If the employer has previously been fined more than 1 time during the 24-month period preceding the violation under this subparagraph, pay a civil penalty of not less than $200 and not more than $2,000 for each unauthorized alien with respect to each such violation.

‘(B) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with recordkeeping requirements of subsections (a), (c), and (d), shall pay a civil penalty as follows:

‘(i) Pay a civil penalty of not less than $300 and not more than $2,000 for each such violation.

‘(ii) If the employer has previously been fined 1 time during the 12-month period preceding the violation under this subparagraph, pay a civil penalty of not less than $600 and not more than $4,000 for each such violation.

‘(iii) If the employer has previously been fined more than 1 time during the 24-month period preceding the violation under this subparagraph or has failed to comply with a previous final order relating to such requirements, pay a civil penalty of not less than $600 and not more than $6,000 for each such violation.

‘(C) CRIMINAL PENALTIES.—

‘(1) CRIMINAL PENALTY.—An employer engaged in a pattern or practice of violating paragraph (1) of this subsection shall be subject to a criminal penalty as follows:

‘(a) If the employer has previously been fined more than 1 time during the 24-month period preceding the violation under this subparagraph, the employer shall be fined not more than $25,000 each time such a violation occurs, imprisoned for not more than 5 years for the entire pattern or practice, or both.

‘(b) ENJOYING OF PATTERN OR PRACTICE VIOLATIONS.—If the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment, retribution, or refusal to hire or to refer to hire, the Attorney General may bring a civil action in the appropriate district court of the United States requesting a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary deems necessary.

‘(A) ADJUSTMENT FOR INFLATION.—All penalties and liquidated damages recovered under this section shall be increased by 4 years beginning January 2010 to reflect the percentage increase in the consumer price index for all urban consumers for the 48 month period ending with September of the year in which the adjustment is made. Any adjustment under this subparagraph shall be rounded to the nearest dollar.

‘(B) PROHIBITION OF INDEMNITY BONDS.—No liquidated damages recovered under this section shall be used for indemnity purposes.

‘(C) CRIMINAL PENALTIES.—Note notwithstanding subparagraphs (A) and (B), the Secretary may impose additional penalties for violations including violations of cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a future violation, and any other penalty on the terms and conditions as the Secretary determines are reasonable and just, or order termination of any proceedings related to the notice.

‘(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for hearing, to have violated paragraph (1) of subsection (e), to have violated paragraph (1) of subsection (a), to have violated paragraph (1) of subsection (b), or to have violated paragraph (1) of subsection (c), shall be subject to a civil penalty for each violation not to exceed $10,000 for each such violation.

‘(D) ADMINISTRATION.—Any agency or department shall levy the civil penalty and disburse the proceeds of such penalty in the manner provided by the Federal Procurement and Nonprocurement Programs for a period of 5 years.

‘(E) EMPLOYERS WITH CONTRACTS, GRANTS, OR AGREEMENTS.—

‘(i) IN GENERAL.—An employer which holds a Federal contract, grant, or cooperative agreement and is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

‘(ii) NOTICE TO AGENCIES.—Prior to debarring the employer under subparagraph (A), the Secretary, in cooperation with the Administrator of General Services of the General Services Administration, shall advise any agency or department holding a contract, grant, or cooperative agreement with the employer of the Government’s intention to debar the employer under this section. The receipt of new Federal contracts, grants, or cooperative agreements is suspended for a period of 5 years, waive operation of this subsection, or limit the duration or scope of the debarment.

‘(F) WAIVER.—The Administrator of General Services of the General Services Administration, upon a showing that the circumstances warrant, may suspend operation of this subsection for a period of 5 years, or limit the duration or scope of the debarment.

‘(G) BARRETT.—The Administrator of General Services of the General Services Administration, upon a showing that the circumstances warrant, may refer to an appropriate lead agency or department the decision of whether to debar the employer for, what duration, and under what circumstances any agency or department holding a contract, grant, or cooperative agreement with the employer.

‘(H) CONGRESSIONAL RECORD.
actions that could form the basis for debarment under this subsection shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

(1) MISCELLANEOUS PROVISIONS.—

(a) In providing documentation or endorsement of authorization of aliens eligible to be employed in the United States, the Secretary shall provide that —

(1) in a comparison with information submitted by the Secretary of Homeland Security to establish the reliability of the System, the Secretary of Homeland Security shall provide such notice to the employer on or before the date such person begins to participate in the System.

(2) the term ‘employer’ means any person or entity, including any entity of the Government of the United States, hiring, recruiting, or referring an individual for employment in the United States.

(b) S酝酿mary.—Except as otherwise provided, civil penalties collected under this section shall be deposited by the Secretary into the Employment Compliance Fund established under section 286(w).

(i) DEFINITIONS.—In this section—

(1) the term ‘employer’ means any person or entity, including any entity of the Government of the United States, hiring, recruiting, or referring an individual for employment in the United States.

(2) S酝酿mary.—Except as otherwise provided, the term ‘Secretary’ means the Secretary of Homeland Security.

(3) UNAUTHORIZED ALIEN.—The term ‘unauthorized alien’ means, with respect to the employment of an alien at a particular time, that time shall not be at that time thereafter.

(a) an alien lawfully admitted for permanent residence; or

(b) authorized to be so employed by this Act or by the Secretary.

(b) CONFORMING AMENDMENTS.—

(A) REPEAL OF BASIC PILOT.—Sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1324a note) are repealed.

(B) S酝酿mary.—

(1) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 200 of the Immigration and Nationality Act (8 U.S.C. 1324b note) is repealed.

(ii) carrying out, including through civil action, any provision of section 274A(h) as amended by this section.

(c) CONSTRUCTION.—Nothing in this subsection or in subsection (d) of section 274A of the Immigration and Nationality Act, as amended by subsection (a), may be construed to limit the authority of the Secretary of Homeland Security to allow or continue to allow the participation of employers who participated in the basic pilot program under sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1360 note) is repealed.

(2) DOCUMENT REQUIREMENTS.—Section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) is amended—

(a) in subsections (a)(6) and (g)(2), by striking ‘‘274A(h)’’ and inserting ‘‘274A(c)’’; and

(b) in subsection (g)(2)(B)(i), by striking ‘‘274A(h)(5)’’ and inserting ‘‘274A(c)’’.

(3) AMENDMENTS TO THE SOCIAL SECURITY ADMINISTRATION.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 605(c)(2)) is amended by adding at the end of such paragraph the following subparagraphs:

‘‘(i) The Commissioner of Social Security shall, subject to the provisions of section 201(f)(2) of the Fair Minimum Wage Act of 2007 (29 U.S.C. 206(w)), provide a reliable, secure method to provide through the Electronic Employment Verification System established pursuant to subsection (d) of section 274A of the Immigration and Nationality Act (referred to in this subparagraph as the ‘System’), within the time periods required by paragraph (8) of such subsection—

‘‘(A) a determination of whether the name, date of birth, employer identification number, and social security account number of an individual provided in an inquiry made to the System is consistent with such information maintained by the Commissioner in order to confirm the validity of the information provided;

‘‘(B) a determination of whether the citizenship status associated with such name and social security account number, according to the records maintained by the Commissioner, belongs to an individual who is deceased, according to the records maintained by the Commissioner;

‘‘(C) a determination of whether the name and number belongs to an individual who is deceased, according to the records maintained by the Commissioner;

‘‘(D) a determination of whether the nonconfirma- tion notice described in such paragraph, in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the System;

‘‘(E) The Commissioner of Social Security shall prevent the fraudulent or other misuse of a social security account number by establishing procedures under which an individual who has been assigned a social security account number may block the use of such number under the System and remove such block;

‘‘(F) in assigning social security account numbers, the Commissioner may assign such number under the System under section 274A of the Immigration and Nationality Act, the Commissioner of Social Security shall, to the maximum extent practicable, assign such numbers to aliens who are authorized to participate in the System under section 274A(d)(2) or section 274A(d)(3)(B) of the Immigration and Nationality Act.

(4) DISCLOSURE OF INFORMATION REGARDING NEW EMPLOYEES OF CERTAIN DESIGNATED EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) hired after the date a person identified in clause (ii) is required to participate in the System under section 274A(d)(3)(B) of the Immigration and Nationality Act.

(5) REIMBURSEMENT.—The Commissioner of Social Security shall prescribe a reason- able fee schedule for furnishing taxpayer identity information under this paragraph...
and collect such fees in advance from the Secretary of Homeland Security.

“(D) TERMINATION.—This paragraph shall not apply to any request made after the date which is 3 years after the date of the enactment of this Act.

(2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.—(A) Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

“(9) DISCLOSURE TO DHS CONTRACTORS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor of the Department of Homeland Security unless such disclosure, to the satisfaction of the Secretary—

“(A) has requirements in effect which require each such contractor which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information.

“(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor to determine compliance with such requirements.

“(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required under paragraph (12), and

“(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements.

“The certification required by subparagraph (D) shall include the name and address of each contractor, a description of the contract or agreement with such contractor, and the duration of such contract or agreement.

(3) CONFORMING AMENDMENTS.—(A) Section 6103(a)(3) of such Code is amended by striking “(or (20)” and inserting “(20), or (21)”.

(B) Section 6103(p)(3)(A) of such Code is amended by adding at the end the following new sentence: “The Commissioner of Social Security shall provide to the Secretary such information as the Secretary may require in carrying out this paragraph with respect to returns or return information to be used for the purposes of determining and enforcing employer compliance with section 274A.”

(C) Section 6103(p)(4) of such Code is amended by—

(i) by striking “or (17)” both places it appears and inserting “(17), or (21)”.

(ii) by striking “or (20)” each place it appears and inserting “(20), or (21)”.

(D) Section 6103(p)(5)(B) of such Code is amended by inserting “or paragraph (9)” after “subsection (A)”.

(E) Section 723(a)(2) of such Code is amended by striking “(or (20)” and inserting “(20), or (21)”.

(F) AUTHORIZATION OF APPROPRIATIONS.—(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as are necessary to carry out the amendments made by this section.

(2) LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner’s responsibilities in this title or the amendments made by this title, but only to the extent that the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner’s costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(2) SUBSECTION (B).—(A) IN GENERAL.—The amendments made by subsection (e) shall apply to disclosures made after the date of the enactment of this Act.

(B) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (e)(2), shall be made with respect to calendar year 2008.

SEC. 202. EMPLOYER COMPLIANCE FUND.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

“(w) EMPLOYER COMPLIANCE FUND.—(1) In general.—There is established in the general fund of the Treasury, a separate account, which shall be known as the ‘Employer Compliance Fund’ (referred to in this subsection as ‘the Fund’).

“(2) Deposits.—There shall be deposited as offsetting receipts into the Fund all civil monetary penalties collected by the Secretary of Homeland Security under section 274A.

“(3) PURPOSE.—Amounts refunded to the Secretary from the Fund shall be used for the purposes of enhancing and enforcing employer compliance with section 274A.

“(4) AVAILABILITY OF FUNDS.—Amounts deposited in the Fund shall remain available until expended and shall be refunded out of the Fund by the Secretary of the Treasury, at least on a quarterly basis, to the Secretary of Homeland Security.

SEC. 203. ADDITIONAL WORKSITE ENFORCEMENT AND FRAUD DETECTION AGENTS.

(a) INCREASE IN NUMBER OF PERSONNEL.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, annually increase, by not less than 2,200, the number of personnel of the Bureau of Immigration and Customs Enforcement during the 5-year period beginning on the date of enactment of this Act.

(b) USE OF PERSONNEL.—The Secretary of Homeland Security shall ensure that not less than 25 percent of all the hours expended by personnel of the Bureau of Immigration and Customs Enforcement shall be used to enforce compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a), or $3,000 and not more than $10,000; and inserting “$4,000 and not more than $10,000”; and

(c) in subsection (III), by striking “$3,000 and not more than $10,000” and inserting “$6,000 and not more than $20,000”; and

(d) in subparagraph (A), by striking “and inserting “$1,000 and not more than $1,000”; and inserting “$2,000 and not more than $4,000”; and inserting “$500 and not more than $5,000”; and

(e) INCREASED FUNDING OF INFORMATION TECHNOLOGY SYSTEM.—Section 274A(l)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(l)(3)) is amended by inserting “and an additional $46,000,000 for each of fiscal years 2009 through 2010” before the period at the end.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act and shall apply to violators occurring on or after such date.

SA 145. Mr. SESSIONS (for himself, Mr. INHOFE, and Mr. GRASSLEY) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 204. CLARIFICATION OF INELIGIBILITY FOR MISREPRESENTATION.

(A) EMPLOYERS WITH NO CONTRACTS, GRANTS, OR AGREEMENTS.—

(1) IN GENERAL.—Subject to clause (ii) and subparagraph (C), if an employer who does not hold a Federal contract, grant, or cooperative agreement is determined to have violated this section, the employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 7 years.

(ii) PLACEMENT ON EXCLUDED LIST.—The Secretary of Homeland Security shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such violation and shall advise any agency or department holding a contract, grant, or cooperative agreement with the Government of the employer of the Government’s intention to debar the employer from the receipt of any such Federal contract, grant, or cooperative agreement for a period of 10 years.

(iii) NOTICE TO AGENCIES.—Prior to debarring the employer under clause (i), the Secretary of Homeland Security shall, in consultation with the Attorney General, may waive operation of clause (i) or may limit the duration or scope of a debarment under clause (i) if such waiver or limitation is necessary to protect national security or to meet the defense or national security needs of the United States. In the case of imposition on an employer of a debarment from the receipt of a Federal contract, grant, or cooperative agreement under subparagraph (A) or (B), that penalty shall be waived if the employer establishes, in a sworn affidavit voluntarily participating in the basic pilot program under section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) and the time of the violations of this section that resulted in the debarment.

SA 146, Mr. SESSIONS (for himself and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage, which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. RESPONSIBLE EMPLOYER REQUIREMENTS.

(a) PENALTIES FOR UNLAWFUL EMPLOYMENT OF ALIENS.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in subsection (e)—

(A) in subparagraph (A)(iii), by striking “not less than $250 and not more than $2,000” and inserting “not less than $500 and not more than $7,500”;

(B) in subparagraph (A)(iii), by striking “not less than $2,000 and not more than $5,000” and inserting “not less than $10,000 and not more than $15,000”; and

(C) in subparagraph (A)(iii), by striking “not less than $3,000 and not more than $10,000” and inserting “not less than $25,000 and not more than $40,000”;

(ii) in the case of debarment under clause (i) of subsection (a) of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a) that the person or entity knowingly or recklessly establishes or willfully participates in a pattern or practice of violating subparagraph (A) or (B), the penalty shall be increased by not less than $10,000 and not more than $25,000; and

(b) AUTHORITY.—The Administrator of General Services, in consultation with the Secretaries of the Departments of Labor and Homeland Security, or any other person designated by the President, may waive any penalty imposed by this subsection (a) upon presentation of a determination by such person that the waiver is necessary to protect national security or to meet the defense or national security needs of the United States.

(iii) NOTICE TO AGENCIES.—If the Administrator grants a waiver or limitation described in subparagraph (C), the Administrator shall advise the Secretary of Labor and each Secretary of a Federal department or agency that the employer has been granted a waiver or limitation.

(2) LIMITATION ON USE OF RETAINED DOCUMENTS.—Paragraph (5) of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(A) in subsection (c), by inserting “or on behalf of the employer” after “prohibits”; and

(B) in subsection (d), by inserting “an employer who holds a Federal contract, grant, or cooperative agreement for a period of 7 years.” after “Secretary of Labor during the period beginning on the date of the hiring, or recruiting or referring for a fee, or the individual and ending—

(1) in the case of the recruiting or referring for a fee, or the individual the later of—

(I) 5 years after the date of such hiring; or

(II) 1 year after the date the individual’s employment is terminated.

(2) OTHER RECORDS.—The employer shall maintain records of any action taken and copies of any correspondence written or received with respect to the verification of an individual’s identity or eligibility for employment in the United States.

(c) LIMITATION ON USE OF ATTACHMENT FORM.—Paragraph (6)(A) of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(A) in subsection (c), by striking “or in cooperation with the Secretary of Homeland Security, in consultation with the Attorney General, may waive operation of clause (i) or may limit the duration or scope of an exclusion under clause (i)” and inserting “may waive operation of clause (i) or may limit the duration or scope of any exclusion under clause (i)”;

(B) in subsection (c), by striking “an agency or a department holding a contract, grant, or cooperative agreement with the Government of the United States” and inserting “a Federal contract, grant, or cooperative agreement with the Government of the United States”;

(C) by deleting clause (ii) and inserting in its place the following:

(II) in the case of debarment under section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) that the person or entity has been debarred for a period of 7 years under this subsection, except as otherwise permitted under law.

(d) EXTENSION OF THE BASIC PILOT PROGRAM.—Section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended—

(1) by inserting “and (4) (A)” after “compiling” in clause (i)(B)(ii).
SA 147. Mr. SESSIONS (for himself and Mr. INHOFE) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 1. RESPONSIBLE EMPLOYER REQUIREMENTS.

(a) Penalties for Unlawful Employment of Aliens.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in subsection (e)(4)—

(A) in subparagraph (A)(i), by striking “not less than $250 and not more than $5,000” and inserting “not less than $3,000 and not more than $7,500”; and

(B) in subparagraph (A)(ii), by striking “not less than $2,000 and not more than $5,000” and inserting “not less than $10,000 and not more than $15,000”; and

(C) in subparagraph (A)(iii), by striking “not less than $5,000 and not more than $10,000” and inserting “not less than $25,000 and not more than $50,000”; and

(2) in subsection (e)(5)—

(A) by inserting “, subject to paragraph (10),” after paragraph (3); and

(B) by striking “$100 and not more than $1,000” and inserting “$1,000 and not more than $25,000”;

(3) by adding at the end the following sentence: “Providing information to the basic pilot program described in section 403(a) of the Illegal Immigration Reform and Responsibility Act of 1996 (8 U.S.C. 1324a note) that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A) and shall not qualify for the exemption provided by (e)(10).”; and

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

“(10) Exemption from Penalty for Employers Participating in the Basic Pilot Program.—In the case of imposition of a civil penalty under paragraph (A)(iv) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed shall be waived if the violator establishes that it was voluntarily participating in the basic pilot electronic verification program at the time of the offense.”;

(b) Retention and Use of Employment Eligibility Verification Documents.—

(1) RETENTION.—Section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended by striking paragraph (4) and inserting the following:

“(4) Copying and Retention of Documentation.—

“(A) in general.—A person or entity required to examine a document described in subparagraph (B), (C), or (D) of paragraph (1) or receive an attestation described in paragraph (2) shall make or have made, microfilm, or electronic version of each such document and attestation, indicate that such each such version is a copied document, and make such document and attestation, if the employer is a party to an agreement by which the employer is responsible to the Department of Homeland Security or any other person designated by the Secretary, the Special Counsel for Immigration-Related Employment Practices of the Department of Justice, or the Secretary of Labor during the period beginning on the date of the hiring, or of recruiting or referring for a fee, of the individual and ending—

(i) in the case of the recruiting or referring for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referring; or

(ii) in the case of the hiring of an individual the later of—

(I) 5 years after the date of such hiring; or

(II) 1 year after the date the individual’s employment is terminated.

(B) OTHER PENALTIES.—Any other person or entity shall maintain records of any action taken and copies of any correspondence written or received with respect to the verification of an individual’s eligibility for employment in the United States.

(2) LIMITATION ON USE OF RETAINED DOCUMENTS.—Paragraph (5) of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(A) in the heading, by striking “LIMITATION ON USE OF ATTESTATION FORM” and inserting “ATTESTATION FORM”; and

(B) by redesigning such paragraph (5) as subparagraph:

(i) in the heading, by striking “LIMITATION ON USE OF ATTESTATION FORM” and inserting “LIMITATION ON USE.”;

(ii) by adding after such subparagraph, the following:

“(B) Retained Documents.—A person or entity required to retain versions of documents or attestations or maintain records for purposes of complying with the requirements of this subsection, except as otherwise permitted under this section, shall maintain the following:

(A) in general.—Notwithstanding any other provision of this title, a person or other entity that elects to participate in the basic pilot program shall follow the procedures described in paragraphs (1) through (4) for each individual who the person or entity hires (or recruits or refers) for employment and for each individual who is employed by the person or entity.”.

SA 148. Mr. SESSIONS (for himself and Mr. INHOFE, and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 1. RESPONSIBLE GOVERNMENT CONTRACT REQUIREMENTS.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended by adding at the end the following new paragraph:

“(l) Prohibition on Award of Government Contracts, Grants, and Agreements.—

“(A) Employers with no Contracts, Grants, or Agreements.—

“In general.—Subject to clause (l) and subparagraph (C), if an employer who does not hold a Federal contract, grant, or cooperative agreement is determined to have violated this section, such employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 7 years.

“(B) Employers with Contracts, Grants, or Agreements.—

“(I) Authority.—The Administrator of General Services, in consultation with the Secretary of Homeland Security and the Attorney General, may waive operation of clause (l) or may limit the duration or scope of a contract, grant, or cooperative agreement if the waiver or limitation is necessary to the national defense or in the interest of national security.

“(II) Notification to Congress.—If the Administrator grants a waiver or limitation described in clause (l), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such waiver or limitation.

“(III) Prohibition on Judicial Review.—The decision of whether to debar or take alternative action under this clause shall not be judicially reviewed.

“(B) Employers with Contracts, Grants, or Agreements.—

“(I) in general.—Subject to clause (l) and clause (II), an employer who holds a Federal contract, grant, or cooperative agreement and is determined to have violated this section shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 10 years.

“(II) Notice to Agencies.—Prior to debaring the employer under clause (I), the Secretary of Homeland Security, in consultation with the Administrator of General Services, shall advise any agency or department holding a contract, grant, or cooperative agreement with the employer of the Government’s intention to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 10 years.

“(III) Authority.—After consideration of the views of any agency or department that holds a contract, grant, or cooperative agreement with the employer, the Administrator of General Services, in consultation with the Secretary of Homeland Security and the Attorney General, may waive operation of clause (l) or may limit the duration or scope of the debarment under clause (l) if such waiver or limitation is necessary to the national defense or in the interest of national security.

“(II) Notification to Congress.—If the Administrator grants a waiver or limitation described in clause (l), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House.
SA 149. Mr. ENSIGN (for himself and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 1. PRECLUSION OF SOCIAL SECURITY CREDITS PRIOR TO ENUMERATION.  
(a) INSURED STATUS.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by adding at the end, the following new subsection:  

"(d) Except as provided in paragraph (2), no quarter of coverage shall be credited for purposes of this section if, with respect to any individual who is assigned a social security account number on or after the date of enactment of the Fair Minimum Wage Act of 2007, each quarter of coverage is earned prior to the year in which such social security account number is assigned."

"(2) Paragraph (1) shall not apply with respect to any quarter of coverage earned by an individual who, at such time such quarter of coverage is earned, satisfies the criterion specified in subsection (c)(2)."

(b) BENEFIT COMPUTATION.—Section 215(e) of such Act (42 U.S.C. 415(e)) is amended by adding at the end of paragraph (1), the following new paragraph:  

"(d) By adding at the end the following new paragraph:  

"(3) In computing the average indexed monthly earnings of an individual who is assigned a social security account number on or after the date of enactment of the Fair Minimum Wage Act of 2007, there shall not be counted any wages or self-employment income for which no quarter of coverage may be credited to such individual as a result of the application of section 214(d)."

SA 150. Mr. ENSIGN (for himself, Mr. SESSIONS, Mr. CRAIG, Mrs. DOLE, Mr. THOMAS, Mr. CORYN, Mr. INHOFE, Mr. ISAkSON, and Mr. COLEMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. TRANSMITTAL AND APPROVAL OF TOTALIZATION AGREEMENTS.  
(a) In General.—Section 233 of the Social Security Act (42 U.S.C. 433(e)) is amended to read as follows:

"(e)(1) Any agreement to establish a totalization arrangement which is entered into with another country under this section shall enter into force with respect to the United States only if the document shall be delivered to both Houses of Congress on the same day and shall be delivered by the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session."

"(2) On the day on which a document setting forth the agreement is transmitted to the House of Representatives and the Senate pursuant to paragraph (1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which the House is in session. The resolution introduced in the House of Representatives shall be referred to the Committee on Ways and Means and the resolution introduced in the Senate shall be referred to the Committee on Finance."

(b) ADDITIONAL REPORTS AND EVALUATION.—Section 233 of the Social Security Act (42 U.S.C. 433) is amended by adding at the end the following new subsections:  

"(1) BIMONTHLY SSA REPORT ON IMPACT OF TOTALIZATION AGREEMENT.  

"(A) An assessment of the extent to which the agreement makes progress in achieving the purposes, policies, and objectives of this title."

"(B) An assessment by the Chief Actuary of the Social Security Administration, working in consultation with the Comptroller General of the United States, of the number of individuals who may become eligible for any benefits under this title or who may otherwise be affected by the agreement."

"(C) An assessment of the ability of such country to track and monitor recipients of benefits under such agreement."

"(D) If any separate agreement or other understanding with another country (whether oral or in writing) relating to an agreement to establish a totalization arrangement under this section is not disclosed to Congress under this paragraph, then such separate agreement or understanding shall be considered to be part of the agreement approved by Congress under this section and shall have no force and effect under United States law."

"(2) DATES FOR SUBMISSION.—The report required under this subsection shall be provided not later than 2 years after the effective date of the totalization agreement that is the subject of the report and biennially thereafter."

"(3) GAO EVALUATION AND REPORT.—  

"(A) EVALUATION OF INITIAL REPORT ON IMPACT OF TOTALIZATION AGREEMENTS.—With respect to each initial report required under section (f), the Comptroller General of the United States shall conduct an evaluation of the report that includes—  

"(i) an evaluation of the procedures used for making the estimates required by subsection (e)(2)(A);  

"(ii) an evaluation of the procedures used for determining the actual number of individuals affected by the agreement and how the agreement changes provisions of an agreement previously negotiated."

"(B) DATES FOR SUBMISSION.—The report required under this subsection shall be provided not later than 2 years after the effective date of the totalization agreement that is the subject of the report and biennially thereafter."

"(C) Such recommendations as the Comptroller General determines appropriate."

"(2) REPORT.—Not later than 1 year after this section is enacted, the report required under section (f), the Comptroller General shall..."
of Social Security shall collect and maintain the data necessary for the Comptroller General of the United States to conduct the evaluation required by paragraph (1).

(c) Amendments.–The amendments made by this section shall apply with respect to agreements establishing totalization arrangements entered into under section 233 of the Social Security Act which are transmitted to Congress on or after January 1, 2007.

SA 151. Mr. ENSIGN (for himself, Mr. DE MINT, Mr. GRAHAM, Mr. COBURN) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. Non-group high deductible health plans. (a) In general.—Section 223(d)(2)(C) of the Internal Revenue Code of 1986 (relating to excepted benefits) is amended by striking "or" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting a semicolon, or by striking the period at the end of clause (iii), by striking the semicolon, and inserting a period, or by striking the period at the end of clause (iv), or by striking the semicolon and period at the end of clause (v), and inserting a period, and by adding at the end the following new clause:

"(v) a high deductible health plan, other than a group health plan (as defined in section 5000(b)(1))."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2007.

SA 152. Mr. ENSIGN (for himself and Mr. INHOFE) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

At the appropriate place, insert the following:

SEC. 3. Preclusion of social security credits prior to enumeration. (a) Insurability.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by adding at the end, the following new subsection:

"(d) Except as provided in paragraph (2), no quarter of coverage shall be credited for purposes of this section if, with respect to any individual who is assigned a social security account number after the date of enactment of the Fair Minimum Wage Act of 2007, such quarter of coverage is earned prior to the year in which such social security account number is assigned.

"(2) Paragraph (1) shall not apply with respect to any quarter of coverage earned by an individual who, at such time such quarter of coverage is earned, satisfies the criteria specified in subsection (c)(2)."

(b) BENNETT COMPUTATION.—Section 215(e) of such Act (42 U.S.C. 415(e)) is amended—

(1) by striking "and" at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ";"; and

(3) by adding at the end the following new paragraph:

"(3) In computing the average indexed monthly earnings of an individual who is assigned a social security account number after the date of enactment of the Fair Minimum Wage Act of 2007, there shall not be counted any wages or self-employment income for which no quarter of coverage may be credited to such individual as a result of the application of section 214(d)."

SA 153. Mr. ENSIGN (for himself, Mr. SESSIONS, Mr. CRAIG, MRS. DOLE, Mr. THOMAS, Mr. CORYN, Mr. INHOFE, Mr. ISAKSON, and Mr. COLEMAN) submitted an amendment proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

At the appropriate place, insert the following:

SEC. 3. Transmittal and approval of totalization agreements. (a) In general.—Section 233(e) of the Social Security Act (42 U.S.C. 433) is amended to read as follows:

"(e)(1) Any agreement to establish a totalization arrangement which is entered into with another country under this section shall enter into force with respect to the United States if (and only if):

"(A) the President, at least 90 calendar days before entering into such agreement, notifies each House of Congress of the President’s intention to enter into the agreement, and promptly transmits to each House a copy of such notice in the Federal Register.

"(B) the President transmits the text of such agreement to each House of Congress as provided in paragraph (2), and

"(C) an approval resolution regarding such agreement has passed both Houses of Congress by a roll call vote or, if there is no roll call vote, by a written vote of at least 270 Members of each House.

"(2)(A) Whenever an agreement referred to in paragraph (1) is entered into, the President shall transmit to Congress a report setting forth the general nature of the agreement and the actual effect of the agreement with the actual impact of the agreement.

"(B) On the day on which a document setting forth such agreement is transmitted to the House of Representatives and the Senate pursuant to subsection (a)(1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

"(2) Whenever a totalization agreement is entered into under this section and the President’s report in support of the agreement is transmitted to Congress pursuant to paragraph (2), copies of such document shall be delivered to both Houses of Congress on the same day on which it was delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

"(3) For purposes of this subsection, the text of an agreement shall be considered to be part of the agreement approved by Congress under this section and the President’s report shall be considered to have no force and effect under United States law.

"(3) For purposes of this subsection, the text of an agreement shall be considered to be part of the agreement approved by Congress under this section and the President’s report shall be considered to have no force and effect under United States law.

"(4) Whenever a document setting forth an agreement entered into under this section and the President’s report in support of the agreement is transmitted to Congress pursuant to paragraph (2), copies of such document shall be delivered to both Houses of Congress on the same day on which it was delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

"(4) Whenever a totalization agreement is entered into under this section and the President’s report in support of the agreement is transmitted to Congress pursuant to paragraph (2), copies of such document shall be delivered to both Houses of Congress on the same day on which it was delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

"(5) On the day on which a document setting forth the agreement is transmitted to the House of Representatives and the Senate pursuant to paragraph (1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

"(5) On the day on which a document setting forth the agreement is transmitted to the House of Representatives and the Senate pursuant to paragraph (1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

"(6) On the day on which a document setting forth the agreement is transmitted to the House of Representatives and the Senate pursuant to paragraph (1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

"(6) On the day on which a document setting forth the agreement is transmitted to the House of Representatives and the Senate pursuant to paragraph (1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

"(7) On the day on which a document setting forth the agreement is transmitted to the House of Representatives and the Senate pursuant to paragraph (1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.
is the subject of the report and biennially thereafter.

"(g) GAO EVALUATION AND REPORT.—

"(1) EVALUATION OF INITIAL REPORT ON IM-
PACT OF TOTALIZATION AGREEMENTS.—With
respect to each initial report regarding a to-
talization agreement submitted under sub-
section (f), the Comptroller General of the
United States shall conduct an evaluation of
the report that includes—

"(A) an evaluation of the procedures used
for making the estimates required by sub-
section (d)(A); and

"(B) an evaluation of the procedures used
determining the actual number of indi-
viduals affected by the agreement and the ef-
fects on the totalization agreement on re-
cipts and disbursements under the social se-
curity system; and

"(C) such recommendations as the Compt-
roller General determines appropriate.

"(2) REPORT.—Not later than 1 year after
the date of submission of an initial report reg-
arding a totalization agreement under sub-
section (f), the Comptroller General shall
submit to Congress a report setting forth the
results of the evaluation conducted under para-
graph (1).

"(h) FRAUD AND ABUSE.—The term ‘fraud
and abuse’ means only the following prac-
tices:

(i) Presenting, causing to be presented or
eliciting, by a health insurance issuer, any State that is
designated as its primary State with respect to all such cov-
erage it offers. Such an issuer may not change the
designated primary State with respect to individual health
insurance coverage once the policy is issued, except that
such a change may be made upon renewal of the policy.
With respect to such designated State, the insurer is deemed to be doing busi-
ness in that State.

(ii) The rating of an insurance policy or
reinsurance contract.

(iii) The financial condition of an insurer
that secondary State.

(iv) A primary State shall apply to individual
health insurance coverage in that State.

(3) HEALTH INSURANCE ISSUER.—The term
‘health insurance issuer’ has the meaning
given such term in section 2791(b)(2), except that
such an issuer must be licensed in the
primary State and be qualified to sell indi-
vidual health insurance coverage in that
State.

(4) INDIVIDUAL HEALTH INSURANCE
COVERAGE.—The term ‘individual health
insurance coverage’ means health insurance cov-
erage offered in the individual market, as de-
fined in section 2791(e)(1).

(5) APPLICABLE STATE AUTHORITY.—The term
‘applicable state authority’ means, with respect to a health insurance issuer in a
State, the State insurance commissioner or official or officials designated
by the State as the State’s insurance laws so requires, the requirements of the
title for the State with respect to the insurer.

(6) HAZARDOUS FINANCIAL CONDITION.—The
term ‘hazardous financial condition’ means that, has not made a reasonable or
anticipated financial condition, a health insur-
ance issuer is unlikely to be able—

(A) to meet obligations to policyholders
with respect to such claims and reasonably
anticipated claims; or

(B) to pay other obligations in the normal
course of business.

(7) COVERED LAWS.—The term ‘covered laws’ means the laws, rules, regulations,
agreements, and orders governing the insur-
ance business pertaining to—

(A) an individual health insurance coverage
issued by a health insurance issuer;

(B) the offer, sale, and issuance of indi-
vidual health insurance coverage to an
individual; and

(C) the provision to an individual in rela-
tion to individual health insurance coverage of—

(i) health care and insurance related ser-

(ii) management, operations, and invest-

(iii) loss control and claims administra-

with respect to liability for which the issuer provides
insurance.

(8) STATE.—The term ‘State’ means only the
States and the District of Columbia.

(9) UNFAIR CLAIMS SETTLEMENT PRACTICES.—The term ‘unfair claims settlement
practices’ means only the following prac-
tices:

(A) Knowingly misrepresenting to claim-
ants and insured individuals relevant facts
or policy provisions relating to coverage at
issue.

(B) Failing to acknowledge with reason-
able promptness pertinent communications
with respect to claims arising under policies.

(C) Failing to adopt and implement rea-
sonable standards for the prompt investiga-
tion and settlement of claims arising under
policies.

(D) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(E) Refusing to pay claims without con-
ducting a reasonable investigation.

(F) Failing to affirm or deny coverage of
claims within a reasonable period of time after
having completed an investigation re-
lated to the claims.

(G) Knowingly misrepresenting to claim-
ants and insured individuals relevant facts
or policy provisions relating to coverage at
issue.

(H) Failing to acknowledge with reason-
able promptness pertinent communications
with respect to claims arising under policies.

(I) Failing to adopt and implement rea-
sonable standards for the prompt investiga-
tion and settlement of claims arising under
policies.

(J) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(K) Refusing to pay claims without con-
ducting a reasonable investigation.

(L) Failing to affirm or deny coverage of
claims within a reasonable period of time after
having completed an investigation re-
lated to the claims.

(M) Knowingly misrepresenting to claim-
ants and insured individuals relevant facts
or policy provisions relating to coverage at
issue.

(N) Failing to acknowledge with reason-
able promptness pertinent communications
with respect to claims arising under policies.

(O) Failing to adopt and implement rea-
sonable standards for the prompt investiga-
tion and settlement of claims arising under
policies.

(P) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(Q) Refusing to pay claims without con-
ducting a reasonable investigation.

(R) Failing to affirm or deny coverage of
claims within a reasonable period of time after
having completed an investigation re-
lated to the claims.

(S) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(T) Refusing to pay claims without con-
ducting a reasonable investigation.

(U) Failing to affirm or deny coverage of
claims within a reasonable period of time after
having completed an investigation re-
lated to the claims.

(V) Knowingly misrepresenting to claim-
ants and insured individuals relevant facts
or policy provisions relating to coverage at
issue.

(W) Failing to acknowledge with reason-
able promptness pertinent communications
with respect to claims arising under policies.

(X) Failing to adopt and implement rea-
sonable standards for the prompt investiga-
tion and settlement of claims arising under
policies.

(Y) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(Z) Refusing to pay claims without con-
ducting a reasonable investigation.

(AA) Failing to affirm or deny coverage of
claims within a reasonable period of time after
having completed an investigation re-
lated to the claims.

(BB) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(CC) Refusing to pay claims without con-
ducting a reasonable investigation.

(DD) Failing to affirm or deny coverage of
claims within a reasonable period of time after
having completed an investigation re-
lated to the claims.

(EE) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(FF) Refusing to pay claims without con-
ducting a reasonable investigation.

(GG) Failing to affirm or deny coverage of
claims within a reasonable period of time after
having completed an investigation re-
lated to the claims.

(HH) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(II) Refusing to pay claims without con-
ducting a reasonable investigation.

(JJ) Failing to affirm or deny coverage of
claims within a reasonable period of time after
having completed an investigation re-
lated to the claims.

(KK) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(LL) Refusing to pay claims without con-
ducting a reasonable investigation.

(MM) Failing to affirm or deny coverage of
claims within a reasonable period of time after
having completed an investigation re-
lated to the claims.

(NN) Failing to effectuate prompt, fair, and
eQUITABLE SETTLEMENT OF CLAIMS.

(PP) Refusing to pay claims without con-
ducting a reasonable investigation.
health insurance issuer in the primary State and in any secondary State, but only if the coverage and issuer comply with the conditions of this section with respect to the offering of insurance in the secondary State.

(b) EXEMPTIONS FROM COVERED LAWS IN A SECONDARY STATE.—Except as provided in this section, insurance laws of the primary State shall apply to insurance coverage issued by an insurance issuer in any secondary State to the extent that such laws are applicable to persons or corporations.

(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A health insurance issuer shall prominently disclose the following, in 12-point bold type, in any insurance coverage offered in a secondary State under this part by such a health insurance issuer, and in any renewal of such policy, with the 5 blank spaces therein being appropriately filled with the name of the health insurance issuer, the name of primary State, the name of the secondary State, and the name of the associated State, respectively, for the coverage in such State.

This policy is issued by [Issuer], and is governed by the laws and regulations of the State of [Primary State], and it has met all the laws of that State as determined by the State’s insurance commissioner. This policy may be less expensive than others because it is not subject to all of the insurance laws and regulations of the State of [Secondary State], including covering services or benefits mandated by the law of the State of [Secondary State]. Additionally, this policy is not subject to all of the consumer protection laws or restrictions that have been adopted by the State of [Secondary State]. As with all insurance products, before purchasing this policy, you should carefully review the policy and determine what health care services the policy covers and what benefits it provides, including any exclusions, limitations, or conditions for such services or benefits.

(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS AND PREMIUM INCREASES.—

(1) IN GENERAL.—For purposes of this section, a health insurance issuer that provides insurance coverage to an individual under the health insurance coverage from the class such individual is in at the time of issue of the contract based on the health-status-related factors of the individual; or

(2) INCREASE PREMIUMS—

(A) increase the premiums assessed the insured under the health insurance coverage from a health-status-related factor or the past or present health status of the individual.

(3) CONSTRUCTION.—Nothing in paragraph (1) shall be construed to prohibit a health insurance issuer from increasing premiums charged an individual insured if such premium increases are based on a significant and material misrepresentation by the individual at the time of issue of the policy.

(e) PRIOR OFFERING OF POLICY IN PRIMARY STATE.—If a secondary State予以 secondary State coverage offered in the primary State is not offered to an individual for such coverage based on a health-status-related factor or the past or present health status of the individual.

(f) LICENSING OF AGENTS OR BROKERS FOR HEALTH INSURANCE ISSUERS.—Any State may require an individual health insurance issuer with respect to the offering of individual health insurance coverage obtain a license from such State, that such license be renewed at regular intervals, and that such license be renewed at regular intervals.

(g) DOCUMENTS FOR SUBMISSION TO STATE INSURANCE COMMISSIONER.—Each health insurance issuer issuing individual health insurance coverage in both primary and secondary States shall submit to the State insurance commissioner for such States the following:

(1) To the insurance commissioner of each State in which it intends to offer such coverage, before it may offer individual health insurance coverage in such State:

(A) a copy of the plan of operation or feasibility study or any similar statement of the policy being offered and its coverage (which shall include the name of its primary State and its principal place of business); and

(B) written notice of any change in its designation of its primary State;

(2) To the insurance commissioner of each secondary State in which it offers individual health insurance coverage, a copy of the issuer’s quarterly financial statement submitted to the primary State, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

(A) a member of the American Academy of Actuaries; or

(B) a qualified loss reserve specialist.

(h) POWER OF COURTS TO ENJOIN CONDUCT Subject to the provisions of subsection (b)(1)(G) (relating to injunctions) and paragraph (2), nothing in this section shall affect the authority of any State to bring action in any Federal or State court to enjoin:

(1) The solicitation or sale of individual health insurance coverage by a health insurance issuer to any person or group who is not eligible for such insurance; or

(2) The solicitation or sale of individual health insurance coverage by a health insurance issuer in connection with the operation of a health insurance issuer that is in hazardous financial condition.

(i) STATE POWERS TO ENFORCE LAWS.—

(1) IN GENERAL.—Subject to the provisions of subsection (b)(1)(G) (relating to injunctions) and paragraph (2), nothing in this section shall affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a health insurance issuer is not exempt under subsection (b).

(2) COURTS OF COMPETENT JURISDICTION.—If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of section 2796, such injunction may be obtained from a Federal or State court of competent jurisdiction.

(j) STATES’ AUTHORITY TO REQUIRE.—Nothing in this section shall affect the authority of any State to bring action in any Federal or State court.

(k) GENERALLY APPLICABLE LAWS.—Nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

SEC. 2797. PRIMARY STATE MUST MEET FEDERAL PLAN REQUIREMENTS TO MAY SELL INTO SECONDARY STATES.

(a) A health insurance issuer may not offer, sell, or issue individual health insurance coverage in a secondary State if the primary State does not meet the following requirements:

(1) The State insurance commissioner must use a risk-based capital formula for the determination of capital and surplus requirements for all health insurance issuers.

(2) The State must have legislation or regulations in place establishing an independent review process for individuals who are covered by individual health insurance coverage unless the issuer provides an independent review process functionally equivalent (as determined by the primary State insurance commissioner or official) to
that prescribed in the 'Health Carrier External Review Model Act' of the National Association of Insurance Commissioners for all individuals who purchase insurance coverage under the plan in question.

SEC. 2706. ENFORCEMENT.

(a) IN GENERAL.—Subject to subsection (b), with respect to specific individual health insurance coverage the primary State for such coverage has sole jurisdiction to enforce the primary State's covered laws in the primary State and any secondary State.

(b) THE APPLICABILITY OF THE PROVISION.—Nothing in subsection (a) shall be construed to affect the authority of a secondary State to enforce its laws as set forth in the exception to section 2706(b)(1).

(c) COURT INTERPRETATION.—In reviewing action initiated by the applicable secondary State authority, the court of competent jurisdiction shall apply the covered laws of the primary State.

(d) NOTICE OF COMPLIANCE FAILURE.—In the case of individual health insurance coverage offered in a secondary State that fails to comply with the covered laws of the primary State, the applicable State authority of the primary State may notify the applicable State authority of the primary State.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to individual health insurance coverage offered, issued, or sold after the date of the enactment of this Act.

(c) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of such provision to any other person or circumstance shall not be affected.

SEC. 3. DISPOSITION OF UNSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

(b) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be—

(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 101) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraph (C)), and the benefit may not be used for the payment of any expenses for any year in which such employee is employed.

(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

(B) the actual amount of reimbursement for such year under such arrangement.

(b) REPEAL OF FSA TERMINATION PROVISION.—

(1) IN GENERAL.—Subsection (e) of section 106 of the Internal Revenue Code of 1986, as added by title X of the Health Care Reform Act of 2006, is amended by striking 'health flexible spending arrangement or' each place it appears.

(2) CONFORMING AMENDMENTS.—

(A) The heading of section 106(e) of such Code is amended by striking 'FSA or'.

(B) Section 223(c)(1)(B)(iii)(II) of such Code, as added by subsection (a) of section 223(d)(2) of the Internal Revenue Code of 1986, is amended to read as follows:

(II) the balance of such arrangement is contributed by the employer to a health savings account of the individual under section 125(h)(1)(B), in accordance with rules prescribed by the Secretary.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2010.

SEC. 4. EXPANSION OF USE OF HEALTH SAVINGS ACCOUNTS FOR CERTAIN HIGH DEDUCTIBLE HEALTH PLANS.

(a) IN GENERAL.—Subparagraph (C) of section 223(d)(2) of the Internal Revenue Code of 1986 (relating to qualified medical expenses) is amended by striking at the end of clause (iii), by striking the period at the end of clause (iv), and by adding at the end the following new clause:

(iv) any high deductible health plan other than a group health plan (as defined in section 5000(b)(1)).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SA 157. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

In section 2 of the bill, strike subsection (a) and insert the following:

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 is amended as follows:

(1) except as otherwise provided in this section, not less than $5.15 beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2007, an amount equal to the minimum wage in effect on such date in the State in which such employee is employed (whether as a result of the application of Federal or State law) increased by $0.70;

(2) beginning 12 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting "$4.90" for "$0.70";

(3) beginning 24 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting "$5.60" for "$0.70"; and

(b) REPEAL OF FSA TERMINATION PROVISION.—

(1) IN GENERAL.—Subsection (e) of section 106 of the Internal Revenue Code of 1986, as added by the Tax Relief and Health Care Act of 2006, is amended by striking 'health flexible spending arrangement or' each place it appears.

(2) CONFORMING AMENDMENTS.—

(A) The heading of section 106(e) of such Code is amended by striking 'FSA or'.

(B) Section 223(c)(1)(B)(iii)(II) of such Code, as added by subsection (a) of section 223(d)(2) of the Internal Revenue Code of 1986, is amended to read as follows:

(II) the balance of such arrangement is contributed by the employer to a health savings account of the individual under section 125(h)(1)(B), in accordance with rules prescribed by the Secretary.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2010.

SA 158. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

In section 101 of the amendment, strike subsection (a) and insert the following:

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 is amended as follows:

(1) except as otherwise provided in this section, not less than $5.15 beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2007, an amount equal to the minimum wage in effect on such date in the State in which such employee is employed (whether as a result of the application of Federal or State law) increased by $0.70;
SEC. 6166. EXTENSION OF TIME FOR PAYMENT OF TAX FOR CERTAIN SMALL BUSINESSES.

(a) In General.—Subchapter B of chapter 62 (relating to extensions of time for payment of tax) is amended by adding at the end the following:

"(m) Special RULES.—

(1) APPLICATION OF LIMITATION TO PARTNERS AND S CORPORATION SHAREHOLDERS.—

(A) IN GENERAL.—In general, this section applies to a partnership which is an eligible small business—

(i) the election under subsection (a) shall be made by the partnership, and

(ii) the amount referred to in subsection (b)(1) shall be the sum of each partner’s tax which is attributable to items of the partnership and assigned to the highest marginal rate under section 1.

(3) PRIORITY OF LENDER.—

(1) OVERALL LIMITATION ALSO APPLIED AT PARTNER LEVEL.—In the case of a partner in a partnership, the limitation under subsection (b)(3) shall be applied at the partnership and partner level.

(2) SIMILAR RULES FOR S CORPORATIONS.—Rules similar to the rules of subparagraphs (A) and (B) shall apply to shareholders in an S corporation.

(2) ACCELERATION OF PAYMENT IN CERTAIN CASES.—

(A) IN GENERAL.—If—

(i) the taxpayer ceases to meet the requirement of subsection (c)(1)(A), or

(ii) there is an ownership change with respect to the tax liability of the taxpayer for such taxable year, the tax provided in subsection (a) shall cease to apply, and the unpaid portion of the tax payable in installments shall be paid on or before the due date for filing the return of tax imposed by chapter 1 for the first taxable year following such change.

(B) OWNERSHIP CHANGE.—For purposes of subparagraph (A), in the case of a corporation, the term ‘ownership change’ has the meaning given to such term under section 48(e)(4). Rules similar to the rules applicable under the preceding sentence shall apply to a partnership.

(C) RELATIONSHIP OF DEFICIENCY TO INSTALLMENT—Rules similar to the rules of section 6166(e) shall apply for purposes of this section.

(D) BRIDGE ACCOUNT.—For purposes of this section—

(1) IN GENERAL.—The term ‘BRIDGE Account’ means a trust created or organized in the United States for the exclusive benefit of an eligible small business, but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deferral under subsection (b) for such year.

(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust is consistent with the requirements of this section.

(C) The assets of the trust consist entirely of cash or of obligations which have an established market value (as defined in section 1274(c)(2)) and which pay interest not less often than annually.

(D) The assets of the trust will not be commingled with other assets in a common trust fund or common investment fund.

(E) Amounts in the trust may be used only—

(i) as security for a loan to the business or for repayment of such loan, or

(ii) to pay the installments under this section.

(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a BRIDGE Account shall be treated for purposes of this title as the owner of such Account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grants and others treated as substantial owners).

(3) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a BRIDGE Account on the last day of the taxable year if such payment is made on account of such taxable year and is made within 3 months after the close of such taxable year.

(4) RETURNS.—The Secretary may require such reporting as the Secretary determines to be appropriate to carry out this section.

(5) APPLICABILITY OF SECTION.—This section shall apply to taxes imposed for taxable years beginning after December 31, 2010, and before January 1, 2015.

(b) Priority of Lender.—Subsection (b) of section 6223 is amended by adding at the end the following new paragraph:

"(1) LOANS SECURED BY BRIDGE ACCOUNTS.—With respect to a BRIDGE account (as defined in section 6166(f)) with any bank (as defined in section 408(n)), to the extent of amounts made by such bank on the basis of such notice or knowledge of the existence of such lien, as against such bank, if such loan is secured by such account.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 62 is amended by adding at the end the following new item:

"Sec. 6166. Extension of time for payment of tax for certain small businesses."

SA 159. Mr. DeMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage, which was ordered to lie on the table; as follows:

"(C) beginning 24 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting "$2.10" for "$0.70";"

SA 160. Mr. DeMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage, which was ordered to lie on the table; as follows:

"(a) PROHIBITION.—Except with the separate, prior, written, voluntary authorization of an individual, it shall be unlawful for any labor organization to collect from or assess its members or nonmembers any dues, initiation fee, or other payment if any part of such dues, fees, or payment will be used to lobby members of Congress or Congressional staff for the purpose of influencing legislation.

(b) AUTHORIZATION.—An authorization described in subsection (a) shall remain in effect until revoked and may be revoked at any time.

"(3) PRIORITY OF LENDER.—

(1) OVERALL LIMITATION ALSO APPLIED AT PARTNER LEVEL.—In the case of a partner in a partnership, the limitation under subsection (b)(3) shall be applied at the partnership and partner levels.

(2) SIMILAR RULES FOR S CORPORATIONS.—Rules similar to the rules of subparagraphs (A) and (B) shall apply to shareholders in an S corporation.

(2) ACCELERATION OF PAYMENT IN CERTAIN CASES.—

(A) IN GENERAL.—If—

(i) the taxpayer ceases to meet the requirement of subsection (c)(1)(A), or

(ii) there is an ownership change with respect to the tax liability of the taxpayer for such taxable year, the tax provided in subsection (a) shall cease to apply, and the unpaid portion of the tax payable in installments shall be paid on or before the due date for filing the return of tax imposed by chapter 1 for the first taxable year following such change.

(B) OWNERSHIP CHANGE.—For purposes of subparagraph (A), in the case of a corporation, the term ‘ownership change’ has the meaning given to such term under section 48(e)(4). Rules similar to the rules applicable under the preceding sentence shall apply to a partnership.

(C) RELATIONSHIP OF DEFICIENCY TO INSTALLMENT—Rules similar to the rules of section 6166(e) shall apply for purposes of this section.

(D) BRIDGE ACCOUNT.—For purposes of this section—

(1) IN GENERAL.—The term ‘BRIDGE Account’ means a trust created or organized in the United States for the exclusive benefit of an eligible small business, but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deferral under subsection (b) for such year.

(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust is consistent with the requirements of this section.

(C) The assets of the trust consist entirely of cash or of obligations which have an established market value (as defined in section 1274(c)(2)) and which pay interest not less often than annually.

(D) The assets of the trust will not be commingled with other assets in a common trust fund or common investment fund.

(E) Amounts in the trust may be used only—

(i) as security for a loan to the business or for repayment of such loan, or

(ii) to pay the installments under this section.

(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a BRIDGE Account shall be treated for purposes of this title as the owner of such Account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grants and others treated as substantial owners).

(3) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a BRIDGE Account on the last day of the taxable year if such payment is made on account of such taxable year and is made within 3 months after the close of such taxable year.

(4) RETURNS.—The Secretary may require such reporting as the Secretary determines to be appropriate to carry out this section.

(5) APPLICABILITY OF SECTION.—This section shall apply to taxes imposed for taxable years beginning after December 31, 2010, and before January 1, 2015.

(b) Priority of Lender.—Subsection (b) of section 6223 is amended by adding at the end the following new paragraph:

"(1) LOANS SECURED BY BRIDGE ACCOUNTS.—With respect to a BRIDGE account (as defined in section 6166(f)) with any bank (as defined in section 408(n)), to the extent of amounts made by such bank on the basis of such notice or knowledge of the existence of such lien, as against such bank, if such loan is secured by such account.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 62 is amended by adding at the end the following new item:

"Sec. 6166. Extension of time for payment of tax for certain small businesses."
SA 161. Mr. DeMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 6. FLEXIBLE SCHEDULE PROGRAMS.

(a) Prohibition of Use of Flexible Schedules for Federal Employees Until Flexible Schedules Are Available to Private Employees.

(1) Prohibition of Use of Flexible Schedules for Federal Employees.—Notwithstanding any provision of subsection II of chapter 61 of title 5, United States Code, no agency, or any flexible schedule program authorized under section 6122 of that title.

(2) Effective Date.—Paragraph (1) shall take effect 1 year after the date of enactment of this Act, unless during such 1 year period, the Secretary of Labor submits certification to the Office of Personnel Management that a statute has been enacted that allows employers covered by the Fair Labor Standards Act of 1938 to provide for the use of a flexible schedule similar to the flexible schedule program authorized under section 6122 of title 5, United States Code, for employees engaged in commerce or in the production of goods for commerce.

(b) Prohibition of Prohibition.—If the prohibition under subsection (a) takes effect, that subsection shall cease to have any force or effect on the date that the Secretary of Labor submits a certification described in subsection (a)(2) to the Office of Personnel Management.

SA 162. Mr. DeMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 7. ENTERPRISE ENGAGED IN COMMERCE.

(a) Annual Gross Volume of Sales.—Section 3(s)(1)(A)(ii) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(1)(A)(ii)) is amended by striking "$50,000" and inserting "$1,000,000".

(b) Inapplicability of Minimum Wage.—Section 6 of the Fair Labor Standards Act of 1938 (20 U.S.C. 206) is amended—

(1) in subsection (a), by striking "in commerce or in the production of goods for commerce, or"; and

(2) in subsection (b), by striking "in commerce or in the production of goods for commerce, or".

SA 163. Ms. SNOWE (for herself and Mr. FINGER) submitted an amendment intended to be proposed by her to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 8. EQUAL ACCESS FOR SMALL PARTIES IN CIVIL AND ADMINISTRATIVE PROCEEDINGS.

(a) Eligibility of Small Businesses for Fee Award.—

(1) Administrative Proceedings.—

(A) In general.—Section 504(b)(1)(B)(ii) of title 5, United States Code, is amended by striking "$7,000,000" and inserting "$10,000,000".

(B) Adjustment in net worth limitation.—Section 504(b) of title 5, United States Code, is amended by adding at the end the following:

"(3) Beginning on January 1 of the 5th year following the date of enactment of this paragraph, and on January 1 every 5 years thereafter, the dollar amount under paragraph (1)(B)(ii) shall be adjusted by the Producer Price Index as determined by the Secretaries of the Treasury and of Labor, in collaboration with the Bureau of Labor Statistics."

(2) Judicial Proceedings.—

(A) In general.—Section 2412(d)(2)(B)(i) of title 28, United States Code, is amended by striking "$7,000,000" and inserting "$10,000,000".

(B) Adjustment in net worth limitation.—Section 2412(d) of title 28, United States Code, is amended by adding at the end the following:

"(5) Beginning on January 1 of the 5th year following the date of enactment of this paragraph, and on January 1 every 5 years thereafter, the dollar amount under paragraph (2)(B)(i) shall be adjusted by the Producer Price Index as determined by the Secretary of the Treasury, in collaboration with the Bureau of Labor Statistics."

(3) Inclusion of response to comments on certification of proposed rule.—Section 604(b)(2) of title 5, United States Code, is amended by inserting "(or certification of the proposed rule under section 605(b)(1))" after "initial regulatory flexibility analysis".

(b) Inclusion of response to comments filed by Chief Counsel for Advocacy.—Section 604(a)(5) of title 5, United States Code, is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and inserting after paragraph (2) the following:

"(7) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a description of any element of law changed made to the proposed rule in the final rule as a result of such comments;"

(c) Publication of analysis on web site, etc.—Section 605(b) of title 5, United States Code, is amended to read as follows:

"(7) the agency shall make copies of the final regulatory flexibility analysis available to the public, including placement of the entire analysis on the agency’s Web site, and shall publish in the Federal Register the final regulatory flexibility analysis, or a summary thereof that includes the telephone number, mailing address, and link to the Web site where the complete analysis may be obtained;"

(3) Cross-references to other analyses.—Section 605(a) of title 5, United States Code, is amended to read as follows:

"(7) any requirement of another agency or the Federal Register that is required by any other law and which satisfies such requirement;"

(d) Certification.—The second sentence of section 606(b) of title 5, United States Code, is amended—

"(7) by inserting "detailed" before "statement"; and

"(8) by inserting "and legal" after "factual".

(e) Quantification requirements.—Section 607 of title 5, United States Code, is amended to read as follows:

"§ 607. Quantification requirements

In complying with sections 603 and 604, an agency shall provide—

(1) a quantifiable or numerical description of the effects of the proposed or final rule and alternatives to the proposed or final rule; or
"(2) a more general descriptive statement and a detailed statement explaining why quantification is not practicable or reliable.

(b) TECHNICAL AND CONFORMING AMENDMENTS.

(1) HEADING.—The heading of section 605 of title 5, United States Code, is amended to read as follows:

"§ 605. Incorporations by reference and certifications".

(2) TABLE OF SECTIONS.—The table of sections for chapter 6 of title 5, United States Code, is amended by:

(a) inserting the following:

"§ 605. Incorporations by reference and certifications".

(b) inserting the following:

"§ 607. Quantification requirements."

SA 165. Mr. SMITH (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 2. EXPANSION OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended to read as follows:

'(1) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who is an employee within the meaning of section 7701(a)(15) of title 26, there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for—

(a) the taxpayer,

(b) the taxpayer's spouse,

(c) the taxpayer's dependents,

(d) any individual who is not the spouse, determined without regard to section 7701, of the taxpayer at any time during the taxable year of the taxpayer,

(ii) who—

(I) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

(ii) is a student who has not attained the age of 24 as of the close of such calendar year,

(iii) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and

(iv) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which the taxpayer's taxable year begins, and

(E) an individual who—

(i) who is designated by the taxpayer for purposes of this paragraph,

(ii) who is not the spouse or qualifying child of such taxpayer or any other taxpayer for any taxable year beginning in the calendar year in which the taxpayer's taxable year begins, and

(iii) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household;

For purposes of subparagraph (E)(i), not more than 1 person may be designated by the taxpayer for any taxable year.'

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 162(l)(2) of the Internal Revenue Code of 1986 is amended by striking "or of the spouse of the taxpayer" and inserting ", or of the spouse of the taxpayer, or of any individual described in paragraph (1)(E)".

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 2007.

SA 167. Mrs. FEINSTEIN (for herself and Mr. CRAIO) submitted an amendment entitled to be proposed to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage which was ordered to lie on the table; as follows:

At the place of the matter proposed to be inserted, insert the following:

TITLE II—AGJOBS ACT OF 2007

SEC. 201. SHORT TITLE.

This title may be cited as the "Agricultural Job Opportunities, Benefits, and Security Act of 2007" or the "AgJOBS Act of 2007".

SEC. 202. DEFINITIONS.

In this title:

(1) AGRICULTURAL EMPLOYMENT.—The term "agricultural employment" means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 312(g) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(II)(a)).

(2) BLUE CARD STATUS.—The term "blue card status" means the status of an alien who has been lawfully admitted into the United States for temporary residence under section 211(a).

(3) DEPARTMENT.—The term "Department" means the Department of Homeland Security.

(4) EMPLOYER.—The term "employer" means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

(5) SECRETARY.—Except as otherwise provided, the term "Secretary" means the Secretary of Homeland Security.

(6) TEMPORARY.—A worker is employed on a "temporary" basis if such employment is intended not to exceed 10 months.

(7) WORK DAY.—The term "work day" means any day in which the individual is employed 5.75 or more hours in agricultural employment.

Subtitle A—Pilot Program for Earned Status

PART I—BLUE CARD STATUS

SEC. 211. REQUIREMENTS FOR BLUE CARD STATUS.

(a) REQUIREMENT TO GRANT BLUE CARD STATUS.—Notwithstanding any other provi- sion of law, the Secretary, subject to the requirements of this section, shall grant blue card status to an alien who qualifies under this section if the Secretary determines that the alien—

(1) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2006,

(2) applied for such status during the 18-month application period beginning on the first day of the seventh month that begins after the date of enactment of this Act, and

(3) is otherwise admissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as otherwise provided under section 218(b); and

(4) has not been convicted of any felony or misdemeanor, the elements of which involve bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

(b) AUTHORIZED TRAVEL.—An alien who is granted blue card status is authorized to travel outside the United States (including commuting to the United States from a residence in a foreign country) in the same manner as an alien lawfully admitted for permanent residence.

(c) AUTHORIZED EMPLOYMENT.—The Secretary shall provide an alien who is granted
blue card status an employment authorized endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

**C. TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.**

(1) IN GENERAL.—The Secretary may terminate blue card status granted to an alien under this section only if the Secretary determines that the blue card status is deportable.

(2) GROUNDS FOR TERMINATION OF BLUE CARD STATUS.—Before any alien becomes eligible for adjustment of status under section 213, the Secretary may deny adjustment to permanent resident status and provide for termination of the blue card status granted to such alien under paragraph (1) if—

(A) the Secretary finds, by a preponderance of the evidence, that the adjustment to blue card status was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i)); or

(B) the alien—

(i) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under section 213(b);

(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States;

(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; or

(iv) fails to perform the agricultural employment requirement of section 213(a)(1) unless the alien was unable to work in agricultural employment due to extraordinary circumstances described in section 213(a)(3).

(e) RECORD OF EMPLOYMENT.—

(1) IN GENERAL.—Each employer of an alien granted blue card status under this section shall annually—

(A) provide a written record of employment to the alien; and

(B) provide a copy of such record to the Secretary.

(2) SUNSET.—The obligation under paragraph (1) shall terminate on the date that is 6 years after the date of the enactment of this Act.

(f) REQUIRED FEATURES OF IDENTITY CARD.—The Secretary shall provide each alien granted blue card status, and the spouse and any child of each such alien residing in the United States, with a card that contains—

(1) an encrypted, machine-readable, electronic identification strip that is unique to the alien to whom the card is issued;

(2) biometric identifiers, including fingerprints and a digital photograph; and

(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

(g) PINK.—An alien granted blue card status shall pay a fine of $100 to the Secretary.

(h) MAXIMUM NUMBER.—The Secretary may not issue more than 1,500,000 blue cards during the first 4 years beginning on the date of the enactment of this Act.

**SEC. 212. TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.**

(a) IN GENERAL.—Except as otherwise provided under this section, an alien granted blue card status shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(b) PERSONAL RESPONSIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien granted blue card status shall not be eligible, by reason of such status, for any form of assistance or benefit under section 409(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the alien is granted an adjustment of status under section 213.

(c) TERMS OF EMPLOYMENT.

(1) PROOF.—No alien granted blue card status may be terminated from employment by any employer during the period of blue card status for any of the following reasons:

(A) the alien has not performed any work for wages or profit for the employer for at least 150 work days during 4 years of those 5 years;

(B) the alien has performed 4 years of agricultural employment in the United States for at least 250 work days per year, of which at least 100 work days during any 1 year of those 4 years;

(C) the alien has performed 4 years of agricultural employment in the United States for at least 150 work days per year, during the 5-year period beginning on the date of the enactment of this Act; or

(D) the alien has performed agricultural employment in the United States for at least 150 work days per year, during the 5-year period beginning on the date of the enactment of this Act.

(2) EXCEPTED PERIODS.

(F) NON-ADHESION TO EMPLOYMENT.—The complaint of an employer under paragraph (1) may be referred to the Secretary pursuant to subparagraph (D) if—

(A) the employer demonstrates to the Secretary that the alien was unable to work due to—

(i) an extraordinary circumstance described in section 213(b)(1); or

(ii) an extraordinary circumstance described in section 213(b)(3).

(B) LIMITATION.—The penalty applicable under subparagraph (A) for failure to provide records shall not apply unless the alien has performed agricultural employment in the United States for at least 150 work days per year, during the 5-year period beginning on the date of the enactment of this Act.

(3) EXTRAORDINARY CIRCUMSTANCES.—In determining whether an alien is subject to the requirement of paragraph (1)(A), the Secretary may credit the alien with not more than 12 additional months to meet the requirement of that subparagraph if the alien was unable to work in agricultural employment due to—

(A) pregnancy, injury, or disease, if the alien can establish such pregnancy, disabling injury, or disease through medical records;

(B) illness, disease, or other special needs of a minor child, if the alien can establish such illness, disease, or special needs through medical records; or

(C) severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time.

(4) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 7
years after the date of the enactment of this Act.

(5) FINES.—The alien pays a fine of $600 to the Secretary.

(b) PROCEDURE FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien granted blue card status an adjustment of status under section 243a(c)(1) and proceedings for termination of such blue card status if—

(1) the Secretary finds by a preponderance of the evidence that the adjustment to blue card status was the result of fraud or willful misrepresentation, as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(2) alien—

(A) commits an act that makes the alien inadmissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as provided under section 215(b); or

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States;

(C) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500;

(D) GROUNDS FOR REMOVAL.—Any alien granted blue card status who does not apply for adjustment of status under this section before the expiration of the period described in subsection (a)(4) or who fails to meet the other requirements of subsection (a) before the end of the application period, is deportable and may be removed under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) if the alien—

(A) commits an act that makes the alien spouse or child inadmissible to the United States under section 212 of such Act (8 U.S.C. 1182), except as provided under section 215(b); or

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(C) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

SEC. 214. APPLICATIONS.

(a) Submission.—The Secretary shall provide that—

(1) applications for blue card status under section 211 may be submitted—

(A) to the Secretary if the applicant is represented by an attorney, or

(B) to a qualified designated entity if the applicant is not represented by an attorney;

(2) to a qualified designated entity if the applicant consents to the forwarding of the application to the Secretary; and

(3) applications for adjustment of status under section 213 shall be filed directly with the Secretary.

(b) QUALIFIED DESIGNATED ENTITIES DEFINED.—In this section, the term ‘qualified designated entity’ means—

(1) a qualified farm labor organization or an association of employers designated by the Secretary;

(2) any other person designated by the Secretary if that person has such qualifications as the Secretary determines to be necessary to carry out the provisions of this section.

(c) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.

(1) REQUIREMENTS.—Each qualified designated entity shall agree—

(A) to forward to the Secretary an application submitted to that entity pursuant to an application filed under subsection (a)(1); (B) not to forward to the Secretary any such application if the person designated has not consented to such forwarding;

(B) to assist an alien in obtaining documentation of the alien’s work history, if the alien requests such assistance;

(2) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified designated entity may make a determination required by this subsection to be made by the Secretary.

(d) LIMITATION ON ACCESS TO INFORMATION.—Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to subsection (f).

(e) LIMITATION ON ACCESS TO INFORMATION.—No qualified designated entity may make a determination required by this subsection to be made by the Secretary.

(f) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Except as otherwise provided in this section, or as required by any other official or employee of the Department or a bureau or agency of the Department is prohibited from—

(A) using information furnished by the applicant pursuant to an application filed under this title, the information provided by an employer or former employer for any purpose other than to make a determination on the application or for imposing the penalties described in subsection (g); and

(B) making any publication in which the information furnished by any individual can be identified or link to the person to a sworn officer or employee of the Department or a bureau or agency of the Department or, with respect to applications filed with a qualified designated entity, to examine individual applications.

(2) REQUIRED DISCLOSURES.—The Secretary shall provide the information furnished under this title or any other information derived from such furnished information to—

(A) a duly recognized law enforcement entity in connection with a criminal investigation; and

(B) an official for purposes of affirmatively identifying a deceased individual or the next of kin of such individual resulted from a crime.

(3) CONSTRUCTION.
(A) IN GENERAL.—Nothing in this subsection shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes, of information contained in files or records of the Department pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the authority granted under other provisions of this subsection or information otherwise derived from the application, that is not available from any other source.

(B) CRIMINAL CONVICTIONS.—Notwithstanding any other provision of this subsection, information concerning whether the alien applying for blue card status under section 211 or an adjustment of status under section 213 has been convicted of a crime at any time may be used or released for immigration enforcement or law enforcement purposes.

(4) CRIMINAL CONVICTIONS.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be subject to a fine in an amount not to exceed $10,000.

(g) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(1) GENERAL.—Any person who—

(A) files an application for blue card status under section 211 or an adjustment of status under section 213 and knowingly willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document known to contain any false, fictitious, or fraudulent statement or entry; or

(B) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(2) IMMINIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(9)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(C)(i)).

(b) PROHIBITION OF EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under paragraph (1)(B) for services provided to applicants.

(c) DISPOSITION OF FEES.—

(A) IN GENERAL.—There is established in the Immigration and Nationality Account a fund, which shall be known as the Cultural Worker Immigration Status Adjusting Fund, to be available only to meet the expenses of the Cultural Worker Immigration Status Adjustment Account.

(B) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the Cultural Worker Immigration Status Adjustment Account shall remain available to the Secretary until expended for processing applications for blue card status under section 211 or an adjustment of status under section 213.

SEC. 215. WAIVER OF NUMERICAL LIMITATIONS AND CIRCUMSTANCES FOR INADMISSIBILITY.

(i) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 212(a)(1)(A)(i), 212(a)(2)(A)(i), and 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(1)(A)(i), 1182(a)(2)(A)(i), and 1182(a)(3)) do not apply to an alien filing an application for blue card status under section 211 or an adjustment of status under section 213.

(ii) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien’s eligibility for status under section 211(a) or an alien’s eligibility for adjustment of status under section 213(b)(2)(A) the following rules shall apply:

(1) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) WAIVER OF OTHER GROUNDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may waive any other provision of such section 212(a) in the case of an alien who—

(i) serves in essential humanitarian purposes, to ensure family unity, or

(ii) is the son of a ground of inadmissibility under section 212(a).

(B) WAIVER OF VARIOUS OTHER GROUNDS.—

(i) APPLICATION FEES.—

(A) IN GENERAL.—There is established in the Cultural Worker Immigration Status Adjustment Account a fund which shall be known as the Cultural Worker Immigration Status Adjusting Fund.

(B) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the Cultural Worker Immigration Status Adjustment Account shall remain available to the Secretary until expended for processing applications for blue card status under section 211 or an adjustment of status under section 213.

(ii) SEC. 218. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.

(a) REGULATIONS.—The Secretary shall issue regulations to implement this subtitle no later than the first day of the fourth month that begins after the date of enactment of this Act.

(b) EFFECTIVE DATE.—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on the interim basis or on any other basis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this subtitle, including any sums needed for costs associated with the initiation of such implementation, for fiscal years 2007 through 2008.
have occurred before the date on which the alien was granted blue card status.

(b) Effective Date.—The amendments made by subsection (a) shall take effect on the first day of the first month that begins after the date of the enactment of this Act.

Subtitle B—Reform of H-2A Worker Program

Sec. 211. Amendment to Immigration and Nationality Act.

(a) In General.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by striking subsection 218 and inserting the following:

SEC. 218. H-2A EMPLOYER APPLICATIONS.

(a) Applications to the Secretary of Labor

(1) In General.—No alien may be admitted to

(b) Description of the nature and location of the work to be performed;

(c) Period (expected beginning and ending dates) for which the workers will be needed; and

(d) The number of job opportunities in which the employer seeks to employ the workers.

(2) Accompanied by Job Offer.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

(b) Assurances for Inclusion in Applications

(c) Notification of Bargaining Representatives.—The employer, at the time of filing the application, has provided notice of the filing of the application to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

(d) Temporary or Seasonal Job Opportunities.—The job opportunity is temporary or seasonal.

(e)振奋于上述条款的范围

(f) Recruitment.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to United States citizens and workers who were employed by another employer during the period of employment for which the employer has made an offer of employment which will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment.

(g) Provision of insurance.—If the job opportunity is not covered by the State workers' compensation law for comparable employment, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment.

(h) Provision of insurance.—If the job opportunity is not covered by the State workers' compensation law for comparable employment, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment.

(i) Strike or Lockout.—The specific job opportunity for which the employer has applied for an H-2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

(j) Temporary or Seasonal Job Opportunities.—The job opportunity is temporary or seasonal.

(k) Benefits, Wages, and Working Conditions.—The employer will provide, at a minimum, the benefits, wages, and working conditions described in subclause (I) to all workers employed in the job opportunities for which the employer has applied for an H-2A worker under subsection (a) and to all other workers in the same occupation at the place of employment.

(l) Non-displacement of United States Workers.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer has applied for an H-2A worker.

(m) Requirements for Placement of the Nonimmigrant with Other Employers.—The employer will not place the nonimmigrant with another employer unless

(n) the nonimmigrant performs duties in whole or in part in more worksites owned, operated, or controlled by such other employer;

(o) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

(p) the employer has received a job offer from another employer.

(q) Period of Employment.—The employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment.

(r) Provision of Insurance.—If the job opportunity is not covered by the State workers' compensation law for comparable employment, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment.

(s) Affirmative Action.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to United States citizens and workers who were employed by another employer during the period of employment for which the employer has made an offer of employment which will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment.

(t) Prohibition.—No person or entity shall, acting in concert, per se or in combination, with another person or entity, including the Secretary of Labor, the Department of Labor, or any of its officials or employees, unreasonably withhold the employment of United States workers before the arrival of H-2A workers in order to force the hiring of United States workers under this clause.

(II) Complaints.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate the complaint. The Secretary of Labor shall suspend the application of this clause with respect to that certification for that date of need.

(II) Placement of United States Workers.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending acceptance of the job. The Secretary of Labor shall authorize the use of the job opportunity in the area of intended employment.

(III) The employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the State employment security agency which serves the area of intended employment and authorize the use of the job opportunity on ‘America’s Job Bank’ or other electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

(III) Advertising of Job Opportunities.—Not later than 14 days before the date on which the employer desires to employ an H-2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunity in which the nonimmigrant is, or non-immigrants are, sought and who will be available at the time and place of need.

(IV) Emergency Procedures.—The employer shall, by regulation, provide a procedure for acceptance and approval of applications in which the employer has not complied with the provisions of this subparagraph because the employer's need for H-2A workers could not reasonably have been foreseen.

(V) Job Offers.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or non-immigrants are, sought and who will be available at the time of the job offer.

(VI) Period of Employment.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the employer departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the nonimmigrant was hired has elapsed, subject to the following requirements:

(I) Prohibition.—No person or entity shall, acting in concert, per se or in combination, with another person or entity, including the Secretary of Labor, the Department of Labor, or any of its officials or employees, unreasonably withhold the employment of United States workers before the arrival of H-2A workers in order to force the hiring of United States workers under this clause.

(II) Placement of United States Workers.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending acceptance of the job. The Secretary of Labor shall authorize the use of the job opportunity in the area of intended employment.

(III) The employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the State employment security agency which serves the area of intended employment and authorize the use of the job opportunity on ‘America’s Job Bank’ or other electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

(IV) Emergency Procedures.—The employer shall, by regulation, provide a procedure for acceptance and approval of applications in which the employer has not complied with the provisions of this subparagraph because the employer's need for H-2A workers could not reasonably have been foreseen.

(V) Job Offers.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or non-immigrants are, sought and who will be available at the time of the job offer.

(VI) Period of Employment.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the employer departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the nonimmigrant was hired has elapsed, subject to the following requirements:

(I) Prohibition.—No person or entity shall, acting in concert, per se or in combination, with another person or entity, including the Secretary of Labor, the Department of Labor, or any of its officials or employees, unreasonably withhold the employment of United States workers before the arrival of H-2A workers in order to force the hiring of United States workers under this clause.

(II) Placement of United States Workers.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending acceptance of the job. The Secretary of Labor shall authorize the use of the job opportunity in the area of intended employment.
SEC. 218A. H-2A EMPLOYMENT REQUIREMENTS.

(a) Preferential Treatment of Aliens Prohibited.—Employers seeking to hire United States workers under United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to aliens under the same circumstances as their United States workers do, any restrictions or obligations which will not be imposed on the employer’s H-2A workers.

(b) Minimum Benefits, Wages, and Working Conditions.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

(A) IN GENERAL.—An employer applying under subsection 218(a) for H-2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has and shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

(B) TYPE OF HOUSING.—

(In complying with subparagraph (A), an employer, at the employer’s election, provide housing that meets applicable local standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation, or in the case of applicable local or State standards, Federal temporary labor camp standards shall apply.)

(C) FAMILY HOUSING.—If it is the prevailing practice in the area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

(D) COST OF HOUSING OR HOUSING ALLOWANCE.—If the employer provides housing with respect to the worker, or assists a worker in locating housing, the employer shall make available for public examination in the District of Columbia a list of employers that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218A, 218B, and 218C.

(2) WITHDRAWAL OF APPLICATIONS.—

(1) In General.—An employer may withdraw an application filed pursuant to subsection (a) if the employer notifies the Secretary of Labor in writing, and the Secretary of Labor shall acknowledge in writing the receipt of such withdrawal notice and shall provide to the Secretary of Labor who withdraws an application under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance from the place of employment, the employer shall make available for public examination in the District of Columbia a list of employers that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218A, 218B, and 218C.

(2) LIMITATION.—An application may not be withdrawn while any alien included status under section 101(a)(15)(H)(ii)(A) pursuant to such application is employed by the employer.

(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any regulation established by the Secretary of Agriculture regulating the recruitment of United States workers or H-2A workers under an offer of terms and conditions of employment required as a result of an application under this section (a) is unaffected by withdrawal of such application.

(4) REVIEW AND APPROVAL OF APPLICATIONS.—

(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination in the District of Columbia a list of employers that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218A, 218B, and 218C.

(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under subsection (a). Such list shall include the name and address of each employer, the number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application and assess the completeness and correctness of the information provided. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be made within 7 days of the filing of the application.

(c) HOUSING ALLOWANCE AS ALTERNATIVE.

(1) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing to H-2A workers. Upon the request of a worker seeking assistance in locating housing, the employer shall make efforts to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance shall file a statement with the Secretary of Labor certifying that the housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1832) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned, controlled, or operated by the employer.

(2) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate and suitable housing in the area of intended employment for migrants and seasonal agricultural workers.

(3) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

(4) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

(5) REIMBURSEMENT OF TRANSPORTATION.—

(1) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment for which the worker was hired shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

(2) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.
provide or pay for the worker’s transportation and subsistence to such subsequent employer’s place of employment.

“(C) LIMITATION.—

“(i) IN GENERAL.—No reimbursement provided under subparagraph (A) or (B) shall be required by subparagraph (B) and, notwithstanding anything to the contrary in subparagraph (A), if the distance traveled is 100 miles or less, the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

“(ii) DISTANCE TRAVELED.—No reimbursement provided under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

“(iii) WORKER’S HOUSING.—The employer shall provide the transportation reimbursement required by subparagraph (A) if the worker provides to the employer a written statement that such transportation will be in accordance with applicable laws and regulations.

“(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding anything to the contrary in subparagraph (A), the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

“(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the worker’s living quarters and the employer’s worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

“(F) REQUIRED WAGES.—

“(A) IN GENERAL.—An employer applying for workers under section 218(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 2006 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

“(B) LIMITATION.—Effective on the date of the enactment of the Agricultural Job Opportunity and Security Act of 2007 and continuing for 3 years thereafter, no adverse effect wage rate for a State may be more than the adverse effect wage rate for that State established by section 565.107 of title 20, Code of Federal Regulations.

“(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

“(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not later than 3 years after the date of enactment of this section, the adverse effect wage rate for each State shall be adjusted by the lesser of—

“1 the 12-month percentage change in the Consumer Price Index for All Urban Consumers between the second preceding year and December of the preceding year; and

“2 a 4 percent.

“(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not later than 3 years after the date of enactment of this section, and each March 1 thereafter, the adverse effect wage rate then in effect for each State shall be adjusted by the lesser of—

“1 the 12-month percentage change in the Consumer Price Index for All Urban Consumers between the second preceding year and December of the preceding year; and

“2 4 percent.

“(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation reimbursement required by subparagraph (B) and, notwithstanding anything to the contrary in subparagraph (A), the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

“(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

“(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

“(i) the worker’s total earnings for the pay period;

“(ii) the worker’s hourly rate of pay, piece rate of pay, or both;

“(iii) the hours of employment which have been offered to the worker (broken out by days and by half days);

“(iv) the hours actually worked by the worker;

“(v) an itemization of the deductions made from the worker’s wages; and

“(vi) if piece rates of pay are used, the units produced daily.

“(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2008, the Commissioner of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the Senate, and the Judiciary of the House of Representatives, a report that addresses—

“(i) whether the employment of H-2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers employed from falling below the wage levels that would have prevailed in the absence of the employment of H-2A workers in those occupations;

“(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of H-2A employment;

“(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

“(v) recommendations for future wage protection under this section.

“(H) FINAL REPORT.—Not later than December 31, 2009, the Commission shall submit a report to the Committees on the findings of the study conducted under clause (iii).

“(I) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

“(J) GUARANTEE OF EMPLOYMENT.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least ¾ of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude any hours for the worker’s Sabbath and Federal holidays. If the employer affords the United States or H-2A worker less employment than that required under this paragraph, the employer shall provide the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

“(K) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, the worker’s Sabbath and Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

“(L) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the “¾ guarantee” described in subparagraph (A).

“(M) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment for which the worker was hired, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee
in subparagraph (A) is fulfilled, the employer may terminate the worker’s employment. In the event of such termination, the employer shall fulfill the employment guarantee in subpart C of this part for the 90 work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will be responsible to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide such return transportation required in paragraph (2)(D).

(5) MOTOR VEHICLE SAFETY.—

(A) ADEQUATE MEANS OF TRANSPORTATION SUBJECT TO COVERAGE.—

(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any business in the transportation of passengers for hire and holds a valid certificate of authority issued by a State, and appropriate license, as provided by State, and local labor laws, including laws providing transportation to which this subparagraph (A) shall not constitute an admissible provision of a labor contract, and the employer shall provide to the worker a separate employment contract covering the employment in question, such separate employment contract shall provide to the worker, not later than the day the work commences, a copy of the employer’s application and job offer described in subparagraph (A) or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this section to be required of the employer, if such workers are transported only under circumstances where there is coverage under such State law.

(iii) AN INSURANCE POLICY OR LIABILITY BOND.—The insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances where there is coverage under such State law.

(iv) AN INSURANCE POLICY OR LIABILITY BOND.—The employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, and where such action described in subparagraph (B)(i)(III) relating to having an insurance policy applied for:

(1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances where there is coverage for the transportation of such workers are not provided under such State law.

(v) SPECIAL JURISDICTION OVER AGRICULTURAL LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, and where such action described in subparagraph (B)(i)(III) relating to having an insurance policy applied for:

(1) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances where there is coverage for the transportation of such workers are not provided under such State law.

(vi) COMPLIANCE WITH STATE LAW.—In this paragraph, the term ‘employers or causes to be used’ applies to an H-2A employer and an H-2A worker, or by a farm labor contractor to an H-2A employer or by a farm labor contractor to an H-2A employer that uses or causes to be used any vehicle to transport an H-2A worker within the United States.

(vii) DEFINED TERM.—In this paragraph, the term ‘uses or causes to be used’ applies to an H-2A employer, shall not constitute an employer from the employment of workers or the payment or reimbursement of the worker for any part or share of such transportation.

(viii) PROHIBITION OF UNLAWFUL WORK.—A person who provides transportation to which this subparagraph (A) shall not constitute an advertisement of, or participation in, such transportation.

(ix) TRANSPORTATION OF LIVESTOCK.—Nothing in this section, section 219, or section 218 shall be considered admissible to the United States if the alien promptly departs the United States when the alien’s authorized period of admission under section 212(a)(15)(H)(i)(a) if the alien has, at any time during the past 5 years—

(1) violated a material provision of this section or again been deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H-2A status, but may not be granted that status in the United States.

(x) MAINTENANCE OF WAIVER.—An alien who is granted an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes deemed inadmissible by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

(x) PERIOD OF ADMISSION.—

(I) IN GENERAL.—The alien shall be admitted to the period of employment in the application certified by the Secretary of Labor pursuant to section 212(a)(15)(H)(ii)(A) who abandons the employment or status shall be considered to have failed any term or condition of the worker’s employment.

(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under another provision of this section or again be deemed inadmissible by virtue of unlawful presence in the United States if the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

(3) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily abandon nonimmigrant status under section 212(a)(15)(H)(ii)(A) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain nonimmigrant status in the United States if the alien promptly departs the United States or is subject to removal under section 237(a)(1)(C)(i)(I). No petition for admission as such a nonimmigrant alien filed by an employer, or association acting as agent for the employer, shall notify the Secretary not later than 7 days after an H-2A worker pre-maturely abandons employment.

(4) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H-2A worker who violates any term or condition of the worker’s non-immigrant status.

(5) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily abandon nonimmigrant status under section 212(a)(15)(H)(ii)(A) if the alien promptly departs the United States upon termination of such employment.

(6) REPLACEMENT OF ALIEN.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall
promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H-2A worker—

(A) 2 years of experience or training; or

(B) whose employment is terminated after a United States worker is employed pursuant to section 101(a)(15)(H)(ii)(A), a United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a reason related to the worker.

(2) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an alien inside the United States from being employed or seeking employment by any employer, or to prevent the Secretary of Labor from investigating complaints under section 218(b) on the basis of such complaints.

(3) WORK AUTHORIZATION UPON FILING PETITION.—If the petition is filed by a person who is authorized to work under section 218(b) and who is a United States citizen, an alien lawfully admitted for permanent residence, or an alien lawfully admitted for a period of more than 10 months, such alien shall be permitted to work under such section. Nothing in this paragraph shall be construed to prevent an eligible alien from seeking adjustment of status in accordance with any other provision of law.

(4) EFFECT OF PETITION.—The filing of a petition described in paragraph (2) or an application for adjustment of status based on the approval of such a petition shall not constitute evidence of status for the alien unless the alien is lawfully admitted for permanent residence.

(5) EXTENSION OF STAY.—The Secretary shall extend the stay of an eligible alien having a pending or approved classified petition described in paragraph (2) in 1-year increments until a final determination is made on the alien’s eligibility for adjustment of status to that of an alien lawfully admitted for permanent residence.

(6) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an eligible alien from seeking adjustment of status in accordance with any other provision of law.

(7) SEC. 218C. WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.

(A) ENFORCEMENT AUTHORITY.—

(1) INVESTIGATION OF COMPLAINTS.—

(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints, including a determination of whether to file a complaint based on an employer’s failure to meet a condition specified in section 218(b), or an employer’s misrepresentation of material facts in an application for extensions of status under section 218(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the offending act under this section, and such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (B)(1)(D), (E), or (F).

(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide within 30 days after the date of such complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (B)(1)(D), (E), or (F).

(C) who is seeking to receive an immigrant visa under section 204(b)(3)(A)(ii).

(2) CLASSIFICATION PETITION.—In the case of an alien eligible, the petition under section 204(b)(3)(A)(ii) may be filed by—

(A) the alien’s employer on behalf of the eligible alien; or

(B) the Secretary of Labor.

(3) NO LABOR CERTIFICATION REQUIRED.—Notwithstanding section 203(b)(3)(C), no determination under section 212(a)(5)(A) is required as to the information described in paragraph (1)(C) for an eligible alien.

(4) EFFECT OF PETITION.—The filing of a petition described in paragraph (2) or an application for adjustment of status based on the approval of such a petition shall not constitute evidence of status for the nonimmigrant status under section 101(a)(15)(H)(ii)(A).

(5) EXTENSION OF STAY.—The Secretary shall extend the stay of an eligible alien having a pending or approved classified petition described in paragraph (2) in 1-year increments until a final determination is made on the alien’s eligibility for adjustment of status to that of an alien lawfully admitted for permanent residence.

(6) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an eligible alien from seeking adjustment of status in accordance with any other provision of law.
(2)(E), or (2)(H) of section 218(b), a material fact in an application under section 218(a)(1); or a violation of subsection (d)(1)

(ii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 2 years.

(3) The payment of wages required under section 218A(b)(3) when due.

(4) The benefits and material terms and conditions provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218(c).

(iii) The Secretary shall, upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

(A) In general.

(B) Approval of mediation.

(i) If it is determined under a State workers compensation law that the workers compensation law is applicable and coverage is provided for an H-2A worker, the workers compensation benefits shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State workers’ compensation law.

(ii) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

(7) The prohibition of discrimination described in section 218A(c), compliance with which shall be governed by the provisions of such laws.

(8) The tolling of the statute of limitations.

(9) Preclusive effect.

(a) Any civil action brought under this subsection shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

(b) Any workers’ compensation benefits, exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from injury or death but does not preclude other equitable relief; and such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

(i) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from injury or death but does not preclude other equitable relief; and such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

(ii) The rights conferred under a State workers’ compensation law.

(c) The tolling of the statute of limitations.

If it is determined under a State workers’ compensation law that the workers’ compensation law is not applicable to a claim for bodily injury or death of an H-2A worker, the judgment of the Federal or State court shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

(d) When an H-2A worker aggrieved by a violation of rights enforceable under this Act, not later than 3 years after the date the violation occurs, after notice and opportunity for a hearing, may, in addition to any other remedy provided by law, file an administrative complaint with the Secretary of Labor, imposing such other administrative remedies as may be appropriate, and the Secretary shall notify the employer of the complaint and the basis for the complaint.

(e) The Director of the Federal Mediation and Conciliation Service shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

(f) The motor vehicle safety requirements.

(g) The benefits and material terms and conditions provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218(c).

(h) The prohibition of discrimination described in section 218A(c), compliance with which shall be governed by the provisions of such laws.

(i) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from injury or death but does not preclude other equitable relief; and such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

(ii) The rights conferred under a State workers’ compensation law.

(j) The tolling of the statute of limitations.

If it is determined under a State workers’ compensation law that the workers’ compensation law is not applicable to a claim for bodily injury or death of an H-2A worker, the judgment of the Federal or State court shall be subject to appeal as provided in chapter 83 of title 28, United States Code.
petition. If such an employer is deter-
mind the rules that govern the em-

2A worker of a com-

The term "employer" means an organ-

3. DISPLACE.—The term "displace", in the case of an agricultural worker who has, with such 

4. EMPL"—The term employer"

5. EMPLOYEE.—The term "employee", other than an individual who is not an unauthorized alien (as defined in section 214A).


8. JOB OPPORTUNITY.—The term "job opportunity" means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers may be referred.

9. LAYING OFF.—(A) In general.—The term "laying off", with respect to a worker—

(f) ROLK OF ASSOCIATIONS.—

(1) VIOLATION BY A MEMBER OF AN ASSOCIA-

Tion.—An employer, or person on behalf of an em-

ployment filed by an association acting as 

its agent is fully responsible for such applica-

and for complying with the terms and 

conditions of sections 218 and 218A, as 

though the employer had filed the applica-

ation itself. If such an employer is deter-

minded, under this section, to have com-

mitted a penalty for such violation, such pa-

punishment shall apply only to that member of the 

association unless the Secretary of Labor 
determines that the association or other member 
in which the case the penalty shall be invoked 

against the association or other association members.

(2) VIOLATIONS BY AN ASSOCIATION 

ACTING AS AN EMPLOYER.—If an association filing an 

application as a sole or joint employer is de-
terned to have committed a penalty for such violations, such pa-

punishment shall apply only to the association un-

less the Secretary of Labor determines that an 

association member or members partic-

ated in or had knowledge of, or reason to 

know of the violation, in which case the pen-

alty shall be invoked against the association member or members as well.

SEC. 218D. DEFINITIONS.

"For purposes of this section and section 218A, 218B, and 218C:

(1) AGRICULTURAL EMPLOYMENT.—The term "agricultural employment" means any activity or service that is considered to be agricultural under section 3(c) of the Fair Labor Standards Act (29 U.S.C. 203(c)) or agricultural labor under section 132(c) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services de-


(2) BONA FIDE UNION.—The term "bona fide union" means any organization in which em-

ployees participate and which exists for the purpose of representing employers con-

cerning grievances, labor disputes, wages, 

rations, and other terms and conditions of work for agricultural 

employees. Such term does not include 

an organization formed, created, adminis-

tered, supported, dominated, financed, 
or controlled by an employer or employer as-

sociation or its agents or representatives.

(3) DISPLACE.—The term "displace", in the case of 

an application with respect to one or more 

agricultural workers by an employer, means 

the employer laying off a worker from a job 

for which the H-2A worker or workers is or 

are sought.

(4) "ELIGIBLE".—The term "eligible", when used with respect to an individual, means an 

individual who is not an unauthorized alien (as defined in section 274A).

(5) EMPL"—The term employer"

(6) EMPLOYEE.—The term "employee", other than an individual who is not an unauthorized alien (as defined in section 274A).


(8) JOB OPPORTUNITY.—The term "job opportunity" means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers may be referred.

(9) LAYING OFF.—(A) In general.—The term "laying off", with respect to a worker—

(1) means the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, involuntary separation, or voluntary retirement, contract suspension (as described in section 218A(b)(4);D), or temporary suspension of employment due to weather, markets, or other temporary conditions;

(2) does not include any situation in which the worker is offered, as an alter-

native to such loss of employment, a similar employment or employment at the same em-

ployer (or, in the case of a placement of a worker with another employer under section 218(b)(2)(E), with either employer described in subsection (a)(15)(H)(ii)(A)), unless the compensation and benefits in such employment are equal to or greater than the compensation and benefits at the previous employment.

(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an em-

ployee's rights under a collective bargaining agreement or the right of an employer to hireorses, or to cause the use of nonimmigrant aliens in lieu of United States workers.

(10) REGULATORY DROUGHT.—The term "regulatory drought" means a decision subse-

quent to the filing of the application under section (a) or (b) of this section, and for the control of the employer making such filing which restricts the employer's access to

water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor under this section.

(11) SEASONAL.—Labor is performed on a "seasonal" basis if—

"(A) ordinarily, it pertains to or is of the kind exclusively performed at certain sea-

sonal periods of the year;

"(B) from its nature, it may not be contin-

uous or carried on throughout the year.

(12) SECRETARY.—Except as otherwise pro-

vided, the term "Secretary" means the Sec-


(13) TEMPORARY.—A worker is employed on "temporary" basis where the employ-

ment is not intended to have a duration of more than 1 year.

(14) UNITED STATES WORKER.—The term "United States worker" means any worker 

whether a national of the United States, an alien lawful admittance for permanent resi-

dence, or any other alien, who is authorized 

to work in the job opportunity within the 

United States, except an alien admitted 


(b) TABLE OF CONTENTS.—The table of con-

tents of the Immigration and Nationality 

Act (8 U.S.C. 1101 et seq.) is amended by 

striking the item relating to section 218 and 

inserting the following:

Sec. 218. H-2A employer applications.

Sec. 218A. H-2A employer requirements.

Sec. 218B. Procedure for admission and ex-
tension of stay of H-2A workers.

Sec. 218C. Worker protections and labor 

standard enforcement.

Sec. 218D. Definitions.

Subtitle C—Miscellaneous Provisions

SEC. 241. DETERMINATION AND USE OF USER FEES.

(b) SCHEDULE OF FEES.—The Secretary 

shall establish and periodically adjust a 

schedule of fees for the employment of aliens 

pursuant to the amendment made by section 

218(a) of this Act and a collection process for 

such fees from employers. Such fees shall be 

the only fees chargeable to employers for 

services provided under such amendment.

(1) IN GENERAL.—The schedule under sub-

section (a) shall reflect a fee rate based on 

the number of job opportunities indicated 

in employer's applications under section 218 

of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by 

amending as amended by section 231 of this Act, and suffi-

cient to provide for the direct costs of pro-

cessing the applications and the United States 

Secretary's authorization to employ aliens pursuant to the amendment made by section 231(a) of this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—(A) In general.—In establishing and ad-

justing such a schedule, the Secretary 

shall comply with Federal cost accounting 

and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Sec-

retary shall publish in the Federal Register 

an initial fee schedule and associated collec-

tion process and the cost data or estimates 

upon which such fee schedule is based, and 

any subsequent amendments thereto, pursu-

ant to the amendment made by section 

231(a) of this Act and a collection process for 

such fees from employers. Such fees shall be 

the only fees chargeable to employers for 

services provided under such amendment.

(c) USE OF PROCEEDS.—Notwithstanding 

any other provision of law, all proceeds 

resulting from the payment of the fees pursu-

ant to the amendment made by section 

218(a) of this Act shall be appropriated to 

the appropriation and shall remain available 

without fiscal year limitation to reimburse 

the Secretary, the Secretary of State, and 

the Secretary of Homeland Security, under 

the provisions of section 218 and 218B of the Immi-

gration and Nationality Act, as amended and 

TITLE II—AGJOBS ACT OF 2007

SEC. 201. SHORT TITLE.

This title may be cited as the "Agricultural Job Opportunities, Benefits, and Security Act of 2007" or the "AGJOBS Act of 2007".

SEC. 202. DEFINITIONS.

In this title:

(1) AGRICULTURAL EMPLOYMENT.—The term "agricultural employment" means any service or activity that is considered to be agricultural under section 3(9) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(9)) or agricultural labor under section 13(g)(2) of the Internal Revenue Code of 1986, unless the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(2) BLUE CARD STATUS.—The term "blue card status" means the status of an alien who has been lawfully admitted into the United States for temporary residence under section 211(a).

(3) DEPARTMENT.—The term "Department" means the Department of Homeland Security.

(4) EMPLOYER.—The term "employer" means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

(5) SECRETARY.—Except as otherwise provided, the term "Secretary" means the Secretary of Homeland Security.

(6) TEMPORARY.—A worker is employed on a "temporary" basis when the employment is intended not to exceed 10 months.

(7) WORK DAY.—The term "work day" means any day in which the individual is employed 5.75 or more hours in agricultural employment.

Subtitle A—Pilot Program for Earned Status Adjustment of Agricultural Workers

PART I—BLUE CARD STATUS

SEC. 211. REQUIREMENTS FOR BLUE CARD STATUS.

(a) REQUIREMENT TO GRANT BLUE CARD STATUS.—Notwithstanding any other proviso of law, the Secretary shall, pursuant to the requirements of this section, grant blue card status to any individual who qualifies under this section if the Secretary determines that the alien—

(1) has performed agricultural employment in the United States for 150 work days during the 24-month period ending on December 31, 2006; and

(2) applied for such status during the 18-month period ending on the first day of the seventh month that begins after the date of enactment of this Act;

(b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien granted blue card status is authorized to travel outside the United States (including commuting to the United States from a residence in a foreign country) in the same manner as an alien lawfully admitted for permanent residence.

(c) AUTHORIZED EMPLOYMENT.—The Secretary shall provide an alien who is granted blue card status with the authority to travel outside the United States if the alien has been lawfully admitted for permanent residence.

(d) TERMINATION OF STATUS.—(1) IN GENERAL.—The Secretary may terminate blue card status to an alien under this section only if the Secretary determines that the alien is deportable.

(2) GROUNDS FOR TERMINATION OF BLUE CARD STATUS.—Before any alien becomes eligible for adjustment of status under section 211, the Secretary may deny adjustment to permanent resident status and provide for termination of the blue card status granted such alien under paragraph (1) if—

(A) the alien finds, by a preponderance of the evidence, that the adjustment to blue card status was the result of fraud or willful misrepresentation of material fact described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(B) the alien—

(i) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under section 212(a)(9); or

(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States;

(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; or

(iv) fails to perform the agricultural employment required under section 234(a)(1)(A) unless the alien was unable to work in agricultural employment due to extraordinary circumstances described in section 234(a)(3).

(e) RECORD OF EMPLOYMENT.—(1) IN GENERAL.—Each employer of an alien granted blue card status under this section shall annually—

(A) provide a written record of employment to the alien; and

(B) provide a copy of such record to the Secretary.

(2) SUNSET.—The obligation under paragraph (1) shall terminate on the date that is 6 years after the date of the enactment of this Act.

(f) REQUIRED FEATURES OF IDENTITY CARD.—The Secretary shall provide each alien granted blue card status, and the spouse and any child of such alien residing in the United States, with a card that contains—

(1) an encrypted, machine-readable, electronic identification strip that is unique to the holder of the card; and

(2) biometric identifiers, including fingerprints and a digital photograph;

(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

(g) FINE.—An alien granted blue card status shall pay a fine of $500 to the Secretary.

(h) MAXIMUM NUMBER.—The Secretary may not issue more than 1,500,000 blue cards during the 5-year period beginning on the date of the enactment of this Act.

SEC. 212. TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.

(a) IN GENERAL.—Except as otherwise provided under this section, an alien granted blue card status shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien granted blue card status shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a) until 5 years after the date on which the alien is granted an adjustment of status under section 213.

(c) TERMS OF EMPLOYMENT.—(1) PROHIBITION.—No alien granted blue card status may be employed by any employer during the period of blue card status except for just cause.

SA 168. Mrs. FEINSTEIN (for herself and Mr. CHABOT) submitted an amendment intended to be proposed to amendment SA 117, submitted by Mr. ISAKSON, and intended to be proposed to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:
TREATMENT OF COMPLAINTS.—

(A) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition of complaints filed by or on behalf of blue card holders who allege that they have been terminated without just cause. No proceeding shall be conducted under this paragraph with respect to a complaint unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

(B) INITIATION OF ARBITRATION.—If the Secretary finds that an alien has filed a complaint in accordance with subparagraph (A) and the cause to be determined is that the alien was terminated from employment without just cause, the Secretary shall initiate binding arbitration proceedings by requesting the American Arbitration Association to appoint a mutually agreeable arbitrator from the roster of arbitrators maintained by such Service for the geographical area in which the employer is located. The procedures and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The arbitrator shall pay the expenses of the arbitrator, subject to the availability of appropriations for such purpose.

(C) ARBITRATION PROCEEDINGS.—The arbitrator shall conduct the proceeding under this paragraph in accordance with the policies and procedures of the American Arbitration Association applicable to private arbitration of employment disputes. The arbitrator shall make findings respecting whether the termination was for just cause. The arbitrator may not find that the termination was for just cause unless the employer so demonstrates by a preponderance of the evidence that the termination was not for just cause.

(TREATMENT OF COMPLAINTS.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted blue card status has failed to provide the record of employment required under section 214(c) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil penalty in an amount not to exceed $1,000 per violation.

(B) LIMITATION.—The penalty applicable under subparagraph (A) for failure to provide the record of employment required under section 214(c) or to provide such record falsely shall provide the employer with evidence of employment authorization granted under this section.

SEC. 213. ADJUSTMENT TO PERMANENT RESIDENCE.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary shall adjust the status of an alien granted blue card status to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

(1) QUALIFYING EMPLOYMENT.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Secretary shall adjust the status of an alien lawfully admitted for permanent residence if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days per year, during the 4-year period beginning on the date of the enactment of this Act; or

(B) 4-YEAR PERIOD OF EMPLOYMENT.—An alien shall be considered to meet the requirements of subparagraph (A) if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days per year, during the 3-year period beginning on the date of the enactment of this Act.

(c) GROUNDS FOR REMOVAL.

Any alien

(1) IN GENERAL.—Not later than the date on which an alien’s status is adjusted under this section, the alien does not owe any applicable Federal tax liability by establishing that—

(A) no such tax liability exists; or

(B) all such outstanding tax liabilities have been paid; or

(C) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(2) APPLICABLE FEDERAL TAX LIABILITY.—In paragraph (1) the term “applicable Federal tax liability” means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required under subsection (a)(1) for which the statutory period for assessment of any deficiency for such taxes has not expired.

(3) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subsection.

(e) SPOUSES AND MINOR CHILDREN.

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident upon the spouse and minor child of an alien granted blue card status if the spouse or minor child applies for such status, if the principal alien includes the spouse or minor child in an application for adjustment of status under subsection (a)(1), including any individual who was a minor child on the date such alien was granted blue card status, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status under subsection (a)(1), including any individual who was a minor child on the date such alien was granted blue card status.

(2) TREATMENT OF SPOUSAL AND MINOR CHILDREN.

(A) GRANTING OF STATUS AND REMOVAL.—The Secretary may grant derivative status to the alien spouse and any minor child residing in the United States of an alien granted blue card status and shall not remove such derivative spouse or child during the period that the alien granted blue card status maintains such status, except as provided in paragraph (3). A grant of derivative status to such a spouse or child under this subparagraph shall not decrease the number of aliens who may receive blue card status under subsection (b) of section 211.

(B) DERIVATIVE RESIDENT.—The derivative spouse and any minor child of an alien granted blue card status may travel outside the United States. The alien spouse and any minor child of an alien granted blue card status may travel outside the United States if—

(1) the Secretary finds by a preponderance of the evidence that the adjustment to blue card status was the result of fraud or willful misrepresentation, as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(2) the alien—

(A) commits an act that makes the alien ineligible to travel; or

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(C) is convicted of an offense, an element of which involves bodily injury, or harm to property in excess of $500.

(c) GROUNDS FOR REMOVAL.—Any alien granted blue card status who does not apply for adjustment of status under this section before the expiration of the application period described in subsection (a)(4) or who fails to meet the other requirements of subsection (a) by the end of the application period, is deportable and may be removed under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(d) PAYMENT OF TAXES.—The Secretary shall adjust the status of an alien lawfully admitted for permanent residence to that of an alien granted blue card status if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days per year, during the 3-year period beginning on the date of the enactment of this Act; or

(A) the record of employment described in section 211(e); or

(B) such documentation as may be submitted under section 214(c).

(2) EXTRAORDINARY CIRCUMSTANCES.—In determining whether an alien has met the requirement of paragraph (1)(A), the Secretary may credit the alien with more than 12 additional months to meet the requirement of that subparagraph if the alien was unable to work in agricultural employment due to—

(A) a pregnancy, disabling injury, or disease through medical records; or

(B) illness, disability, or other special needs of a minor child of the alien that the alien can establish such illness, disease, or special needs through medical records.

(3) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 2 years after the date of the enactment of this Act.

(4) FINE.—The alien pays a fine of $400 to the Secretary.
in the same manner as an alien lawfully admitted for permanent residence.

(C) EMPLOYMENT.—The derivative spouse of an alien granted blue card status may apply to the Secretary for a work permit to authorize such spouse to engage in any lawful employment in the United States while such alien maintains blue card status.

(3) PENALTIES.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined in an amount not to exceed $10,000.

(g) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(1) CRIMINAL PENALTY.—Any person who—

(A) files an application for blue card status under section 213 and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or

(B) makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry;

shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182).

(b) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104-134 (110 Stat. 1321-53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for blue card status under section 213 or an adjustment of status under section 213.

(c) PROOF OF ELIGIBILITY.—

(1) IN GENERAL.—An alien shall provide a schedule of fees that—

(A) is calculated in accordance with an application for blue card status under section 213 or an adjustment of status under section 213; and

(B) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(2) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge an excess of, or in addition to, the fees authorized under paragraph (1)(B) for services provided to applicants.

(3) DISPOSITION OF FEES.—

(A) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ‘Agricultural Worker Immigration Status Adjustment Account’.

(B) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the ‘Agricultural Worker Immigration Status Adjustment Account’ shall remain available to the Secretary until expended for processing applications for blue card status under section 213 or an adjustment of status under section 213.
SEC. 215. WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.

(a) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 212(l) and 213 of the Immigration and Nationality Act (8 U.S.C. 1182(l) and 1183) shall not apply to the adjustment of aliens to lawful permanent resident status under section 211(a), or an alien's eligibility for adjustment of status under section 213(b)(2)(A).

(b) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under section 211(a) or an alien's eligibility for adjustment of status under section 213(b)(2)(A), the following rules shall apply:

(1) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) WAIVER OF OTHER GROUNDS.—(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes to assure family unity, or if otherwise in the public interest.

(B) GROUNDS THAT MAY NOT BE WAIVED.—(1) Paragraphs (1), (2)(B), (2)(C), (3), and (4) of such section 212(a) shall not be waived by the Secretary under subparagraph (A).

(2) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Attorney General to take action under this paragraph to waive provisions of such section 212(a).

(c) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—(1) BEFORE APPLICATION PERIOD.—Effective on the date of the enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in section 211(a)(2), who demonstrates a history of employment in the United States and is not inadmissible for fraud or willfully misrepresentation, the Secretary shall order the alien to be released from custody in order to provide evidence to support the application period to complete the filing of an application for blue card status, the alien may not be removed; and the alien shall be granted authorization to engage in employment in the United States and be provided such employment authorization or other appropriate work permit for such purpose.

(2) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for blue card status during the application period described in section 211(a)(2), including any time after filing such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this paragraph

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided such employment authorization or other appropriate work permit for such purpose.

SEC. 216. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for blue card status under section 211 or adjustment of status under section 213 except in accordance with this section.

(b) ADMINISTRATIVE REVIEW.—(1) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(2) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(c) JUDICIAL REVIEW.—LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

SEC. 217. USE OF BLUE CARDS.

Beginning not later than the first day of the application period described in section 211(a)(2), the Secretary, in cooperation with the Attorney General, shall establish rules to implement this subtitle, including

(a) APPLICATIONS TO THE SECRETARY OF LABOR.

(1) SINGLE LEVEL OF ADMINISTRATIVE APPEAL.

(2) STANDARDS FOR JUDICIAL REVIEW.

(3) JUDICIAL REVIEW.

(b) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION.

(c) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION.

(1) BEFORE APPLICATION PERIOD.

(2) DURING APPLICATION PERIOD.

(d) JUDICIAL REVIEW.

With respect to a job opportunity that is covered under a collective bargaining agreement, the

(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(2) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(3) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(4) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(5) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(6) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(7) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(8) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(9) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

Subtitle B—Reform of H-2A Worker Program

SEC. 231. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by inserting section 218 and inserting the following:

SEC. 218. H-2A EMPLOYER APPLICATIONS.

(a) APPLICATIONS TO THE SECRETARY OF LABOR.

(B) ACCOMPANIED BY JOB OFFER.

(D) THE NUMBER OF JOB OPPORTUNITIES.

(E) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(F) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(G) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(H) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(I) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(J) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(K) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(L) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(M) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(N) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(O) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(P) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(Q) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(R) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(S) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(T) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(U) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(V) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(W) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(X) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(Y) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.

(Z) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.
(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is applying for an H-2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions set forth in 29 CFR 653 of title 20, Code of Federal Regulations.

(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer has applied for an H-2A worker.

(E) REQUIREMENTS FOR PLACEMENT OF THE NONIMMIGRANT WITH OTHER EMPLOYERS.—The employer will not place the nonimmigrant with another employer unless—

(i) the nonimmigrant performs duties in whole or in part at another worksite owned, operated, or controlled by such other employer;

(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

(iii) the employer has inquired of the other employer as to whether, and has actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H-2A workers.

(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the provisions under subparagraph (E) of an employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph.

(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker’s employment which will provide benefits at least equal to those provided under the State’s workers’ compensation law for comparable employment.

EMPLOYMENT OF UNITED STATES WORKERS.—

(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H-2A nonimmigrant is, or H-2A nonimmigrants are, sought:

(ii) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact United States workers for the job opportunities for which the employer is applying for an H-2A worker employed during the previous season in the occupation at the place of intended employment for which the employer is applying for an H-2A worker and has made reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the same employer in the same occupation at the place of intended employment.

(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job involved so long as such criteria are not applied in a discriminatory manner.

(c) APPLICATIONS BY ASSOCIATIONS OR EMPLOYERS.—

(i) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members to the Secretary of Labor to place the type of job involved long as such criteria are not applied in a discriminatory manner.

(ii) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (i) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its producer members named on the application, and such workers may be transferred among such producer members to perform agricultural work of a temporary or seasonal nature for which the certifications were granted.

(iv) WITHDRAWAL OF APPLICATIONS.—In general, an employer may withdraw an application filed pursuant to subsection (a), except that if the application is an agricultural association, the association may withdraw an application filed pursuant to subsection (a) with respect to 1 or more of its members. To withdraw an application, the employer or association shall notify the Secretary of Labor by letter. The Secretary of Labor shall acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a) is liable for any obligations undertaken in the application.

(v) LIMITATION.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(i)(a) is subjected to such application is employed by the employer.

(vi) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or the placement of workers under subsections (a) and (b) of section 101(a)(15) of this title is not subject to the conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

(v) REVIEW AND APPROVAL OF APPLICATIONS.—

(i) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer’s principal place of business and each place of business of each such application and at each place of business of each such application and at each place of business of each such application, a copy of each such application and each accompanying document as are necessary.

(ii) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

(A) COMPILEMENT OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under subsection (a). Such list shall include the wage, rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall, after the expiration of the period of examination provided for in subsection (a), review the applications.
that the application is incomplete or obvi-
ously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an applica-
tion as required under subsection (a), and such certifi-
cation shall be provided within 7 days of the filing of the application."

**218A. H-2A EMPLOYMENT REQUIREMENTS.**

(a) Preferential Treatment of Aliens Provided Seeking to Hire United States workers shall offer the United States workers no less than the same bene-
fits, wages, and working conditions that the employer is offering, intends to offer, or will offer to H-2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer’s H-2A workers.

(b) Minimum Benefits, Wages, and Working Con-
ditions.—Except in cases where higher employee, wage, or working conditions are required by the provisions of subsection (a), in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provi-
sions:

(1) **Requirement to Provide Housing or a Housing Allowance.**

(A) **In General.**—An employer applying under section 218(a) for H-2A workers shall offer to provide housing at no cost to all workers employed in the area of intended employment who are receiving the worker’s wages and compensation while employed in agricultural work. The employer shall provide housing to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing allowance under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1907) so long as it is provided through a program established by the Governor of the State concerned. The employer shall provide housing under this subparagraph only if the requirement set forth in paragraph (i) is satisfied.

(B) **Type of Housing.**—In complying with subpar-
agraph (A), an employer may, at the employer’s discretion, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

(C) **Workers Engaged in the Range Production of Livestock.**—The Secretary of Labor shall issue regulations that address the special housing needs of migrant workers engaged in the provision of housing to workers engaged in the range pro-
duction of livestock.

(E) **Limitation.**—Nothing in this paragraph shall be interpreted to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulation in effect on January 1, 1990.

(F) **Charges for Housing.**

(i) **Charges for Public Housing.**—If public housing provided for migrant agricultural workers is operated under the auspices of a local, county, or State government is secured by an em-
ployer, and use of the public housing unit normally requires charges from migrant workers, those charges shall be paid by the employer directly to the appropriate indi-
vidual or entity affiliated with the housing’s management.

(ii) **Incidental Charges.**—Charges in the form of deposits for bedding or other similar incidental related to housing shall not be levied upon workers by employers who pro-
vide housing for their workers. An employer may require a worker found to have been re-
ponsible for damage to such housing which was caused by the worker or by a fact or act related to habitation to reimburse the em-
ployer for the reasonable cost of repair of such damage.

(iii) **Housing Allowance as Alternative.**—

(I) **In General.**—If the requirement set out in clause (ii) is satisfied, the employer may provide a housing allowance instead of offering housing under subpara-
graph (A). Upon the request of a worker seeking housing in agricultural work, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. If the employer fails to provide housing to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing allowance under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1907) so long as it is provided through a program established by the Governor of the State concerned. The employer shall provide housing under this subparagraph only if the requirement set forth in paragraph (i) is satisfied.

(ii) **Certification.**—The requirement of this clause is satisfied if the Governor of the State for the area in which there is no State program for whatever reason that there is adequate housing available in the area of intended employment for mi-
grant farm workers and H-2A workers who are seeking or employed in agricultural work. Such certifi-
cation shall expire after 3 years unless re-
newed by the Governor of the State.

(II) **Nonmetropolitan Counties.**—If the place of employment of the workers provided an allowance under subparagraph (A) is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for non-
metropolitan counties for the State, as es-
established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (2 U.S.C. 1437f(c)), based on a 2-bedroom dwell-
ing unit and an assumption of 2 persons per bedroom.

(III) **Metropolitan Counties.**—If the place of employment of the workers provided an allowance under subparagraph (A) is a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (2 U.S.C. 1437f(c)), based on a 3-bedroom dwelling unit and an assumption of 3 persons per bedroom.

(4) **Metropolitan Counties.**—If the place of employment of the workers provided an allowance under subparagraph (A) is a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (2 U.S.C. 1437f(c)), based on a 3-bedroom dwelling unit and an assumption of 3 persons per bedroom.

(2) **Reimbursement of Transportation.**

(A) **To Place of Employment.**—A worker who completes the period of employment shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the place from which the worker came to work for the employer (or place of last employ-
ment, if the worker traveled from such place to the place of new employ-
ment), to the place of employment, or to the place of next employ-
ment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker’s transportation and subsistence to such subsequent employer’s place of employment.

(B) **Amount of Reimbursement.**—Except as provided in clause (ii), the amount of reim-
bursement under paragraph (A) shall be the lesser of—

(i) the actual cost to the worker or alien of the transportation and subsistence in-
volved; or

(ii) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

(C) **Transportation Between Living Quarters and Worksite.**—The employer shall provide transportation between the worker’s living quarters and the employer’s worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

(D) **Required Wages.**

(i) **In General.**—An employer applying for workers under section 218(a) shall offer to pay, and shall pay, all workers in the occupa-
tion for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of in-
tended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 8(a)(1) of the Fair Labor Stan-
dards Act of 1938 (29 U.S.C. 206(a)(1)) or the ap-
licable State minimum wage.

(ii) **Transportation Between Living Quarters and Worksite.**—The employer shall provide transportation between the worker’s living quarters and the employer’s worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

(iii) **Required Wages After 3-Year Period.**

(1) **First Adjustment.**—If Congress does not set a new wage standard applicable to this section before the first March 1 that is more than 3 years after the enactment of this section, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have re-
sulted if the adverse effect wage rate in ef-
fect on January 1, 2003, had been annually adjusted, beginning on March 1, 2006, by the lesser of—

(A) the 12-month percentage change in the Consumer Price Index for All Urban Con-
sumers between December of the second pre-
ceding year and December of the preceding year; or

(B) **4 percent.**

(ii) **Subsequent Annual Adjustments.**—

Beginning on the first March 1 that is more than 3 years after the enactment of this section, and each March 1 thereafter, the adverse effect wage rate then in effect

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for each State shall be adjusted by the lesser of—

'(i) the 12-month percentage change in the Consumer Price Index for All Urban Consumers for each of the 2 preceding years; or

'(ii) 4 percent.

'Deductions. The employer shall make only those deductions from the worker's wages that are authorized by law or are reasonable and customary in the occupation and manner of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker's wages.

'Frequency of Pay. The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

'Hours and Earnings Statements. The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

'(i) the worker's total earnings for the pay period;

'(ii) the worker's hourly rate of pay, piece rate of pay, or both;

'(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the 1/2% guarantee described in paragraph (4));

'(iv) the hours actually worked by the worker;

'(v) an itemization of the deductions made from the worker's wages; and

'(vi) if piece rates of pay are used, the units produced daily.

'Weak Link on Wage Protection. Not later than December 31, 2009, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the House of Representatives, a report that addresses—

'(i) whether the employment of H-2A or unauthorized aliens in the United States agriculture workforce has depressed United States farm worker wages below the levels that would have prevailed if such United States farm workers had not been employed in the United States;

'(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H-2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H-2A workers in those occupations;

'(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of H-2A employment;

'(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

'(v) recommendations for future wage protection under this section.

'Commission on Wage Standards. Not later than December 31, 2009, the Comptroller General of the United States shall make efforts to have a United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the transportation required in paragraph (2)(D).

'Motor Vehicle Safety. The employer of transportation subject to coverage—

'(i) in general. Except as provided in clauses (iii) and (iv), this subsection applies to any H-2A employer that uses or causes to be used any vehicle to transport an H-2A worker within the United States.

'(ii) Defined term. In this paragraph, the term 'uses or causes to be used'—

'(I) applies only to transportation provided by an H-2A employer to an H-2A worker, or by a farm labor contractor to an H-2A worker at the request or direction of an H-2A employer; and

'(II) does not apply to—

'(aa) transportation provided, or transportation arrangements made, by an H-2A employer, unless the employer specifically requested or arranged such transportation; or

'(bb) carpool arrangements made by H-2A employers in connection with the work of workers' own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

'(iii) Clarification. Providing a job offer to an H-2A worker that causes the worker to travel to or from the place of employment, the employer of transportation costs of an H-2A worker by an H-2A employer, shall not constitute an arrangement of, or participation in, such transportation.

'(iv) Agricultural Machinery and Equipment Excluded. This subsection does not apply to the transportation of an H-2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agriculture crops or the transportation of live stock or poultry or engaged in transportation incidental thereto.

'(v) Common Carriers Excluded. This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public for the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

'(B) Applicability of Standards; Licensing, and Insurance Requirements. In general. When using, or causing to be used, any vehicle to provide transportation to which this subsection applies, each employer shall—

'(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1911(b)) and other applicable Federal and State safety standards;

'(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle for the purposes of transportation, operation, or causing to be operated, of any vehicle used to transport any H-2A worker;
"(II) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

"(III) EFFECT OF WORKERS’ COMPENSATION COVERAGE.—If the employer of any H-2A worker provides workers’ compensation coverage in accordance with paragraph (1), the employer shall comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to such workers while they are employed by the employer or an agent of the employer.

"(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances where there is coverage under such State law.

"(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

"(c) Special Reference to Labor Laws.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to such workers while they are employed by the employer or an agent of the employer. An insurance policy or liability bond shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act of 2001 (29 U.S.C. 1801 et seq.).

"(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer’s application and job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract concerning the employment in question, separate employment contract.

"(e) CHANGE IN DURATION OF WORK.—Nothing in this section, section 218, or section 218B shall preclude the Secretary of Labor and the Secretary from continuing to apply such laws and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

"SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H-2A WORKERS.

"(a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an alien to perform an agricultural service for an employer may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218(e)(2)(B) covering the petitioner.

"(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means of rapid delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or the United States consulate as the case may be where the petitioning has indicated that the alien beneficiary (or beneficiary) will apply for a visa or admission to the United States.

"(c) CRITERIA FOR ADMISSIBILITY.—(1) In general.—An H-2A worker shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218, and section 218A, and the alien is not inadmissible under paragraph (2).

"(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

"(A) violated any of the terms or conditions of an H-2A status for which such alien had been admitted; or

"(B) been adjudged guilty of a criminal offense.

"(d) PERIOD OF ADMISSION.—(1) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be required to be admitted into, and employed in, the United States as an H-2A status, but may be granted that status in the United States.

"(2) MAINTENANCE OF WAIVER.—An alien possessing an H-2A status under subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible to be admitted into, and employed in, the United States by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility provided in subparagraph (A).

"(3) PERIOD OF ADMISSION.—(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor under section 218(e)(2)(B), not to exceed 10 months, supplemented by a period of not more than 1 week before the beginning of the period of employment for the purpose of travel to the worksite and a period of 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment, except that—

"(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

"(B) the total period of employment, including such 14-day period, may not exceed 10 months.

"(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of law. In determining eligibility, the Secretary shall be authorized to take into account the following:

"(e) ABANDONMENT OF EMPLOYMENT.—(1) IN GENERAL.—An alien admitted or permitted to be admitted into, and employed in, the United States as an H-2A worker who violates any term or condition of the worker’s nonimmigrant status.

"(f) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily cease to perform the agricultural service if the alien promptly departs the United States upon termination of such employment.

"(g) IDENTIFICATION DOCUMENT.—(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify the alien’s identity.

"(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

"(A) The document shall be capable of reliably determining whether—

"(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

"(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

"(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H-2A worker.

"(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

"(C) The document shall—

"(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

"(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

"(h) EXTENSION OF STAY OF H-2A ALIENS IN THE UNITED STATES.—

"(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H-2A alien who is unlawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien’s stay and a change in the alien’s status.

"(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien’s stay—

"(A) for a period of more than 10 months; or

"(B) to a date that is more than 3 years after the date of the alien’s last admission to the United States under the petition.

"(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—(A) IN GENERAL.—An alien who is lawfully present in the United States may commence the employment described in a petition under paragraph (1) on the date on which the petition is filed.

"(B) EXTENSION OF STAY.—For purposes of subparagraph (A), the term ‘filed’ means sending the petition by certified mail via the United States Postal Service, return receipt requested, or other commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

"(C) HANDLING PETITION.—The employer shall provide a copy of the employer’s petition to the alien, who shall keep the petition

"(D) TEMPORARY ABANDONMENT.—An alien who...
with the alien’s identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States.

‘’(D) Petition. Upon approval of a petition for an extension of stay or change in the alien’s authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

‘’(E) Limitation on Employment Authorization of Aliens Without Valid Identification and Employment Eligibility Document. Notwithstanding any provisions of this section, the Secretary may issue a valid work authorization document to a period of not more than 60 days beginning on the date on which such petition is filed, after which time only a currently valid identification and employment eligibility document shall be acceptable.

‘’(F) Limitation on an Individual’s Stay in Status.‘’

‘’(A) Maximum Period. The maximum continuous period of authorized status as an H-2A worker (including any extensions) is 3 years.

‘’(B) Requirement to Remain Outside the United States.‘’

‘’(1) General. Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H-2A worker (including any extensions) has expired, the alien may not apply again for admission to the United States as an H-2A worker unless the alien has remained outside the United States for a continuous period of at least 4 years from the duration of the alien’s previous period of authorized status as an H-2A worker (including any extensions).

‘’(ii) Exception. Clause (i) shall not apply in the case of an alien if the alien’s period of authorized status as an H-2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H-2A worker.

‘’(1) Special Rules for Aliens Employed as Sheepherders, Goat Herders, or Dairy Workers. Notwithstanding any provision of the Agricultural Job Opportunities, Benefits, and Security Act of 2007, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a sheepherder, goat herder, or dairy worker—

‘’(i) may be admitted for an initial period of 12 months;

‘’(ii) subject to subsection (j)(5), may have such initial period of admission extended for a period of up to 3 years; and

‘’(iii) subject to the requirements of subsection (b)(5) (relating to periods of absence from the United States).

‘’(2) Adjustment to Lawful Permanent Resident Status for Aliens Employed as Sheepherders, Goat Herders, or Dairy Workers.

‘’(i) Eligible Alien. For purposes of this subsection, the term “eligible alien” means an alien—

‘’(A) having nonimmigrant status under section 101(a)(15)(H)(ii)(a) based on employment as a sheepherder, goat herder, or dairy worker;

‘’(B) who has maintained such nonimmigrant status in the United States for a cumulative period equal to at least 3 years, and who is not within the period of absence from the United States; and

‘’(C) who is seeking to receive an immigrant visa under section 203(b)(3)(A)(ii).

‘’(ii) Classifications. In the case of an alien eligible under section 203(b)(3)(A)(ii), an alien may file—

‘’(A) the alien’s employer on behalf of the alien; or

‘’(B) the alien’s employer.

‘’(3) No Labor Certification Required. Notwithstanding section 203(b)(3)(C), no determination under section 212(a)(5)(A) is required in order to issue a visa or to grant a petition for admission under section 212(a)(5)(B) if the alien is an eligible alien.

‘’(4) Effect of Petition. The filing of a petition described in paragraph (2) or an application for adjustment of status based on the approval of such a petition shall not constitute a ground of inadmissibility for an alien who has been admitted under section 101(a)(15)(H)(ii)(a).

‘’(5) Extension of Stay. The Secretary shall extend the stay of an eligible alien having a pending or approved classification petition described in paragraph (2) in 1 year increments until a final determination is made on the alien’s eligibility to adjust to permanent residence.

‘’(6) Construction. Nothing in this subsection is intended to prevent an eligible alien from seeking adjustment of status in accordance with any other provision of law.

‘’(286) Worker Protections and Labor Standards Enforcement.

‘’(a) Enforcement Authority.‘’

‘’(1) Investigation of Complaints.‘’

‘’(A) Achieved Person or Third-Party Complaints. The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints regarding a willful failure or misrepresentation by an employer or a prospective employer of a material fact in an application under section 218(b), or an employer’s misrepresentation of material facts in an application under section 218(a). Complaints may be filed by an aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of such misrepresentation, except under this section, under section 218 or 218A.

‘’(B) Limitations on Civil Money Penalties.‘’

‘’(i) General. The Secretary of Labor determines to be appropriate; and

‘’(ii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 2 years.

‘’(E) Displacement of United States Workers.‘’

‘’(i) In general. If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(b), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer’s application under section 218(b) or during the period of 30 days preceding such period of employment—

‘’(ii) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate; and

‘’(iii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 1 year.

‘’(F) Limitations on Civil Money Penalties. The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218(b) in excess of $90,000.

‘’(G) Failures to Pay Wages or Required Benefits. If the Secretary of Labor finds, after notice and opportunity for hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, and any other employee benefits, required under section 218(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H-2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218(b) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

‘’(2) Statutory Construction. Nothing in this section shall be deemed to abridge the authority of the Secretary of Labor to conduct any compliance investigation under any other law, including any law affecting the rights and responsibilities of workers, or, in the absence of a complaint under this section, under section 218 or 218A.
(b) Rights Enforceable by Private Right of Action.—H-2A workers may enforce the following rights through the private right of action provided in subsection (c), and enforcement of such right shall exist under Federal or State law to enforce such rights:

(1) The payment of wages or a housing allowance as required under section 218A(b)(1).
(2) The reimbursement of transportation as required under section 218A(b)(2).
(3) The payment of wages required under section 218A(b)(3) when due.
(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218(a)(1), compliance with which shall be governed by the provisions of such laws.
(5) The guaranteed employment required under section 218A(b)(4).
(6) The motor vehicle safety requirements under section 218A(b)(5).
(7) The prohibition of discrimination under subsection (d)(8).

(c) Private Right of Action.—

(1) Mediation.—Upon the filing of a complaint alleging a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action shall file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request any giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

(2) Dispute Resolution Services.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under subsection (b) between H-2A workers and agricultural employers without charge to the parties.

(3) 90-Day Limit.—The Federal Mediation and Conciliation Service may conduct mediation or other nonbinding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

(4) Authorization.—

(i) In general.—Subject to clause (ii), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $500,000 for each fiscal year to carry out this section.

(ii) Mediation.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service may conduct mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds as may be appropriated for purposes of this subsection. The reimbursement shall be credited to appropriations currently available at the time of receipt.

(5) Maintenance of Civil Action in District Court by Aggrieved Person.—An H-2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or conciliation service may file suit in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy, without regard to the status of the mediations or conciliation process required under subsection (b) (or any other proceeding), and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurred.

(6) Election.—An H-2A worker who has filed an administrative complaint with the Secretary of Labor may not maintain a civil action under paragraph (2) unless a complaint based on the same violation filed with the Secretary of Labor under subsection (a) has been dismissed of such civil action, in which case the rights and remedies available under this subsection shall be exclusive.

(7) Preempted of State Contract Rights.—Nothing in this Act shall be construed to diminish the rights and remedies of an H-2A worker under any other Federal or State contract law or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights and remedies of an H-2A worker against an employer (which term, for purposes of this subsection includes a former employer and an applicant for employment) because the employer has discharged information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 218 or 218A or any rule or regulation pertaining to section 218 or 218A, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning any violations of the requirements of section 218 or 218A, or any rule or regulation pertaining to either of such sections.

(d) Discrimination Prohibited.—

(1) Violation by a Member of an Association.—If an association filing an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, or penalize an H-2A worker, the association shall be liable for damages under subsection (c), and in any court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

(2) Discrimination Against an H-2A Worker.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, or penalize an H-2A worker because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a violation of the requirements of section 218 or 218A, or the denial of the nonimmigrant classification authorized under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

(3) Authorization to Seek Other Appropriate Employment.—The Secretary of Labor and the Secretary of Agriculture shall establish a process under which an H-2A worker who was found to have been the victim of a violation of subsection (d) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States, but not to exceed the maximum period of stay authorized for such nonimmigrant classification.

(4) Role of Associations.—

(a) Violation by an Association.—An employer on whose behalf an application is filed by an association acting as its agent is fully responsible for such application, and for complying with the terms and conditions of sections 218 and 218A, as though the employer had filed the application itself. If such an employer is determined to have committed a violation of the Act, the penalty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know of, the violation, in which case the penalty shall be invoked against the association or other association member as well.

(b) Violations by an Association Acting as an Employer.—If an association filing an application as a sole cause of such an application is determined to have committed a violation of this section, the penalty for such violation shall apply only to the association un- less the Secretary of Labor determines that the association or an association member or members participated in or had knowledge, or reason to
know of the violation, in which case the penalty shall be invoked against the association member or members as well.

**SEC. 219. DEFINITIONS.**

"For purposes of this section and section 218A, 218B, and 218C:

"(A) AGRICULTURAL EMPLOYMENT.—The term ‘agricultural employment’ means any service or activity that is considered to be agricultural employment 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 312(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

"(B) BONA FIDE UNION.—The term ‘bona fide union’ means any organization in which employees engage which excludes the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employee association or its agents or representatives.

"(C) DISPLACEMENT.—The term ‘displacement’, in the case of an application with respect to 1 or more eligible aliens, means laying off a United States worker from a job for which the H-2A worker or workers is or are scheduled.

"(D) ELIGIBLE.—The term ‘eligible’, when used with respect to an individual, means an individual who is not an unauthorized alien (as defined in section 214A).

"(E) EMPLOYER.—The term ‘employer’ means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

"(F) H-2A EMPLOYER.—The term ‘H-2A employer’ means an employer who seeks to hire 1 or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(a).


"(H) JOB OPPORTUNITY.—The term ‘job opportunity’ means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

"(I) LAYING OFF.—

"(A) IN GENERAL.—The term ‘laying off’, with respect to an individual, means:

"(i) causes the worker’s loss of employment, other than through a discharge for inadequate performance, violation of work rules, voluntary departure, voluntary retirement, contract impossibility (as described in section 218A(b)(4)(D)), or temporary suspension of employment due to weather, markets, or other temporary conditions; but

"(ii) does not include any situation in which the worker is offered, as an alternative to employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b)(1), the employer or the labor contractor (in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

"(J) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employer’s ability to engage in collective bargaining agreement or other employment contract.

"(K) REGULATORY DROUGHT.—The term ‘regulatory drought’ means a decision subsequent to the application under section 218 by an entity not under the control of the employer making such filing which restricts the employer’s access to water for irrigation purposes and reduces or limits the employer’s ability to produce an agricultural commodity, thereby reducing the need for labor.

"(L) SEASONAL.—Labor is performed on a ‘seasonal’ basis if:

"(1) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

"(2) from its nature, it may not be continuous or carried on throughout the year.

"(M) SECRETARY.—Except as otherwise provided, the term ‘Secretary’ means the Secretary of Homeland Security.

"(N) TEMPORARY.—A worker is employed on a ‘temporary’ basis where the employer is intended not to exceed 10 months.

"(O) UNITED STATES WORKER.—The term ‘United States worker’ means any worker, alien lawfully admitted for permanent residence, or any other alien, who is authorized to work in the job opportunity within the control of the employer making such filing.

"(P) VOLUNTARY RETIREMENT.—The term ‘voluntary retirement’, with respect to a worker, means any retirement by the worker voluntarily.

"(Q) WORKER.—The term ‘worker’, means any worker, including any worker lawfully admitted for permanent residence or any other alien, who is authorized to work in the job opportunity within the control of the employer making such filing.

"(R) X-LAYING OFF.—Laying off a United States worker from a job for which the H-2A worker or workers is or are scheduled.

"(S) WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.—The term ‘worker protections and labor standards enforcement’, means the enforcement of standards of employment and the application of labor and employment standards, as provided for in this title.

Subtitle C—Miscellaneous Provisions

**SEC. 241. DETERMINATION AND USE OF USER FEES.**

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for: (i) the United States or any alien seeking admission for purposes of section 213 of this Act; and (ii) the admission of eligible aliens pursuant to the amendment made by section 231(a) of this Act.

(b) REQUIREMENT FOR THE SECRETARY OF STATE TO CONSULT.—The Secretary of State, the Secretary of Labor, and the Secretary of Agriculture shall consult with the Secretary of the Treasury, the Secretary of State, and the Secretary of Labor created under section 218A, 218B, 218C, and 218D of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(A)), and the number of workers actually admitted, disaggregated by State and by occupation;

(2) the number of such aliens entered under section 214A, 215A, 215B, and 215C of the Immigration

(3) the number of aliens who applied for permanent residence pursuant to section 211(c) of any such Act;

(7) the number of such aliens who were approved for permanent resident pursuant to section 213(c); and

(7) the number of such aliens who were approved for permanent resident pursuant to section 213(c).

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the enactment of this Act, the Secretary shall submit to Congress a report that describes the measures being taken and the progress made in implementing this Act.

**SEC. 244. EFFECTIVE DATE.**

Except as otherwise provided, sections 231 and 241 shall take effect 1 year after the date of the enactment of this Act.

**SA 169. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill. The amendment would provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:**

At the end, add the following new section:
SEC. 4. SHARING OF SOCIAL SECURITY DATA FOR IMMIGRATION ENFORCEMENT PURPOSES.

(a) SOCIAL SECURITY ACCOUNT NUMBERS. —Section 264(f) of the Immigration and Nationality Act (8 U.S.C. 1364(f)) is amended to read as follows:

"(f) Notwithstanding any other provision of law (including section 6103 of the Internal Revenue Code of 1986), the Secretary of Homeland Security, the Secretary of Labor, and the Attorney General, or of inclusion in any record of the individual, and the name and address of the person reporting the earnings, the name and address of the person making the request, and the amount of the earnings.

(b) The information described in subparagraph (A) shall be provided in an electronic form agreed upon by the Commissioner and the Secretary.

(c) Notwithstanding any other provision of law (including section 6103 of the Internal Revenue Code of 1986), if a social security account number was used with multiple names, the Commissioner of Social Security shall provide the Secretary of Homeland Security with information regarding the name, date of birth, and address of each individual who used that social security account number, and the name and address of the person reporting the earnings for an individual who used that social security account number.

(d) The information described in subparagraph (A) shall be provided in an electronic form agreed upon by the Commissioner and the Secretary for the sole purpose of enforcing the immigration laws.

(e) The Secretary, in consultation with the Commissioner, may limit or modify the requirements of this paragraph, as appropriate, to identify the cases posing the highest possibility of fraudulent use of social security account numbers related to violation of the immigration laws.

(f) The Commissioner of Social Security shall perform, at the request to the Secretary of Homeland Security, any search or manipulation of records held by the Commissioner in the Secretary’s possession that the purpose of the search or manipulation is to obtain information that is likely to assist in identifying individuals (and their employers) who are sharing the social security numbers, who are sharing a single valid name and social security number among multiple individuals, who are using the social security number of a person who is deceased, too young to work, or not authorized to work, or who are otherwise engaged in a violation of the immigration laws. The Commissioner shall provide the results of such search or manipulation to the Secretary, notwithstanding any other provision law (including section 6103 of the Internal Revenue Code of 1986).

(g) The Secretary shall transfer to the Secretary of Homeland Security, with information regarding the name, date of birth, and address of the alien, the alien’s social security number of a person who is deceased, too young to work, or not authorized to work, or who are otherwise engaged in a violation of the immigration laws. The Commissioner shall provide the results of such search or manipulation to the Secretary, notwithstanding any other provision law (including section 6103 of the Internal Revenue Code of 1986).

SEC. 13A. BIWEEKLY WORK PROGRAMS.

(a) VOLUNTARY PARTICIPATION. —

(1) OPTION. —Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

(2) COLLECTIVE BARGAINING AGREEMENT. —

In a case in which a valid collective bargaining agreement exists between the employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required to participate in such a program in accordance with the agreement. (b) BIWEEKLY WORK PROGRAMS. —

(1) IN GENERAL. —Notwithstanding section 7(a)(1), an employer may establish biweekly work programs that —

(A) allow the use of a biweekly work schedule —

(i) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

(ii) in which more than 40 hours of the work requirement may occur in a week of the period, except that no more than 10 hours may be shifted between the 2 weeks involved; and

(B) provides that an employee participating in the program is compensated for overtime hours in accordance with paragraph (4) of section 7(a)(1).

(2) CONDITIONS. —An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

(A) AGREEMENT. —The program may be carried out only in accordance with —

(i) the following: (A) (1) a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or (ii) in the case of an employee who is not represented by a labor organization described in clause (i), a written agreement arrived at between the employer and employee before the performance of the work involved if the agreement was entered into knowingly and voluntarily by such employee and was not a condition of employment.

(B) STATEMENT OF VOLUNTARY PARTICIPATION. —The program shall inform each employee described in subparagraph (A)(ii) if such employee has affirmed, in a written statement that is made, kept, and preserved in accordance with section 7(a)(1), that the employee has voluntarily chosen to participate in the program.

(C) MINIMUM SERVICE. —No employee may participate, or agree to participate, in the program described in paragraph (1) if the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

(D) COMPENSATION FOR HOURS IN SCHEDULE. —Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each overtime hour at a rate not less than the regular rate at which the employee is employed.

(E) OVERTIME COMPENSATION PROVISION. —An employee participating in such a biweekly work program shall be compensated for each overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1).

(F) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL. —

(A) DISCONTINUANCE OF PROGRAM. —An employer that has established a biweekly work program under paragraph (1) may discontinue the program for employees described in paragraph (1) by providing 30 days’ written notice to the employees who are subject to an agreement described in paragraph (2)(A)(ii).

(B) WITHDRAWAL. —An employee may withdraw an agreement described in paragraph (2)(A)(ii) at the end of any 2-week period described in paragraph (1)(A)(ii), by submitting a written notice of withdrawal to the employer of the employee.

(G) PROHIBITION OF COERCION. —

(1) IN GENERAL. —An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule.

(2) DEFINITIONS. —In this section:

(A) The term ‘intimidate, threaten, or coerce’ includes promising to confer or conferring any benefit (such as appointment, promotion, or continued employment) or effecting any reprisal (such as deprivation of appointment, promotion, or compensation).

(B) The term ‘biweekly work requirement’ means the number of hours required in a biweekly period of time that an employee is required to work or is required to account for by leave or otherwise.
"(2) COLLECTIVE BARGAINING.—The term ‘collective bargaining’ means the performance of the mutual obligation of the representative of an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law to meet at reasonable times and to consult and bargain in good faith to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written agreement incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

"(3) COLLECTIVE BARGAINING AGREEMENT.—The term ‘collective bargaining agreement’ means an agreement entered into as a result of collective bargaining.

"(4) EMPLOYEE.—The term ‘employee’ means an individual—

(A) who is an employee (as defined in section 3);

(B) who is not an employee of a public agency; and

(C) whom section 7(a) applies.

"(5) EMPLOYER.—The term ‘employer’ does not include a public agency.

"(6) OVERTIME HOURS.—The term ‘overtime hours’ means the hours worked in excess of the number of hours provided in section 13A of the Fair Labor Standards Act of 1938 for a week of 40 hours, or in excess of the limited 50 hours a week, or in excess of the allotted 20 hours in the 2-week period involved, that are requested in advance by an employer.

"(7) REGULAR RATE.—The term ‘regular rate’ has the meaning given in section 7(e).

"(B) REMEDIES.—


(i) in the first sentence of subsection (a) by striking ‘‘an employee’’ before the term ‘‘employee’’;

(ii) in subsection (b)—

(I) in the paragraph referred to in this subsection, by striking ‘‘an employee participating in such a biweekly work program is required to participate in the program described in this section. Participation in a program described in this section may not be required to participate in such a program in accordance with the agreement.’’; and

(II) by adding the following:

‘‘(3) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this section, the Secretary of Labor shall revise the materials the Secretary provides, under regulations in section 516.4 of title 29, Code of Federal Regulations, to employ- ers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to employees so that the notice reflects the amendments made to the Act by this section.’’

(b) CONGRESSIONAL COVERAGE.—Section 203 of the Congressional Accountability Act of 1995 (2 U.S.C. 1313) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ‘‘section 12(c)’’ and inserting ‘‘section 12(e), and sections 13A and 13B’’; and

(B) by striking paragraph (3); and

(2) in subsection (b)—

(A) by striking ‘‘The remedy’’ and inserting the following:

‘‘(1) IN GENERAL.—Except as provided in paragraph (3), the remedies described in paragraphs (2) and (3), and the following:

‘‘(B) by adding at the end the following:

‘‘(2) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOURS PROGRAMS.—The remedy for a violation of subsection (a) relating to the requirements of section 13A of the Fair Labor Standards Act of 1938 shall be such remedy as would be appropriate if awarded under section 216 of such Act (29 U.S.C. 216, 217) for such a violation.’’;

and

(3) in subsection (c), by striking paragraph (4).’’

(c) TERMINATION.—The authority provided by this section and the amendments made by this section terminates 5 years after the date of enactment of this section.

SA 171. Mr. GREGG (for himself, Mr. SUNUNU, and Mr. ISAKSON) submitted a proposed amendment to section 13(a)(1) of title 29, Code of Federal Regulations, to provide for an increase in the Federal minimum wage, which was ordered reported to the Senate on July 25, 2007.

SEC. 13A. BIWEEKLY WORK PROGRAMS.

(a) BIWEEKLY WORK PROGRAMS.

(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

‘‘SEC. 13A. BIWEEKLY WORK PROGRAMS.

(a) VARIOUS PROGRAMS.

(1) Option of Employee.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

(b) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been designated as the representative of the employees of the employer under applicable law, an employee may only be required to participate in such a program in accordance with the agreement.

(b) BIWEEKLY WORK PROGRAMS.—

(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs—

(A) by allowing the use of a biweekly work schedule—

(i) that consists of a basic work requirement of not more than 40 hours, over a 2-week period; and

(ii) in which more than 40 hours of the work requirement may occur in a week of the requirement if no more than 10 hours may be shifted between the 2 weeks involved; and

‘‘(B) provides that an employee participating in the program is compensated for overtime hours in accordance with paragraph (4).

(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

(a) EMPLOYER.—The program may be carried out only in accordance with—

(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

(ii) if the program is not represented by a labor organization described in clause (i), a written agreement arrived at between the employer and employee representatives of the performance of the work involved if the agreement was entered into knowingly and voluntarily by such employee and was not a condition of employment.

(b) STATEMENT OF VOLUNTARY PARTICIPATION.—The program shall apply to an employee described in subparagraph (A)(II) if such employee has affirmed, in a written statement that is made available to the employee in accordance with section 11(c), that the employee has voluntarily chosen to participate in the program.

(c) CONCLUSION OF SERVICE.—No employee may participate, or agree to participate, in the program unless the employee has been employed by the employer for at least 70 hours of service with the employer during the previous 12-month period.

(d) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an employee participating in such a bi-weekly work program, the employee shall be compensated for such hours in such a bi-weekly work schedule at a rate not less than the regular rate at which the employee is employed.

(3) OVERTIME COMPENSATION PROVISION.—An employee participating in such a bi-weekly work program shall be compensated for each overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1).

(4) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program described in paragraph (2)(A)(ii) after providing 30 days’ written notice to the employees who are subject to an agreement described in paragraph (2)(A)(ii).

(B) WITHDRAWAL.—An employer may withdraw a program described in paragraph (2)(A)(ii) at the end of any 2-week period described in paragraph (2)(A)(ii) by submitting a written notice of withdrawal to the employer of the employee.

(5) ORAL INTERFERING WITH THE RIGHTS OF EMPLOYEES.—

(A) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule.

(B) DEFINITIONS.—In this section—

(1) COLLECTIVE WORK REQUIREMENT.—The term ‘‘basic work requirement’’ means the number of hours, excluding overtime hours, that an
employee is required to work or is required to account for by leave or otherwise.

“(2) COLLECTIVE BARGAINING.—The term ‘collective bargaining’ means the performance of the collective bargaining obligations of a public agency or employer, or representative of an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer, or the applicable law, and the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

“(3) COLLECTIVE BARGAINING AGREEMENT.—The term ‘collective bargaining agreement’ means an agreement entered into as a result of collective bargaining.

“(4) EMPLOYEE.—The term ‘employee’ means an individual—

“(a) who is an employee as defined in section 3;

“(b) who is not an employee of a public agency; and

“(c) to whom section 7(a) applies.

“(5) EMPLOYER.—The term ‘employer’ does not include a public agency.

“(6) OVERTIME HOURS.—The term ‘overtime hours’ when used with respect to biweekly work programs under subsection (b), means all hours in excess of the biweekly work schedule involved, in excess of the allotted 50 hours a week, or in excess of the allotted 80 hours in the 2-week period involved, that are requested in advance by an employer.

“(7) REGULAR RATE.—The term ‘regular rate’ has the meaning given the term in section 7(e).”.

(2) REMEDIES.—


(i) by inserting “(A)” after “(3);”;

(ii) by adding “or” after the semicolon; and

(iii) by adding at the end the following:

“(A) in paragraph (1), by striking “and section 12(c)” and inserting “section 12(c), and section 13A”; and

(B) by striking paragraph (3); and

(ii) by striking “(A) by striking any of the provisions of section 13A.”;

(B) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(i) in subsection (a)—

(1) by striking “employee security training and background checks,” and inserting “employee security training and background checks, and

“(2) limitation and prevention of access to controls of specified agricultural chemicals stored at the facility,

“(3) tagging, locking tank valves, and chemical or physical additives to prevent the theft of specified agricultural chemicals or to render such chemicals unfit for illegal use,

“(4) protection of the perimeter of specified agricultural chemicals;

“(5) installation of security lighting, cameras, recording equipment, and intrusion detection sensors,

“(6) implementation of measures to increase computer or network security,

“(7) conducting a security vulnerability assessment,

“(8) implementing a site security plan, and

“(9) such other measures for the protection of specified agricultural chemicals as the Secretary may identify in regulations.

Amounts described in the preceding sentence shall be taken into account only to the extent that such amounts are paid or incurred for the purpose of protecting specified agricultural chemicals.

“(c) ELIGIBLE AGRICULTURAL BUSINESS.—For purposes of this section, the term ‘eligible agricultural business’ means any person in the trade or business of—

“(1) selling agricultural products, including specified agricultural chemicals, at retail predominantly to farmers and ranchers, or

“(2) manufacturing, formulating, distributing, or aerially applying specified agricultural chemicals.

“(d) SPECIFIED AGRICULTURAL CHEMICAL.—For purposes of this section, the term ‘specified agricultural chemical’ means—

“(1) any fertilizer commonly used in agricultural operations which is listed under—

“(A) section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986,

“(B) section 101 of part 172 of title 49, Code of Federal Regulations, or

“(C) part 126, 127, or 154 of title 33, Code of Federal Regulations, and

“(2) any pesticide (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act), including all active and inert ingredients thereof, which is customarily used on crops grown for food, feed, or fiber.

“(e) CONTROLLED GROUPS.—Rules similar to the rules of paragraphs (1) and (2) of section 41(f) shall apply for purposes of this section.

“(f) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

“(1) provide for the proper treatment of amounts which are paid or incurred for purposes of protecting any specified agricultural chemical and for other purposes, and

“(2) provide for the treatment of related properties as one facility for purposes of subsection (b).

“(i) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 2012.

“(b) CREDIT ALLOWED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) is amended by striking “plus” at the end of paragraph (3) and inserting “plus”, and by adding at the end the following new paragraph:

“(1) in the case of an eligible agricultural business (as defined in section 45o(e)), the agricultural chemicals security credit determined under section 450(a).”.

“(c) DENIAL OF DOUBLE BENEFIT.—Section 280C is amended by adding at the end the following new subsection:
“(f) CREDIT FOR SECURITY OF AGRICULTURAL CHEMICALS.—No deduction shall be allowed for that portion of the expenses (otherwise allowable as a deduction) taken into account in determining the credit under section 45D for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45O(a).” (d) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item: “Sec. 45O. Agricultural chemicals security credit.”. (e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2006.

SA 173. Mr. KERRY submitted an amendment intended to be proposed to amendment SA 112 submitted by Mr. SENCHUK to the amendment SA 100 proposed by Mr. REID (Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following: SEC. ___ SUSTAINABILITY PROGRAM. (a) In general.—Section 29(k) of the Small Business Act (15 U.S.C. 665(k)) is amended— (1) in the subsection heading, by striking “Pilot”; (2) in paragraph (1), by striking “4-year pilot”; (3) in paragraph (5), by striking “Pilot”; (b) Conforming amendments.—Section 29(k) of the Small Business Act (15 U.S.C. 665(k)) is amended— (1) in paragraph (1), by striking “Pilot”; (2) in paragraph (4)— (A) in the paragraph heading, by striking “Pilot”; (B) in subparagraph (A), by adding at the end the following: “(v) For fiscal years 2007 and 2008, not less than 41 percent.”; and (C) in the heading for subparagraph (B), by striking “Pilot”.

SA 174. Mr. KERRY submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows: At the appropriate place, insert the following: SEC. ___ SUSTAINABILITY PROGRAM. (a) In General.—Section 29(k) of the Small Business Act (15 U.S.C. 665(k)) is amended— (1) in the subsection heading, by striking “Pilot”; (2) in paragraph (1), by striking “4-year pilot”; (3) in paragraph (5), by striking “Pilot”; (b) Conforming Amendments.—Section 29(k) of the Small Business Act (15 U.S.C. 665(k)) is amended— (1) in paragraph (1), by striking “Pilot”; (2) in paragraph (4)— (A) in the paragraph heading, by striking “Pilot”; (B) in subparagraph (A), by adding at the end the following: “(v) For fiscal years 2007 and 2008, not less than 41 percent.”; and (C) in the heading for subparagraph (B), by striking “Pilot”.

SA 175. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows: At the appropriate place, insert the following: SEC. ___ PROVISIONS TO IMPROVE AND EXPAND THE AVAILABILITY OF HEALTH SAVINGS ACCOUNTS. (a) Provisions relating to eligibility to contribute to HSAs.— (1) Individuals eligible for reimbursement under flexible spending arrangements.—Section 223(c)(1)(D)(i) (defining eligible individual) is amended by adding at the end the following new subparagraph: “(C) Special rule for certain flexible spending arrangements.—For purposes of subparagraph (A)(i), an individual shall not be treated as covered under a health plan described in such subparagraph merely because the individual is covered under a flexible spending arrangement (within the meaning of section 106(c)(2)) which is maintained by an employer of the spouse of the individual, but only if— (i) the employer is not also the employer of the individual, and (ii) the individual certifies to the employer and to the Secretary (in such form and manner as the Secretary may prescribe) that the individual and the individual’s spouse will not accept reimbursement under the arrangement for any expenses for medical care provided to the individual.”. (2) Individuals over age 65 automatically enrolled in Medicare—Part A.—Section 223(b)(7) (relating to contribution limitation on medicare eligible individuals) is amended by adding at the end the following new sentence: “An expense shall not fail to be treated as covered under a high deductible health plan on account if such expense was incurred before the establishment of the health savings account if such expense was incurred during a period that such individual was an eligible individual.”. (b) Special rule for certain veterans benefits.—Section 223(c)(1) (defining eligible individual), as amended by subsection (a), is amended by adding at the end the following new subparagraph: “(D) Special rule for individuals eligible for certain veterans benefits.—For purposes of subparagraph (A)(ii), an individual described in subsection (c)(1) shall be treated as covered under part A of title XVIII of such Act pursuant to an arrangement for any medical care provided to the individual if the expenses for such care are incurred but before the time prescribed by law for filing the return for such taxable year (not including extensions thereof) and (ii) for medical care of an individual during a period that such individual was an eligible individual. (c) Insurance plans for families.—For purposes of paragraph (b)(2), an insurance plan maintained under a health plan described in such subparagraph merely because the individual receives periodic medical care or medical services for a service-connected disability under any law administered by the Secretary of Veterans Affairs but only if the individual is not eligible to receive such care or services for any condition other than a service-connected disability.”. (d) Family plan may have individual annual deductible limit.—Section 223(c)(2) (defining high deductible health plan) is amended by adding at the end the following new subparagraph: “(E) special rule for family coverage.—A high deductible health plan providing family coverage shall not fail to meet the requirements of subparagraph (A)(ii) merely because the plan elects to provide both— (i) an aggregate annual deductible limit for all individuals covered by the plan which is not less than the amount in effect under subparagraph (A)(i); and (ii) an annual deductible limit for each individual covered by the plan which is not less than the amount in effect under subparagraph (A)(i) defined in paragraph (4) of that section and (B) DEFINITION OF QUALIFIED MEDICAL EXPENSES.— (1) PREMIUMS FOR LOW PREMIUM HEALTH PLANS TREATED AS QUALIFIED MEDICAL EXPENSES.—Subparagraph (C) of section 223(d)(2) is amended by striking “or” at the end of clause (ii), by striking “in the case of” at the end of clause (iv), by striking “, or”, and by adding at the end the following new clause: “(v) a high deductible health plan, only if the expenses are for coverage for a month with respect to which the account beneficiary is an eligible individual by reason of the coverage under the plan.” (2) Special Rule for Certain Medical Expenses Incurred Before Establishment of Account.—Paragraph (2) of section 223(d) is amended by adding at the end the following new subparagraph: “(D) Certain medical expenses incurred before establishment of account treated as qualified medical expenses apply to taxable years beginning after December 31, 2007.”

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Tuesday, February 13, 2007, at 10:00 a.m. in room SD–106 of the Dirksen Senate Office Building.

The purpose of this hearing is to receive testimony on the Stern Review of the Economics of Climate Change, examining the economic impacts of climate change and stabilizing greenhouse gases in the atmosphere.