(Mr. SESSIONS) was added as a cosponsor of S. 46, a bill to amend the Internal Revenue Code of 1986 to expand the permissible use of health savings accounts to include premiums for nongroup high deductible health plan coverage.

S. 122

At the request of Mr. BAUCUS, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from Colorado (Mr. SALAZAR) were added as cosponsors of S. 122, a bill to amend the Trade Act of 1974 to extend benefits to service sector workers and firms, enhance certain trade adjustment assistance authorities, and for other purposes.

S. 170

At the request of Mr. ENSIGN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 170, a bill to amend the Internal Revenue Code of 1986 to repeal the excise tax on telephone and other communications services.

S. 214

At the request of Mrs. FEINSTEIN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 214, a bill to amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys.

S. 237

At the request of Mrs. FEINSTEIN, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. 237, a bill to improve agricultural job opportunities, benefits, and security for aliens in the United States and for other purposes.

S. 238

At the request of Mrs. FEINSTEIN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 238, a bill to amend title 18, United States Code, to limit the misuse of Social Security numbers, to establish criminal penalties for such misuse, and for other purposes.

S. 267

At the request of Mr. BINGAMAN, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 267, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to clarify that territories and Indian tribes are eligible to receive grants for confronting the use of methamphetamine.

S. 269

At the request of Ms. SNOWE, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 269, a bill to amend the Internal Revenue Code of 1986 to increase and permanently extend the expensing of certain depreciable business assets for small businesses.

S. 284

At the request of Mr. CONRAD, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 284, a bill to provide emergency agricultural disaster assistance.

S. CON. RES. 2

At the request of Mr. BIDEN, the names of the Senator from Maryland (Mr. CARDIN), the Senator from Maryland (Ms. MIKULSKI), the Senator from New York (Mrs. CLINTON), the Senator from Rhode Island (Mr. REED) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. Con. Res. 2, a concurrent resolution expressing the bipartisan resolution on Iraq.

S. CON. RES. 3

At the request of Mr. SALAZAR, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. Con. Res. 3, a concurrent resolution expressing the sense of Congress that it is the goal of the United States that, not later than January 1, 2025, the agricultural, forestry, and working land of the United States should provide from renewable resources not less than 25 percent of the total energy consumed in the United States and continue to produce safe, abundant, and affordable food, feed, and fiber.

AMENDMENT NO. 20

At the request of Mr. BENNETT, the names of the Senator from Wyoming (Mr. ENZI) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of amendment No. 20 proposed to S. 1, a bill to provide greater transparency in the legislative process.

AMENDMENT NO. 34

At the request of Mr. FEINGOLD, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of amendment No. 34 proposed to S. 1, a bill to provide greater transparency in the legislative process.

AMENDMENT NO. 39

At the request of Mr. CARDIN, his name was added as a cosponsor of amendment No. 39 proposed to S. 1, a bill to provide greater transparency in the legislative process.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ISAKSON:

S. 330. A bill to authorize secure borders and comprehensive immigration reform, and for other purposes; to the Committee on the Judiciary.

Mr. ISAKSON. Mr. President, I am pleased to rise today before the Senate. This is an issue this Senate visited 9 months ago in the month of May. Nine months ago, the Senate tackled what I submit is the most important domestic issue in the United States of America and in every State. That is the issue of legal immigration and illegal immigration.

In that debate of what became known as a comprehensive immigration reform bill, I submitted an amendment that ended up being amendment No. 1. The amendment simply said that before any provision of this act that grants legal status to someone who is in America illegally takes effect, the Secretary of Homeland Security will certify to the Congress that all of the provisions of border security contained in the bill were funded, in place, and operational. It become known as a trigger—and it was a trigger—because the immigration issue is not like when you can never figure what is the chicken, what is the egg, and what came first. There is no way to reform illegal immigration unless you first stop the porous borders we have and the flow of illegal immigrants. But to do only one without the other is a terrible mistake.

The result of last year's debate was the Senate passed a bill without the trigger that granted new legal statuses. Although it provided for the authorization of border security, it did not provide for the guarantee of border security. The House reaction was, we want border security only, and the debate to this day between the House and the Senate has been the Senate is for comprehensive reform and the House is for border security only and never the twain will meet. The twain must meet. It is the No. 1 domestic issue.

I come to the Senate today to introduce a major immigration reform bill that is the bridge from where we are to where we must go. For a moment, I will discuss the provisions of that proposal.

First of all, it contains the trigger. It predicates any reform of immigration that grants legal status to someone here illegally to be noneffective until we have first closed the doors to the south and to the north. It provides for all the security measures the Senate passed last year—and they are 2,500 new port-of-entry inspectors, 14,000 border inspectors, trained and ready to deploy, $454 million for unmanned aerial vehicles to give us the 24/7 eyes in the sky essential to enforcement on our border, authorization and ultimate appropriation for those barriers and those fences and those roads that are necessary for our agents to patrol, 20,000 beds for detention, to end the practice of cash and release.

When I came to the Senate 2 years ago as a Georgian and one who loves the outdoors, I thought ''catch and release'' was a fishing term. I found out it became a border term, where we would catch people, tell them to go home, release them and they would wait for us to leave and come back again.

We must remember the reason we have this problem is we have the greatest Nation on the face of this Earth. We do not find anyone trying to break out of the United States of America. They are all trying to break in and for a very special reason: The promise of hope, opportunity, and jobs. But we must make the right way to come to America be the legal way to come to America, not the ease of crossing our border in the dark of night under some other cover.

Lastly, an integral part of border security is a verifiable program, where

America's employers can be given a verifiable ID by someone who is here legally that verifies they are who they say they are. The biggest growth industry in the United States of America on our southwestern border is forged documents. We have a proliferation today of forged documents, where illegal aliens have legal-looking documents and we have a customs and immigration system that cannot tell an American farmer or an American employer that, in fact, the document they were shown is, in fact, right or wrong. That has to be fixed.

Once those provisions are in, we have a secure border. Interestingly enough, it takes about the same amount of time to put in the barriers, get unmanned aerial vehicles in the air, train the border security and port-of-entry people as it takes to get the verifiable identification system in place. We know both will take about 24 months.

When we have the trigger, it does not protract reform, but it precedes the implementation of what is going to take 24 months to do anyway. And all of a sudden we have a new paradigm in America. Those who want to come here realize the way to come is the legal way, not the illegal way. They learn there are consequences to coming illegally and employers know when they get an ID they can either swipe it on a computer or they can go up on the Internet and code to customs and immigration and find out that person is legal. The paradigm changes, and then the hope and opportunity of reforming legal immigration in this country can become a reality.

I am not an obstructionist to doing it. In fact, if anything needs to be done, we need to reform the legal system because we almost promote, through the rigidity and difficulty of legal immigration, coming here illegally because we are looking the other way on the border. We have a historical precedent.

In 1986, we reformed immigration with the Simpson Act. We granted 3 million people amnesty, said we were going to secure the border and didn't. Today, we have 12 million because we did not secure that border. That can never happen again.

Second, if the border is secure and we give people who are here illegally but are lawfully obeying the laws a chance to come forward, we can identify who is here who is not a problem.

And you, also, leave open, for those who do not come forward whom you must concentrate on, to see to it they are not here for the wrong reasons and they go home. But you can never enforce the system internally before you first close the external opportunity to come through illegal immigration.

Mr. President, in May 1903, Anders Isakson came through Ellis Island because of the potato famine in Scandinavia. In 1916, my father was born to him and his wife, Josephine. My father became a citizen of this country because he was born on our soil. In 1926, my grandfather became a naturalized citizen of the United States of America.

In my home today, framed and hanging on the wall, are his naturalization certificates from 1926, when he raised his right arm and pledged his allegiance to the United States of America. There is no one who has greater respect and greater joy in the promise of this country and the opportunity of immigration. But we must begin restoring the respect for legal immigration and shutting the door on illegal immigration, or else those lines become blurred, and the stress we have on our social service system, civil justice system, public health system, and public education system that is stretched to the limit because of illegal aliens today will increase.

We owe it to the history of our country and the greatness which makes us great to secure our borders, to honor legal immigration, and to move forward with a reform of illegal immigration that matches the economic needs of the United States of America.

I stand on the Senate floor today committed to work with any Member of this Senate for comprehensive reform, as long as its cornerstone in its foundation is that we fix the problem on our borders, have it certified, and have that fix be the foundation for the modernization and reform of our immigration laws.

Mr. President, I thank you for the time and yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I congratulate the Senator from Georgia. He has described something that for the last several months I have been calling the Isakson principle. I believe the Isakson principle is the basis for a comprehensive immigration bill that could attract 85 to 90 votes in the Senate and could, in a fairly short period of time, be reconciled with legislation passed by the House of Representatives.

It would be a single piece of legislation that would work in two stages. It would first secure our border; and then, as the Senator from Georgia says, the trigger would come in, and we would get the rest of the job done. And the rest of the job includes defining who can work and who can study in the United States if they come from overseas. The rest of the job also includes helping prospective citizens, of which there are about a million a year today—people who are here legally—to help them learn English, to learn our history, and to learn our democratic traditions so we can be one country.

There is a lot of talk this week about the borders of Iraq. I believe there are some more important borders in this world, at least to us Americans, and they are the borders around our own country. It is more important that we secure our borders at home than it is to secure the borders in Iraq.

Last year, both the Senate and the House of Representatives passed an immigration bill. I voted no on the Senate immigration bill. I opposed the bill because I did not believe it did enough to secure our borders. It had some good proposals for border security, and it had a number of other excellent proposals, but it did not guarantee they would be funded. We all know that border security on paper means nothing. It requires boots on the ground. It requires jeeps on the roads and unmanned aerial vehicles in the air. It requires an employer verification system. And it requires adequate funding.

So I voted no. But I said at the time I was ready to vote for, and wanted to vote for, a comprehensive bill, one that fixed the whole problem. And I suggested then, as did a number of others, that the basis for such a bill was the Isakson principle.

Well, instead of getting a bill passed into law, it was a political year, and some Members of the House of Representatives, including some members of my own party, thought the wiser course was basically to run against the Senate bill that I voted against. Well, we now know how successful that turned out to be. That was not successful because the American people expect us to act like grownups, deal with big issues, and come to a conclusion.

There is no issue upon which we in the Congress have more need to come to a conclusion on than the issue of immigration. It is our responsibility. We cannot kick it to the Governors. We cannot blame the mayor of Nashville. We cannot blame anybody in Iraq. It is our job in the Senate and the House of Representatives.

We should begin to do our job. We should take it up within the next few weeks. We should base our bill on the Isakson principle. And we should not stop our work on the immigration bill until we are finished.

The Isakson principle is the basis for success with immigration because of the so-called trigger. As the Senator from Georgia said, once we put into effect all of the things we need to do to secure the border, the trigger operates, and then we get to all the rest of the issues, some of which are hard to solve. But they are made much easier to solve once we and the American people are assured the border will be secured.

It is outrageous for us in the Senate to preach about the rule of law to the rest of the world and ignore it here at home. The rule of law is one of the most important principles of our country. We should make no apology, not be embarrassed 1 minute for insisting upon it. Every new citizen knows that. They do not come to this country to become an American based upon their color or their ethnic background. They come because to be an American, you believe in a few principles which you must learn if you are going to become a citizen. Foremost among those is the rule of law.

So we start with that. But that is not the only principle new citizens learn. There is the principle of laissez-faire—

in other words, a strong economy. And immigrants help a strong economy, whether they are going to be Nobel Prize winners or whether they are going to be picking fruit in California.

There is the principle of equal opportunity. There is the principle of e pluribus unum, engraved right up there above the Presiding Officer: How do we become one country? We learn our tradition. We learn a common language. We adhere to common principles, instead of color and background. And there is the tradition of the country that we are a nation of immigrants. By our failure to act, we are showing a lack of respect for the rule of law and a lack of respect for our tradition as a nation of immigrants.

It is especially outrageous for us not to act when there is no one to blame but us. We cannot blame Syria for this one. We cannot blame the Iraqi Government. We cannot blame Iran. We cannot blame al-Qaida. It is us. It is our job. So, Mr. President, I am here today to commend the Senator from Georgia. Since last fall, he has had before us the basis for sound, comprehensive immigration legislation—all in one bill; two parts: secure our borders; and once that is done, then all the rest of it. I believe that would attract 85 or 90 votes. And I would suggest, respectfully, to my friend, the Democratic leader, and my friend, the Republican leader, that if we are looking for things to do that are important, that the American people expect us to act on, that we have already demonstrated we can work on together, that within a few weeks we take up the matter of immigration, we base it on the Isakson principle, and we do not stop until we finish the job.

By Mr. THUNE (for himself, Mr. SALAZAR, and Mr. HAGEL):

S. 331. A bill to provide grants from moneys collected from violations of the corporate average fuel economy program to be used to expand infrastructure necessary to increase the availability of alternative fuels; to the Committee on Energy and Natural Resources.

Mr. THUNE. Mr. President, I rise today along with my colleague from Colorado, Senator SALAZAR, regarding S. 331, the Alternative Energy Refueling Systems Act of 2007. The bill is a very straightforward measure that seeks to increase the number of alternative refueling stations across our country, something that I hope the full Senate will support later this year.

Today, there are over 9 million alternative fuel automobiles on the road in America. However, while automakers have pledged to produce an increasing number of these vehicles, there is a serious shortfall in the number of gas stations to support these vehicles. For instance, while there are more than 6 million flex-fuel vehicles on the road today which can run on E–85 or gasoline, less than 1 percent of all gas stations in this country offer E–85 fuel. Clearly, more must be done to increase the availability of alternative fuels at the retail level.

The Alternative Energy Refueling Systems Act would authorize the Department of Energy, through the existing Clean Cities Program, to provide grants to gas station owners who will install alternative refueling systems. These grants would greatly assist in expanding the availability of alternative fuels such as E–85, which is a mix of 15 percent gasoline and 85 percent ethanol, or biodiesel, natural gas, compressed natural gas, hydrogen, or liquefied petroleum gas.

Under this legislation, gas station owners who wish to install a new alternative fuel tank would be reimbursed for up to 30 percent of the cost, not exceeding $30,000, of expenses related to the purchase and installation of a new alternative refueling system. Keep in mind that subject to an annual appropriations, funding for these grants would come from a portion of the penalties that are collected annually from auto manufacturers who violate the Corporate Average Fuel Economy, or CAFE standards, most of which are foreign automakers.

I have to say the cost to install a pump like this generally runs somewhere from $30,000 to $40,000 to about $200,000, depending on where you are in the country. So obviously, it is a big investment for a lot of these filling station owners. But the fact is, they need to have an incentive and some assistance to make sure we are closing the gap that exists in this country between the production of renewable energy—a lot of ethanol production is going on in the country. In my State alone we have 11 plants currently operating, 5 more under construction, and we will be, by 2008, at 1 billion gallons annually of ethanol in South Dakota alone. So when you add to that the ethanol that is produced in other areas of the Midwest, we have a lot of production out there, and I think we have a big market growing. We have a renewable fuels standard that requires that we use 7.5 billion gallons annually by the year 2012, which, frankly, I think we will eclipse way before that time. Because at the current rate of production, we are going to blow by that in a very short time.

But that being said, there is a requirement out there that a market develop for this. We have a lot of consumers around the country who would like to have access to renewable energy who believe for a lot of reasons, as I do, that it makes sense to lessen our dependence upon foreign sources of energy, to become more energy secure. It cleans up the environment and, obviously, in my part of the country, it is very good for American agriculture. But what we are missing in that distribution system is the retail level. We have the production, we have the demand, we have a renewable fuels standard, we have a market, but we don't have a way of joining those. Because of the costs associated with installing some of these pumps, a lot of filling station owners are reluctant to do so. What this would do is provide up to $30,000 or 30 percent of the cost not to exceed $30,000 toward that end. So we think this is a very commonsense approach to doing something that we really need to be doing in America today, and that is moving away from our dependence upon the oil industry for our energy.

I wanted to tell my colleagues a little bit about who supports this piece of legislation. We have a number of businesses, agricultural and alternative energy groups, including General Motors, Ford Motors, Daimler Chrysler—all the big domestic automakers—Wal-Mart, the Petroleum Marketers Association of America, the National Ethanol Vehicle Coalition, the National Association of Fleet Administrators, the Renewable Fuels Association, the National Biodiesel Board, the National Corn Growers Association, the American Soybean Association, the American Coalition for Ethanol, and the National Association of Truck Stop Operators.

So up and down the so-called food chain, from the production, the corn growers, the manufacturers of vehicles in this country, those who are involved at the retail level with getting fuel out there—filling stations, convenience stores—all the agricultural organizations, as I said, the ethanol industry, are all very much supportive of this particular piece of legislation.

A measure very similar to this overwhelmingly passed in the House of Representatives by a vote of 355 to 9 back on July 4 of 2006. Unfortunately, the Senate was unable to consider our companion measure before adjourning last year.

So Senator SALAZAR and I wholeheartedly believe this is a commonsense measure that will significantly increase the number of alternative refueling stations nationwide. As I said earlier, it accomplishes a lot of objectives that are important from a policy standpoint, a national security standpoint, energy security standpoint, and an environmental standpoint. This, to me, is a win-win, and I hope the Senate will act on it before this year is out. Hopefully, we will start to consider very seriously in the weeks and months ahead energy legislation and another farm bill, which I hope will have a very robust energy title included in it. It is high time we did something substantial to lessen or to close this gap we have and this problem that needs to be addressed in terms of our ability to continue to grow the renewable fuels industry in this country, home-grown energy, energy that we get on an annual basis.

We raise a corn crop every year in South Dakota, as they do in Iowa, Minnesota, and Nebraska and in other States across this country which are all starting to realize the benefits of ethanol production and what it means to their agricultural economy. So this

is a good piece of legislation that makes sense in so many ways. I hope the very clear logic of it will help us prevail in getting it passed in the Senate this year.

This legislation is cosponsored by Senator HAGEL of Nebraska and Senator CONRAD of North Dakota. I again put this bill before the Senate, and I look forward to its consideration.

Mr. SALAZAR. Mr. President, I join my colleague Senator THUNE today in introducing S. 331, the Thune/Salazar Alternative Fuel Grant Program. I am proud that Senators HAGEL and CONRAD are also joining us in this effort.

This morning I spoke about the dire threat that our dependence on foreign oil poses to our energy security and our national security. We are simply too vulnerable to oil shocks, supply disruptions, and the whims of oil-rich and democracy-poor countries.

It is time to build a new, clean energy economy that runs on biofuels, wind, solar, and alternative energies. This clean energy economy will move us out of the shadows of our oil dependence. Our farmers, ranchers, engineers, and entrepreneurs should play a lead role in this clean energy revolution, and Congress should do more to help them.

The bill that Senator THUNE and I are introducing today, S. 331, is a straightforward bill that will help expand the availability of alternative fuels at our Nation's filling stations.

It aims to solve a key problem that is slowing the growth of alternative fuels in the transportation sector. Although our farmers and ranchers are producing more and more biofuels each year, and our car manufacturers are building more and more vehicles that run on E–85, consumers still have a difficult time finding anything but gasoline at their filling station.

Our alternative fuel infrastructure is woefully behind the times. At last count, only a few hundred filling stations around the country carried E–85 fuel, while more than 6 million flexible fuel vehicles are on the road.

Consumers should have the choice of whether to fill their car with biofuels or with gasoline. Unfortunately, most of them do not.

The bill we are introducing is simple. It would provide grants to eligible gas station owners, farmers, and businesses that install pumps to deliver alternative fuels, such as natural gas or E–85.

The bill uses funds collected through CAFE penalties—approximately $20 million—for grants of up to $30,000. The funding would still be subject to annual appropriations and is budget neutral.

This bill will dramatically improve the availability of alternative fuels to consumers. It will allow those with E–85 vehicles to finally use the fuel they dream of using. It will also put in place the infrastructure we need for cellulosic ethanol, which is expected to come to market in just a few years.

I urge my colleagues to take a serious look at this bill—it is common sense, straightforward, fills a clear need, and is fiscally responsible.

I again thank my colleague from South Dakota for his leadership on this matter.

By Mr. WYDEN:

S. 334. A bill to provide affordable, guaranteed private health coverage that will make Americans healthier and can never be taken away; to the Committee on Finance.

Mr. WYDEN. Mr. President, it has been more than a decade since the U.S. Senate last addressed fixing health care. I do not think it is morally right for the Senate to duck on health care any longer and that is why I am proposing legislation today to provide affordable, guaranteed, private health coverage for all Americans.

The legislation, called the Healthy Americans Act, ensures care for the 46 million Americans who now live without health insurance, frees business owners from the skyrocketing costs of insuring their workers, and promises every American health care coverage that can never be taken away. My proposal is fully paid for, holds down health care cost growth in the future and provides coverage just like Members of Congress can get now.

America spent $2.2 trillion on health care last year. PriceWaterhouseCoopers expects premiums will increase 11 percent this year alone and I believe the American health care system as we know it is not sustainable.

Our current employer-sponsored health insurance system is a historic accident. In the 1940s, employers needed a way to attract workers as wage and price controls continued. Our country needs a uniquely American solution that works for an economy that is competing not just with the company across town but the company across the world. Americans need a health care system that works for individuals and families, and encourages people to stay healthy instead of only seeking care after they are sick.

The Healthy Americans Act does this and more. It doesn't take long to explain how the Healthy Americans Act works. From the first day individuals, families and businesses win. The Healthy Americans Act cuts the link between health insurance and employment altogether. Under the Healthy Americans Act, businesses paying for employee health premiums are required to increase their workers' paychecks by the amount they spent last year on their health coverage. Federal tax law is changed to hold the worker harmless for the extra compensation, and the worker is required to purchase private coverage through an exchange in their State that forces insurance companies to offer simplified, standardized coverage, with benefits like a Member of Congress gets, and prohibits insurers from engaging in price discrimination.

Requiring employers to cash out their health premiums, as I propose in the Healthy Americans Act, is good for both employers and workers. With health premiums going up 11 percent this year, employers are going to be glad to be exempt from these increases. With the extra money in their paycheck, workers have a new incentive to shop for their health care and hold down their cost. If a worker can save a few hundred dollars on their health care purchase, they can use that money for something else they need.

In addition, the Healthy Americans Act is easy to administer and guarantees lifetime health security. Once you have signed up with a plan through an exchange in the State in which you live, that is it; you have completed the administrative process. Even if you lose your job or you go bankrupt, you can never have your coverage taken away. Sign up, and the premium you pay for the plan and all of the administrative activities are handled through the tax system. For those who cannot afford private coverage, the Healthy Americans Act subsidizes their purchases.

Businesses that have not been able to afford health coverage for their workers, under the new approach, will pay a fee—one that is tiered to their size and revenue, with some paying as little as 2 percent of the national average premium amount per worker for that basic benefit package.

It will be easy to administer, locally controlled, with guaranteed coverage as good as your Member of Congress gets. The Lewin Group has costed out my proposal and reports that it is fully paid for and in addition to expanding coverage for millions of people, guaranteeing health benefits as good as their Member of Congress gets, it also saves $4.5 billion in health spending in the first year. Money is saved by reducing the administrative costs of insurance, reducing cost shifting, and preventing those needless hospital emergency room visits. Also, there are substantial incentives that come about because insurance companies would have to compete for the business of consumers, who would have a new incentive to hold down health costs.

There are other parts of the Healthy Americans Act I wish to describe briefly. As the name of the legislation suggests, I believe strongly that fixing American health care requires a new ethic of health care prevention, a sharp new focus in keeping our citizens well, and trying to keep them from falling victim to skyrocketing rates of increase in diabetes, heart attack, and strokes.

Spending on these chronic illnesses is soaring, and it is especially sad to see so many children and seniors fall victim to these diseases. Yet many Government programs and private insurance devote most of their attention to treating Americans after they are ill and give short shrift to wellness.

Under the Healthy Americans Act, there will be for the first time significant new incentives for all Americans to stay healthy. They are voluntary incentives, but ones that I think will make a real difference in building a national new ethic of wellness and health care prevention.

Parents who enroll children in wellness programs will be eligible for discounts in their own premiums. Instead of mandating that parents take youngsters to various health programs—and maybe they do and maybe they don't—the Healthy Americans Act says when a parent takes a child to one of those wellness programs, the parent would be eligible to get a discount on the parent's health premiums.

Under the Healthy Americans Act, employers who financially support health care prevention for their workers get incentives for doing that as well. Medicare is authorized to reduce outpatient Part B premiums so as to reward seniors trying to reduce their cholesterol, lose weight, or decrease the risk of stroke. It has never been done before. For example, Part B of Medicare, the outpatient part, doesn't offer any incentives for older Americans to change their behavior. Everybody pays the same Medicare Part B premium right now. The Healthy Americans Act proposes we change that and ensures that if a senior from Virginia or Oregon or elsewhere is involved in a wellness program, in health care prevention efforts, like smoking cessation, they could get a lower Part B premium for doing that.

The preventive health efforts I have described are promoted through new voluntary incentives under the Healthy Americans Act, not heavy-handed mandates. What this legislation says is—let's make it more attractive for people to stay healthy and change their behaviors to promote the kind of wellness practices we all know we should do but need an incentive to follow.

Finally, and most importantly, the Healthy Americans Act does not harm those who have coverage in order to help those who have nothing. The legislation makes clear that all Americans retain the right to purchase as much health care coverage as they want. All Americans will enjoy true health security with the Healthy Americans Act, a lifetime guarantee of coverage at least as good as their Member of Congress receives.

A recent ''Health Affairs'' article pointed out that more than half of the Nation's uninsured are ineligible for public programs such as Medicaid, but do not have the money to purchase coverage for themselves.

At present, for most poor people to receive health benefits, they have to go out and try to squeeze themselves into one of the categories that entitles them to care. Under the Healthy Americans Act, low-income people will receive private health coverage, coverage that is as good as a Member of Congress gets, automatically. Like everyone else, they will sign up through the exchange in their State. When they are working, the premiums they owe are withheld from their paycheck. If they lose their job, there is an automatic adjustment in their withholding.

In addition, under the Healthy Americans Act, it will be more attractive for doctors and other health care providers to care for the poor. Those who are now in underfunded programs, such as Medicaid, are going to be able to have private insurance that pays doctors and other providers commercial rates which are traditionally higher than Medicaid reimbursement rates.

Because low-income children and the disabled are so vulnerable, if Medicaid provides benefits that are not included in the kind of package Members of Congress get, then those low-income folks would be entitled to get the additional benefits from the Medicaid Program in their State.

The Healthy Americans Act also makes changes in Medicare. As the largest Federal health program, Medicare's financial status is far more fragile than Social Security. Two-thirds of Medicare spending is now devoted to about 5 percent of the elderly population. Those are the seniors with chronic illness and the seniors who need compassionate end-of-life health care. The Healthy Americans Act strengthens Medicare for both seniors and taxpayers in both of these areas.

In addition to reducing Medicare's outpatient premiums for seniors who adopt healthy lifestyles and reduce the prospect of chronic illness, primary care reimbursements for doctors and other providers get a boost under the Healthy Americans Act. Good primary care for seniors also reduces the likelihood of chronic illness that goes unmanaged. This reimbursement boost is sure to increase access to care for seniors—and I see them all over, in Oregon and elsewhere—who are having difficulty finding doctors who will treat them.

To better meet the needs of seniors suffering from multiple chronic illnesses, the Healthy Americans Act promotes better coordination of their care by allowing a special management fee to providers who better assist seniors with these especially important services.

Hospice law is changed so that seniors who are terminally ill do not have to give up care that allows them to treat their illness in order to get the Medicare hospice benefit. In addition, the Healthy Americans Act empowers all our citizens wishing to make their own end-of-life care decisions. The legislation requires hospitals and other facilities to give patients the choice of stating in writing how they would want their doctor and other health care providers to handle various end-of-life care decisions.

When I announced the Healthy Americans Act last December, I stood with an unprecedented coalition of labor and business. Andy Stern, president of SEIU said ''It is time for fundamental, not incremental change and Senator WYDEN has a plan that is practical and principle, and sets down a moral test'' 'Why doesn't every American have the right to the same health care as the President, the Vice President, 535 members of Congress and 3 million Federal workers?''' Steve Burd, the CEO of Safeway, a Fortune 50 company that has focused on prevention and wellness, called the Healthy Americans Act ''an innovative proposal that lays a foundation to begin a serious discussion on health care reform in this country.''

Ron Pollack of Families USA, listed the principles embodied in the Healthy Americans Act that he believes are important: universality; subsides to make the coverage affordable; community rating rules so the sicker and older are not priced out of the market; and benefits like a Member of Congress has today.

Also at my press conference was Mike Roach, of Portland, OR, a 30-year member of National Federation of Independent Businesses. He owns a clothing store in Portland and employs eight people. He believes the Healthy Americans Act will help him attract good employees. And Bob Beal, president of Oregon Iron Works, an Oregon-based company that competes internationally, believes that we must also address the skyrocketing health care costs that make it harder for companies like his in the international market place.

Like me, the people who stood by me when I announced the Healthy Americans Act believe we need to move the health care debate forward and cannot afford to let more time to go by. The last time Congress took a serious look at reforming health care, there wasn't anything resembling this kind of coalition of labor, business, low-income and end-of-life advocates standing together to call for action.

In tackling one-seventh of the economy, invariably technical issues arise. I want to thank many people who have assisted along the way. Len Nichols of the New America Foundation sent me e-mails at 2 in the morning that helped refine provisions. John Sheils, Randy Haught and Evelyn Murphy of the Lewin Group assisted in telling us our numbers worked or didn't. The Congressional Research Service staff followed up on questions from the common to the obscure. That group included: Bob Lyke, Jeanne Hearne, April Grady, Julie Whitaker, Christine Scott, Chris Peterson, Richard Rimkunas, Karen Trintz, Julie Stone and Andrew Sommers. The Senate Legislative Counsel staff translated the ideas and concepts into legislative language. They devoted an enormous amount of time in getting the ideas and the language right. I'd like to thank Mark Mathiesen, Mark McGunagle, Bill Baird, John Goetcheus, Stacy Kern-Sheerer, Kelly

Malone and Ruth Ernest for their patience and extraordinary effort.

On my staff, Joshua Sheinkman, my legislative director and Jeff Michaels, my administrative assistant, were instrumental in completing the tax and business sections of the bill. Emily Katz who started in my office as a legislative fellow and became a permanent part of the Wyden health team made sure we had credible facts and statistics. Last but not least, I would like to thank Stephanie Kennan, my Senior Health Policy Adviser for the last 9 years who played devil's advocate, worked through the conflicting and evolving ideas, and kept the many threads of the bill working together.

The full text of the Healthy Americans Act and the Lewin analysis are available on my Web site.

In closing, I believe that without your health, you don't get to the starting line of life. For too long, the Congress has dodged the debate and chosen to slice off parts of the issue. And as worthy as those past efforts have been to help certain segments of our citizens, all Americans deserve guaranteed coverage like their Member of Congress, and no one should go to bed at night worrying about losing their health care. It is time for Congress to provide 21st century solutions to one of the most important issues our country must address. The Healthy Americans Act starts that debate.

I ask unanimous consent, that the Healthy Americans Act section-by-section summary, and examples of how the legislation would affect individuals and families and employers be printed in the RECORD.

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

THE HEALTHY AMERICANS ACT SECTION BY SECTION

Section 1— Short Title and Table of Contents

Section 2—Findings

Section 3—Definitions

TITLE I: HEALTHY AMERICANS PRIVATE INSURANCE PLANS

Subtitle A—Guaranteed Private Coverage

Section 101: Guarantee of Healthy Americans Private Insurance Coverage: Within 2 years of enactment States must create a system as outlined in the bill to provide individuals the opportunity to purchase a Healthy Americans Private Insurance (HAPI) plan that meets the requirements of the Act.

Section 102: Individual Responsibility to Enroll: Adults (over age 19, U.S. citizens, not incarcerated) must enroll themselves and dependent children in a plan offered through the state-wide Health Help Agency (HHA) unless they provide evidence of enrollment or coverage through Medicare, a health insurance plan offered by the Department of Defense, an employee benefit plan through a former employer (i.e. retiree health plans), a qualified collective bargaining agreement, the Department of Veterans Affairs, or the Indian Health Service.

Religious Exemption: If a person opposes for religious reasons to purchasing health insurance the requirement may be waived.

Dependent Children: Each adult has the responsibility to enroll each child in a plan. Dependent children include individuals up to age 24 claimed by their parents for deductions in the tax code.

Penalty for Failure to Purchase Coverage: If an individual fails to purchase coverage and does not meet the exceptions or the religious exemption, then a financial penalty will be assessed. The penalty is calculated by multiplying the number of uncovered months times the weighted average of the monthly premium for a plan in the person's coverage class and coverage area, plus 15 percent. Payments will be made to the HHA of the State in which the person resides. That agency also may establish a procedure to waive the penalty if the penalty poses a hardship. Each State shall determine appropriate mechanisms to enforce the requirement that individuals be enrolled, but the enforcement cannot be the revocation or ineligibility of coverage.

Subtitle B—Standards for Healthy Americans Private Insurance Coverage

Section 111: Healthy Americans Private Insurance Plans: At least two plans that meet the requirements of the Act must be offered through the Health Help Agency in each State. The offerings permitted through Health Help include several options: (1) a plan similar to the Blue Cross Blue Shield Standard Plan provided under the Federal Employees Health Benefit Program as of January 1, 2007; (2) plans with additional benefits added to the standard plan so long as those benefits are priced and displayed separately; and (3) actuarial equivalent plans to the standard plan. In addition, plans must provide benefits for wellness programs; incentives to promote wellness; provide coverage for catastrophic medical events resulting in the exhaustion of lifetime limits; create a health home for the covered individual or family; ensure that as part of a first visit with a primary care physician, a care plan is developed to maximize the health of the individual through wellness and prevention activities; provide for comprehensive disease prevention, early detection and management; and provide for personal responsibility contributions at the time services are administered except for preventive items or services for early detection.

Family Planning: A health insurance issuer must make available supplemental coverage for abortion services that may be purchased in conjunction with a HAPI plan or an actuarially equivalent HAPI.

Actuarial Equivalent Plans: Actuarial equivalent plans have to have a set of core benefits that include preventive items and services; inpatient and outpatient hospital services; physicians' surgical and medical services; and laboratory and X-ray services. Like the other HAPI plans, actuarial equivalent plans cannot charge copays for prevention and chronic disease management items or services.

Coverage Classes: There will be the following coverage classes: (1) individual; (2) married couple or domestic partnership (as determined by a State) without dependent children; (3) coverage of an adult individual with 1 or more dependent children; (4) coverage of a married couple or domestic partnership as determined by a State with one or more dependent children.

Premium Determinations: Community rating or adjusted community rating principles established by the State will be used. States may permit premium variations based only on geography, smoking status, and family size. States may determine to have no variations.

A State shall permit a health insurance issuer to provide premium discounts and other incentives to enrollees based on participation in wellness, chronic disease management, and other programs designed to improve the health of participants.

Limitations: Age, gender, industry, health status or claims experience may not be used to determine premiums.

Section 112: Specific Coverage Requirements: This section requires existing provisions of law currently applied to group health markets to be applied to the plans offered through Health Help Agencies including: protections for coverage of pre-existing conditions; guaranteed availability of coverage; guaranteed renewability of coverage; prohibition of discrimination based on health status; coverage protections for mothers and newborns, mental health parity, and reconstructive surgery following a mastectomy; and prohibition of discrimination on the basis of genetic information.

This section also states that a HAPI plan shall not establish rules for eligibility for enrollment based on genetic information, and premiums and personal responsibility payments cannot be adjusted based on genetic information. A plan cannot request or require an individual to have a genetic test.

Section 113: Updating Healthy Americans Private Insurance Plan Requirements: The Secretary of Health and Human Services (HHS) shall create a 15-person advisory committee that will report annually to Congress and the Secretary concerning modifications to benefits, items and services. The committee members will include a health economist; an ethicist; health care providers including nurses and other non-physician providers; health insurance issuers; health care consumers; a member of the U.S. Preventive Services Task Force; and an actuary.

Subtitle C—Eligibility for Premium and Personal Responsibility Contribution Subsidies

Section 121: Eligibility for Premium Subsidies: Individuals and families with modified adjusted gross incomes of 100% of poverty ($9,800 individual, $20,000 for a family of four) and below will be eligible for a full subsidy with which to purchase health insurance. For individuals and families with income between 100% of poverty and 400% of poverty ($39,200 for an individual, $52,800 for a couple and $80,000 for a family of four), subsidies will be provided on a sliding scale.

[Note: To calculate the subsidy level, the individual or family would first subtract the health deductions and a deduction for children in the family to determine the modified adjusted gross income. See deductions in Section 664.]

Individuals have 60 days to notify the HHA that there has been a change in income which may make them eligible or ineligible for the subsidy. States may also develop other mechanisms to ensure individuals do not have a break in coverage due to a catastrophic financial event.

Section 122: Eligibility for Personal Responsibility Contribution Subsidies:

Full subsidy: Individuals who have a modified adjusted gross income below 100 percent of poverty will receive a subsidy amount equal to the full amount of any personal responsibility contributions.

Partial subsidy: For individuals with modified adjusted gross incomes at or above 100 percent of poverty an HHA may provide a subsidy equal to the amount of any personal responsibility contributions the person incurs.

Section 123: Definitions and Special Rules:

The term modified adjusted gross income means adjusted gross income as defined in the Internal Revenue Code increased by the amount of interest received during the year and the amount of any Social Security benefits received during the taxable year.

Taxable year to be used to determine modified adjusted gross income is determined by the individual's most recent income tax return and other information the Secretary may require.

Poverty Line is the meaning given in the Community Health Services Block Grant.

The Secretary shall promulgate regulations to be used by the HHAs to calculate premium subsides and personal responsibility subsidies for individuals whose modified adjusted gross income is significantly lower than for the previous year being used to calculate the premium subsidy.

Special Rule for Unlawfully Present Aliens: Subsidies may not go to adult illegal aliens.

Special Rule for Aliens: If an alien owes either a premium payment or a penalty, the alien's visa may not be renewed or adjusted.

Bankruptcy: Debts created by failing to pay premiums are not dischargeable through bankruptcy.

Subtitle D—Wellness Programs

Section 131: Requirements for Wellness Programs:

Defining Wellness: Wellness programs must consist of a combination of activities designed to increase awareness, assess risks, educate and promote voluntary behavior change to improve the health of an individual, modify his or her consumer health behavior, enhance his or her personal wellbeing and productivity, and prevent illness and injury.

Discounts on premiums: Individuals who participate successfully in approved wellness programs are eligible for a discounted premium, including rewarding parents if their child participates in an approved wellness program. Determinations concerning successful participation by an individual in a wellness program shall be made by the plan based on a retrospective review of the activities the individual participated in and the plan may require a minimum level of successful participation.

A plan may choose to provide discounts on personal responsibility contributions.

Wellness programs approved by the insurer must be offered to all enrollees and permit enrollees an opportunity to meet a reasonable alternative participation standard if it is medically inadvisable to attempt to meet the initial program standard. Participation in wellness programs cannot be used as a proxy for health status.

To be an approved wellness program, the program must be designed to promote good health and prevent disease, is approved by the HAPI plan, and is offered to all enrollees.

Employers may deduct the costs of offering wellness programs or worksite health centers.

TITLE II: HEALTHY START FOR CHILDREN

Subtitle A—Benefits and Eligibility

Section 201: General Goal and Authorization of Appropriations for HAPI Plan Coverage for Children: The general goal of Healthy Start is to ensure all children receive health coverage that is good quality, affordable and includes prevention-oriented benefits.

Funds needed for this section are to be appropriated.

If a child is in a family with an income of 300% or below and the child does not have coverage, Healthy Start shall ensure the child is enrolled in a plan. The States and insurers shall create a separate class of coverage for children not enrolled in a plan by an adult. A child is defined as those under the age of 18 or in the case of foster care, under the age of 21.

Section 202: Coordination of Supplemental Coverage under the Medicaid Program to HAPI Plan Coverage for Children: If a child was receiving services through Medicaid that are not offered through the private coverage offered through Health Help, Medicaid will continue to provide that assistance. This includes Early Periodic Screening Diagnosis and Treatment (EPSDT) services.

Subtitle B—Service Providers

Section 211: Inclusion of Providers under HAPI Plans: Children receiving care though school based health centers, other centers funded through Public Health Service Act, rural health clinics or an Indian Health Service facility will be provided services at no cost or HAPI plans will reimburse the providers for the services.

Section 212: Use of, and Grants for, School Based Health Centers: Creates and defines school based health centers and provides for grants to develop more school based health centers.

School based health centers must be located in elementary or secondary schools, operated in collaboration with the school in which the center is located; administered by a community-based organization including a hospital, public health department, community health center, or nonprofit health care agency. The school based health center must provide primary health care services including health assessments, diagnosis and treatment of minor acute or chronic conditions and Healthy Start benefits; and mental health services. Services must be available when the school is open and through on call coverage. Services are to be provided by appropriately credentialed individuals including nurse practitioner, physician assistant, a mental health professional, physician or an assistant. Centers must use electronic medical records by January 1, 2010. In addition, the centers may also provide preventive dental services consistent with State licensure law through dental hygienists or dental assistants.

School based health centers may provide services to students in more than one school if it is determined to be appropriate.

A parent must give permission for the child to receive care in a school based health center. Centers may seek reimbursement from a third party payer including HAPI plans. Funds received from third party payer reimbursement shall be allocated to the center in which the care was provided.

Development Grants: The Secretary shall provide grants to local school districts and communities for the establishment and operation of school based health centers. The Secretary shall give priority to applicants who will establish a school based health center in medically underserved areas or areas for which there are extended distances between the school involved and appropriate providers of care for children; services students with the highest incidence of unmet medical and psycho social needs; and can demonstrate that funding state, local or community partners have provided at least 50 percent of the funding for the center to ensure the ongoing operation of the center.

Federal Tort Claims Act: A health care provider shall have malpractice coverage through the Federal Tort Claims Act for services provided through a school based health center.

TITLE III: BETTER HEALTH FOR OLDER AND DISABLED AMERICANS

Subtitle A—Assurance of Supplemental Medicaid Coverage

Section 301: Coordination of Supplemental Coverage under the Medicaid Program for Elderly and Disabled Individuals: The Secretary shall provide guidance to States and insurers that takes into account the specific health care needs of elderly and disabled individuals who receive Medicaid benefits so that Medicaid may provide services not provided by HAPI plans.

Subtitle B—Empowering Individuals and States To Improve Long-Term Care Choices

Section 311: New, Automatic Medicaid Option for State Choices for Long-Term Care: If a State decides to do a waiver similar to the Vermont waiver which allows individuals to have access to home and community based services, so long as the State meets criteria specified, the State may automatically implement the program.

Section 312: Simpler and More Affordable Long-Term Care Insurance Coverage: This section creates Medigap-like models for tax qualified long term care policies and adds additional consumer protections.

A Qualified Long Term Care Plan is a plan that meets the standards and requirements developed by either the National Association of Insurance Commissioners (NAIC) or by federal regulations.

Development of Standards and Requirements: Within 9 months after the date of enactment, the NAIC should adopt a model regulation to regulate limitations on the groups or packages of benefits that may be offered under a long term care insurance policy; uniform language and definitions; uniform format to be used in the policy with respect to benefits; and other standards required by the Secretary of HHS.

If NAIC does not adopt a model regulation with the 9-month period, the Secretary shall promulgate regulations within 9 months that do the same as the above section. In developing standards and requirements, the Secretary shall consult with a working group of representatives of long term care insurers, beneficiaries and consumer groups, and other individuals.

Limitations on Groups and Packages of Benefits: The model regulation or federal regulation shall provide for the identification of a core group of basic benefits common to all policies and the total number of different benefit packages and combination of benefits that maybe offered as a separate benefit package may not exceed 10.

The objectives that need to be balanced in developing the packages are: to simplify the market to facilitate comparisons among policies; avoiding adverse selection; provide consumer choice; provide market stability and promote competition.

The requirements would go into effect no later than one year after the date NAIC or the Secretary adopts the standards.

Required State Legislation: State legislatures would adopt the standards.

Additional Consumer Protections: This section amends the 1993 NAIC model regulation and model Act to require additional consumer protections for qualified long term care policies concerning, guaranteed renewal or noncancelability; prohibitions on limitations and exclusions, continuation or conversion of coverage, unintentional lapse, probationary periods, preexisting conditions, and other issues.

Any person selling a long term care insurance policy shall make available for sale a policy with only the core group of basic benefits.

TITLE IV: HEALTHIER MEDICARE

Subtitle A—Authority To Adjust Amount of Part B Premium To Reward Positive Health Behavior

Section 401: Authority to Adjust Amount of Medicare Part B Premium to Reward Positive Health Behavior: The Secretary may adjust Part B premiums for an individual based on whether or not the individual participates in healthy behaviors, including weight management, exercise, nutrition counseling, refraining from tobacco use, designating a health home, and other behaviors determined appropriate by the Secretary. In adjusting the Part B premium, the Secretary

must ensure budget neutrality and the aggregate must be equal to 25 percent of premium paid (as in current law).

Subtitle B—Promoting Primary Care for Medicare Beneficiaries

Section 411: Primary Care Services Management Payment: This section requires the Secretary to create a primary care management fee for providers who are designated the health home of a Medicare beneficiary and who provide continuous medical care, including prevention and treatment, and referrals to specialists. This section is cross referenced in the chronic care disease management section so that primary care physicians providing chronic disease management may receive the primary care services management fee for those services. The amount of the payment will be determined by the Secretary in consultation with MedPAC.

Requirement for Designation as a Health Home: The management fee shall be provided if the beneficiary has designated the provider as a health home. A health home is a provider that a Medicare beneficiary has designated to monitor the health and health care of the senior.

Subtitle C—Chronic Care Disease Management

Section 421: Chronic Care Disease Management: This section requires Medicare to have a chronic disease management program available to all Medicare beneficiaries no later than January 1, 2008. The program must cover the 5 most prevalent diseases. Physicians who are not primary care providers, but do provide chronic disease management may receive an additional payment for providing chronic disease management. The fee will be determined by the Secretary in consultation with MedPAC.

The Secretary shall establish procedures for identifying and enrolling Medicare beneficiaries who may benefit from participation in the program.

Section 422: Chronic Care Education Centers: This section creates Chronic Care Education Centers to serve as clearinghouses for information on health care providers who have expertise in the management of chronic disease.

Subtitle D—Part D Improvements Chapter 1

Section 431: Negotiating Fair Prices for Medicare Prescription Drugs (based on Snowe-Wyden MEND bill): This section provides the Secretary with authority to negotiate prices with manufacturers of prescription drugs. The Secretary must negotiate for fall back plans and if a plan requests assistance. However, the authority to negotiate is not limited to these two scenarios. Specifies no uniform formulary or price setting is permitted. Savings are to go towards filling the coverage gap or deficit reduction.

Section 432: Process for Individuals Entering the Medicare Coverage Gap to Switch to a Plan that Provides Coverage in the Gap (based on Snowe-Wyden Lifeline Act to permit people to change plans if they hit the donut hole): Permits individuals to change plans if they hit the coverage gap. In addition, the section requires the Secretary to notify individuals they are getting close to the coverage gap and what their options are. This provision would sunset 5 years after enactment.

Subtitle E—Improving Quality in Hospitals for All Patients

Section 441: Improving Quality in Hospitals for All Patients: Within 2 years after enactment, hospitals must demonstrate to accrediting bodies improvements in quality control that include: rapid response teams; heart attack treatments; procedures that reduce medication errors; infection prevention; procedures that reduce the incidence of ventilator-related illnesses; and other elements the Secretary wishes to add.

Within 2 years after enactment, the Secretary shall convene a panel of independent experts to ensure hospitals have state of the art quality control that is updated on an annual basis.

Subtitle F—End-of-Life Care Improvements

Section 451: Patient Empowerment and Following a Patient's Health Care Wishes: Within 2 years after enactment, health care facilities receiving Medicare funds must provide each patient with a document designed to promote patient autonomy by documenting the patient's treatment preferences and coordinating these preferences with physician orders. The document must transfer with the patient from one setting to another; provide a summary of treatment preferences in multiple scenarios by the patient or the patient's guardian and a physician or other practitioner's order for care; is easy to read in an emergency situation; reduces repetitive activities in complying with the Patient Self Determination Act; ensures that the use of the document is voluntary by the patient or the patient's guardian; is easily accessible in the patient's medical chart and does not supplant State health care proxy, living wills or other end-of-life care forms.

Section 452: Permitting Hospice Beneficiaries to Receive Curative Care: Changes the current Medicare requirement that to choose hospice an individual must give up curative care. Instead, an individual may continue curative care while receiving hospice.

Section 453: Providing Beneficiaries with Information Regarding End-of-Life Care Clearinghouse: When signing up for Medicare, the Secretary shall refer people to the clearinghouse described in this Act.

Section 454: Clearinghouse: The Secretary shall establish a national toll-free information clearinghouse that the public may access to find out State-specific information regarding advance directives and end-of-life care decisions. If such a clearinghouse exists and is administered by a not-for-profit organization the Secretary must support that clearinghouse instead of creating a new one.

SUBTITLE G—ADDITIONAL PROVISIONS

Section 461: Additional Cost Information: The Secretary of HHS shall require Medicare Advantage Organizations to aggregate claims information into episodes of care and to provide the information to the Secretary so costs for specific hospitals and physicians may be measured and compared. The Secretary shall make the information public on an annual basis.

Section 462: Reducing Medicare Paperwork and Regulatory Burdens: Not later than 18 months after the date of enactment, the Secretary shall provide to Congress a plan for reducing regulations and paperwork in the Medicare program. The plan shall focus initially on regulations that do not directly enhance the quality of patient care provided under Medicare.

TITLE V: STATE HEALTH HELP AGENCIES

Section 501: Establishment: Each state will establish a Health Help Agency to administer HAPI plans. States must establish an HHA in order to get transition payments to develop them.

Section 502: Responsibilities and Authorities: Health Help Agencies shall promote prevention and wellness through education; distribution of information about wellness programs; making available to the public the number of individuals in each plan that have chosen a health home; and promoting the use and understanding of health information technology.

Enrollment Oversight: Each HHA shall oversee enrollment in plans by: providing standardized unbiased information on plans available; administering open enrollment periods; assisting changes required by birth, divorce, marriage, adoption or other circumstances that may affect the plan a person chooses; establishing a default enrollment process; establishing procedures for hospitals and other providers to report individuals not enrolled in a plan; ensuring enrollment of all individuals; developing standardized language for plan terms and conditions to be used; providing enrollees with a comparative document of HAPI plans; and assisting consumers in choosing a plan by publishing loss ratios, outcome data regarding wellness programs, and disease detection and chronic care management programs categorized by health insurer.

The HHA will determine and administer subsidies to eligible individuals and collect premium payments made by or on behalf of individuals and send the payments to the plans.

HHAs shall empower individuals to make health care decisions by providing State-specific information concerning the right to refuse treatment and laws relating to end-of-life care decisions; and by providing access to State forms.

Each HHA will establish plan coverage areas for the State.

States that share one or more metropolitan statistical areas may enter into agreements to share responsibilities for administration.

States will have to work with the Secretary of HHS to ensure transition from Medicaid and SCHIP is orderly and that individuals receiving other benefits from Medicaid continue to do so.

Section 503: Appropriations for Transition to State Health Help Agencies: States will receive federal funds to establish HHAs for two full fiscal years. States may assess insurers for administrative costs of running their HHAs.

TITLE VI—SHARED RESPONSIBILITIES

Subtitle A—Individual Responsibilities

Section 601: Individual Responsibility to Ensure HAPI Plan Coverage: Individuals must enroll themselves and their children in a plan during open enrollment periods; submit documentation to the HHA to determine premium and personal responsibility contribution subsidies; pay the required premium and personal responsibility contributions; and inform the HHA of any changes that affect family status or residence.

Subtitle B—Employer Responsibilities

Section 611: Health Care Responsibility Payments: Reorders and changes the IRS code.

Subchapter A: Employer Shared Responsibility Payments

Section 3411: Payment Requirement: Employer Shared Responsibility Payments: Every Employer must make an employer shared responsibility payment (ESR) for each calendar year in the amount equal to the number of full time equivalent employees employed by the employer during the previous year multiplied by a percentage of the average HAPI plan premium amount. The percentage used is determined by size and revenue per employee.

Once in effect, the percentages employers would pay are:

Large employers:
0–20th percentile 17%
21st–40th percentile 19%
41st–60th percentile 21%
61st–80th percentile 23%
81st–99th percentile 25%
Small employers:
0–20th percentile 2%
21st–40th percentile 4%

41st–60th percentile 6%
61st–80th percentile 8%
81st–99th percentile 10%

At the beginning of each calendar year, the Secretary in consultation with the Secretary of Labor shall publish a table based on a sampling of employers to be used in determining the national percentile for revenue per employee amounts.

Transition Rates: Employers who offered health insurance prior to enactment will contribute ''make good'' payments to their employees. The payments will be equal to the cash value of the health insurance provided and the amount will be added to the employee's wages. These employers will not be required to make any other payments in the first two years.

If an employer did not provide health insurance to employees prior to this legislation, the employer shared responsibility payment for the first year will be equal to one-third of the amount otherwise required and the payment for the second year will be two thirds of the amount required.

Employer Shared Responsibility Credit: The Secretary may provide a credit to private employers who provided health insurance benefits greater than the 80th percentile of the national average in the 2 years prior to enactment, can demonstrate the benefits provided encouraged prevention and wellness activities and continue to provide wellness programs.

Section 3412: Instrumentalities of the United States: State and local governments must make employer shared responsibility payments.

Subchapter B: Individual Shared Responsibility Payments

Section 3421: Amount of Payment: Every individual shall pay an amount equal to the premium amount they owe.

Section 3422: Deduction of Individual Shared Responsibility Payment from Wages: Employers may deduct the amount of the payment for premiums from their employees' wages.

Subchapter C: General Provisions

Section 3431: Definitions and Special Rules: Provides definitions.

The average HAPI plan premium used to compute employer responsibility payments will be a simple average of all four premium classes (individuals, married, head of household and family)

All individuals who perform work for an employer for more than three months in the previous calendar year and who meet the definition of common law employee, either full or part time, will be counted toward the employer's total employees when determining the employer shared responsibility payments.

Section 3431: Definitions and Special Rules: Provides definitions

Section 3432: Labor Contracts: In general these provisions do not apply to collective bargaining agreements until the earlier of 7 years after the date of enactment or the date the collective bargaining agreement expires.

Section 612: Distribution of Individual Responsibility Payments to HHAs: The Treasury will provide to each HHA an amount equal to the amount of individual shared responsibility payments made through the tax code by each eligible individual.

Subtitle C—Insurer Responsibilities

Section 621: Insurer Responsibilities: To offer a HAPI plan through an HHA, insurers will be required to: implement and emphasize prevention, early detection and chronic disease management; ensure wellness programs are available; demonstrate how provider reimbursement methodology achieves quality and cost efficiency; ensure a physical and a care plan are available to the individual; ensure enrollees have the opportunity to designate a health home and make public how many enrollees have designated a health home; create a medical record if the patient wants one; comply with loss ratios established; use common claims form and billing practices; make administrative payments the State requires for the operation of its HHA; provide discounts and incentives for the parent if the child participates in a wellness program; report outcome data on wellness programs, disease detection and chronic care management, and loss ratio information; send large hospital bills to patients with a contact name so the patient can contact a person to discuss questions or complaints; and provide HHA with information concerning the plans offered.

Insurers must use standardized common claim forms prescribed by the State HHA chronic care programs offered must help provide early identification and management. Each program will use a uniform set of clinical performance standards.

Insurers must report performance and outcomes of chronic care management programs and loss ratios. Loss ratios will be defined by the Secretary in consultation with NAIC, consumers, and insurers.

Defines administrative expenses as including all taxes, reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit.

The cost of personnel, equipment and facilities directly used in the delivery of health care services, payments to HHAs and the cost of overseeing chronic disease management programs and wellness programs are not included in the definition of administrative costs.

Subtitle D—State Responsibilities

Section 631: State Responsibilities: States must: designate or create a Health Help Agency; ensure HAPI plans are sold through the HHA and comply with requirements (there must be at least two HAPI plans offered); develop mechanisms for enrollment and the collection of premiums; ensure enrollment and develop methods to check on enrollment status; implement mechanisms to enforce the individual responsibility to purchase coverage (but this may not include revocation of insurance); and implement a way to automatically enroll individuals who are not covered and seek care in emergency departments.

States will continue to apply State law on consumer protections and licensure.

States must continue a maintenance of effort so they are required to contribute 100 percent of what they spent on health services prior to enactment.

Section 632: Empowering States to Innovate through Waivers: A State may be granted a waiver if the legislature enacts legislation or the State approves through ballot initiative a plan to provide heath care coverage that is at least as comprehensive as required under a HAPI plan. If the State submits a waiver to the Secretary, the Secretary must respond no later than 180 days and if the Secretary refuses to grant a waiver, the Secretary must notify the State and Congress about why the waiver was not granted.

Subtitle E—Federal Fallback Guarantee Responsibility

Section 641: Federal Guarantee of Access to Coverage: If a State does not establish an HHA and have a system up within two years, the Secretary shall establish a fallback plan so individuals can still receive a HAPI plan.

Subtitle F—Federal Financing Responsibilities

Section 561: Appropriation for Subsidy Payments: Appropriations will be made each year to fund the insurance premium subsides.

Section 652: Recapture of Medicare and 90 Percent of Medicaid Federal DSH Funds to Strengthen Medicare and Ensure Continued Support for Public Health Programs: All of Medicare DSH stops and remains in the Part A Trust Fund.

Medicaid DSH continues at 10 percent of current levels. The amount not spent is put into a new trust fund, the ''Healthy Americans Public Health Trust Fund.''

Section 9511: Healthy Americans Public Health Trust Fund: The Treasury shall establish a trust fund in which the funds that would have been spent on Medicaid DSH will now go. This trust fund will be used only for premium and personal responsibility payment subsidies and to States for a bonus payment if they adopt certain medical malpractice reforms. Any additional amounts will go toward reducing the federal budget deficit.

Subtitle G—Tax Treatment of Health Care Coverage Under Healthy Americans Program; Termination of Coverage Under Other Governmental Programs and Transition Rules for Medicaid and SCHIP

Part 1: Tax Treatment of Health Care Coverage Under Healthy Americans Program

Section 661: Limited Employee Income and Payroll Tax Exclusion for Employer Shared Responsibility Payments, Historic Retiree Health Contributions, and Transitional Coverage Contributions: The following payments made by employers are not taxable as income to their employees: (1) shared responsibility payments by employers; (2) payments for coverage of retirees under existing retiree health plans; (3) payments for continuing employer-provided health plans under existing collective bargaining agreements; and (4) payments for employer-provided coverage for long-term care.

Section 662: Exclusion for Limited Employer-Provided Health Care Fringe Benefits: The value of employer-provided wellness programs and on-site first aid coverage for employees is not taxable as income to the employees.

Section 663: Limited Employer Deduction for Employer Shared Responsibility Payments, Retiree Health Contributions and other Health Care Expenses: Limits the current employer deduction for the costs of employee health care coverage to the following: (1) shared responsibility payments made by employers; (2) coverage of retirees under existing retiree health plans; (3) continuing employer-provided health plans under existing collective bargaining agreements; (4) employer-provided wellness programs; and (5) on-site first aid coverage for employees.

Section 664: Health Care Standard Deduction: Creates a new Health Care Standard Deduction. Taxpayers can claim this deduction and reduce the amount they pay in taxes whether they file an itemized tax return or take the standard deduction. The amount of the deduction a taxpayer can claim depends on the class of health care coverage the taxpayer has. The deduction is indexed to the consumer price index with the deduction amounts initially set as follows:

Individual coverage—$6,025

Married couple or domestic partnership coverage—$12,050

Unmarried individual with dependent children—$8, 610 plus $2,000 for each dependent child

Married couple or domestic partnership (as determined by a State) with dependent children—$15,210 plus $2,000 for each dependent child

The deduction can be claimed by individuals and families with incomes greater than the poverty line. Both the health care and the healthy child deduction are phased in starting from 100–400 percent of poverty. The deduction begins phasing out starting at $62,500 ($125,000 in the case of a joint return) and is fully phased out at $125,000 ($250,000 in the case of a joint return). The deduction will be adjusted for inflation

Section 665: Modification of Other Tax Incentives to Complement Healthy Americans Program: Sunsets the following tax breaks for health care: tax credit for health insurance costs of individuals; coverage of health care benefits under ''cafeteria plans''; and Archer Medical Savings Accounts. This section also allows Health Savings Accounts in conjunction with high deductible Healthy Americans Private Insurance plans and long-term care benefits to be provided tax-free to workers through cafeteria plans.

Section 666: Termination of Certain Employer Incentives When Replaced by Lower Health Care Costs: Beginning 2 years after enactment, terminates tax provisions relating to income attributable to domestic production activities, relating to tax-exempt status of voluntary employees' beneficiary associations, and relating to inventory property sales source rule exception, and the deferral of active income of controlled foreign corporations.

Part II: Termination of Group Coverage under other Governmental Programs and Transition Rules for Medicaid and SCHIP

Sections 671–673: eliminates group coverage, FEHBP, Medicaid (except for its wrap around and long term care functions) and SCHIP.

TITLE VII: OTHER PROVISIONS

Subtitle A—Effective Health Services and Products

Section 701: One Time Disallowance of Deduction for Advertising and Promotional Expenses for Certain Prescription Pharmaceuticals: If a drug is new and on the market, there is no tax deduction for advertising unless it is being studied for comparison effectiveness. If the drug is already on the market it must inform consumers that a generic will be on the market if the drug is coming off patent.

Section 702: Enhanced New Drug and Device Approval: Drugs and devices get additional exclusivity or additional patent protection if they submit comparison effectiveness as part of their application to the Food and Drug Administration.

Section 703: Medical Schools and Finding What Works in Health Care: Medical schools and other researchers may post on a website run by Agency Healthcare Research and Quality (AHRQ) evidence-informed best practices. AHRQ will run a pilot program to find ways to get that information into the curricula of medical schools.

Section 704: Finding Affordable Health Care Providers Nearby: Creates a website so individuals can find affordable high quality providers by zip code. The website can begin with the providers who report under pay for performance efforts and then be broadened out to include all providers using uniform care standards developed in consultation with Quality Improvement Organizations (QIOs).

The affordability standard would be developed by the Secretary in consultation with insurers.

Subtitle B—Other Provisions to Improve Health Care Services and Quality

Section 711: Individual Medical Records: Individuals own their medical records.

Section 712: Bonus Payment for Medical Malpractice Reform: If a State adopts certain reforms the State may get additional funds. Those reforms are: (1) require an individual who files a malpractice action in state court have the facts of their case reviewed by a panel with not less than one qualified medical expert chosen in consultation with the State Medicare quality improvement organization or physician specialty whose expertise is appropriate for the case; not less than one legal expert and not less than one community representative to verify that a malpractice claim exists; (2) permit an individual to engage in voluntary non-binding mediation with respect to the malpractice claim prior to filing an action in court; (3) impose sanctions against plaintiffs and attorneys who file frivolous medical malpractice claims in courts; (4) prohibit attorneys who file three or more medical malpractice actions in state courts from filing others in state courts for a period of 10 years; and provides for the application of presumption of reasonableness if the defendant establishes that he or she followed accepted clinical practice guidelines established by the specialty or listed in the National Guideline clearinghouse.

The bonus payments must be used to carry out activities related to disease and illness prevention and for children's health care services.

TITLE VIII: CONTAINING MEDICAL COSTS

Section 801: Cost-Containment Results of the Healthy Americans Act: Summarizes what in the bill contains costs.

THE HEALTHY AMERICANS ACT—AFFORDABLE HEALTH CARE FOR EVERY AMERICAN

Worker Profiles	Current Health System	Wyden Plan
Fabulous Clean, janitor, has $25,000/year income; married with 2 children; family insured through employer.	Pays $2,000 in premiums; Tax savings: $500 (not taxed on employer's $5,000 contribution). Net cost:$1,500	Pays $1,200 in subsidized premiums; Salary increase: $5,000; Additional taxes after the new health care tax deduction: $150 Net savings:$3,650
Sally Forth, secretary, has $40,000/year income; married with 2 children; family insured through employer.	Pays $2,500 in premiums; Tax savings: $1,500 (not taxed on employer's $10,000 contribution). Net cost:$1,000	Pays $3,600 in subsidized premiums; Salary increase: $10,000; Additional taxes after the new health care tax deduction: $60 Net savings:$6,340
Bess Driver, school bus driver, has $55,000/year income; married; couple insured through employer.	Pays $1,000 in premiums; Tax savings: $1,575 (not taxed on employer's $10,500 contribution). Net savings:$575	Pays $8,200 in premiums; Salary increase: $10,500; Tax savings after the new health care tax deduction: $230 Net savings:$2,530
Ann Bankroll, investment banker, has $200,000/year income; married; 2 children; family insured through employer.	Pays $2,500 in premiums; Tax savings: $3,300 (not taxed on employer's $10,000 contribution). Net savings:$800	Pays $10,600 in premiums; Salary increase: $10,000; Additional taxes after the new health care tax deduction: $1,271 Net cost:$1,871
Shirley Needing, waitress, has $15,000/year income; single; no health coverage.	None	Pays $600 in subsidized premiums; Tax savings after new health care tax deduction:: $100 Net cost:$500 ($42/month)
Harold Heart, salesman, has $25,000/year income; married with 2 children; no health coverage.	None available because of preexisting condition.	Pays $600 in subsidized premiums; Tax savings*: $150 Net cost:$450 ($38/month)

THE HEALTHY AMERICANS ACT: WORKING FOR EMPLOYERS

SMALL SERVICE EMPLOYER

Daisy Hills Day Care has 32 employees, 8 are full-time and the other 24 work an average of 20 hours per week. Only the 8 full-time employees are currently eligible for the Daisy Hills health plan, and 6 take advantage of it. The firm pays half of the premium for employees, nothing for family coverage. Daisy Hills's total current health care costs are $10,400 per year, which pays for coverage of only 6 employees. Under the Healthy Americans Act, Daisy Hills would pay a total of $6,208 per year in Employer Shared Responsibility payments. This amount represents 4 percent of the national average essential benefit premium multiplied by 20 full-time equivalent employees.

SMALL RESTAURANT

Doug's Diner has 3 full-time and 9 part-time employees who work an average of 30 hours per week. Doug cannot currently afford to offer health care to his employees. He often loses his best staff to chain restaurants that offer health insurance and is unable to afford insurance for himself and his family on the individual market. This small family business falls into the lowest rate tier under revenue by employee, paying a 2 percent rate. Under the Healthy Americans Act Doug will pay $1,513 per year and he, his family, and all of his employees will have access to affordable health insurance.

MID-SIZE FINANCIAL INSTITUTION

Happy Valley Bank has 1,600 full-time employees and 400 part-time employees who work an average of 25 hours per week. All employees who work over 20 hours per week are offered and take advantage of health care. The firm pays 80 percent of the premiums for individuals and families. Under the current system, Happy Valley's total health care expenditures are $10,200,000 per year. Under the Healthy Americans Act, they will pay a total of $3,589,463 per year. This amount represents 25 percent of the national average essential benefit premium per employee.

MID-SIZED MANUFACTURING FIRM

Allied Industrial has 1,000 full time employees. The firm pays 100 percent of individual premiums and 80 percent of family premiums for all employees. Currently Allied pays $6,100,000 per year in health care premiums and has been seeing 10 percent increases year over year for several years despite the use of a number of cost-control measures. Allied falls into the middle range of companies in revenue per employee, paying the 21 percent rate. Under the Healthy Americans Act, Allied will pay $1,629,890.

LARGE SPECIALTY RETAILER

Acme Game Emporiums is a national specialty retailer with 2,000 full time and 7,000 part time employees who work an average of 22 hours per week. All full time and 4,500 of the part time employees are eligible for and take advantage of Acme's health plan. The firm pays 95 percent of employees' premiums and 60 percent of family premiums. Their current total health care costs are $52,000,000 per year. As a retailer with relatively low revenue per employee, Acme pays the 19 percent rate. Under the Healthy Americans Act, Acme will pay $8,626,351.

By Mr. DORGAN (for himself, Mrs. MURRAY, Ms. MIKULSKI, Mr. AKAKA, Mr. LEAHY, Mr. LEVIN, Mr. KENNEDY, Ms. CANTWELL, Mr. ROCKEFELLER, Mr. KERRY, Mr. INOUYE, Mr. CARDIN, Mrs. BOXER, Mr. LIEBERMAN, Mr. MENENDEZ, Mrs. FEINSTEIN, and Mr. LAUTENBERG):

S. 335. A bill to prohibit the Internal Revenue Service from using private debt collection companies, and for other purposes; to the Committee on Finance.

Mr. DORGAN. Mr. President, today I am joined by Senator MURRAY and 15 of our Senate colleagues in reintroducing legislation to stop the Internal Revenue Service from outsourcing part of

its tax collection responsibilities to private collection companies.

Last fall, the Internal Revenue Service, IRS, ignored objections raised by many Federal policymakers and tax experts, including the IRS's own National Taxpayer Advocate, and moved ahead with its controversial plan to hire private companies to collect Federal tax debts. When the IRS attempted a similar plan in 1996, it failed miserably. The 1996 initiative lost money. Taxpayers were harassed by private debt collectors. In many instances, private debt collectors violated Federal debt collection laws and confidential taxpayer information was not properly secured.

Today, the IRS is planning to share more than 2.5 million taxpayer accounts with up to 12 private collection companies when its new private debt collection plan is fully implemented—even though there is compelling evidence that this new initiative will suffer from many of the same maladies experienced by the IRS and taxpayers in the ill-fated 1996 plan.

IRS Commissioner Everson readily admits that if the IRS hired and used trained IRS employees for this purpose, not private collectors, far more revenues would be deposited in the U.S. Treasury fund. Yet the IRS is ready to hand out very large commissions ranging from 21 to 24 percent to private firms for every dollar they collect, when internal IRS reports suggest that it would cost the Federal Government just 3 pennies on a dollar to have trained IRS employees collect tax debts that are owed.

Stated another way, the IRS anticipates spending well over $300 million in commission payments to private firms to collect an estimated $1.4 billion in tax debt over 10 years, when internal IRS reports suggest that spending $296 million to hire new IRS collectors could raise some $9.5 billion annually. At a time of exploding deficits and Federal debt, the IRS's use of private debt collectors is an inexcusable waste of taxpayer money.

In fact, the Government Accountability Office, GAO, released a report last September revealing that the cost of implementing the IRS's initial phases of its tax debt collection initiative alone, excluding any commission payments, may actually exceed all of the tax revenues collected by these private collectors by millions of dollars. The IRS plan is riddled with hidden costs. For example, the three companies hired by the IRS in the initial phase of its private collection plan have some 75 employees working on what the IRS has described as relatively easy collection cases. However, at least 65 IRS employees have been tasked to monitor the work of these collectors. So from a revenue collection and efficiency standpoint, it doesn't take a calculator to figure out that IRS private collection plan is not worth the paper it's printed on.

Using private debt collectors is also very troubling because it puts confidential taxpayer information at risk of public disclosure and misuse. Just over two years ago, a Treasury Inspector General for Tax Administration, TIGTA, investigation found that a contractor's employees committed security violations, placing IRS equipment and taxpayer data at risk. In some cases, TIGTA officials found that contractors ''blatantly circumvented IRS policies and procedures even when security personnel had identified inappropriate practices.''

As I've mentioned, the IRS has agreed to pay three private collection firms at the outset of its initiative nearly a quarter for every dollar their employees collect on what the IRS has described as relatively easy cases. The IRS's use of very large commissions to pay private firms for their work on such cases is not only fiscally unsound and a shameful example of government waste, it also increases the potential for overzealous collection practices and the misuse of sensitive taxpayer return information. Private debt collection agencies are driven by profit motives, not public service.

Let me emphasize, once again, one very important point. Everybody needs to pay the taxes they owe. If they do not, however, professional IRS employees, not private collectors in search of profits, should be the ones to ensure that outstanding tax debts are paid. If the IRS now says it needs more resources for tax enforcement and collection activities, then Congress should consider providing them.

I fully agree with the recommendations by the independent Taxpayer Advocacy Panel last summer—and recently echoed by National Taxpayer Advocate Nina Olson in the Taxpayer Advocate's 2006 Annual Report to Congress—that the IRS should terminate its outsourcing of taxpayer debt collection and restrict collection activities to properly trained and proficient IRS employees. Indeed, the IRS should immediately reverse course and indefinitely suspend the implementation of its private debt collection activities.

The House of Representatives voted last year to eliminate funding for this IRS initiative in its version of the Treasury Department spending bill, which was never approved by the full Congress. I will be working with Senator MURRAY and many of our colleagues early in this new Congress to get similar language passed by the full Senate at the first available opportunity.

The IRS should act on its own to stop its use of private debt collectors and save any further expenditures of taxpayer money for this purpose. If it will not, however, I will do everything in my power to put the brakes on this initiative in the U.S. Senate. That's why I urge my colleagues to cosponsor this legislation and help us, as the Taxpayer Advocate has suggested, terminate the IRS's privatization collection initiative ''once and for all.''

By Mr. DURBIN (for himself, Mr. VOINOVICH, Mr. LEVIN, Mr. OBAMA, Mr. BAYH, Mr. KOHL, Ms. STABENOW, and Mr. LUGAR):

S. 336. A bill to require the Secretary of the Army to operate and maintain as a system the Chicago Sanitary and Ship Canal dispersal barriers, and for other purposes; to the Committee on Environment and Public Works.

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

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

S. 336

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Barrier Project Consolidation and Construction Act of 2007''.

SEC. 2. CONSOLIDATION OF BARRIER PROJECTS.

(a) IN GENERAL.—The Chicago Sanitary and Ship Canal Dispersal Barrier Project (referred to in this Act as ''Barrier I'') (as in existence on the date of enactment of this Act), constructed as a demonstration project under section 1202(i)(3) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4722(i)(3)), and the project relating to the Chicago Sanitary and Ship Canal Dispersal Barrier, as authorized by section 345 of the District of Columbia Appropriations Act, 2005 (Public Law 108–335; 118 Stat. 1352) (referred to in this Act as ''Barrier II''), shall be considered to constitute a single project.

(b) ACTIVITIES RELATING TO BARRIER I AND BARRIER II.—

(1) DUTIES OF SECRETARY OF THE ARMY.—The Secretary of the Army (referred to in this Act as the ''Secretary'') shall, at full Federal expense—

(A) upgrade and make permanent Barrier I;

(B) construct Barrier II, notwithstanding the project cooperation agreement with the State of Illinois dated June 14, 2005;

(C) operate and maintain Barrier I and Barrier II as a system to optimize effectiveness;

(D) conduct, in consultation with appropriate Federal, State, local, and nongovernmental entities, a study of a full range of options and technologies for reducing impacts of hazards that may reduce the efficacy of the Barriers; and

(E) provide to each State a credit in an amount equal to the amount of funds contributed by the State toward Barrier II.

(2) APPLICATION OF CREDIT.—A State may apply a credit received under paragraph (1)(E) to any cost-sharing responsibility for an existing or future Federal project with the Corps of Engineers in the State.

(c) FEASIBILITY STUDY.—The Secretary, in consultation with appropriate Federal, State, local, and nongovernmental entities, shall conduct a feasibility study, at full Federal expense, of the range of options and technologies available to prevent the spread of aquatic nuisance species between the Great Lakes and Mississippi River Basins through the Chicago Sanitary and Ship Canal and other aquatic pathways.

(d) CONFORMING AMENDMENT.—Section 345 of the District of Columbia Appropriations Act, 2005 (Public Law 108–335; 118 Stat. 1352) is amended to read as follows:

''SEC. 345. There are authorized to be appropriated such sums as are necessary to carry out the Barrier II project of the project for the Chicago Sanitary and Ship Canal Dispersal Barrier, Illinois, initiated pursuant to

section 1135 of the Water Resources Development Act of 1986 (33 U.S.C. 2309a).''.

By Mr. CONRAD (for himself, Mr. HATCH, Mr. WYDEN, Mr. VITTER, Mr. DORGAN, and Mrs. LINCOLN):

S. 338. A bill to amend title XVIII of the Social Security Act to ensure and foster continued patient quality of care by establishing facility and patient criteria for long-term care hospitals and related improvements under the Medicare program; to the Committee on Finance.

Mr. CONRAD. Mr. President, today I am introducing legislation that would take steps to protect access to long-term care hospitals while ensuring that these institutions are admitting the appropriate type of patients. I am pleased to be introducing the bill along with my colleague, Senator HATCH, and I urge my colleagues to consider cosponsoring this cost-saving proposal.

Long Term Acute Care hospitals, or LTAC hospitals, serve a vital role in the Medicare program by providing care to beneficiaries with clinically complex conditions that need hospital care for extended periods of time. These are patients who are too sick to go home or even to a skilled nursing facility, but are stable enough to be released from an intensive care unit. I am happy to have two of these hospitals in North Dakota, one in Fargo and one in Mandan. Together, these two hospitals employ several hundred people and provide care to thousands of North Dakotans. They are a vital part of the North Dakota continuum of care.

While these hospitals provide important health services to very frail individuals, the Centers for Medicare and Medicaid Services (CMS) has become concerned with the growth in these facilities. In 2006, there were 400 LTAC hospitals, compared to 100 in 1996. In addition, the agency has also expressed concern that some LTAC hospitals are admitting patients that may be better served by nursing homes or another level of care. As a result, CMS has begun to arbitrarily cut LTAC hospital payments across-the-board.

As Chairman of the Budget Committee, I have a unique appreciation for the enormous fiscal challenges that face our country and respect CMS's efforts to reduce growth in Medicare. However, any cuts in spending should be targeted at waste and abuse. We should address the growth in LTAC hospitals, but we also want to ensure that there is a place for patients who truly need long-term hospital stays.

The legislation I'm introducing today is a first step in clarifying Congressional intent and giving CMS clearer definitions of what is and is not a LTAC hospital and what type of patient should be admitted to these facilities. At the heart of this bill is a provision that limits the types of patients who can be admitted to LTAC hospitals to those who truly need the specialized care these facilities provide. LTAC hospitals like those in my state that admit only very sick patients will not be significantly affected. But, by eliminating abuses by those facilities that have been receiving generous payments for patients who do not require this sort of specialized care, this provision of the bill would significantly reduce Medicare spending on LTAC hospitals.

It was not easy for the LTAC hospitals in North Dakota and across the country to support legislation that restricts their payments, but I compliment them for working with me to put forward a constructive public policy proposal. In particular, I want to recognize Custer Huseby, Chief Executive Officer of SCCI Hospital in Fargo. He understands that the status quo is no longer defensible and has fought to put forward a workable solution that maintains access to these vital facilities, where they are appropriate. I also want to thank Chip Thomas and Karen Haskins of the North Dakota Healthcare Association, who have partnered with Mr. Huseby to support this legislation.

Long-term care hospitals serve a vital role in our health care system, and we must protect access to these facilities for those who truly need it. But, we can also take responsible steps to ensure that our federal tax dollars are well spent and directed to the most appropriate level of care. I believe my legislation achieves this balance and urge my colleagues to support this measure.

Mr. HATCH. Mr. President, I am happy to join my colleagues, Senators CONRAD, WYDEN, VITTER, DORGAN and LINCOLN in introducing legislation to create standards for long-term, acute-care (LTAC) hospitals. My home State of Utah has LTAC hospitals located in Salt Lake City, West Valley City and Bountiful.

Let me explain what LTAC hospitals are to my colleagues, and discuss the need for this legislation. A general hospital stay in the United States is about 6 days. In contrast, the average patient stay in an LTAC hospital is 25 days. LTAC hospitals represent one of four post-acute care facilities. Of the four types of post-acute care, LTAC hospitals are the most expensive. And, the number of LTAC hospitals has grown rapidly from 100 to 400 over a 10-year period. These dynamics have led the Centers for Medicare & Medicaid Services (CMS) to push for having certain LTAC patients treated in less costly facilities such as nursing homes or rehabilitation clinics.

Our legislation is premised on the belief that only truly sick patients should go to LTAC hospitals. Less medically-complex patients should be seen at less intensive facilities. S. 338 limits the type of patients who may be treated in LTAC hospitals and, by doing so, it will generate at least $1 billion in savings over the next 5 years.

LTAC hospitals have a role to play in the American continuum of health care. We all agree that there should be a place for patients who truly need long-term hospital stays. In that sense, LTAC hospitals serve an important role. Today, Medicare spending on LTAC hospitals is little more than one percent of total Medicare spending.

Let me conclude by saying that this bill is just one component of a larger debate that we need to have about Medicare post-acute care. LTAC hospitals are one component. Nursing homes and rehabilitation clinics are other components. All long-term care providers need to do a better job in convincing the Congress and Federal regulators why our health care system needs four different types of post-acute facilities.

I urge my colleagues to cosponsor the Conrad-Hatch legislation—it is a good bill and it addresses an important aspect of the long-term health care debate. As baby boomers continue to retire, long-term care will become more and more important to all Americans.

Mr. LEAHY. Mr. President, today I join, again, with a bipartisan group of Senators to introduce a bill to reform our immigration laws concerning foreign agricultural workers. America's farmers are calling for a greater number of legal foreign workers, and an improved system for obtaining those workers. We need to likewise ensure meaningful benefits and protections to the workers who will fill these jobs.

I am especially pleased that measures are included to help dairy farmers, who in my home State of Vermont are an integral part of our economy, our history, and our culture. Indeed, it is difficult to think of the Green Mountain State without conjuring up the image of verdant rolling hills dotted with Holstein cows. The provisions in this bill make the H–2A program more workable for dairy farmers by lengthening the time period a foreign worker may remain in the country, providing a process by which an employer can extend the stay of a worker, and by ensuring that workers may ultimately apply for an adjustment to permanent legal resident status.

The bill we introduce today goes a long way toward reforming our H–2A visa program. Along with measures to help streamline procedures for labor certification by employers, the bill will make it easier for employers to meet their responsibilities to ensure that available agricultural jobs are offered first to domestic workers. The bill also makes the process easier for an employer to apply for an extension to a worker's stay, and makes it easier for a foreign worker to switch jobs during their stay.

The bill includes greater protections for workers, including the requirement that employers meet the same motor vehicle safety standards for H–2A workers that are required for domestic workers. A limited Federal right of action is provided for H–2A workers to enforce the economic benefits provided under the H–2A program, or those provided in writing by their employers.

More flexibility is provided for workers and employers by permitting employers to elect to provide a housing allowance, instead of housing. These are but a few of the positive reforms contained in the bill.

The bill also contains a procedure by which undocumented workers who have been working in agriculture can apply for a ''blue card,'' a system where through consistent employment, a fine, proof of the payment of taxes, and proof of no serious criminal history, an undocumented worker can continue his or her contribution legally, and eventually adjust his or her status. The ''blue card'' program encourages family unification by making special provisions for spouses and children of the card holder. The program also has a numerical cap and the built-in safeguard of a sunset provision.

These reforms are a commonsense response that should help meet the needs of our farmers without burdening them with an unduly, time-consuming procedure for securing legal workers. The bill represents an effort to meet both the needs of agricultural employers while respecting the rights and interests of agricultural workers, and is an example of a bipartisan group of legislators listening and responding to the interests of all parties affected.

I join with other Senators in recognizing the needs of our modern economy, and the needs of the American farmer as well as the rights of the individuals who make up the backbone of many farming operations. Working together we can ensure that no American farmer is put in the position of having to choose between obeying the law and making a living, and that no willing worker is denied a chance to work.

By Mrs. FEINSTEIN (for herself, Mr. CRAIG, Mr. KENNEDY, Mr. MARTINEZ, Mrs. BOXER, Mr. VOINOVICH, Mr. LEAHY, Mr. SPECTER, Mrs. CLINTON, Mr. MCCAIN, Mr. OBAMA, Mr. HAGEL, Mr. SCHUMER, Mr. DOMENICI, Mr. KOHL, Mr. SALAZAR, and Mrs. MURRAY):

S. 340. A bill to improve agricultural job opportunities, benefits, and security for aliens in the United States and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, Senators CRAIG, KENNEDY, MARTINEZ, BOXER, VOINOVICH, and several others are once again introducing legislation that will address the chronic labor shortage in our Nation's agricultural industry. This bill is a priority for me and for the tens of thousands of farmers who are currently suffering—and I hope we will move it forward early in this Congress.

The Agricultural Job Opportunities, Benefits, and Security Act, or AgJOBS, is the product of more than ten years of work. It is a bipartisan bill supported by growers, farmers, and farm workers alike. It passed the Senate last year as part of the comprehensive immigration reform bill last spring in the 109th Congress. It is time to move this bill forward.

The agricultural industry is in crisis. Farmers across the Nation report a twenty percent decline in labor.

The result is that there are simply not enough farm workers to harvest the crops.

The Nation's agricultural industry has suffered. If we do not enact a workable solution to the agricultural labor crisis, we risk a national production loss of $5 billion to $9 billion each year, according to the American Farm Bureau.

California, in particular, will suffer. California is the single largest agricultural State in the Nation. California agriculture accounts for $34 billion in annual revenue. There are 76,500 farms that produce half of the Nation's fruits, vegetables, and nuts from only 3 percent of the Nation's farmland. California farms produce approximately 350 different crops: pears, walnuts, raisins, lettuce, onions, cotton, just to name a few.

Many of the farmers who grow these crops have been in the business for generations. They farm the land that their parents and their grandparents farmed before them.

The sad consequence of the labor shortage is that many of these farmers are giving up their farms. Some are leaving the business entirely. Others are bulldozing their fruit trees—literally pulling out trees that have been in the family for generations—because they do not have the labor they need to harvest their fruit.

Once the trees are gone, they are replaced by crops that do not require manual labor. And our pears, our apples, our oranges will come from foreign sources. The trend is quite clear. If there is not a means to grow and harvest our produce here, we will import produce from China, from Mexico, from other countries who have the labor they need.

We will put American farmers out of business. And there will be a ripple effect felt throughout the economy: in farm equipment, inputs, packaging, processing, transportation, marketing, lending and insurance. Jobs will be lost and our economy will suffer.

The reality is that Americans have come to rely on undocumented workers to harvest their crops for them.

In California alone, we rely on approximately one million undocumented workers to harvest the crops. The United Farm Workers estimate that undocumented workers make up as much as 90 percent of the farm labor payroll. Americans simply will not do the work. It is hard, stooped labor, requiring long and unpredictable hours. Farm workers must leave home and travel from farm to farm to plant, prune, and harvest crops according to the season. We must come to terms with the fact that we rely on an undocumented migrant work force. We must bring those workers out of the shadows and create a legal and enforceable means to provide labor for agriculture. That realization is what led to the long and careful negotiations creating AgJOBS.

The AgJOBS bill is a two part bill. Part one identifies and deals with those undocumented agricultural workers who have been working in the United States for the past 2 years or more. Part two creates a more usable H–2A Program, to implement a realistic and effective guest worker program.

The first step requires undocumented agricultural workers to apply for a ''blue card'' if they can demonstrate that they have worked in American agriculture for at least 150 workdays over the past 2 years. The blue card entitles the worker to a temporary legal resident status. The blue card itself is encrypted and machine readable; it is tamper and counterfeit resistant, and contains biometric identifiers unique to the farm worker.

The second step requires that a blue card holder work in American agriculture for an additional 5 years for at least 100 workdays a year, or 3 years at 150 workdays a year. Blue card workers would have to pay a $500 fine. The workers can travel abroad and reenter the United States and they may work in other, non-agricultural jobs, as long as they meet the agricultural work requirements.

The blue card worker's spouse and minor children, who already live in the United States, may also apply for a temporary legal status and identification card, which would permit them to work and travel. The total number of blue cards is capped at 1.5 million over a five year period and the program sunsets after 5 years. At the end of the required work period, the blue card worker may apply for a green card to become a legal permanent resident.

There are also a number of safeguards. If a blue card worker does not apply for a green card, or does not fulfill the work requirements, that individual can be deported.

Likewise, a blue card holder who commits a felony, three misdemeanors, or any crime that involves bodily injury, the threat of serious bodily injury, or harm to property in excess of $500, cannot get a green card and can be deported.

This program, for the first time, allows us to identify those hundreds of thousands of farm workers who now work in the shadows. It requires the farm workers to come forward and to be identified in exchange for the right to work and live legally in the United States. And it gives farmers the legal certainty they need to hire the workers they need. The program also modifies the H–2A guest worker program so that it realistically responds to our agricultural needs.

Currently, the H–2A program is bureaucratic, unresponsive, expensive, and prone to litigation. Farmers cannot get the labor when they need it.

AgJOBS offers a much-needed reform of the outdated system. The labor certification process, which often takes 60 days or more, is replaced by an ''attestation'' process. The employer can file a fax-back application form agreeing to abide by the requirements of the H–2A program. Approval should occur in 48 to 72 hours. The interstate clearance order to determine whether there are U.S. workers who can qualify for the jobs is replaced by a requirement that the employer file a job notification with the local office of the State Employment Security Agency. Advertising and positive recruitment must take place in the local labor market area.

Agricultural associations can continue to file applications on behalf of members. The statutory prohibition against ''adversely affecting'' U.S. workers is eliminated. The Adverse Effect Wage Rate is instead frozen for 3 years, and thereafter indexed by a methodology that will lead to its gradual replacement with a prevailing wage standard. Employers may elect to provide a housing allowance in lieu of housing if the governor determines that there is adequate rental housing available in the area of employment.

Inbound and return transportation and subsistence is required on the same basis as under the current program, except that trips of less than 100 miles are excluded, and workers whom an employer is not required to provide housing are excluded.

The motor vehicle safety standards for U.S. workers are extended to H–2A workers. Petitions for admission of H–2A workers must be processed and the consulate or port of entry notified within 7 days of receipt. Requirements are the same as current law.

Petitions extending aliens' stay or changing employers are valid upon filing. Employers may apply for the admission of new H–2A workers to replace those who abandoned their work or are terminated for cause and the Department of Homeland Security is required to remove H–2A aliens who abandoned their work. H–2A visas will be secure and counterfeit resistant.

A new limited Federal right of action is available to foreign workers to enforce the economic benefits required under the H–2A program, and any benefits expressly offered by the employer in writing. A statute of limitations of 3 years is imposed.

Finally, lawsuits in State court under State contract law alleging violations of the H–2A program requirements and obligations are expressly preempted. Such State court lawsuits have been the venue of choice for litigation against H–2A employers in recent years.

AgJOBS is the one part of the immigration bill about which there is uniform agreement. Everyone knows that agriculture in America is supported by undocumented workers. As immigration enforcement tightens up, and increasing numbers of people are prevented from crossing the borders or are being deported, the result is our crops go unharvested. We are faced today with a very practical dilemma and one that is easy to solve. The legislation has been vetted over and over again. Senator CRAIG, I, and a multitude of other Senators have sat down with the growers, with the farm bureaus, with the chambers, with everybody who knows agriculture, and they have all signed off on the AgJOBS bill. This is our opportunity to solve a real problem.

I ask my colleagues to join this bipartisan coalition and support this legislation. I also ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 340

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

SECTION 1. SHORT TITLE, TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2007'' or the ''AgJOBS Act of 2007''.

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

SEC. 2. DEFINITIONS.

In this Act:

(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 3121(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) 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 101(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.

TITLE I—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

Subtitle A—Blue Card Status

SEC. 101. REQUIREMENTS FOR BLUE CARD STATUS.

(a) REQUIREMENT TO GRANT BLUE CARD STATUS.—Notwithstanding any other provision of law, the Secretary shall, pursuant to the requirements of this section, 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;

(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 105(b); and

(4) has not been convicted of any felony or a misdemeanor, an element of which involves 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.

(d) TERMINATION OF 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 alien is deportable.

(2) GROUNDS FOR TERMINATION OF BLUE CARD STATUS.—Before any alien becomes eligible for adjustment of status under section 103, 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 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

(B) the alien—

(i) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under section 105(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 required under section 103(a)(1)(A) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in section 103(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) FINE.—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 5-year period beginning on the date of the enactment of this Act.

SEC. 102. 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 103.

(c) TERMS OF EMPLOYMENT.—

(1) PROHIBITION.—No alien granted blue card status may be terminated from employment by any employer during the period of blue card status except for just cause.

(2) TREATMENT OF COMPLAINTS.—

(A) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition of complaints by aliens granted blue card status who allege that they have been terminated without just cause. No proceeding shall be conducted under this paragraph with respect to a termination 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 there is reasonable cause to believe that the alien was terminated from employment without just cause, the Secretary shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service 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 Secretary shall pay the fee and 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 promulgated by 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. If the arbitrator finds that the termination was not for just cause, the arbitrator shall make a specific finding of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order any other remedy, including reinstatement, back pay, or front pay to the affected employee. Not later than 30 days after the date of the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

(D) EFFECT OF ARBITRATION FINDINGS.—If the Secretary receives a finding of an arbitrator that an employer has terminated the employment of an alien who is granted blue card status without just cause, the Secretary shall credit the alien for the number of days or hours of work not performed during such period of termination for the purpose of determining if the alien meets the qualifying employment requirement of section 103(a).

(E) TREATMENT OF ATTORNEY'S FEES.—Each party to an arbitration under this paragraph shall bear the cost of their own attorney's fees for the arbitration.

(F) NONEXCLUSIVE REMEDY.—The complaint process provided for in this paragraph is in addition to any other rights an employee may have in accordance with applicable law.

(G) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employee's current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator's specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to subparagraph (D).

(3) CIVIL PENALTIES.—

(A) IN GENERAL.—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 101(e) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed $1,000 per violation.

(B) LIMITATION.—The penalty applicable under subparagraph (A) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

SEC. 103. 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 subparagraph (B), the alien has performed at least—

(i) 5 years of agricultural employment in the United States for at least 100 work days per year, during the 5-year period beginning on the date of the enactment of this Act; or

(ii) 3 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.

(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 during 3 years of those 4 years and at least 100 work days during the remaining year, during the 4-year period beginning on the date of the enactment of this Act.

(2) PROOF.—An alien may demonstrate compliance with the requirement under paragraph (1) by submitting—

(A) the record of employment described in section 101(e); or

(B) such documentation as may be submitted under section 104(c).

(3) EXTRAORDINARY CIRCUMSTANCES.—In determining whether an alien has met 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) FINE.—The alien pays a fine of $400 to the Secretary.

(b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien granted blue card status an adjustment of status under this section and provide 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) the 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 105(b);

(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.

(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.—

(1) IN GENERAL.—Not later than the date on which an alien's status is adjusted under this section, the alien shall establish that the alien does not owe any applicable Federal tax liability by establishing that—

(A) no such tax liability exists;

(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 on the spouse and minor child of an alien granted any adjustment of status under subsection (a), 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 to that of a lawful permanent resident.

(2) TREATMENT OF SPOUSES 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 (h) of section 101.

(B) TRAVEL.—The derivative spouse and any minor child of an alien granted blue card status may travel outside the United States 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) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS AND REMOVAL.—The Secretary may deny an alien spouse or child adjustment of status under paragraph (1) and may remove such spouse or child under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) if the spouse or child—

(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 105(b);

(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. 104. APPLICATIONS.

(a) SUBMISSION.—The Secretary shall provide that—

(1) applications for blue card status under section 101 may be submitted—

(A) to the Secretary if the applicant is represented by an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) to a qualified designated entity if the applicant consents to the forwarding of the application to the Secretary; and

(2) applications for adjustment of status under section 103 shall be filed directly with the Secretary.

(b) QUALIFIED DESIGNATED ENTITY 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; or

(2) any such other person designated by the Secretary if that Secretary determines such person is qualified and has substantial experience, demonstrated competence, and has a history of long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act (8 U.S.C. 1159, 1160, and 1255), the Act entitled ''An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes'', approved November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note), Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99–603; 100 Stat. 3359) or any amendment made by that Act.

(c) PROOF OF ELIGIBILITY.—

(1) IN GENERAL.—An alien may establish that the alien meets the requirement of section 101(a)(1) or 103(a)(1) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(2) DOCUMENTATION OF WORK HISTORY.—

(A) BURDEN OF PROOF.—An alien applying for status under section 101(a) or 103(a) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days required under section 101(a)(1) or 103(a)(1), as applicable.

(B) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under subparagraph (A) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(C) SUFFICIENT EVIDENCE.—An alien may meet the burden of proof under subparagraph (A) to establish that the alien has performed the days or hours of work required by section 101(a)(1) or 103(a)(1) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(d) 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 subsection (a)(1)(B) if the applicant has consented to such forwarding;

(B) not to forward to the Secretary any such application if the applicant has not consented to such forwarding; and

(C) 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 subtitle to be made by the Secretary.

(e) 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 a 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).

(f) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary or 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 applicant to a qualified designated entity, or any 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);

(B) making any publication in which the information furnished by any particular individual can be identified; or

(C) permitting a person other than 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, that 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 or prosecution, if such information is requested in writing by such entity; or

(B) an official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death 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 application, or any other information 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 101 or an adjustment of status under section 103 has been convicted of a crime at any time may be used or released for immigration enforcement or law enforcement purposes.

(4) CRIME.—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) CRIMINAL PENALTY.—Any person who—

(A) files an application for blue card status under section 101 or an adjustment of status

under section 103 and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same 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) 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(a)(6)(C)(i)).

(h) 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 101 or an adjustment of status under section 103.

(i) APPLICATION FEES.—

(1) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(A) shall be charged for the filing of an application for blue card status under section 101 or for an adjustment of status under section 103; 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 any fee in 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''. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (1)(A).

(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 101 or an adjustment of status under section 103.

SEC. 105. WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.

(a) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under section 103.

(b) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under section 101(a) or an alien's eligibility for adjustment of status under section 103(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 ensure family unity, or if otherwise in the public interest.

(B) GROUNDS THAT MAY NOT BE WAIVED.—Paragraphs (2)(A), (2)(B), (2)(C), (3), and (4) of such section 212(a) may not be waived by the Secretary under subparagraph (A).

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(3) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for blue card status under section 101 or an adjustment of status under section 103 by reason of a ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(c) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—Effective on the date of 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 101(a)(2) and who can establish a nonfrivolous case of eligibility for blue card status (but for the fact that the alien may not apply for such status until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for blue card status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement 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 101(a)(2), including an alien who files 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 section, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

SEC. 106. 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 101 or adjustment of status under section 103 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.—

(1) 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).

(2) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

SEC. 107. USE OF INFORMATION.

Beginning not later than the first day of the application period described in section 101(a)(2), the Secretary, in cooperation with qualified designated entities (as that term is defined in section 104(b)), shall broadly disseminate information respecting the benefits that aliens may receive under this subtitle and the requirements that an alien is required to meet to receive such benefits.

SEC. 108. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.

(a) REGULATIONS.—The Secretary shall issue regulations to implement this subtitle not later than the first day of the seventh 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 an 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 implement this subtitle, including any sums needed for costs associated with the initiation of such implementation, for fiscal years 2007 and 2008.

Subtitle B—Correction of Social Security Records

SEC. 111. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

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

''(D) who is granted blue card status under the Agricultural Job Opportunity, Benefits, and Security Act of 2007,''; and

(4) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to 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 seventh month that begins after the date of the enactment of this Act.

TITLE II—REFORM OF H–2A WORKER PROGRAM

SEC. 201. 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 striking section 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 the United States as an H–2A worker, or otherwise provided status as an H–2A worker, unless the employer has filed with the Secretary of Labor an application containing—

''(A) the assurances described in subsection (b);

''(B) a description of the nature and location of the work to be performed;

''(C) the anticipated 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.—The assurances referred to in subsection (a)(1) are the following:

''(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

''(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm's length between a bona fide union and the employer.

''(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting 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.

''(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph 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) OFFERS TO UNITED STATES WORKERS.—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 the nonimmigrants are, sought and who will be available at the time and place of need.

''(F) 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.

''(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

''(A) 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.

''(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 required by section 218A 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.

''(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 1 or more worksites 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 no 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 liability 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.

''(H) 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:

''(I) 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 any United States worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of the employer's job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

''(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28 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 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 posting 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 opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

''(IV) EMERGENCY PROCEDURES.—The Secretary of Labor 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.

''(ii) 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 nonimmigrants are, sought and who will be available at the time and place of need.

''(iii) 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 H–2A worker 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 H–2A worker who is in the job was hired has elapsed, subject to the following requirements:

''(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold 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 Secretary of Labor shall, within 36 hours of the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

''(III) 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 all 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 job service that offer similar job opportunities in the area 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 that are normal or customary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

''(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

''(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members 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) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (1) 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 the agricultural services of a temporary or seasonal nature for which the certifications were granted.

''(d) WITHDRAWAL OF APPLICATIONS.—

''(1) IN GENERAL.—An employer may withdraw an application filed pursuant to subsection (a), except that if the employer 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 in writing, and the Secretary of Labor shall acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a), or on whose behalf an application is withdrawn, is relieved of the obligations undertaken in the application.

''(2) LIMITATION.—An application may not be withdrawn while any alien provided 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 other law or regulation as a result of the recruitment of United States workers or H–2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

''(e) REVIEW AND APPROVAL OF APPLICATIONS.—

''(1) 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 or worksite, a copy of each such application (and such accompanying documents as are necessary).

''(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 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 review such an application only for completeness and obvious inaccuracies. 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 provided within 7 days of the filing of the application.''

''SEC. 218A. H–2A EMPLOYMENT REQUIREMENTS.

''(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the 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 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 CONDITIONS.—Except in cases where higher benefits, wages, 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 provisions:

''(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 in job opportunities for which the employer has applied 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.

''(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, 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) FAMILY HOUSING.—If it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

''(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

''(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

''(F) CHARGES FOR HOUSING.—

''(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

''(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. An employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

''(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

''(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating 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. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

''(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers and H–2A workers who are seeking temporary housing while employed in agricultural work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

''(iii) AMOUNT OF ALLOWANCE.—

''(I) 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.

''(II) 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.

''(2) REIMBURSEMENT OF TRANSPORTATION.—

''(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity 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.

''(B) 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 to the place of next employment, 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.

''(C) LIMITATION.—

''(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

''(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

''(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

''(ii) DISTANCE TRAVELED.—No reimbursement 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).

''(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 whether 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.

''(3) 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 1938 (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 Opportunities, Benefits, 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 in effect on January 1, 2003, as established by section 655.107 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 less than 3 years after the date of 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 resulted if the adverse effect wage rate in effect on January 1, 2003, had been annually adjusted, beginning on March 1, 2006, by the lesser of—

''(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

''(II) 4 percent.

''(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not less than 4 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—

''(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

''(II) 4 percent.

''(D) 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 area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker's wages.

''(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 hours offered in accordance with and over and above the ¾ 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.

''(G) REPORT ON WAGE PROTECTIONS.—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 Senate, and 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 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 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; and

''(v) recommendations for future wage protection under this section.

''(H) COMMISSION ON WAGE STANDARDS.—

''(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H–2A program (in this subparagraph referred to as the 'Commission').

''(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

''(I) Four representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

''(II) Four representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

''(iii) FUNCTIONS.—The Commission shall conduct a study that shall address—

''(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 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.

''(iv) FINAL REPORT.—Not later than December 31, 2009, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

''(v) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

''(4) GUARANTEE OF EMPLOYMENT.—

''(A) OFFER TO WORKER.—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 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 pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

''(B) 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, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

''(C) 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).

''(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, 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, hurricane, freeze, earthquake, fire, 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 subparagraph (A) for the 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 make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

''(5) MOTOR VEHICLE SAFETY.—

''(A) MODE 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

worker, unless the employer specifically requested or arranged such transportation; or

''(bb) car pooling arrangements made by H–2A workers themselves, using 1 of the 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, or the payment or reimbursement of the 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 agricultural commodities or the care of livestock 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 as engaging in 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.—

''(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this subparagraph 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. 1841(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; and

''(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, 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 for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

''(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which 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) COMPLIANCE WITH 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 all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (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 covering the employment in question, such separate employment contract.

''(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218, or section 218B shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures 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 H–2A worker 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 assuring expedited 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 United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) 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 ineligible 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 a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

''(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

''(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

''(A) 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 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.

''(B) MAINTENANCE OF WAIVER.—An alien provided 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 ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

''(d) 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 pursuant to 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 this Act.

''(e) ABANDONMENT OF EMPLOYMENT.—

''(1) IN GENERAL.—An alien admitted or provided status under section 101(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 as an H–2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

''(2) REPORT BY EMPLOYER.—The employer, or association acting as agent for the employer, shall notify the Secretary not later than 7 days after an H–2A worker prematurely abandons employment.

''(3) 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 nonimmigrant status.

''(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

''(f) REPLACEMENT OF ALIEN.—

''(1) IN GENERAL.—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) who abandons or prematurely terminates employment; or

''(B) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(2)(H)(iii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

''(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

''(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 lawfully 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 employment.

''(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 this section.

''(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) DEFINITION.—For purposes of subparagraph (A), the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

''(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition 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) APPROVAL OF 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.

''(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An expired identification and employment eligibility document, together with a copy of a petition for extension of stay or change in the alien's authorized employment that complies with the requirements of paragraph (1), shall constitute a valid work authorization document for 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.

''(5) 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.—

''(i) IN 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 again apply for admission to the United States as an H–2A worker unless the alien has remained outside the United States for a continuous period equal to at least ⅓ 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.

''(i) 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—

''(1) may be admitted for an initial period of 12 months;

''(2) subject to subsection (j)(5), may have such initial period of admission extended for a period of up to 3 years; and

''(3) shall not be subject to the requirements of subsection (h)(5) (relating to periods of absence from the United States).

''(j) ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

''(1) 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 total of 36 months (excluding any period of absence from the United States); and

''(C) who is seeking to receive an immigrant visa under section 203(b)(3)(A)(iii).

''(2) CLASSIFICATION PETITION.—In the case of an eligible alien, the petition under section 204 for classification under section 203(b)(3)(A)(iii) may be filed by—

''(A) the alien's employer on behalf of the eligible alien; or

''(B) the eligible alien.

''(3) NO LABOR CERTIFICATION REQUIRED.—Notwithstanding section 203(b)(3)(C), no determination under section 212(a)(5)(A) is required with respect to an immigrant visa 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 an alien's ineligibility for 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 classification 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.

''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 respecting a petitioner's failure to meet a condition specified in section 218(b), or an employer's misrepresentation of material facts in an application 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 failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

''(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (G). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

''(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218(b), or a material misrepresentation of fact in an application under section 218(a)—

''(i) 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 $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

''(ii) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

''(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b), a willful misrepresentation of a material fact in an application under section 218(a), or a violation of subsection (d)(1)—

''(i) 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;

''(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

''(iii) 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.—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(a), 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(a) or during the period of 30 days preceding such period of employment—

''(i) 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 $15,000 per violation) as 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 3 years.

''(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(a) in excess of $90,000.

''(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218A(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 218A(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 construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural 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 no other right of action shall exist under Federal or State law to enforce such rights:

''(1) The providing of housing 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 218A(c), compliance with which shall be governed by the provisions of such laws.

''(5) The guarantee of 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)(2).

''(c) PRIVATE RIGHT OF ACTION.—

''(1) MEDIATION.—Upon the filing of a complaint by an H–2A worker aggrieved by 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 may 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 and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

''(A) MEDIATION 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.

''(B) 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.

''(C) 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 is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt.

''(2) 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 other person 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 citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

''(3) 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)(1) is withdrawn before the filing of such action, in which case the rights and remedies available under this subsection shall be exclusive.

''(4) PREEMPTION 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 law or regulation 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 created by this Act.

''(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to waive or modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of the rights or obligations in favor of the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

''(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

''(A) 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.

''(B) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

''(7) WORKERS' COMPENSATION BENEFITS; EXCLUSIVE REMEDY.—

''(A) Notwithstanding any other provision of this section, where a State's 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's workers' compensation law.

''(B) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

''(i) a recovery under a State workers' compensation law; or

''(ii) rights conferred under a State workers' compensation law.

''(8) TOLLING OF 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 statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H–2A worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law.

''(9) PRECLUSIVE EFFECT.—Any settlement by an H–2A worker and an H–2A employer or any person reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

''(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H–2A employer on behalf of an H–2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection (a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

''(d) DISCRIMINATION PROHIBITED.—

''(1) IN GENERAL.—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, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed 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 the employer's compliance with the requirements of section 218 or 218A or any rule or regulation pertaining to either of such sections.

''(2) DISCRIMINATION AGAINST H–2A WORKERS.—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, discharge, or in any manner discriminate against an H–2A employee because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

''(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE EMPLOYMENT.—The Secretary of Labor and the Secretary shall establish a process under which an H–2A worker who files a complaint regarding 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 for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

''(f) ROLE OF ASSOCIATIONS.—

''(1) VIOLATION BY A MEMBER OF 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, under this section, to have committed a violation, 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.

''(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that 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. 218D. DEFINITIONS.

''For purposes of this section and section 218, 218A, 218B, and 218C:

''(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 3121(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).

''(2) BONA FIDE UNION.—The term 'bona fide union' means any organization in which employees participate and which exists for 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 employer association or its agents or representatives.

''(3) DISPLACE.—The term 'displace', in the case of an application with respect to 1 or more H–2A workers by an employer, means laying off a United States 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) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

''(6) 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).

''(7) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

''(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 can be referred.

''(9) LAYING OFF.—

''(A) IN GENERAL.—The term 'laying off', with respect to a worker—

''(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, 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 such loss of 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)(2)(E), with either employer described 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.

''(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(10) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of 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.

''(11) SEASONAL.—Labor is performed on a 'seasonal' basis if—

''(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

''(B) from its nature, it may not be continuous or carried on throughout the year.

''(12) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

''(13) TEMPORARY.—A worker is employed on a 'temporary' basis where the employment is intended not to exceed 10 months.

''(14) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a national of the United States, an alien lawfully admitted for permanent residence, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).''.

(b) TABLE OF CONTENTS.—The table of contents 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 employment requirements.
''Sec. 218B. Procedure for admission and extension of stay of H–2A workers.
''Sec. 218C. Worker protections and labor standards enforcement.
''Sec. 218D. Definitions.''.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. DETERMINATION AND USE OF USER FEES.

(a) 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 201(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.

(b) DETERMINATION OF SCHEDULE.—

(1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based on the number of job opportunities indicated in the employer's application under section 218 of the Immigration and Nationality Act, as amended by section 201 of this Act, and sufficient to provide for the direct costs of providing services related to an employer's authorization to employ aliens pursuant to the amendment made by section 201(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 adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

(c) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the fees pursuant to the amendment made by section 201(a) of this Act shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out sections 218 and 218B of the Immigration and Nationality Act, as amended and added, respectively, by section 201 of this Act, and the provisions of this Act.

SEC. 302. REGULATIONS.

(a) REQUIREMENT FOR THE SECRETARY TO CONSULT.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture during the promulgation of all regulations to implement the duties of the Secretary under this Act and the amendments made by this Act.

(b) REQUIREMENT FOR THE SECRETARY OF STATE TO CONSULT.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this Act and the amendments made by this Act.

(c) REQUIREMENT FOR THE SECRETARY OF LABOR TO CONSULT.—The Secretary of Labor shall consult with the Secretary of Agriculture and the Secretary on all regulations to implement the duties of the Secretary of Labor under this Act and the amendments made by this Act.

(d) DEADLINE FOR ISSUANCE OF REGULATIONS.—All regulations to implement the duties of the Secretary, the Secretary of State,

and the Secretary of Labor created under sections 218, 218A, 218B, 218C, and 218D of the Immigration and Nationality Act, as amended or added by section 201 of this Act, shall take effect on the effective date of section 201 and shall be issued not later than 1 year after the date of enactment of this Act.

SEC. 303. REPORTS TO CONGRESS.

(a) ANNUAL REPORT.—Not later than September 30 of each year, the Secretary shall submit a report to Congress that identifies, for the previous year—

(1) the number of job opportunities approved for employment of aliens admitted under section 101(a)(15)(H)(ii)(a) 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 reported to have abandoned employment pursuant to subsection 218B(e)(2) of such Act;

(3) the number of such aliens who departed the United States within the period specified in subsection 218B(d) of such Act;

(4) the number of aliens who applied for adjustment of status pursuant to section 101(a);

(5) the number of such aliens whose status was adjusted under section 101(a);

(6) the number of aliens who applied for permanent residence pursuant to section 103(c); and

(7) the number of such aliens who were approved for permanent residence pursuant section 103(c).

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall prepare and submit to Congress a report that describes the measures being taken and the progress made in implementing this Act.

SEC. 304. EFFECTIVE DATE.

Except as otherwise provided, sections 201 and 301 shall take effect 1 year after the date of the enactment of this Act.

Mr. CRAIG. Mr. President, the last Congress worked long and hard to resolve one of the most contentious issues of our time: immigration. As many of our colleagues know, while a number of border enforcement measures were enacted, we did not complete all the critical elements of a comprehensive strategy on immigration reform.

Today, I am joining with Senators FEINSTEIN, KENNEDY, SPECTER, LEAHY, MARTINEZ, VOINOVICH, MCCAIN, HAGEL, DOMENICI, BOXER, CLINTON, OBAMA, KOHL, SALAZAR, MURRAY, and SCHUMER in reintroducing legislation to address a very important piece of that unfinished business: the establishment of a workable, secure, effective temporary worker program to match willing foreign workers with jobs that Americans are unwilling or unable to perform.

Our legislation is specific to U.S. agriculture, because this economic sector, more than any other, has become dependent for its existence on the labor of immigrants who are here without legal documentation. The only program currently in place to respond to a lack of legal domestic agricultural workers, the H–2A Guest Worker Program, is profoundly broken. Outside of H–2A, farm employers have no effective, reliable assurance that their employees are legal.

The bill we are reintroducing is called AgJOBS—the Agricultural Job Opportunity, Benefits, and Security Act. This bill was part of the comprehensive immigration legislation passed last year by the Senate. Today's version incorporates a few language changes that update, but do not substantively amend, that measure.

We are reintroducing AgJOBS to fix the serious flaws that plague our country's current agricultural labor system. Agriculture has unique workforce needs because of the special nature of its products and production, and our bill addresses those needs.

Our bill offers a thoughtful, thorough, two-step solution. On a one-time basis, experienced, trusted workers with a significant work history in American agriculture would be allowed to stay here legally and earn adjustment to legal status. For workers and growers using the H–2A legal guest worker program, that program would be overhauled and made more streamlined, practical, and secure.

This legislation has been tested and examined for years in the Senate and House of Representatives, and it remains the best alternative for resolving urgent problems in our agriculture that require immediate attention. That is why AgJOBS has been endorsed by a historic, broad-based coalition of more than 400 national, State, and local organizations, including farmworkers, growers, the general business community, Latino and immigration issue groups, taxpayer groups, other public interest organizations, State directors of agriculture, and religious groups.

We all want and need a stable, predictable, legal workforce in American agriculture. Willing American workers deserve a system that puts them first in line for available jobs with fair market wages. All workers should receive decent treatment and protection of fundamental legal rights. Consumers deserve a safe, stable, domestic food supply. American citizens and taxpayers deserve secure borders and a government that works.

AgJOBS would serve all these goals.

Last year, we saw millions of dollars' worth of produce rot in the fields for lack of workers. We are beginning to hear talk of farms moving out of the country, moving to the foreign workforce. All Americans face the danger of losing more and more of our safe, domestic food supply to imports.

Time is running out for American agriculture, farmworkers, and consumers. What was a problem years ago is a crisis today and will be a catastrophe if we do not act immediately. I urge my colleagues to demonstrate their support for U.S. agriculture by cosponsoring the Agricultural Job Opportunity, Benefits, and Security Act—AgJOBS 2007—and by helping us pass this critical legislation as soon as possible.

Mr. KENNEDY. Mr. President, it's a privilege to join Senators FEINSTEIN and CRAIG and my other colleagues today as we re-introduce the Agricultural Jobs, Opportunity, Benefits, and Security Act of 2007. I commend them and Representatives HOWARD BERMAN and CHRIS CANNON for their bipartisan leadership and am pleased to be part to this landmark legislation.

The bill reflects a far-reaching and welcome agreement between the United Farm Workers and the agricultural industry, one of the most difficult immigration challenges we face, and we in Congress should make the most of this unique opportunity for progress.

America has a proud tradition as a nation of immigrants and a nation of laws. But our current immigration laws have failed us on both counts. Much of the Nation's economy today depends on the hard work and the many contributions of immigrants. The agricultural industry would grind to a halt without immigrant farm workers. Yet, the overwhelming majority of these workers lack legal status, and thus can be easily exploited by unscrupulous employers.

The Agricultural Jobs, Opportunity, Benefits, and Security Act—AgJOBS—is an opportunity to correct these long-festering problems. It will give farm workers and their families the dignity and justice they deserve, and it will give agricultural employees a legal workforce.

This compromise has broad support in Congress, and from business and labor, civic and faith-based organizations, liberals and conservatives, trade associations and immigrant rights groups.

The AgJOBS Act is a needed reform in our immigration laws, to reflect current economic realities, address our security needs more effectively, and do so in a way that respects America's immigrant heritage. It provides a fair and reasonable way for undocumented agricultural workers to earn legal status and also reforms the current visa program, so that employers unable to find American workers can hire needed foreign workers. Together they serve as the cornerstone for comprehensive immigration reform of the agricultural sector.

AgJOBS is good for labor and business. The Nation can no longer ignore the fact that more than half of our agricultural workers are undocumented. Growers need an immediate, reliable and legal workforce at harvest time. Farm workers need legal status to improve their wages and working conditions. Everyone is harmed when crops rot in the field because of the lack of an adequate labor force.

The AgJOBS Act provides a fair and reasonable process for undocumented agricultural workers to earn legal status. Undocumented farm workers are clearly vulnerable to abuse by unscrupulous labor contractors and growers, and their illegal status deprives them of bargaining power and depresses the wages of all farm workers. Our bill provides fair solutions for undocumented workers who have been toiling in our fields, harvesting our fruits and vegetables.

The bill is not an amnesty. To earn the right to remain in this country, workers would not only have to demonstrate past work contributions to the U.S. economy, but also make a substantial future work commitment. These workers will be able to come forward, identify themselves, provide evidence that they have been employed in agriculture, and continue to work hard and play by the rules.

The legislation will also modify the current temporary foreign agricultural worker program, while preserving and enhancing key labor protections. It strikes a fair balance and streamlines the H–2A program's application process by reducing paperwork for employers and accelerate processing. But individuals participating in the program receive strong labor protections. Anything else would undermine the jobs, wages and working conditions of U.S. workers.

This legislation would unify families. When temporary residence is granted, the farm worker's spouse and minor children would be allowed to remain legally in the U.S., but they would not be authorized to work. When the worker becomes a permanent resident, the spouse and minor children would also gain such status.

AgJOBS will also enhance national security and reduce illegal immigration. AgJOBS will also reduce the chaotic, illegal, and all-too-deadly flows of immigrants at our borders by providing safe and legal avenues for farm workers and their families. Future temporary workers will be carefully screened to meet security concerns. Enforcement resources will be more effectively focused on the highest risks. By bringing undocumented farm workers out of the shadows and require them to pass thorough security checks, it will enable our officers to more effectively train their sights on terrorists and criminals.

Last year, the Senate came together—Democrats and Republicans—to pass farreaching immigration reform legislation, which included the AgJOBS bill. The American people are calling on us to come together again. They know there is a crisis and they want action now.

The President has been a leader on immigration reform, and I'm hopeful that he will renew his efforts with members of his party, so that we can enact comprehensive reform legislation, to end the festering crisis once and for all. The House of Representatives is now ready to be a genuine partner in this effort.

By heritage and history, America is a nation of immigrants. Our legislation proposes necessary changes in the law while preserving this tradition. This bill will ensure that immigrant farm workers can live the American dream and contribute to our prosperity, our security, and our values and I hope very much that it can be enacted quickly in this new Congress.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 33—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES SHOULD EXPAND ITS RELATIONSHIP WITH THE REPUBLIC OF GEORGIA BY COMMENCING NEGOTIATIONS TO ENTER INTO A FREE TRADE AGREEMENT

Mr. LUGAR submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 33

Whereas, in the November 2003 Rose Revolution, the people of the Republic of Georgia protested fraudulent elections in a non-violent manner and demanded a fair election, resulting in a democratically elected new government;

Whereas, based on commitments to maintain an open economy and adhere to free trade principles including the reduction and elimination of trade barriers, Georgia was granted membership in the World Trade Organization on June 14, 2000;

Whereas, Georgia was found to have accorded its citizens the right to emigrate, travel freely, and to return to their country without restriction meeting the human rights criteria consistent with the objectives of the Trade Act of 1974, and based on these findings was granted permanent normal trade relations through a waiver of Jackson-Vanik sanctions in 2000;

Whereas, in 1994, Georgia concluded a bilateral investment treaty with the United States, its largest source of foreign direct investment, in order to promote and facilitate non-discriminatory, open and fair commercial policies;

Whereas, the United States is Georgia's largest trading partner and the commercial relationship presents an opportunity for American companies to expand and prosper;

Whereas, the Georgian government has made significant efforts to promote regional cooperation and peaceful conflict resolution;

Whereas Georgia has demonstrated a commitment to responsible facilitation of the energy resources located within the region;

Whereas, Georgia has taken important steps toward the creation of democratic institutions and a free-market economy and, as a participating state of the Organization for Security and Cooperation in Europe (OSCE), is committed to developing a system of governance in accordance with the principles regarding human rights and humanitarian affairs that are set forth in the Final Act of the Conference on Security and Cooperation in Europe (also known as the ''Helsinki Final Act''); and

Whereas the United States is committed to aiding in regional development, economic integration and supporting democracy in the South Caucuses: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States should expand its relationship with the Republic of Georgia by commencing negotiations to enter into a free trade agreement.

SENATE RESOLUTION 34—CALLING FOR THE STRENGTHENING OF THE EFFORTS OF THE UNITED STATES TO DEFEAT THE TALIBAN AND TERRORIST NETWORKS IN AFGHANISTAN

Mr. KERRY (for himself and Mr. FEINGOLD) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 34

Whereas global terrorist networks, including the al Qaeda organization that attacked the United States on September 11, 2001, continue to threaten the security of the United States and are recruiting new members and developing the capability and plans to attack the United States and its allies throughout the world;

Whereas a democratic, stable, and prosperous Afghanistan is a vital security interest of the United States;

Whereas stability in Afghanistan is being threatened by antigovernment and Taliban forces that seek to disrupt political and economic developments throughout the country;

Whereas Osama Bin Laden and Ayman al-Zawahiri, the leaders of al Qaeda, are still at large and are reportedly hiding somewhere in the Afghanistan-Pakistan border region;

Whereas, according to United States military intelligence officials—

(1) Taliban attacks on United States, allied, and Afghan forces increased from 1,558 in 2005 to 4,542 in 2006;

(2) suicide bomb attacks in Afghanistan increased from 27 in 2005 to 139 in 2006;

(3) roadside bomb attacks more than doubled from 783 in 2005 to 1,677 in 2006; and

(4) crossborder attacks from Pakistan into Afghanistan have increased by 300 percent since September 2006;

Whereas, on September 2, 2006, the United Nations Office on Drugs and Crime reported that in 2006 opium poppy cultivation in Afghanistan increased 59 percent over 2005 levels and reached a record high;

Whereas the President's current request for United States economic assistance to Afghanistan for fiscal year 2007 is approximately 33 percent of the amount appropriated for fiscal year 2006;

Whereas only 50 percent of the money pledged by the international community for Afghanistan between 2002 and 2005 has actually been delivered;

Whereas, on September 12, 2006, the Secretary of State said, ''[A]n Afghanistan that does not complete its democratic evolution and become a stable, terrorist-fighting state is going to come back to haunt us. . . . [I]t will come back to haunt our successors and their successors.'' and ''If we should have learned anything, it is if you allow that kind of vacuum, if you allow a failed state in that strategic a location, you're going to pay for it.'';

Whereas the bipartisan Iraq Study Group Report concluded, ''If the Taliban were to control more of Afghanistan, it could provide al Qaeda the political space to conduct terrorist operations. This development would destabilize the region and have national security implications for the United States and other countries around the world.'';

Whereas the Iraq Study Group Report recommended that the President provide additional political, economic, and military support for Afghanistan, including resources that might become available as combat forces are redeployed from Iraq;

Whereas the Iraq Study Group Report specifically recommended that the United States meet the request of General James Jones, then United States North Atlantic Treaty Organisation (NATO) commander, for more troops to combat the resurgence of al Qaeda and Taliban forces in Afghanistan;

Whereas, on October 8, 2006, General David Richards, NATO's top commander in Afghanistan, warned that a majority of Afghans would likely switch their allegiance to resurgent Taliban militants if their lives showed no visible improvements in the next 6 months;