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

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

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

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

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

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

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

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

TEXT OF AMENDMENTS

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

At the appropriate place, insert the following:

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

(a) SHORT TITLE.—This section may be cited as the ''Small Public Housing Authorities Paperwork Reduction Act''.

(b) IN GENERAL.—Section 5A(b) of the United States Housing Act of 1937 (42 U.S.C. 1437c–1(b)) is amended by adding at the end the following:

''(3) EXEMPTION OF CERTAIN PHAS FROM FILING REQUIREMENT.—

''(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of this Act—

''(i) the requirement under paragraph (1) shall not apply to any qualified public housing agency; and

''(ii) except as provided in subsection (e)(4)(B), any reference in this section or any other provision of law to a 'public housing agency' shall not be considered to refer to any qualified public housing agency, to the extent such reference applies to the requirement to submit an annual public housing agency plan under this subsection.

''(B) CIVIL RIGHTS CERTIFICATION.—Notwithstanding that qualified public housing agencies are exempt under subparagraph (A) from the requirement under this section to prepare and submit an annual public housing plan, each qualified public housing agency shall, on an annual basis, make the certification described in paragraph (16) of subsection (d), except that for purposes of such qualified public housing agencies, such paragraph shall be applied by substituting 'the public housing program of the agency' for 'the public housing agency plan'.

''(C) DEFINITION.—For purposes of this section, the term 'qualified public housing agency' means a public housing agency that—

''(i) administers—

''(I) 500 or fewer public housing dwelling units; or

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

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

(c) RESIDENT PARTICIPATION.—Section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) is amended—

(1) in subsection (e), by inserting after paragraph (3) the following:

''(4) QUALIFIED PUBLIC HOUSING AGENCIES.—

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

''(B) APPLICABILITY OF WAIVER AUTHORITY.—Paragraph (3) shall apply to qualified public housing agencies, except that for purposes of such qualified public housing agencies, subparagraph (B) of such paragraph shall be applied by substituting 'the functions described in the second sentence of paragraph (4)(A)' for 'the functions described in paragraph (2)'.

''(f) PUBLIC HEARINGS.—''; and

(2) in subsection (f) (as so designated by the amendment made by paragraph (1)), by adding at the end the following:

''(5) QUALIFIED PUBLIC HOUSING AGENCIES.—

''(A) REQUIREMENT.—Notwithstanding that qualified public housing agencies are exempt under subsection (b)(3)(A) from the requirement under this section to conduct a public hearing regarding the annual public housing plan of the agency, each qualified public housing agency shall annually conduct a public hearing—

''(i) to discuss any changes to the goals, objectives, and policies of the agency; and

''(ii) to invite public comment regarding such changes.

''(B) AVAILABILITY OF INFORMATION AND NOTICE.—Not later than 45 days before the date of any hearing described in subparagraph (A), a qualified public housing agency shall—

''(i) make all information relevant to the hearing and any determinations of the agency regarding changes to the goals, objectives, and policies of the agency to be considered at the hearing available for inspection by the public at the principal office of the public housing agency during normal business hours; and

''(ii) publish a notice informing the public that—

''(I) the information is available as required under clause (i); and

''(II) a public hearing under subparagraph (A) will be conducted.''

SA 112. Mr. SUNUNU submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

At the appropriate place, insert the following:

SEC. ___. RENEWAL GRANTS FOR WOMEN'S BUSINESS CENTERS.

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

''(m) CONTINUED FUNDING FOR CENTERS.—

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

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

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

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

''(3) APPLICATION AND APPROVAL CRITERIA.—

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

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

''(4) AWARD OF GRANTS.—

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

''(B) AMOUNT.—A grant under this subsection shall be for not less than $90,000 and not more than $150,000, for each year of that grant.

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

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

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

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

At the appropriate place, insert the following:

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

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

(b) PERMANENT EXTENSION OF ABOVE-THE-LINE DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.—Subparagraph (D) of section 62(a)(2) of the Internal Revenue Code of 1986 is amended by striking ''In the case of taxable years beginning during 2002, 2003, 2004, 2005, 2006, or 2007, the deductions'' and inserting ''The deductions''.

SA 114. Mr. THUNE (for himself and Mr. VITTER) submitted an amendment

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

At the appropriate place, insert the following:

TITLE ____—SMALL BUSINESS HEALTH COVERAGE

SEC. __01. SHORT TITLE.

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

SEC. __02. RULES GOVERNING ASSOCIATION HEALTH PLANS.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

''PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

''SEC. 801. ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—For purposes of this part, the term 'association health plan' means a group health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

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

''(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining or providing medical care;

''(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership in the sponsor; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(3) RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—

''(A) BOARD MEMBERSHIP.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the members of the board of trustees are individuals selected from individuals who are the owners, officers, directors, or employees of the participating employers or who are partners in the participating employers and actively participate in the business.

''(ii) LIMITATION.—

''(I) GENERAL RULE.—Except as provided in subclauses (II) and (III), no such member is an owner, officer, director, or employee of, or partner in, a contract administrator or other service provider to the plan.

''(II) LIMITED EXCEPTION FOR PROVIDERS OF SERVICES SOLELY ON BEHALF OF THE SPONSOR.—Officers or employees of a sponsor which is a service provider (other than a contract administrator) to the plan may be members of the board if they constitute not more than 25 percent of the membership of the board and they do not provide services to the plan other than on behalf of the sponsor.

''(III) TREATMENT OF PROVIDERS OF MEDICAL CARE.—In the case of a sponsor which is an association whose membership consists primarily of providers of medical care, subclause (I) shall not apply in the case of any service provider described in subclause (I) who is a provider of medical care under the plan.

''(iii) CERTAIN PLANS EXCLUDED.—Clause (i) shall not apply to an association health plan which is in existence on the date of the enactment of the Small Business Health Improvement Act of 2007.

''(B) SOLE AUTHORITY.—The board has sole authority under the plan to approve applications for participation in the plan and to contract with a service provider to administer the day-to-day affairs of the plan.

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

''(1) the requirements of subsection (a) and section 801(a) shall be deemed met if such requirements would otherwise be met if the franchiser were deemed to be the sponsor referred to in section 801(b), such network were deemed to be an association described in section 801(b), and each franchisee were deemed to be a member (of the association and the sponsor) referred to in section 801(b); and

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

The Secretary may by regulation define for purposes of this subsection the terms 'franchiser', 'franchise network', and 'franchisee'.

''SEC. 804. PARTICIPATION AND COVERAGE REQUIREMENTS.

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

''(1) each participating employer must be—

''(A) a member of the sponsor,

''(B) the sponsor, or

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

except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals

who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

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

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

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

''(b) COVERAGE OF PREVIOUSLY UNINSURED EMPLOYEES.—In the case of an association health plan in existence on the date of the enactment of the Small Business Health Improvement Act of 2007, an affiliated member of the sponsor of the plan may be offered coverage under the plan as a participating employer only if—

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

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

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

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

''(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

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

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

''SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if the following requirements are met:

''(1) CONTENTS OF GOVERNING INSTRUMENTS.—The instruments governing the plan include a written instrument, meeting the requirements of an instrument required under section 402(a)(1), which—

''(A) provides that the board of trustees serves as the named fiduciary required for plans under section 402(a)(1) and serves in the capacity of a plan administrator (referred to in section 3(16)(A));

''(B) provides that the sponsor of the plan is to serve as plan sponsor (referred to in section 3(16)(B)); and

''(C) incorporates the requirements of section 806.

''(2) CONTRIBUTION RATES MUST BE NONDISCRIMINATORY.—

''(A) The contribution rates for any participating small employer do not vary on the basis of any health status-related factor in relation to employees of such employer or their beneficiaries and do not vary on the basis of the type of business or industry in which such employer is engaged.

''(B) Nothing in this title or any other provision of law shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from—

''(i) setting contribution rates based on the claims experience of the plan; or

''(ii) varying contribution rates for small employers in a State to the extent that such rates could vary using the same methodology employed in such State for regulating premium rates in the small group market with respect to health insurance coverage offered in connection with bona fide associations (within the meaning of section 2791(d)(3) of the Public Health Service Act),

subject to the requirements of section 702(b) relating to contribution rates.

''(3) FLOOR FOR NUMBER OF COVERED INDIVIDUALS WITH RESPECT TO CERTAIN PLANS.—If any benefit option under the plan does not consist of health insurance coverage, the plan has as of the beginning of the plan year not fewer than 1,000 participants and beneficiaries.

''(4) MARKETING REQUIREMENTS.—

''(A) IN GENERAL.—If a benefit option which consists of health insurance coverage is offered under the plan, State-licensed insurance agents shall be used to distribute to small employers coverage which does not consist of health insurance coverage in a manner comparable to the manner in which such agents are used to distribute health insurance coverage.

''(B) STATE-LICENSED INSURANCE AGENTS.—For purposes of subparagraph (A), the term 'State-licensed insurance agents' means one or more agents who are licensed in a State and are subject to the laws of such State relating to licensure, qualification, testing, examination, and continuing education of persons authorized to offer, sell, or solicit health insurance coverage in such State.

''(5) REGULATORY REQUIREMENTS.—Such other requirements as the applicable authority determines are necessary to carry out the purposes of this part, which shall be prescribed by the applicable authority by regulation.

''(b) ABILITY OF ASSOCIATION HEALTH PLANS TO DESIGN BENEFIT OPTIONS.—Subject to section 514(d), nothing in this part or any provision of State law (as defined in section 514(c)(1)) shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from exercising its sole discretion in selecting the specific items and services consisting of medical care to be included as benefits under such plan or coverage, except (subject to section 514) in the case of (1) any law to the extent that it is not preempted under section 731(a)(1) with respect to matters governed by section 711, 712, or 713, or (2) any law of the State with which filing and approval of a policy type offered by the plan was initially obtained to the extent that such law prohibits an exclusion of a specific disease from such coverage.

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

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

''(1) the benefits under the plan consist solely of health insurance coverage; or

''(2) if the plan provides any additional benefit options which do not consist of health insurance coverage, the plan—

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

''(i) a reserve sufficient for unearned contributions;

''(ii) a reserve sufficient for benefit liabilities which have been incurred, which have not been satisfied, and for which risk of loss has not yet been transferred, and for expected administrative costs with respect to such benefit liabilities;

''(iii) a reserve sufficient for any other obligations of the plan; and

''(iv) a reserve sufficient for a margin of error and other fluctuations, taking into account the specific circumstances of the plan; and

''(B) establishes and maintains aggregate and specific excess/stop loss insurance and solvency indemnification, with respect to such additional benefit options for which risk of loss has not yet been transferred, as follows:

''(i) The plan shall secure aggregate excess/stop loss insurance for the plan with an attachment point which is not greater than 125 percent of expected gross annual claims. The applicable authority may by regulation provide for upward adjustments in the amount of such percentage in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(ii) The plan shall secure specific excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan's qualified actuary. The applicable authority may by regulation provide for adjustments in the amount of such insurance in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(iii) The plan shall secure indemnification insurance for any claims which the plan is unable to satisfy by reason of a plan termination.

Any person issuing to a plan insurance described in clause (i), (ii), or (iii) of subparagraph (B) shall notify the Secretary of any failure of premium payment meriting cancellation of the policy prior to undertaking such a cancellation. Any regulations prescribed by the applicable authority pursuant to clause (i) or (ii) of subparagraph (B) may allow for such adjustments in the required levels of excess/stop loss insurance as the qualified actuary may recommend, taking into account the specific circumstances of the plan.

''(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS RESERVES.—In the case of any association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan establishes and maintains surplus in an amount at least equal to—

''(1) $500,000, or

''(2) such greater amount (but not greater than $2,000,000) as may be set forth in regulations prescribed by the applicable authority, considering the level of aggregate and specific excess/stop loss insurance provided with

respect to such plan and other factors related to solvency risk, such as the plan's projected levels of participation or claims, the nature of the plan's liabilities, and the types of assets available to assure that such liabilities are met.

''(c) ADDITIONAL REQUIREMENTS.—In the case of any association health plan described in subsection (a)(2), the applicable authority may provide such additional requirements relating to reserves, excess/stop loss insurance, and indemnification insurance as the applicable authority considers appropriate. Such requirements may be provided by regulation with respect to any such plan or any class of such plans.

''(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSURANCE.—The applicable authority may provide for adjustments to the levels of reserves otherwise required under subsections (a) and (b) with respect to any plan or class of plans to take into account excess/stop loss insurance provided with respect to such plan or plans.

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

''(f) MEASURES TO ENSURE CONTINUED PAYMENT OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

''(1) PAYMENTS BY CERTAIN PLANS TO ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—In the case of an association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan makes payments into the Association Health Plan Fund under this subparagraph when they are due. Such payments shall consist of annual payments in the amount of $5,000, and, in addition to such annual payments, such supplemental payments as the Secretary may determine to be necessary under paragraph (2). Payments under this paragraph are payable to the Fund at the time determined by the Secretary. Initial payments are due in advance of certification under this part. Payments shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure.

''(B) PENALTIES FOR FAILURE TO MAKE PAYMENTS.—If any payment is not made by a plan when it is due, a late payment charge of not more than 100 percent of the payment which was not timely paid shall be payable by the plan to the Fund.

''(C) CONTINUED DUTY OF THE SECRETARY.—The Secretary shall not cease to carry out the provisions of paragraph (2) on account of the failure of a plan to pay any payment when due.

''(2) PAYMENTS BY SECRETARY TO CONTINUE EXCESS/STOP LOSS INSURANCE COVERAGE AND INDEMNIFICATION INSURANCE COVERAGE FOR CERTAIN PLANS.—In any case in which the applicable authority determines that there is, or that there is reason to believe that there will be: (A) a failure to take necessary corrective actions under section 809(a) with respect to an association health plan described in subsection (a)(2); or (B) a termination of such a plan under section 809(b) or 810(b)(8) (and, if the applicable authority is not the Secretary, certifies such determination to the Secretary), the Secretary shall determine the amounts necessary to make payments to an insurer (designated by the Secretary) to maintain in force excess/stop loss insurance coverage or indemnification insurance coverage for such plan, if the Secretary determines that there is a reasonable expectation that, without such payments, claims would not be satisfied by reason of termination of such coverage. The Secretary shall, to the extent provided in advance in appropriation Acts, pay such amounts so determined to the insurer designated by the Secretary.

''(3) ASSOCIATION HEALTH PLAN FUND.—

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

''(B) INVESTMENT.—Whenever the Secretary determines that the moneys of the fund are in excess of current needs, the Secretary may request the investment of such amounts as the Secretary determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

''(g) EXCESS/STOP LOSS INSURANCE.—For purposes of this section—

''(1) AGGREGATE EXCESS/STOP LOSS INSURANCE.—The term 'aggregate excess/stop loss insurance' means, in connection with an association health plan, a contract—

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

''(B) which is guaranteed renewable; and

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

''(2) SPECIFIC EXCESS/STOP LOSS INSURANCE.—The term 'specific excess/stop loss insurance' means, in connection with an association health plan, a contract—

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

''(B) which is guaranteed renewable; and

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

''(h) INDEMNIFICATION INSURANCE.—For purposes of this section, the term 'indemnification insurance' means, in connection with an association health plan, a contract—

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

''(2) which is guaranteed renewable and noncancellable for any reason (except as the applicable authority may prescribe by regulation); and

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

''(i) RESERVES.—For purposes of this section, the term 'reserves' means, in connection with an association health plan, plan assets which meet the fiduciary standards under part 4 and such additional requirements regarding liquidity as the applicable authority may prescribe by regulation.

''(j) SOLVENCY STANDARDS WORKING GROUP.—

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

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

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

''(B) a representative of the American Academy of Actuaries;

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

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

''(E) a representative of associations of the type referred to in section 801(b)(1), or their interests; and

''(F) a representative of multiemployer plans that are group health plans, or their interests.

"SEC. 807. REQUIREMENTS FOR APPLICATION AND RELATED REQUIREMENTS.

''(a) FILING FEE.—Under the procedure prescribed pursuant to section 802(a), an association health plan shall pay to the applicable authority at the time of filing an application for certification under this part a filing fee in the amount of $5,000, which shall be available in the case of the Secretary, to the extent provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to association health plans.

''(b) INFORMATION TO BE INCLUDED IN APPLICATION FOR CERTIFICATION.—An application for certification under this part meets the requirements of this section only if it includes, in a manner and form which shall be prescribed by the applicable authority by regulation, at least the following information:

''(1) IDENTIFYING INFORMATION.—The names and addresses of—

''(A) the sponsor; and

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

''(2) STATES IN WHICH PLAN INTENDS TO DO BUSINESS.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

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

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

''(5) AGREEMENTS WITH SERVICE PROVIDERS.—A copy of any agreements between the plan and contract administrators and other service providers.

''(6) FUNDING REPORT.—In the case of association health plans providing benefits options in addition to health insurance coverage, a report setting forth information with respect to such additional benefit options determined as of a date within the 120-day period ending with the date of the application, including the following:

''(A) RESERVES.—A statement, certified by the board of trustees of the plan, and a statement of actuarial opinion, signed by a qualified actuary, that all applicable requirements of section 806 are or will be met in accordance with regulations which the applicable authority shall prescribe.

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

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

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

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

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

''(d) NOTICE OF MATERIAL CHANGES.—In the case of any association health plan certified under this part, descriptions of material changes in any information which was required to be submitted with the application for the certification under this part shall be filed in such form and manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation prior notice of material changes with respect to specified matters which might serve as the basis for suspension or revocation of the certification.

''(e) REPORTING REQUIREMENTS FOR CERTAIN ASSOCIATION HEALTH PLANS.—An association health plan certified under this part which provides benefit options in addition to health insurance coverage for such plan year shall meet the requirements of section 103 by filing an annual report under such section which shall include information described in subsection (b)(6) with respect to the plan year and, notwithstanding section 104(a)(1)(A), shall be filed with the applicable authority not later than 90 days after the close of the plan year (or on such later date as may be prescribed by the applicable authority). The applicable authority may require by regulation such interim reports as it considers appropriate.

''(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The board of trustees of each association health plan which provides benefits options in addition to health insurance coverage and which is applying for certification under this part or is certified under this part shall engage, on behalf of all participants and beneficiaries, a qualified actuary who shall be responsible for the preparation of the materials comprising information necessary to be submitted by a qualified actuary under this part. The qualified actuary shall utilize such assumptions and techniques as are necessary to enable such actuary to form an opinion as to whether the contents of the matters reported under this part—

''(1) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

''(2) represent such actuary's best estimate of anticipated experience under the plan.

The opinion by the qualified actuary shall be made with respect to, and shall be made a part of, the annual report.

''SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TERMINATION.

''Except as provided in section 809(b), an association health plan which is or has been certified under this part may terminate (upon or at any time after cessation of accruals in benefit liabilities) only if the board of trustees, not less than 60 days before the proposed termination date—

''(1) provides to the participants and beneficiaries a written notice of intent to terminate stating that such termination is intended and the proposed termination date;

''(2) develops a plan for winding up the affairs of the plan in connection with such termination in a manner which will result in timely payment of all benefits for which the plan is obligated; and

''(3) submits such plan in writing to the applicable authority.

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

''SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMINATION.

''(a) ACTIONS TO AVOID DEPLETION OF RESERVES.—An association health plan which is certified under this part and which provides benefits other than health insurance coverage shall continue to meet the requirements of section 806, irrespective of whether such certification continues in effect. The board of trustees of such plan shall determine quarterly whether the requirements of section 806 are met. In any case in which the board determines that there is reason to believe that there is or will be a failure to meet such requirements, or the applicable authority makes such a determination and so notifies the board, the board shall immediately notify the qualified actuary engaged by the plan, and such actuary shall, not later than the end of the next following month, make such recommendations to the board for corrective action as the actuary determines necessary to ensure compliance with section 806. Not later than 30 days after receiving from the actuary recommendations for corrective actions, the board shall notify the applicable authority (in such form and manner as the applicable authority may prescribe by regulation) of such recommendations of the actuary for corrective action, together with a description of the actions (if any) that the board has taken or plans to take in response to such recommendations. The board shall thereafter report to the applicable authority, in such form and frequency as the applicable authority may specify to the board, regarding corrective action taken by the board until the requirements of section 806 are met.

''(b) MANDATORY TERMINATION.—In any case in which—

''(1) the applicable authority has been notified under subsection (a) (or by an issuer of excess/stop loss insurance or indemnity insurance pursuant to section 806(a)) of a failure of an association health plan which is or has been certified under this part and is described in section 806(a)(2) to meet the requirements of section 806 and has not been notified by the board of trustees of the plan that corrective action has restored compliance with such requirements; and

''(2) the applicable authority determines that there is a reasonable expectation that the plan will continue to fail to meet the requirements of section 806,

the board of trustees of the plan shall, at the direction of the applicable authority, terminate the plan and, in the course of the termination, take such actions as the applicable authority may require, including satisfying any claims referred to in section 806(a)(2)(B)(iii) and recovering for the plan any liability under subsection (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure that the affairs of the plan will be, to the maximum extent possible, wound up in a manner which will result in timely provision of all benefits for which the plan is obligated.

''SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOLVENT ASSOCIATION HEALTH PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR INSOLVENT PLANS.—Whenever the Secretary determines that an association health plan which is or has been certified under this part and which is described in section 806(a)(2) will be unable to provide benefits when due or is otherwise in a financially hazardous condition, as shall be defined by the Secretary by regulation, the Secretary shall, upon notice to the plan, apply to the appropriate United States district court for appointment of the Secretary as trustee to administer the plan for the duration of the insolvency. The plan may appear as a party and other interested persons may intervene in the proceedings at the discretion of the court. The court shall appoint such Secretary trustee if the court determines that the trusteeship is necessary to protect the interests of the participants and beneficiaries or providers of medical care or to avoid any unreasonable deterioration of the financial condition of the plan. The trusteeship of such Secretary shall continue until the conditions described in the first sentence of this subsection are remedied or the plan is terminated.

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

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

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

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

''(4) to require the sponsor, the plan administrator, any participating employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the Secretary as

trustee may reasonably need in order to administer the plan;

''(5) to collect for the plan any amounts due the plan and to recover reasonable expenses of the trusteeship;

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

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

''(8) to terminate the plan (or provide for its termination in accordance with section 809(b)) and liquidate the plan assets, to restore the plan to the responsibility of the sponsor, or to continue the trusteeship;

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

''(10) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries and providers of medical care.

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

''(1) the sponsor and plan administrator;

''(2) each participant;

''(3) each participating employer; and

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

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

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

''(f) JURISDICTION OF COURT.—

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

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

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

''SEC. 811. STATE ASSESSMENT AUTHORITY.

''(a) IN GENERAL.—Notwithstanding section 514, a State may impose by law a contribution tax on an association health plan described in section 806(a)(2), if the plan commenced operations in such State after the date of the enactment of the Small Business Health Improvement Act of 2007.

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

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

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

''(3) such tax is otherwise nondiscriminatory; and

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

''SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.

''(a) DEFINITIONS.—For purposes of this part—

''(1) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning provided in section 733(a)(1) (after applying subsection (b) of this section).

''(2) MEDICAL CARE.—The term 'medical care' has the meaning provided in section 733(a)(2).

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

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

''(5) APPLICABLE AUTHORITY.—The term 'applicable authority' means the Secretary, except that, in connection with any exercise of the Secretary's authority regarding which the Secretary is required under section 506(d) to consult with a State, such term means the Secretary, in consultation with such State.

''(6) HEALTH STATUS-RELATED FACTOR.—The term 'health status-related factor' has the meaning provided in section 733(d)(2).

''(7) INDIVIDUAL MARKET.—

''(A) IN GENERAL.—The term 'individual market' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

''(B) TREATMENT OF VERY SMALL GROUPS.—

''(i) IN GENERAL.—Subject to clause (ii), such term includes coverage offered in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

''(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 2791(e)(5) of the Public Health Service Act) is regulated by such State.

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

''(9) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of title XXVII of the Public Health Service Act for the State involved with respect to such issuer.

''(10) QUALIFIED ACTUARY.—The term 'qualified actuary' means an individual who is a member of the American Academy of Actuaries.

''(11) AFFILIATED MEMBER.—The term 'affiliated member' means, in connection with a sponsor—

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

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

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

''(12) LARGE EMPLOYER.—The term 'large employer' means, in connection with a group health plan with respect to a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(13) SMALL EMPLOYER.—The term 'small employer' means, in connection with a group health plan with respect to a plan year, an employer who is not a large employer.

''(b) RULES OF CONSTRUCTION.—

''(1) EMPLOYERS AND EMPLOYEES.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is an association health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

''(A) in the case of a partnership, the term 'employer' (as defined in section 3(5)) includes the partnership in relation to the partners, and the term 'employee' (as defined in section 3(6)) includes any partner in relation to the partnership; and

''(B) in the case of a self-employed individual, the term 'employer' (as defined in section 3(5)) and the term 'employee' (as defined in section 3(6)) shall include such individual.

''(2) PLANS, FUNDS, AND PROGRAMS TREATED AS EMPLOYEE WELFARE BENEFIT PLANS.—In the case of any plan, fund, or program which

was established or is maintained for the purpose of providing medical care (through the purchase of insurance or otherwise) for employees (or their dependents) covered thereunder and which demonstrates to the Secretary that all requirements for certification under this part would be met with respect to such plan, fund, or program if such plan, fund, or program were a group health plan, such plan, fund, or program shall be treated for purposes of this title as an employee welfare benefit plan on and after the date of such demonstration.''.

(b) CONFORMING AMENDMENTS TO PREEMPTION RULES.—

(1) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

''(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of an association health plan which is certified under part 8.''.

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

(A) in subsection (b)(4), by striking ''Subsection (a)'' and inserting ''Subsections (a) and (d)'';

(B) in subsection (b)(5), by striking ''subsection (a)'' in subparagraph (A) and inserting ''subsection (a) of this section and subsections (a)(2)(B) and (b) of section 805'', and by striking ''subsection (a)'' in subparagraph (B) and inserting ''subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805'';

(C) by redesignating subsection (d) as subsection (e); and

(D) by inserting after subsection (c) the following new subsection:

''(d)(1) Except as provided in subsection (b)(4), the provisions of this title shall supersede any and all State laws insofar as they may now or hereafter preclude, or have the effect of precluding, a health insurance issuer from offering health insurance coverage in connection with an association health plan which is certified under part 8.

''(2) Except as provided in paragraphs (4) and (5) of subsection (b) of this section—

''(A) In any case in which health insurance coverage of any policy type is offered under an association health plan certified under part 8 to a participating employer operating in such State, the provisions of this title shall supersede any and all laws of such State insofar as they may preclude a health insurance issuer from offering health insurance coverage of the same policy type to other employers operating in the State which are eligible for coverage under such association health plan, whether or not such other employers are participating employers in such plan.

''(B) In any case in which health insurance coverage of any policy type is offered in a State under an association health plan certified under part 8 and the filing, with the applicable State authority (as defined in section 812(a)(9)), of the policy form in connection with such policy type is approved by such State authority, the provisions of this title shall supersede any and all laws of any other State in which health insurance coverage of such type is offered, insofar as they may preclude, upon the filing in the same form and manner of such policy form with the applicable State authority in such other State, the approval of the filing in such other State.

''(3) Nothing in subsection (b)(6)(E) or the preceding provisions of this subsection shall be construed, with respect to health insurance issuers or health insurance coverage, to supersede or impair the law of any State—

''(A) providing solvency standards or similar standards regarding the adequacy of insurer capital, surplus, reserves, or contributions, or

''(B) relating to prompt payment of claims.

''(4) For additional provisions relating to association health plans, see subsections (a)(2)(B) and (b) of section 805.

''(5) For purposes of this subsection, the term 'association health plan' has the meaning provided in section 801(a), and the terms 'health insurance coverage', 'participating employer', and 'health insurance issuer' have the meanings provided such terms in section 812, respectively.''.

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

(A) in clause (i)(II), by striking ''and'' at the end;

(B) in clause (ii), by inserting ''and which does not provide medical care (within the meaning of section 733(a)(2)),'' after ''arrangement,'', and by striking ''title.'' and inserting ''title, and''; and

(C) by adding at the end the following new clause:

''(iii) subject to subparagraph (E), in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement and which provides medical care (within the meaning of section 733(a)(2)), any law of any State which regulates insurance may apply.''.

(4) Section 514(e) of such Act (as redesignated by paragraph (2)(C)) is amended—

(A) by striking ''Nothing'' and inserting ''(1) Except as provided in paragraph (2), nothing''; and

(B) by adding at the end the following new paragraph:

''(2) Nothing in any other provision of law enacted on or after the date of the enactment of the Small Business Health Improvement Act of 2007 shall be construed to alter, amend, modify, invalidate, impair, or supersede any provision of this title, except by specific cross-reference to the affected section.''.

(c) PLAN SPONSOR.—Section 3(16)(B) of such Act (29 U.S.C. 102(16)(B)) is amended by adding at the end the following new sentence: ''Such term also includes a person serving as the sponsor of an association health plan under part 8.''.

(d) DISCLOSURE OF SOLVENCY PROTECTIONS RELATED TO SELF-INSURED AND FULLY INSURED OPTIONS UNDER ASSOCIATION HEALTH PLANS.—Section 102(b) of such Act (29 U.S.C. 102(b)) is amended by adding at the end the following: ''An association health plan shall include in its summary plan description, in connection with each benefit option, a description of the form of solvency or guarantee fund protection secured pursuant to this Act or applicable State law, if any.''.

(e) SAVINGS CLAUSE.—Section 731(c) of such Act is amended by inserting ''or part 8'' after ''this part''.

(f) REPORT TO THE CONGRESS REGARDING CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—Not later than January 1, 2010, the Secretary of Labor shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate the effect association health plans have had, if any, on reducing the number of uninsured individuals.

(g) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

''PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

''Sec. 801. Association health plans
''Sec. 802. Certification of association health plans
''Sec. 803. Requirements relating to sponsors and boards of trustees
''Sec. 804. Participation and coverage requirements
''Sec. 805. Other requirements relating to plan documents, contribution rates, and benefit options
''Sec. 806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage
''Sec. 807. Requirements for application and related requirements
''Sec. 808. Notice requirements for voluntary termination
''Sec. 809. Corrective actions and mandatory termination
''Sec. 810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage
''Sec. 811. State assessment authority
''Sec. 812. Definitions and rules of construction''.

SEC. __03. CLARIFICATION OF TREATMENT OF SINGLE EMPLOYER ARRANGEMENTS.

Section 3(40)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amended—

(1) in clause (i), by inserting after ''control group,'' the following: ''except that, in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), two or more trades or businesses, whether or not incorporated, shall be deemed a single employer for any plan year of such plan, or any fiscal year of such other arrangement, if such trades or businesses are within the same control group during such year or at any time during the preceding 1-year period,'';

(2) in clause (iii), by striking ''(iii) the determination'' and inserting the following:

''(iii)(I) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), the determination of whether a trade or business is under 'common control' with another trade or business shall be determined under regulations of the Secretary applying principles consistent and coextensive with the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, an interest of greater than 25 percent may not be required as the minimum interest necessary for common control, or

''(II) in any other case, the determination'';

(3) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

(4) by inserting after clause (iii) the following new clause:

''(iv) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), in determining, after the application of clause (i), whether benefits are provided to employees of two or more employers, the arrangement shall be treated as having only one participating employer if, after the application of clause (i), the number of individuals who are employees and former employees of any one participating employer and who are covered under the arrangement is greater than 75 percent of the aggregate number of all individuals who are employees or former employees of participating employers and who are covered under the arrangement,''.

SEC. __04. ENFORCEMENT PROVISIONS RELATING TO ASSOCIATION HEALTH PLANS.

(a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL MISREPRESENTATIONS.—Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by inserting ''(a)'' after ''Sec. 501.''; and

(2) by adding at the end the following new subsection:

''(b) Any person who willfully falsely represents, to any employee, any employee's beneficiary, any employer, the Secretary, or any State, a plan or other arrangement established or maintained for the purpose of offering or providing any benefit described in section 3(1) to employees or their beneficiaries as—

''(1) being an association health plan which has been certified under part 8;

''(2) having been established or maintained under or pursuant to one or more collective bargaining agreements which are reached pursuant to collective bargaining described in section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) or paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152, paragraph Fourth) or which are reached pursuant to labor-management negotiations under similar provisions of State public employee relations laws; or

''(3) being a plan or arrangement described in section 3(40)(A)(i),

shall, upon conviction, be imprisoned not more than 5 years, be fined under title 18, United States Code, or both.''.

(b) CEASE ACTIVITIES ORDERS.—Section 502 of such Act (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

''(n) ASSOCIATION HEALTH PLAN CEASE AND DESIST ORDERS.—

''(1) IN GENERAL.—Subject to paragraph (2), upon application by the Secretary showing the operation, promotion, or marketing of an association health plan (or similar arrangement providing benefits consisting of medical care (as defined in section 733(a)(2))) that—

''(A) is not certified under part 8, is subject under section 514(b)(6) to the insurance laws of any State in which the plan or arrangement offers or provides benefits, and is not licensed, registered, or otherwise approved under the insurance laws of such State; or

''(B) is an association health plan certified under part 8 and is not operating in accordance with the requirements under part 8 for such certification,

a district court of the United States shall enter an order requiring that the plan or arrangement cease activities.

''(2) EXCEPTION.—Paragraph (1) shall not apply in the case of an association health plan or other arrangement if the plan or arrangement shows that—

''(A) all benefits under it referred to in paragraph (1) consist of health insurance coverage; and

''(B) with respect to each State in which the plan or arrangement offers or provides benefits, the plan or arrangement is operating in accordance with applicable State laws that are not superseded under section 514.

''(3) ADDITIONAL EQUITABLE RELIEF.—The court may grant such additional equitable relief, including any relief available under this title, as it deems necessary to protect the interests of the public and of persons having claims for benefits against the plan.''.

(c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—Section 503 of such Act (29 U.S.C. 1133) is amended by inserting ''(a) IN GENERAL.—'' before ''In accordance'', and by adding at the end the following new subsection:

''(b) ASSOCIATION HEALTH PLANS.—The terms of each association health plan which is or has been certified under part 8 shall require the board of trustees or the named fiduciary (as applicable) to ensure that the requirements of this section are met in connection with claims filed under the plan.''.

SEC. ____05. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

''(d) CONSULTATION WITH STATES WITH RESPECT TO ASSOCIATION HEALTH PLANS.—

''(1) AGREEMENTS WITH STATES.—The Secretary shall consult with the State recognized under paragraph (2) with respect to an association health plan regarding the exercise of—

''(A) the Secretary's authority under sections 502 and 504 to enforce the requirements for certification under part 8; and

''(B) the Secretary's authority to certify association health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

''(2) RECOGNITION OF PRIMARY DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recognized, with respect to any particular association health plan, as the State with which consultation is required. In carrying out this paragraph—

''(A) in the case of a plan which provides health insurance coverage (as defined in section 812(a)(3)), such State shall be the State with which filing and approval of a policy type offered by the plan was initially obtained, and

''(B) in any other case, the Secretary shall take into account the places of residence of the participants and beneficiaries under the plan and the State in which the trust is maintained.''.

SEC. ____06. EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.

(a) EFFECTIVE DATE.—The amendments made by this title shall take effect one year after the date of the enactment of this Act. The Secretary of Labor shall first issue all regulations necessary to carry out the amendments made by this title within one year after the date of the enactment of this Act.

(b) TREATMENT OF CERTAIN EXISTING HEALTH BENEFITS PROGRAMS.—

(1) IN GENERAL.—In any case in which, as of the date of the enactment of this Act, an arrangement is maintained in a State for the purpose of providing benefits consisting of medical care for the employees and beneficiaries of its participating employers, at least 200 participating employers make contributions to such arrangement, such arrangement has been in existence for at least 10 years, and such arrangement is licensed under the laws of one or more States to provide such benefits to its participating employers, upon the filing with the applicable authority (as defined in section 812(a)(5) of the Employee Retirement Income Security Act of 1974 (as amended by this subtitle)) by the arrangement of an application for certification of the arrangement under part 8 of subtitle B of title I of such Act—

(A) such arrangement shall be deemed to be a group health plan for purposes of title I of such Act;

(B) the requirements of sections 801(a) and 803(a) of the Employee Retirement Income Security Act of 1974 shall be deemed met with respect to such arrangement;

(C) the requirements of section 803(b) of such Act shall be deemed met, if the arrangement is operated by a board of directors which—

(i) is elected by the participating employers, with each employer having one vote; and

(ii) has complete fiscal control over the arrangement and which is responsible for all operations of the arrangement;

(D) the requirements of section 804(a) of such Act shall be deemed met with respect to such arrangement; and

(E) the arrangement may be certified by any applicable authority with respect to its operations in any State only if it operates in such State on the date of certification.

The provisions of this subsection shall cease to apply with respect to any such arrangement at such time after the date of the enactment of this Act as the applicable requirements of this subsection are not met with respect to such arrangement.

(2) DEFINITIONS.—For purposes of this subsection, the terms ''group health plan'', ''medical care'', and ''participating employer'' shall have the meanings provided in section 812 of the Employee Retirement Income Security Act of 1974, except that the reference in paragraph (7) of such section to an ''association health plan'' shall be deemed a reference to an arrangement referred to in this subsection.

SA 115. Mr. KYL proposed an amendment to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

On page 4, line 21, strike ''April 1, 2008'' and insert ''January 1, 2009''.

On page 6, lines 5 and 6, strike ''April 1, 2008'' and insert ''January 1, 2009''.

SA 116. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the end of section 2, add the following:

(c) STATE FLEXIBILITY.—Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) is amended by adding at the end the following:

''(h) STATE FLEXIBILITY.—Notwithstanding any other provision of this section, an employer shall not be required to pay an employee a wage that is greater than the minimum wage provided for by the law of the State in which the employee is employed and not less than the minimum wage in effect in that State on January 1, 2007.''.

SA 117. Mr. CHAMBLISS (for himself, Mr. BURR, and Mr. ISAKSON) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

At the appropriate place, add the following new section:

SEC. ____. WAGES FOR AGRICULTURAL WORKERS.

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

''(5) if such employee is employed to provide agriculture labor or services—

''(A) not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977; or

''(B) pursuant to the provisions of section 218 of the Immigration and Nationality Act (8 U.S.C. 1188), not less than the greater of—

''(i) the minimum wage rate in effect under paragraph (1) after December 31, 1977; or

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

SA 118. Mr. CHAMBLISS (for himself, Mr. ISAKSON, and Mr. BURR) submitted an amendment intended to be proposed

by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following new section:

SEC. ___. WAGES FOR AGRICULTURAL WORKERS.

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

''(5) if such employee is employed in agriculture, or is employed to provide agriculture labor or services pursuant to section 218 of the Immigration and Nationality Act (8 U.S.C. 1188), not less than the greater of—

''(A) the minimum wage rate in effect under paragraph (1) after December 31, 1977; or

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

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

At the appropriate place insert the following:

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

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

''(a) IN GENERAL.—Gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of—

''(1) one-half of the social security benefits received during the taxable year, or

''(2) one-half of the excess described in subsection (b)(1).''.

(b) REPEAL OF ADJUSTED BASE AMOUNT.—Subsection (c) of section 86 is amended to read as follows:

''(c) BASE AMOUNT.—For purposes of this section, the term 'base amount' means—

''(1) except as otherwise provided in this subsection, $25,000,

''(2) $32,000 in the case of a joint return, and

''(3) zero in the case of a taxpayer who—

''(A) is married as of the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

''(B) does not live apart from his spouse at all times during the taxable year.''.

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 871(a)(3) is amended by striking ''85 percent'' and inserting ''50 percent''.

(2)(A) Subparagraph (A) of section 121(e)(1) of the Social Security Amendments of 1983 (Public Law 98–21) is amended—

(i) by striking ''(A) There'' and inserting ''There'';

(ii) by striking ''(i)'' immediately following ''amounts equivalent to''; and

(iii) by striking '', less (ii)'' and all that follows and inserting a period.

(B) Paragraph (1) of section 121(e) of such Act is amended by striking subparagraph (B).

(C) Paragraph (3) of section 121(e) of such Act is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(D) Paragraph (2) of section 121(e) of such Act is amended in the first sentence by striking ''paragraph (1)(A)'' and inserting ''paragraph (1)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 2007.

(2) SUBSECTION (c)(1).—The amendment made by subsection (c)(1) shall apply to benefits paid after December 31, 2007.

(3) SUBSECTION (c)(2).—The amendments made by subsection (c)(2) shall apply to tax liabilities for taxable years beginning after December 31, 2007.

SEC. ___. MAINTENANCE OF TRANSFERS TO HOSPITAL INSURANCE TRUST FUND.

There are hereby appropriated to the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) amounts equal to the reduction in revenues to the Treasury by reason of the enactment of this Act. Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund had this Act not been enacted.

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

At the appropriate place, insert the following:

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

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

(b) INCREASE IN LIMIT AND PHASEOUT THRESHOLD FOR EXPENSING FOR SMALL BUSINESS.—

(1) IN GENERAL.—Paragraph (1) of section 179(b) of the Internal Revenue Code of 1986 (relating to dollar limitation), as amended by subsection (a), is amended by striking ''$25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2011)'' and inserting ''$25,000 ($150,000 in the case of taxable years beginning after 2007 and before 2011)''.

(2) INCREASE IN QUALIFYING INVESTMENT AT WHICH PHASEOUT BEGINS.—Paragraph (2) of section 179(b) of such Code (relating to reduction in limitation), as amended by subsection (a), is amended by striking ''$200,000 ($400,000 in the case of taxable years beginning after 2002 and before 2011)'' and inserting ''$200,000 ($600,000 in the case of taxable years beginning after 2007 and before 2011)''.

(3) INFLATION ADJUSTMENTS.—Section 179(b)(5)(A) of such Code (relating to inflation adjustments), as amended by subsection (a), is amended—

(A) in the matter preceding clause (i)—

(i) by striking ''after 2003 and before 2011'' and inserting ''after 2008 and before 2011'', and

(ii) by striking ''the $100,000 and $400,000 amounts'' and inserting ''the $150,000 and $600,000 amounts'', and

(B) in clause (ii), by striking ''calendar year 2002'' and inserting ''calendar year 2007''.

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

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

At the appropriate place, insert the following:

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

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

(b) INCREASE IN LIMIT AND PHASEOUT THRESHOLD FOR EXPENSING FOR SMALL BUSINESS.—

(1) IN GENERAL.—Paragraph (1) of section 179(b) of the Internal Revenue Code of 1986 (relating to dollar limitation), as amended by subsection (a), is amended by striking ''$25,000 ($100,000 in the case of taxable years beginning after 2002 and before 2011)'' and inserting ''$25,000 ($150,000 in the case of taxable years beginning after 2007 and before 2011)''.

(2) INCREASE IN QUALIFYING INVESTMENT AT WHICH PHASEOUT BEGINS.—Paragraph (2) of section 179(b) of such Code (relating to reduction in limitation), as amended by subsection (a), is amended by striking ''$200,000 ($400,000 in the case of taxable years beginning after 2002 and before 2011)'' and inserting ''$200,000 ($600,000 in the case of taxable years beginning after 2007 and before 2011)''.

(3) INFLATION ADJUSTMENTS.—Section 179(b)(5)(A) of such Code (relating to inflation adjustments), as amended by subsection (a), is amended—

(A) in the matter preceding clause (i)—

(i) by striking ''after 2003 and before 2011'' and inserting ''after 2008 and before 2011'', and

(ii) by striking ''the $100,000 and $400,000 amounts'' and inserting ''the $150,000 and $600,000 amounts'', and

(B) in clause (ii), by striking ''calendar year 2002'' and inserting ''calendar year 2007''.

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

SA 122. Ms. SNOWE (for herself and Mrs. LINCOLN) submitted an amendment intended to be proposed by her to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

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

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

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

''(a) GENERAL RULE.—A qualified small business may elect to have a taxable year, other than the required taxable year, which ends on the last day of any of the months of

April through November (or at the end of an equivalent annual period (varying from 52 to 53 weeks)).

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

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

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

''(c) TERMINATION.—

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

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

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

''(C) the date on which the entity terminates.

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

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

''(4) INCOME INCLUSION AND DEDUCTION RULES FOR PERIOD AFTER TERMINATION.—If the termination of an election under paragraph (1) results in a short taxable year—

''(A) items relating to net profits for the period beginning on the day after its last fiscal year-end and ending on the day before the beginning of the taxable year determined under paragraph (3) shall be includible in income ratably over the 4 taxable years following the year of termination, or (if fewer) the number of taxable years equal to the fiscal years for which the election under this section was in effect, and

''(B) items relating to net losses for such period shall be deductible in the first taxable year after the taxable year with respect to which the election terminated.

''(d) DEFINITIONS.—For purposes of this section—

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

''(A)(i) for which an election under section 1362(a) is in effect for the first taxable year or period of such entity and for all subsequent years, or

''(ii) which is treated as a partnership for the first taxable year or period of such entity for Federal income tax purposes,

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

''(C) which is a start-up business.

''(2) START-UP BUSINESS.—For purposes of paragraph (1)(C), an entity shall be treated as a start-up business so long as not more than 75 percent of the entity is owned by any person or persons who previously conducted a similar trade or business at any time within the 1-year period ending on the date on which such entity is formed. For purposes of the preceding sentence, a person and any other person bearing a relationship to such person specified in section 267(b) or 707(b)(1) shall be treated as one person, and sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse and the individual's children under the age of 21.

''(3) REQUIRED TAXABLE YEAR.—The term 'required taxable year' has the meaning given to such term by section 444(e).

''(e) TIERED STRUCTURES.—The Secretary shall prescribe rules similar to the rules of section 444(d)(3) to eliminate abuse of this section through the use of tiered structures.''.

(b) CONFORMING AMENDMENT.—Section 444(a)(1) is amended by striking ''section'' and inserting ''section and section 444A''.

(c) CLERICAL AMENDMENT.—The table of sections for part I of subchapter E of chapter 1 is amended by inserting after the item relating to section 444 the following new item:

''Sec. 444A. Qualified small businesses election of taxable year ending in a month from April to November.''.

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

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

At the appropriate place, insert the following:

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

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

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

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

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

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

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

''(c) TERMINATION.—

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

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

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

''(C) the date on which the entity terminates.

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

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

''(4) INCOME INCLUSION AND DEDUCTION RULES FOR PERIOD AFTER TERMINATION.—If the termination of an election under paragraph (1) results in a short taxable year—

''(A) items relating to net profits for the period beginning on the day after its last fiscal year-end and ending on the day before the beginning of the taxable year determined under paragraph (3) shall be includible in income ratably over the 4 taxable years following the year of termination, or (if fewer) the number of taxable years equal to the fiscal years for which the election under this section was in effect, and

''(B) items relating to net losses for such period shall be deductible in the first taxable year after the taxable year with respect to which the election terminated.

''(d) DEFINITIONS.—For purposes of this section—

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

''(A)(i) for which an election under section 1362(a) is in effect for the first taxable year or period of such entity and for all subsequent years, or

''(ii) which is treated as a partnership for the first taxable year or period of such entity for Federal income tax purposes,

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

''(C) which is a start-up business.

''(2) START-UP BUSINESS.—For purposes of paragraph (1)(C), an entity shall be treated as a start-up business so long as not more than 75 percent of the entity is owned by any person or persons who previously conducted a similar trade or business at any time within the 1-year period ending on the date on which such entity is formed. For purposes of the preceding sentence, a person and any other person bearing a relationship to such person specified in section 267(b) or 707(b)(1) shall be treated as one person, and sections 267(b) and 707(b)(1) shall be applied as if section 267(c)(4) provided that the family of an individual consists of the individual's spouse and the individual's children under the age of 21.

''(3) REQUIRED TAXABLE YEAR.—The term 'required taxable year' has the meaning given to such term by section 444(e).

''(e) TIERED STRUCTURES.—The Secretary shall prescribe rules similar to the rules of section 444(d)(3) to eliminate abuse of this section through the use of tiered structures.''.

(b) CONFORMING AMENDMENT.—Section 444(a)(1) is amended by striking ''section'' and inserting ''section and section 444A''.

(c) CLERICAL AMENDMENT.—The table of sections for part I of subchapter E of chapter 1 is amended by inserting after the item relating to section 444 the following new item:

''Sec. 444A. Qualified small businesses election of taxable year ending in a month from April to November.''.

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

SA 124. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ESTABLISHMENT OF SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.

(a) IN GENERAL.—Section 125 (relating to cafeteria plans) is amended by redesignating

subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

''(h) SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.—

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

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

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

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

''(3) CONTRIBUTIONS REQUIREMENTS.—

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

''(i) the employer makes matching contributions on behalf of each employee who is eligible to participate in the plan and who is not a highly compensated or key employee in an amount equal to the elective plan contributions of the employee to the plan to the extent the employee's elective plan contributions do not exceed 3 percent of the employee's compensation, or

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

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

''(C) SPECIAL RULES.—

''(i) TIME FOR MAKING CONTRIBUTIONS.—An employer shall not be treated as failing to meet the requirements of this paragraph with respect to any elective plan contributions of any compensation, or employer contributions required under this paragraph with respect to any compensation, if such contributions are made no later than the 15th day of the month following the last day of the calendar quarter which includes the date of payment of the compensation.

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

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

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

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

''(ii) HIGHLY COMPENSATED EMPLOYEE.—The term 'highly compensated employee' has the meaning given such term by section 414(q).

''(iii) KEY EMPLOYEE.—The term 'key employee' has the meaning given such term by section 416(i).

''(4) MINIMUM ELIGIBILITY AND PARTICIPATION REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

''(i) all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate, and

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

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

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

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

''(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good faith bargaining between employee representatives and the employer, or

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

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

''(5) ELIGIBLE EMPLOYER.—For purposes of this subsection—

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

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

''(C) GROWING EMPLOYERS RETAIN TREATMENT AS SMALL EMPLOYER.—If—

''(i) an employer was an eligible employer for any year (a 'qualified year'), and

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

then, notwithstanding the fact the employer fails to meet the requirements of subparagraph (A) for any subsequent year, such employer shall be treated as an eligible employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any trade or business which was covered by the plan during any qualified year. This subparagraph shall cease to apply if the employer employs an average of 200 more employees on business days during any year preceding any such subsequent year.

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

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

''(7) COMPENSATION.—The term 'compensation' has the meaning given such term by section 414(s).''

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

SA 125. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ESTABLISHMENT OF SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.

(a) IN GENERAL.—Section 125 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

''(h) SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.—

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

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

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

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

''(3) CONTRIBUTIONS REQUIREMENTS.—

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

''(i) the employer makes matching contributions on behalf of each employee who is eligible to participate in the plan and who is not a highly compensated or key employee in an amount equal to the elective plan contributions of the employee to the plan to the extent the employee's elective plan contributions do not exceed 3 percent of the employee's compensation, or

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

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

''(C) SPECIAL RULES.—

''(i) TIME FOR MAKING CONTRIBUTIONS.—An employer shall not be treated as failing to meet the requirements of this paragraph with respect to any elective plan contributions of any compensation, or employer contributions required under this paragraph with respect to any compensation, if such contributions are made no later than the 15th day of the month following the last day of the calendar quarter which includes the date of payment of the compensation.

''(ii) FORM OF CONTRIBUTIONS.—Employer contributions required under this paragraph

may be made either to the plan to provide benefits offered under the plan or to any person as payment for providing benefits offered under the plan.

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

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

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

''(ii) HIGHLY COMPENSATED EMPLOYEE.—The term 'highly compensated employee' has the meaning given such term by section 414(q).

''(iii) KEY EMPLOYEE.—The term 'key employee' has the meaning given such term by section 416(i).

''(4) MINIMUM ELIGIBILITY AND PARTICIPATION REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

''(i) all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate, and

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

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

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

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

''(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good faith bargaining between employee representatives and the employer, or

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

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

''(5) ELIGIBLE EMPLOYER.—For purposes of this subsection—

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

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

''(C) GROWING EMPLOYERS RETAIN TREATMENT AS SMALL EMPLOYER.—If—

''(i) an employer was an eligible employer for any year (a 'qualified year'), and

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

then, notwithstanding the fact the employer fails to meet the requirements of subparagraph (A) for any subsequent year, such employer shall be treated as an eligible employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any trade or business which was covered by the plan during any qualified year. This subparagraph shall cease to apply if the employer employs an average of 200 more employees on business days during any year preceding any such subsequent year.

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

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

''(7) COMPENSATION.—The term 'compensation' has the meaning given such term by section 414(s).''

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

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

At the appropriate place, insert the following:

SEC. ___. HEALTH PROFESSIONS TRAINING DEMONSTRATION PROJECT.

Section 171 of the Workforce Investment Act of 1998 (29 U.S.C. 2916) is amended by adding at the end the following:

''(e) HEALTH PROFESSIONS TRAINING DEMONSTRATION PROJECT.—

''(1) DEFINITIONS.—In this subsection:

''(A) COVERED COMMUNITY.—The term 'covered community' means a community or region that—

''(i) has experienced a significant percentage decline in positions in the manufacturing or service sectors; and

''(ii)(I) is eligible for designation under section 332 of the Public Health Service Act (42 U.S.C. 254e) as a health professional shortage area;

''(II) is eligible to be served by a health center under section 330 or a grantee under section 330(h) (relating to homeless individuals) of the Public Health Service Act (42 U.S.C. 254b, 254b(h));

''(III) has a shortage of personal health services, as determined under criteria issued by the Secretary of Health and Human Services under section 1861(aa)(2) of the Social Security Act (relating to rural health clinics) (42 U.S.C. 1395x(aa)(2)); or

''(IV) is designated by a Governor (in consultation with the medical community) as a shortage area or medically underserved community.

''(B) COVERED WORKER.—The term 'covered worker' means an individual who—

''(i)(I) has been terminated or laid off, or who has received a notice of termination or layoff, from employment in a manufacturing or service sector;

''(II)(aa) is eligible for or has exhausted entitlement to unemployment compensation; or

''(bb) has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 134(c), attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and

''(III) is unlikely to return to a previous industry or occupation; or

''(ii)(I) has been terminated or laid off, or has received a notice of termination or layoff, from employment in a manufacturing or service sector as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise; or

''(II) is employed in a manufacturing or service sector at a facility at which the employer has made a general announcement that such facility will close within 180 days.

''(C) HEALTH CARE PROFESSIONAL.—The term 'health care professional'—

''(i) means an individual who is involved with—

''(I) the delivery of health care services, or related services, pertaining to—

''(aa) the identification, evaluation, and prevention of diseases, disorders, or injuries; or

''(bb) home-based or community-based long-term care;

''(II) the delivery of dietary and nutrition services; or

''(III) rehabilitation and health systems management; and

''(ii) includes nurses, home health aides, nursing assistants, physician assistants, dental hygienists, diagnostic medical sonographers, dietitians, medical technologists, occupational therapists, physical therapists, radiographers, respiratory therapists, emergency medical service technicians, speech-language pathologists, and specific occupational needs of the community served by the eligible entities as defined in section (e)(4) of this Act.

''(2) ESTABLISHMENT OF PROJECT.—In accordance with subsection (b), the Secretary shall establish and carry out a health professions training demonstration project.

''(3) GRANTS.—In carrying out the project, the Secretary, after consultation with the Secretary of Health and Human Services, shall make grants to eligible entities to enable the entities to carry out programs in covered communities to train covered workers for employment as health care professionals. The Secretary shall make each grant in an amount of not less than $100,000 and not more than $500,000.

''(4) ELIGIBLE ENTITIES.—Notwithstanding subsection (b)(2)(B), to be eligible to receive a grant under this subsection to carry out a program in a covered community, an entity shall be a partnership that is—

''(A) under the direction of a local workforce investment board established under section 117 that is serving the covered community; and

''(B) composed of members serving the covered community, such as—

''(i) a 4-year institution of higher education;

''(ii) an accredited community college;

''(iii) an accredited vocational or technical school;

''(iv) a health clinic or hospital;

''(v) a home-based or community-based long-term care facility or program; or

''(vi) a health care facility administered by the Secretary of Veterans Affairs.

''(5) APPLICATIONS.—To be eligible to receive a grant under this subsection, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including, at a minimum—

''(A) a proposal to use the grant funds to establish or expand a training program in order to train covered workers for employment as health care professionals or paraprofessionals;

''(B) information demonstrating the need for the training and support services to be provided through the program;

''(C) information describing the manner in which the entity will expend the grant funds,

and the activities to be carried out with the funds;

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

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

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

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

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

''(iv) on the number of qualified trainees that are refused admittance into the training programs because of lack of capacity.

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

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

''(B) select—

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

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

''(7) USE OF FUNDS.—

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

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

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

''(II) expanding course offerings;

''(III) hiring faculty;

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

''(V) establishing or expanding clinical education opportunities;

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

''(VII) conducting recruitment; or

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

''(I) providing tuition assistance;

''(II) establishing or expanding distance education programs;

''(III) providing transportation assistance; or

''(IV) providing child care.

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

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

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

At the end, add the following:

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

Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(b) REPORTS.—

''(1) IN GENERAL.—Not later than 180 days after the end of each fiscal year, the head of each Federal agency shall submit a report to Congress on the amount of the acquisitions made by the agency of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States in that fiscal year.

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

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

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

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

''(D) a summary of—

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

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

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

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

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

At the appropriate place, insert the following:

SEC. ___. SMALL BUSINESS REGULATORY ASSISTANCE.

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

(1) provide confidential assistance to small business concerns;

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

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

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

(5) expand the services delivered by the Small Business Development Centers under section 21(c)(3)(H) of the Small Business Act to improve access to programs to assist small business concerns with regulatory compliance.

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

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

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

(3) ASSOCIATION.—The term ''association'' means the association established pursuant to section 21(a)(3)(A) of the Small Business Act (15 U.S.C. 648(a)(3)(A)) representing a majority of Small Business Development Centers.

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

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

(6) SMALL BUSINESS DEVELOPMENT CENTER.—The term ''Small Business Development Center'' means a Small Business Development Center described in section 21 of the Small Business Act (15 U.S.C. 648).

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

(c) SMALL BUSINESS REGULATORY ASSISTANCE PILOT PROGRAM.—

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

(2) SMALL BUSINESS DEVELOPMENT CENTERS.—

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

(i) provide access to information and resources, including current Federal and State nonpunitive compliance and technical assistance programs similar to those established under section 507 of the Clean Air Act Amendments of 1990 (42 U.S.C. 7661f);

(ii) conduct training and educational activities;

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

(iv) provide technical assistance;

(v) give referrals to experts and other providers of compliance assistance who meet such standards for educational, technical, and professional competency as are established by the Administrator; and

(vi) form partnerships with Federal compliance programs.

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

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

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

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

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

(4) SELECTION OF PARTICIPATING STATE PROGRAMS.—

(A) GROUPINGS.—

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

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

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

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

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

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

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

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

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

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

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

(B) DEADLINE FOR SELECTION.—The Administrator shall make selections under this paragraph not later than 60 days after the date of publication of final regulations under subsection (d).

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

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

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

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

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

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

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

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

(i) the results of the evaluation; and

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

(8) AUTHORIZATION OF APPROPRIATIONS.—

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

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

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

(B) LIMITATION ON USE OF OTHER FUNDS.—The Administrator may carry out the pilot program established under this section only with amounts appropriated in advance specifically to carry out this section.

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

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

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

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

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

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

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

SA 129. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. _____. MODIFICATION OF DETERMINATION OF EXCLUSION FOR TRACTORS WEIGHING NOT MORE THAN 19,500 POUNDS FROM FEDERAL EXCISE TAX ON HEAVY TRUCKS AND TRAILERS.

(a) IN GENERAL.—Subparagraph (B) of section 4051(a)(4) is amended to read as follows:

''(B) the gross combined weight (as determined by the Secretary) of such tractor, in combination with a trailer or a semitrailer, does not exceed the tractor's gross vehicle weight by 26,000 pounds or more.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 11112(a) of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

SA 130. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ____. EXTENSION OF WORK OPPORTUNITY TAX CREDIT TO QUALIFIED RESTAURANT EMPLOYEES.

(a) IN GENERAL.—Section 51(d)(1) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', or'', and by adding at the end the following new subparagraph:

''(J) a qualified restaurant employee.''.

(b) QUALIFIED RESTAURANT EMPLOYEE.—Section 51(d) of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (11) through (13) as paragraphs (12) through (14), respectively, and by inserting after paragraph (10) the following new paragraph:

''(11) QUALIFIED RESTAURANT EMPLOYEE.—

''(A) IN GENERAL.—The term 'qualified restaurant employee' means any individual—

''(i) who performs services in a restaurant where tipping is not customary,

''(ii) who is not exempt under the Fair Labor Standards Act and earns at least the Federal minimum wage, and

''(iii) who is certified by the employer during the hiring process as having attained age 16 but not 20 on the hiring date.

''(B) SPECIAL RULE FOR DETERMINING AMOUNT OF CREDIT.—For purposes of applying this subpart to wages paid or incurred to any qualified restaurant employee, subsection (b)(3) shall be applied by substituting '$3,000' for '$6,000'.''.

(c) SPECIAL RULE FOR CERTIFICATIONS.—Subparagraph (A) of section 51(d)(14) of the Internal Revenue Code of 1986, as redesignated by subsection (b), is amended by inserting '', other than an individual described in paragraph (11),'' after ''An individual''.

(d) NONQUALIFYING REHIRES.—Paragraph (2) of section 51(i) of the Internal Revenue Code of 1986 is amended to read as follows:

''(2) NONQUALIFYING REHIRES.—

''(A) IN GENERAL.—No wages shall be taken into account under subsection (a) with respect to any individual, other than an individual described in subsection (d)(11), if, prior to the hiring date of such individual, such individual had been employed by the employer at any time.

''(B) QUALIFIED RESTAURANT EMPLOYEES.—In the case of an individual described in subsection (d)(11), no wages shall be taken into account under subsection (a) if, prior to the hiring date of such individual, such individual had been employed by the employer within the prior 90 day period.''.

(e) MINIMUM EMPLOYMENT PERIODS.—Section 51(i)(3) of the Internal Revenue Code of

1986 is amended by adding at the end the following new subparagraph:

''(C) NONAPPLICATION TO QUALIFIED RESTAURANT EMPLOYEES.—Subparagraphs (A) and (B) shall not apply to an individual described in subsection (d)(11).''.

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

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

At the appropriate place insert the following:

SEC. _____. DEDUCTIBILITY OF INTEREST EXPENSE INCURRED BY ELECTING SMALL BUSINESS TRUST TO ACQUIRE S CORPORATION STOCK.

(a) IN GENERAL.—Subparagraph (C) of section 641(c)(2) of the Internal Revenue Code of 1986 (relating to modifications) is amended by inserting after clause (iii) the following new clause:

''(iv) Any interest expense incurred to acquire stock in an S corporation.''.

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

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

At the appropriate place, insert the following:

SEC. ____. EXPANSION OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for—

''(A) the taxpayer,

''(B) the taxpayer's spouse,

''(C) the taxpayer's dependents,

''(D) any individual—

''(i) who was not the spouse, determined without regard to section 7703, of the taxpayer at any time during the taxable year of the taxpayer,

''(ii) who—

''(I) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

''(II) is a student who has not attained the age of 24 as of the close of such calendar year,

''(iii) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and

''(iv) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which the taxpayer's taxable year begins, and

''(E) an individual—

''(i) who is designated by the taxpayer for purposes of this paragraph,

''(ii) who is not the spouse or qualifying child of such taxpayer or any other taxpayer for any taxable year beginning in the calendar year in which the taxpayer's taxable year begins, and

''(iii) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

For purposes of subparagraph (E)(i), not more than 1 person may be designated by the taxpayer for any taxable year.''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 162(l)(2) of the Internal Revenue Code of 1986 is amended by striking ''or of the spouse of the taxpayer'' and inserting '', of the spouse of the taxpayer, or of any individual described in paragraph (1)(E)''.

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

SA 133. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. STATE MINIMUM WAGE.

Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) is amended by adding at the end the following:

''(h)(1) An employer in a State that adopts a minimum wage law that conforms to the requirements of paragraph (2) shall not be required to pay the employer's employees at the minimum wage prescribed by subsection (a)(1).

''(2) Paragraph (1) shall apply in a State that adopts a minimum wage law that—

''(A) sets a rate that is not less than $5.15 an hour; and

''(B) applies that rate to not fewer than the employees performing work within the State who would otherwise be covered by the minimum wage rate prescribed by subsection (a)(1).

''(3) In the case of a State that does not have a State law that conforms to the requirements of paragraph (2), an increase in the minimum wage rate prescribed by subsection (a)(1) that is enacted on or after the date of enactment of the Fair Minimum Wage Act of 2007 shall go into effect in such State 6 months after the first day of the first legislative session of the State legislature in which a State law described in paragraph (2) may be considered.''.

SA 134. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. STATE MINIMUM WAGE.

Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) is amended by adding at the end the following:

''(h)(1) An employer in a State that adopts a minimum wage law that conforms to the requirements of paragraph (2) shall not be required to pay the employer's employees at the minimum wage prescribed by subsection (a)(1).

''(2) Paragraph (1) shall apply in a State that adopts a minimum wage law that—

''(A) sets a rate that is not less than $5.15 an hour; and

''(B) applies that rate to not fewer than the employees performing work within the State who would otherwise be covered by the minimum wage rate prescribed by subsection (a)(1).

''(3) In the case of a State that does not have a State law that conforms to the requirements of paragraph (2), an increase in the minimum wage rate prescribed by subsection (a)(1) that is enacted on or after the date of enactment of the Fair Minimum Wage Act of 2007 shall go into effect in such State 6 months after the first day of the first legislative session of the State legislature in which a State law described in paragraph (2) may be considered.''.

SA 135. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. REPEAL OF FEDERAL UNEMPLOYMENT SURTAX.

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

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

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

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

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

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

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

At the appropriate place, insert the following:

SEC. _____. REPEAL OF FEDERAL UNEMPLOYMENT SURTAX.

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

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

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

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

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

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

SA 137. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the

Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

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

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

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

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

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

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

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

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

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

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

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

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

(c) EXCLUSION APPLIES TO HIGHLY COMPENSATED EMPLOYEES ONLY IF NO DISCRIMINATION.—Section 132(j)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''Paragraphs (1) and (2) of subsection (a)'' and inserting ''Subsections (a)(1), (a)(2), and (j)(4)'', and

(2) by striking the heading thereof through ''(2) APPLY'' and inserting ''CERTAIN EXCLUSIONS APPLY''.

(d) EMPLOYER DEDUCTION FOR DUES TO CERTAIN ATHLETIC FACILITIES.—

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

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

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

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

At the appropriate place, insert the following:

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

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

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

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

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

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

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

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

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

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

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

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

(c) EXCLUSION APPLIES TO HIGHLY COMPENSATED EMPLOYEES ONLY IF NO DISCRIMINATION.—Section 132(j)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''Paragraphs (1) and (2) of subsection (a)'' and inserting ''Subsections (a)(1), (a)(2), and (j)(4)'', and

(2) by striking the heading thereof through ''(2) APPLY'' and inserting ''CERTAIN EXCLUSIONS APPLY''.

(d) EMPLOYER DEDUCTION FOR DUES TO CERTAIN ATHLETIC FACILITIES.—

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

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

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

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

At the appropriate place, insert the following:

SEC. ___. REPEAL OF EGTRRA AND JGTRRA SUNSETS.

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

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

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

At the appropriate place, insert the following:

SEC. ___. REPEAL OF EGTRRA AND JGTRRA SUNSETS.

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

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

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

At the appropriate place, insert the following:

SEC. ___. RESPONSIBLE EMPLOYER REQUIREMENTS.

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

(1) in subsection (e)(4)—

(A) in subparagraph (A)(i), by striking ''not less than $250 and not more than $2,000'' and inserting ''not less than $5000 and not more than $7,500'';

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

(C) in subparagraph (A)(iii), by striking ''not less than $3,000 and not more than $10,000'' and inserting ''not less than $25,000 and not more than $40,00'';

(2) in subsection (e)(5)—

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

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

(C) by adding at the end the following sentence: ''Providing information to the basic pilot program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A) and shall not qualify for the exemption provided by (e)(10).'';

(3) by adding at the end of subsection (e) the following new paragraph:

''(10) EXEMPTION FROM PENALTY FOR EMPLOYERS PARTICIPATING IN THE BASIC PILOT PROGRAM.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for

hiring or recruitment or referral by a person or entity, the penalty otherwise imposed shall be waived if the violator establishes that it was voluntarily participating in the basic pilot electronic verification program at the time of the offense.'';

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

''(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of paragraph (1) or (2) of subsection (a) shall be fined not less than $3,000 and more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year, or both, notwithstanding the provisions of any other Federal law relating to fine levels.''; and

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

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

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

''(4) COPYING AND RETENTION OF DOCUMENTATION.—

''(A) IN GENERAL.—A person or entity required to examine a document described in subparagraph (B), (C), or (D) of paragraph (1) or receive an attestation described in paragraph (2) shall retain a paper, microfiche, microfilm, or electronic version of each such document and attestation, indicate that each such version is a copied document, and make such versions available for inspection by an officer of the Department of Homeland Security or any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor during the period beginning on the date of the hiring, or recruiting or referring for a fee, of the individual and ending—

''(i) in the case of the recruiting or referral for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referral; or

''(ii) in the case of the hiring of an individual the later of—

''(I) 5 years after the date of such hiring; or

''(II) 1 year after the date the individual's employment is terminated.

''(B) OTHER RECORDS.—Such person or entity shall maintain records of any action taken and copies of any correspondence written or received with respect to the verification of an individual's identity or eligibility for employment in the United States.''.

(2) LIMITATION ON USE OF RETAINED DOCUMENTS.—Paragraph (5) of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(A) in the heading, by striking ''LIMITATION ON USE OF ATTESTATION FORM'' and inserting ''ATTESTATION FORM'';

(B) by redesignating such paragraph (5) as subparagraph (A);

(C) by indenting such subparagraph, as so designated, six ems from the left margin;

(D) by inserting before such subparagraph, as so designated, the following:

''(5) LIMITATION ON USE.—''; and

(E) by inserting after such subparagraph, as so designated, the following new subparagraph:

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

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

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

SEC. ___. RESPONSIBLE GOVERNMENT CONTRACTOR REQUIREMENTS.

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

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

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

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

''(ii) PLACEMENT ON EXCLUDED LIST.—The Secretary of Homeland Security or the Attorney General shall advise the Administrator of General Services of the debarment of an employer under clause (i) and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 7 years.

''(iii) WAIVER.—

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

''(II) NOTIFICATION TO CONGRESS.—If the Administrator grants a waiver or limitation described in subclause (I), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such waiver or limitation.

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

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

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

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

''(iii) WAIVER.—

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

''(II) NOTIFICATION TO CONGRESS.—If the Administrator grants a waiver or limitation described in subclause (I), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such waiver or limitation.

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

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

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

At the appropriate place, insert the following:

SEC. ___. RESPONSIBLE EMPLOYER REQUIREMENTS.

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

(1) in subsection (e)(4)—

(A) in subparagraph (A)(i), by striking ''not less than $250 and not more than $2,000'' and inserting ''not less than $5000 and not more than $7,500'';

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

(C) in subparagraph (A)(iii), by striking ''not less than $3,000 and not more than $10,000'' and inserting ''not less than $25,000 and not more than $40,00'';

(2) in subsection (e)(5)—

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

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

(C) by adding at the end the following sentence: ''Providing information to the basic pilot program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A) and shall not qualify for the exemption provided by (e)(10).'';

(3) by adding at the end of subsection (e) the following new paragraph:

''(10) EXEMPTION FROM PENALTY FOR EMPLOYERS PARTICIPATING IN THE BASIC PILOT PROGRAM.—In the case of imposition of a

civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed shall be waived if the violator establishes that it was voluntarily participating in the basic pilot electronic verification program at the time of the offense.'';

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

''(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of paragraph (1) or (2) of subsection (a) shall be fined not less than $3,000 and more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year, or both, notwithstanding the provisions of any other Federal law relating to fine levels.''; and

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

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

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

''(4) COPYING AND RETENTION OF DOCUMENTATION.—

''(A) IN GENERAL.—A person or entity required to examine a document described in subparagraph (B), (C), or (D) of paragraph (1) or receive an attestation described in paragraph (2) shall retain a paper, microfiche, microfilm, or electronic version of each such document and attestation, indicate that each such version is a copied document, and make such versions available for inspection by an officer of the Department of Homeland Security or any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor during the period beginning on the date of the hiring, or recruiting or referring for a fee, of the individual and ending—

''(i) in the case of the recruiting or referral for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referral; or

''(ii) in the case of the hiring of an individual the later of—

''(I) 5 years after the date of such hiring; or

''(II) 1 year after the date the individual's employment is terminated.

''(B) OTHER RECORDS.—Such person or entity shall maintain records of any action taken and copies of any correspondence written or received with respect to the verification of an individual's identity or eligibility for employment in the United States.''.

(2) LIMITATION ON USE OF RETAINED DOCUMENTS.—Paragraph (5) of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(A) in the heading, by striking ''LIMITATION ON USE OF ATTESTATION FORM'' and inserting ''ATTESTATION FORM'';

(B) by redesignating such paragraph (5) as subparagraph (A);

(C) by indenting such subparagraph, as so designated, six ems from the left margin;

(D) by inserting before such subparagraph, as so designated, the following:

''(5) LIMITATION ON USE.—''; and

(E) by inserting after such subparagraph, as so designated, the following new subparagraph:

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

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

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

SEC. ___. RESPONSIBLE GOVERNMENT CONTRACTOR REQUIREMENTS.

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

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

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

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

''(ii) PLACEMENT ON EXCLUDED LIST.—The Secretary of Homeland Security or the Attorney General shall advise the Administrator of General Services of the debarment of an employer under clause (i) and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 7 years.

''(iii) WAIVER.—

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

''(II) NOTIFICATION TO CONGRESS.—If the Administrator grants a waiver or limitation described in subclause (I), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such waiver or limitation.

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

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

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

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

''(iii) WAIVER.—

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

''(II) NOTIFICATION TO CONGRESS.—If the Administrator grants a waiver or limitation described in subclause (I), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such waiver or limitation.

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

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

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

At the end, add the following:

TITLE II—UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 201. UNLAWFUL EMPLOYMENT OF ALIENS.

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

''SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.

''(a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

''(1) IN GENERAL.—It is unlawful for an employer—

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

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

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

''(3) USE OF LABOR THROUGH CONTRACT.—

''(A) IN GENERAL.—An employer who uses a contract, subcontract, or exchange to obtain the labor of an alien in the United States knowing, or with reckless disregard—

''(i) that the alien is an unauthorized alien with respect to performing such labor, shall be considered to have hired the alien in violation of paragraph (1)(A); or

''(ii) that the person hiring such alien failed to comply with the requirements of

subsections (c) and (d) shall be considered to have hired the alien in violation of paragraph (1)(B).

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

''(C) REPORTING REQUIREMENT.—The employer shall submit to the Electronic Verification System established under subsection (d), in a manner prescribed by the Secretary, the employer identification number provided by the person hiring the alien. Failure to submit such number shall be considered a recordkeeping violation under subsection (e)(4)(B).

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

''(4) DEFENSE.—

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

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

''(b) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

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

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

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

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

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

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

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

''(1) ATTESTATION BY EMPLOYER.—

''(A) REQUIREMENTS.—

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

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

''(iii) STANDARDS FOR EXAMINATION.—The employer has complied with the requirement of this paragraph with respect to examination of documentation if a reasonable person would conclude that the document examined is genuine and relates to the individual whose identity and eligibility for employment in the United States is being verified. If the individual provides a document sufficient to meet the requirements of this paragraph, nothing in this paragraph shall be construed as requiring an employer to solicit any other document or as requiring the individual to produce any other document.

''(B) IDENTIFICATION DOCUMENTS.—A document described in this subparagraph is—

''(i) in the case of an individual who is a national of the United States—

''(I) a United States passport; or

''(II) a driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States that satisfies the requirements of division B of Public Law 109–13 (119 Stat. 302);

''(ii) in the case of an alien lawfully admitted for permanent residence in the United States, a permanent resident card, as specified by the Secretary;

''(iii) in the case of an alien who is authorized under this Act or by the Secretary to be employed in the United States, an employment authorization card, as specified by the Secretary that—

''(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

''(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use;

''(iv) in the case of an individual who is unable to obtain a document described in clause (i), (ii), or (iii), a document designated by the Secretary that—

''(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

''(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use; or

''(v) until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (d) or is participating in such System on a voluntary basis, a document, or a combination of documents, of such type that, as of the date of the enactment of the Fair Minimum Wage Act of 2007, the Secretary had established by regulation were sufficient for purposes of this section.

''(C) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—

''(i) AUTHORITY.—If the Secretary finds that a document or class of documents described in subparagraph (B) is not reliable to establish identity or is being used fraudulently to an unacceptable degree, the Secretary shall prohibit, or impose conditions, on the use of such document or class of documents for purposes of this subsection.

''(ii) REQUIREMENT FOR PUBLICATION.—The Secretary shall publish notice of any findings under clause (i) in the Federal Register.

''(2) ATTESTATION OF EMPLOYEE.—

''(A) REQUIREMENTS.—

''(i) IN GENERAL.—The individual shall attest, under penalty of perjury on the form described in paragraph (1)(A)(i), that the individual is a national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be hired, or to be recruited or referred for a fee, in the United States.

''(ii) SIGNATURE FOR EXAMINATION.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

''(B) PENALTIES.—An individual who falsely represents that the individual is eligible for employment in the United States in an attestation required by subparagraph (A) shall, for each such violation, be subject to a fine of not more than $5,000, a term of imprisonment not to exceed 3 years, or both.

''(3) RETENTION OF ATTESTATION.—The employer shall retain a paper, microfiche, microfilm, or electronic version of the attestations made under paragraph (1) and (2) and make such attestations available for inspection by an officer of the Department of Homeland Security, any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor during a period beginning on the date of the hiring, or recruiting or referring for a fee, of the individual and ending—

''(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referral; or

''(B) in the case of the hiring of an individual the later of—

''(i) 5 years after the date of such hiring;

''(ii) 1 year after the date the individual's employment is terminated; or

''(iii) in the case of an employer or class of employers, a period that is less than the applicable period described in clause (i) or (ii) if the Secretary reduces such period for such employer or class of employers.

''(4) DOCUMENT RETENTION AND RECORDKEEPING REQUIREMENTS.—

''(A) RETENTION OF DOCUMENTS.—Notwithstanding any other provision of law, an employer shall retain, for the applicable period described in paragraph (3), the following documents:

''(i) IN GENERAL.—The employer shall copy all documents presented by an individual described in paragraph (1)(B) and shall retain paper, microfiche, microfilm, or electronic copies of such documents. Such copies shall be designated as copied documents.

''(ii) OTHER DOCUMENTS.—The employer shall maintain records of any action taken and copies of any correspondence written or received with respect to the verification of an individual's identity or eligibility for employment in the United States.

''(B) USE OF RETAINED DOCUMENTS.—An employer shall use copies retained under clause (i) or (ii) of subparagraph (A) only for the purposes of complying with the requirements of this subsection, except as otherwise permitted under law.

''(5) PENALTIES.—An employer that fails to comply with the recordkeeping requirements of this subsection shall be subject to the penalties described in subsection (e)(4)(B).

''(6) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section may be construed to authorize, directly or indirectly, the issuance, use, or establishment of a national identification card.

''(d) ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—

''(1) REQUIREMENT FOR SYSTEM.—The Secretary, in cooperation with the Commissioner of Social Security, shall implement an Electronic Employment Verification System (referred to in this subsection as the 'System') to determine whether—

''(A) the identifying information submitted by an individual is consistent with the information maintained by the Secretary or the Commissioner of Social Security; and

''(B) such individual is eligible for employment in the United States.

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

''(3) OTHER PARTICIPATION IN SYSTEM.—Notwithstanding paragraph (2), the Secretary has the authority—

''(A) to permit any employer that is not required to participate in the System under paragraph (2) to participate in the System on a voluntary basis; and

''(B) to require any employer or class of employers to participate on a priority basis in the System with respect to individuals employed as of, or hired after, the date of enactment of the Fair Minimum Wage Act of 2007—

''(i) if the Secretary designates such employer or class of employers as a critical employer based on an assessment of homeland security or national security needs; or

''(ii) if the Secretary has reasonable cause to believe that the employer has engaged in material violations of paragraph (1), (2), or (3) of subsection (a).

''(4) REQUIREMENT TO NOTIFY.—The Secretary shall notify the employer or class of employers in writing regarding the requirement for participation in the System under paragraph (3)(B) not less than 60 days prior to the effective date of such requirement. Such notice shall include the training materials described in paragraph (8)(E)(v).

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

''(6) ADDITIONAL GUIDANCE.—A registered employer shall be permitted to utilize any technology that is consistent with this section and with any regulation or guidance from the Secretary to streamline the procedures to facilitate compliance with—

''(A) the attestation requirement in subsection (c); and

''(B) the employment eligibility verification requirements in this subsection.

''(7) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required to participate in the System and fails to comply with the requirements of the System with respect to an employee—

''(A) such failure shall be treated as a violation of subsection (a)(1)(B); and

''(B) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A), however, such presumption may not apply to a prosecution under subsection (f)(1).

''(8) DESIGN AND OPERATION OF SYSTEM.—

''(A) IN GENERAL.—The Secretary shall, through the System—

''(i) respond to each inquiry made by a registered employer through the Internet or other electronic media, or over a toll-free telephone line regarding an individual's identity and eligibility for employment in the United States; and

''(ii) maintain a record of each such inquiry and the information provided in response to such inquiry.

''(B) INITIAL INQUIRY.—

''(i) INFORMATION REQUIRED.—A registered employer shall, with respect to the hiring, or recruiting or referring for a fee, any individual for employment in the United States, obtain from the individual and record on the form described in subsection (c)(1)(A)(i)—

''(I) the individual's name and date of birth and, if the individual was born in the United States, the State in which such individual was born;

''(II) the individual's social security account number;

''(III) the employment identification number of the individual's employer during any one of the 5 most recently completed calendar years; and

''(IV) in the case of an individual who does not attest that the individual is a national of the United States under subsection (c)(1)(A)(i), such alien identification or authorization number that the Secretary shall require.

''(ii) SUBMISSION TO SYSTEM.—A registered employer shall submit an inquiry through the System to seek confirmation of the individual's identity and eligibility for employment in the United States—

''(I) not later than 3 days after the date of the hiring, or recruiting or referring for a fee, of the individual (as the case may be); or

''(II) in the case of an employee hired by a critical employer designated by the Secretary under paragraph (3)(B) at such time as the Secretary shall specify.

''(iii) EIN REQUIREMENTS.—

''(I) REQUIREMENT TO PROVIDE.—An employer shall provide the employer identification number issued to such employer to the individual, upon request, for purposes of providing the information under clause (i)(III).

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

''(C) INITIAL RESPONSE.—Not later than 10 days after an employer submits an inquiry to the System regarding an individual, the Secretary shall provide, through the System, to the employer—

''(i) if the System is able to confirm the individual's identity and eligibility for employment in the United States, a confirmation notice, including the appropriate codes on such confirmation notice; or

''(ii) if the System is unable to confirm the individual's identity or eligibility for employment in the United States, and after a secondary manual verification has been conducted, a tentative nonconfirmation notice, including the appropriate codes on such tentative nonconfirmation notice.

''(D) CONFIRMATION OR NONCONFIRMATION.—

''(i) CONFIRMATION UPON INITIAL INQUIRY.—If an employer receives a confirmation notice under paragraph (C)(i) for an individual, the employer shall record, on the form described in subsection (c)(1)(A)(i), the appropriate code provided in such notice.

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

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

''(iv) CONTEST.—If the individual contests the tentative nonconfirmation notice, the individual shall submit appropriate information to contest such notice under the procedures established in subparagraph (E)(iii) not later than 10 days after receiving the notice from the individual's employer.

''(v) EFFECTIVE PERIOD OF TENTATIVE NONCONFIRMATION NOTICE.—A tentative nonconfirmation notice shall remain in effect until such notice becomes final under clause (iii), or the earlier of—

''(I) a final confirmation notice or final nonconfirmation notice is issued through the System; or

''(II) 30 days after the individual contests a tentative nonconfirmation under clause (iv).

''(vi) AUTOMATIC FINAL NOTICE.—

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

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

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

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

''(vii) EFFECTIVE PERIOD OF FINAL NOTICE.—A final confirmation notice issued under this paragraph for an individual shall remain in effect—

''(I) during any continuous period of employment of such individual by such employer, unless the Secretary determines the final confirmation was the result of identity fraud; or

''(II) in the case of an alien authorized to be employed in the United States for a temporary period, during such period.

''(viii) PROHIBITION ON TERMINATION.—An employer may not terminate the employment of an individual based on a tentative

nonconfirmation notice until such notice becomes final under clause (iii) or a final nonconfirmation notice is issued for the individual by the System. Nothing in this clause shall prohibit the termination of employment for any reason other than such tentative nonconfirmation.

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

''(x) CONSEQUENCES OF NONCONFIRMATION.—If the employer has received a final nonconfirmation regarding an individual, the employer shall terminate the employment, recruitment, or referral of the individual. Such employer shall provide to the Secretary any information relating to the individual that the Secretary determines would assist the Secretary in enforcing or administering the immigration laws. If the employer continues to employ, recruit, or refer the individual after receiving final nonconfirmation, a rebuttable presumption is created that the employer has violated subsections (a)(1)(A) and (a)(2). Such presumption may not apply to a prosecution under subsection (f)(1).

''(E) RESPONSIBILITIES OF THE SECRETARY.—

''(i) IN GENERAL.—The Secretary shall establish a reliable, secure method to provide through the System, within the time periods required by this subsection—

''(I) a determination of whether the name and alien identification or authorization number provided in an inquiry by an employer is consistent with such information maintained by the Secretary in order to confirm the validity of the information provided; and

''(II) a determination of whether the individual is authorized to be employed in the United States.

''(ii) ANNUAL REPORT AND CERTIFICATION.—Not later than the date that is 24 months after the date that not less than $400,000,000 have been appropriated and made available to the Secretary to implement this subsection, and annually thereafter, the Secretary shall submit to Congress a report that includes—

''(I) an assessment of whether the System is able to correctly issue, within the period described in subparagraph (D)(v)(II), a final notice in at least 99 percent of the cases in which the final notice relates to an individual who is eligible for employment in the United States (excluding an individual who fails to contest a tentative nonconfirmation notice); and

''(II) if the assessment under subclause (I) is that the System is able to correctly issue within the specified time period a final notice in at least 99 percent of the cases described in such subclause, a certification of such assessment.

''(iii) CONTEST AND SELF-VERIFICATION.—The Secretary in consultation with the Commissioner of Social Security, shall establish procedures to permit an individual who contests a tentative or final nonconfirmation notice, or seeks to verify the individual's own employment eligibility prior to obtaining or changing employment, to contact the appropriate agency and, in a timely manner, correct or update the information used by the System.

''(iv) INFORMATION TO EMPLOYEE.—The Secretary shall develop a written form for employers to provide to individuals who receive a tentative or final nonconfirmation notice. Such form shall be made available in a language other than English, as necessary and reasonable, and shall include—

''(I) information about the reason for such notice;

''(II) the right to contest such notice;

''(III) contact information for the appropriate agency and instructions for initiating such contest; and

''(IV) a 24-hour toll-free telephone number to respond to inquiries related to such notice.

''(v) TRAINING MATERIALS.—The Secretary shall make available or provide to the employer, upon request, not later than 60 days prior to such employer's participation in the System, appropriate training materials to facilitate compliance with this subsection, and sections 274B(a)(7) and 274C(a).

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

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

''(10) ADMINISTRATIVE REVIEW.—

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

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

''(C) REVIEW FOR ERRORS.—If a final determination on an appeal filed under subparagraph (A) results in a confirmation of an individual's eligibility to work in the United States, the administrative review process shall require the Secretary to determine if the final nonconfirmation notice issued for the individual was the result of—

''(i) an error or negligence on the part of an employee or official operating or responsible for the System;

''(ii) the decision rules, processes, or procedures utilized by the System; or

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

''(D) COMPENSATION FOR ERROR.—

''(i) IN GENERAL.—If the Secretary makes a determination under subparagraph (C) that the final nonconfirmation notice issued for an individual was not caused by an act or omission of the individual, the Secretary shall compensate the individual for lost wages.

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

''(E) LIMITATION ON COMPENSATION.—For purposes of determining an individual's compensation for the loss of employment, such compensation shall not include any period in which the individual was ineligible for employment in the United States.

''(F) SOURCE OF FUNDS.—Compensation or reimbursement provided under this paragraph shall not be provided from funds appropriated in annual appropriations Acts to the Secretary for the Department of Homeland Security.

''(11) JUDICIAL REVIEW.—

''(A) IN GENERAL.—After the Secretary makes a final determination on an appeal filed by an individual under the administrative review process described in paragraph (10), the individual may obtain judicial review of such determination by a civil action commenced not later than 60 days after the date of such decision, or such further time as the Secretary may allow.

''(B) JURISDICTION.—A civil action for such judicial review shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has a principal place of business, or, if the plaintiff does not reside or have a principal place of business within any such judicial district, in the District Court of the United States for the District of Columbia.

''(C) ANSWER.—As part of the Secretary's answer to a complaint for such judicial review, the Secretary shall file a certified copy of the administrative record compiled during the administrative review under paragraph (10), including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming or reversing the result of that administrative review, with or without remanding the cause for a rehearing.

''(D) COMPENSATION FOR ERROR.—

''(i) IN GENERAL.—In cases in which such judicial review reverses the final determination of the Secretary made under paragraph (10), the court shall compensate the individual for lost wages.

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

''(12) LIMITATION ON COLLECTION AND USE OF DATA.—

''(A) LIMITATION ON COLLECTION OF DATA.—

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

''(I) information necessary to register employers under paragraph (5);

''(II) information necessary to initiate and respond to inquiries or contests under paragraph (8);

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

''(IV) information necessary to detect and prevent employment related identity fraud; and

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

''(ii) PENALTIES.—Any officer, employee, or contractor who willfully and knowingly collects and maintains data in the System other than data described in clause (i) shall be guilty of a misdemeanor and fined not more than $1,000 for each violation.

''(B) LIMITATION ON USE OF DATA.—Whoever willfully and knowingly accesses, discloses, or uses any information obtained or maintained by the System—

''(i) for the purpose of committing identity fraud, or assisting another person in committing identity fraud, as defined in section 1028 of title 18, United States Code;

''(ii) for the purpose of unlawfully obtaining employment in the United States or unlawfully obtaining employment in the United States for any other person; or

''(iii) for any purpose other than as provided for under any provision of law;

shall be guilty of a felony and upon conviction shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

''(C) EXCEPTIONS.—Nothing in subparagraph (A) or (B) may be construed to limit the collection, maintenance, or use of data by the Commissioner of Internal Revenue or the Commissioner of Social Security as provided by law.

''(13) MODIFICATION AUTHORITY.—The Secretary, after notice is submitted to Congress and provided to the public in the Federal Register, is authorized to modify the requirements of this subsection with respect to completion of forms, method of storage, attestations, copying of documents, signatures, methods of transmitting information, and other operational and technical aspects to improve the efficiency, accuracy, and security of the System.

''(14) ANNUAL GAO STUDY AND REPORT.—

''(A) REQUIREMENT.—The Comptroller General of the United States shall conduct an annual study of the System.

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

''(C) REPORT.—Not later than the date that is 24 months after the date that not less than $400,000,000 have been appropriated and made available to the Secretary to implement this subsection, and annually thereafter, the Comptroller General shall submit to Congress a report containing the findings of the study carried out under this paragraph. Each such report shall include, at a minimum, the following:

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

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

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

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

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

''(vi) An assessment of whether the Secretary and the Commissioner of Social Security have adequate resources to carry out the duties and responsibilities of this section.

''(e) COMPLIANCE.—

''(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary shall establish procedures—

''(A) for individuals and entities to file complaints regarding potential violations of subsection (a);

''(B) for the investigation of such complaints that the Secretary determines are appropriate to investigate; and

''(C) for the investigation of other violations of subsection (a) that the Secretary determines is appropriate.

''(2) AUTHORITY IN INVESTIGATIONS.—

''(A) IN GENERAL.—In conducting investigations and hearings under this subsection, officers and employees of the Department of Homeland Security—

''(i) shall have reasonable access to examine evidence regarding any employer being investigated; and

''(ii) if designated by the Secretary, may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection.

''(B) FAILURE TO COOPERATE.—In case of refusal to obey a subpoena lawfully issued under subparagraph (A)(ii), the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished by such court as contempt.

''(C) DEPARTMENT OF LABOR.—The Secretary of Labor shall have the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)) to ensure compliance with the provisions of this section.

''(3) COMPLIANCE PROCEDURES.—

''(A) PREPENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a violation of a requirement of this section and determines that further proceedings related to such violation are warranted, the Secretary shall issue to the employer concerned a written notice of the Secretary's intention to issue a claim for a fine or other penalty. Such notice shall—

''(i) describe the violation;

''(ii) specify the laws and regulations allegedly violated;

''(iii) specify the amount of fines or other penalties to be imposed;

''(iv) disclose the material facts which establish the alleged violation; and

''(v) inform such employer that the employer shall have a reasonable opportunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

''(B) REMISSION OR MITIGATION OF PENALTIES.—

''(i) REVIEW BY SECRETARY.—If the Secretary determines that such fine or other penalty was incurred erroneously, or determines the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate such fine or other penalty on the terms and conditions as the Secretary determines are reasonable and just, or order termination of any proceedings related to the notice.

''(ii) APPLICABILITY.—This subparagraph may not apply to an employer that has or is engaged in a pattern or practice of violations of paragraph (1), (2), or (3) of subsection (a) or of any other requirements of this section.

''(C) PENALTY CLAIM.—After considering evidence and representations offered by the employer, the Secretary shall determine whether there was a violation and promptly issue a written final determination setting forth the findings of fact and conclusions of law on which the determination is based and the appropriate penalty.

''(4) CIVIL PENALTIES.—

''(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates any provision of paragraph (1), (2), or (3) of subsection (a) shall pay civil penalties as follows:

''(i) Pay a civil penalty of not less than $500 and not more than $4,000 for each unauthorized alien with respect to each such violation.

''(ii) If the employer has previously been fined 1 time during the 12-month period preceding the violation under this subparagraph, pay a civil penalty of not less than $4,000 and not more than $10,000 for each unauthorized alien with respect to each such violation.

''(iii) If the employer has previously been fined more than 1 time during the 24-month period preceding the violation under this subparagraph or has failed to comply with a previously issued and final order related to any such provision, pay a civil penalty of not less than $6,000 and not more than $20,000 for each unauthorized alien with respect to each such violation.

''(B) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with the recordkeeping requirements of subsections (a), (c), and (d), shall pay a civil penalty as follows:

''(i) Pay a civil penalty of not less than $200 and not more than $2,000 for each such violation.

''(ii) If the employer has previously been fined 1 time during the 12-month period preceding the violation under this subparagraph, pay a civil penalty of not less than $400 and not more than $4,000 for each such violation.

''(iii) If the employer has previously been fined more than 1 time during the 24-month period preceding the violation under this subparagraph or has failed to comply with a previously issued and final order related to such requirements, pay a civil penalty of not less than $600 and not more than $6,000 for each such violation.

''(C) OTHER PENALTIES.—Notwithstanding subparagraphs (A) and (B), the Secretary may impose additional penalties for violations, including violations of cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the criminal penalty described in subsection (f).

''(5) JUDICIAL REVIEW.—An employer adversely affected by a final determination may, within 45 days after the date the final determination is issued, file a petition in any appropriate district court of the United States. The filing of a petition as provided in this paragraph shall stay the Secretary's determination until entry of judgment by the court. The burden shall be on the employer to show that the final determination was not supported by substantial evidence. The Secretary is authorized to require that the petitioner provide, prior to filing for review, security for payment of fines and penalties through bond or other guarantee of payment acceptable to the Secretary.

''(6) ENFORCEMENT OF ORDERS.—If an employer fails to comply with a final determination issued against that employer under this subsection, and the final determination is not subject to review as provided in paragraph (5), the Attorney General may file suit to enforce compliance with the final determination, not earlier than 46 days and not later than 180 days after the date the final determination is issued, in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final determination shall not be subject to review.

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

''(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

''(1) CRIMINAL PENALTY.—An employer that engages in a pattern or practice of knowing violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $20,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not

more than 3 years for the entire pattern or practice, or both.

''(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—If the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary deems necessary.

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

''(h) PROHIBITION OF INDEMNITY BONDS.—

''(1) PROHIBITION.—It is unlawful for an employer, in the hiring, recruiting, or referring for a fee, of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

''(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for mitigation of the monetary penalty under subsection (e), to have violated paragraph (1) of this subsection shall be subject to a civil penalty of $10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the Employer Compliance Fund established under section 286(w).

''(i) PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS, AND AGREEMENTS.—

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

''(A) IN GENERAL.—If an employer who does not hold a Federal contract, grant, or cooperative agreement is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 5 years. The Secretary or the Attorney General shall advise the Administrator of General Services of such a debarment, and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 5 years.

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

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

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

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

''(C) WAIVER.—After consideration of the views of any agency or department that holds a contract, grant, or cooperative agreement with the employer, the Secretary may, in lieu of debarring the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years, waive operation of this subsection, limit the duration or scope of the debarment, or may refer to an appropriate lead agency the decision of whether to debar the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding. The decision of whether to debar or take alternate action under this subparagraph shall not be judicially reviewed.

''(3) SUSPENSION.—Indictments for violations of this section or adequate evidence of actions that could form the basis for debarment under this subsection shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

''(j) MISCELLANEOUS PROVISIONS.—

''(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens eligible to be employed in the United States, the Secretary shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement (other than aliens lawfully admitted for permanent residence).

''(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

''(k) DEPOSIT OF AMOUNTS RECEIVED.—Except as otherwise specified, civil penalties collected under this section shall be deposited by the Secretary into the Employer Compliance Fund established under section 286(w).

''(l) DEFINITIONS.—In this section:

''(1) EMPLOYER.—The term 'employer' means any person or entity, including any entity of the Government of the United States, hiring, recruiting, or referring an individual for employment in the United States.

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

''(3) UNAUTHORIZED ALIEN.—The term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either—

''(A) an alien lawfully admitted for permanent residence; or

''(B) authorized to be so employed by this Act or by the Secretary.''.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS.—

(A) REPEAL OF BASIC PILOT.—Sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) are repealed.

(B) REPEAL OF REPORTING REQUIREMENTS.—

(i) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 290 of the Immigration and Nationality Act (8 U.S.C. 1360) is repealed.

(ii) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—Subsection (b) of section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1360 note) is repealed.

(2) CONSTRUCTION.—Nothing in this subsection or in subsection (d) of section 274A of the Immigration and Nationality Act, as amended by subsection (a), may be construed to limit the authority of the Secretary of Homeland Security to allow or continue to allow the participation of employers who participated in the basic pilot program under sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) in the Electronic Employment Verification System established pursuant to such subsection (d).

(c) TECHNICAL AMENDMENTS.—

(1) DEFINITION OF UNAUTHORIZED ALIEN.—The Immigration and Nationality Act is amended in sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8) (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C. 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C. 1324b(a)(1)) are amended by striking ''274A(h)(3)'' and inserting ''274A''.

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

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

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

(d) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended by adding at the end the following new subparagraphs:

''(I)(i) The Commissioner of Social Security shall, subject to the provisions of section 201(f)(2) of the Fair Minimum Wage Act of 2007, establish a reliable, secure method to provide through the Electronic Employment Verification System established pursuant to subsection (d) of section 274A of the Immigration and Nationality Act (referred to in this subparagraph as the 'System'), within the time periods required by paragraph (8) of such subsection—

''(I) a determination of whether the name, date of birth, employer identification number, and social security account number of an individual provided in an inquiry made to the System by an employer is consistent with such information maintained by the Commissioner in order to confirm the validity of the information provided;

''(II) a determination of the citizenship status associated with such name and social security account number, according to the records maintained by the Commissioner;

''(III) a determination of whether the name and number belongs to an individual who is deceased, according to the records maintained by the Commissioner;

''(IV) a determination of whether the name and number is blocked in accordance with clause (ii); and

''(V) a confirmation notice or a nonconfirmation notice described in such paragraph (8), in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the System.

''(ii) The Commissioner of Social Security shall prevent the fraudulent or other misuse of a social security account number by establishing procedures under which an individual who has been assigned a social security account number may block the use of such number under the System and remove such block.

''(J) In assigning social security account numbers to aliens who are authorized to work in the United States under section 218A of the Immigration and Nationality Act, the Commissioner of Social Security shall, to

the maximum extent practicable, assign such numbers by employing the enumeration procedure administered jointly by the Commissioner, the Secretary of State, and the Secretary.''.

(e) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION.—

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

''(21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO DEPARTMENT OF HOMELAND SECURITY.—

''(A) IN GENERAL.—From taxpayer identity information which has been disclosed to the Social Security Administration and upon written request by the Secretary of Homeland Security, the Commissioner of Social Security shall disclose directly to officers, employees, and contractors of the Department of Homeland Security the following information:

''(i) DISCLOSURE OF EMPLOYER NO-MATCH NOTICES.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 during calendar year 2006, 2007, or 2008 which contains—

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

''(II) more than 10 names of employees (within the meaning of such section) with the same taxpayer identifying number.

''(ii) DISCLOSURE OF INFORMATION REGARDING USE OF DUPLICATE EMPLOYEE TAXPAYER IDENTIFYING INFORMATION.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of identity fraud due to the multiple use of the same taxpayer identifying number (assigned under section 6109) of an employee (within the meaning of section 6051).

''(iii) DISCLOSURE OF INFORMATION REGARDING NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of such person's failure to register and participate in the Electronic Employment Verification System authorized under section 274A(d) of the Immigration and Nationality Act (hereafter in this paragraph referred to as the 'System').

''(iv) DISCLOSURE OF INFORMATION REGARDING NEW EMPLOYEES OF NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) hired after the date a person identified in clause (iii) is required to participate in the System under section 274A(d)(2) or section 274A(d)(3)(B) of the Immigration and Nationality Act.

''(v) DISCLOSURE OF INFORMATION REGARDING EMPLOYEES OF CERTAIN DESIGNATED EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) of each person who is required to participate in the System under section 274A(d)(3)(B) of the Immigration and Nationality Act.

''(vi) DISCLOSURE OF NEW HIRE TAXPAYER IDENTITY INFORMATION.—Taxpayer identity information of each person participating in the System and taxpayer identity information of all employees (within the meaning of section 6051) of such person hired during the period beginning with the later of—

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

''(II) the date of the request immediately preceding the most recent request under this clause,

ending with the date of the most recent request under this clause.

''(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose taxpayer identity information under subparagraph (A) only for purposes of, and to the extent necessary in—

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

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

''(iii) the civil operation of the Alien Terrorist Removal Court.

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

''(D) TERMINATION.—This paragraph shall not apply to any request made after the date which is 3 years after the date of the enactment of this paragraph.''.

(2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.—

(A) IN GENERAL.—Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

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

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

''(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor to determine compliance with such requirements,

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

''(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements.

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

(3) CONFORMING AMENDMENTS.—

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

(B) Section 6103(p)(3)(A) of such Code is amended by adding at the end the following new sentence: ''The Commissioner of Social Security shall provide to the Secretary such information as the Secretary may require in carrying out this paragraph with respect to return information inspected or disclosed under the authority of subsection (l)(21).''.

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

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

(ii) by striking ''or (20)'' each place it appears and inserting ''(20), or (21)''.

(D) Section 6103(p)(8)(B) of such Code is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(E) Section 7213(a)(2) of such Code is amended by striking ''or (20)'' and inserting ''(20), or (21)''.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as are necessary to carry out the amendments made by this section.

(2) LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner's responsibilities in this title or the amendments made by this title, but only to the extent the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner's full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(2) SUBSECTION (e).—

(A) IN GENERAL.—The amendments made by subsection (e) shall apply to disclosures made after the date of the enactment of this Act.

(B) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (e)(2), shall be made with respect to calendar year 2008.

SEC. 202. EMPLOYER COMPLIANCE FUND.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

''(w) EMPLOYER COMPLIANCE FUND.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury, a separate account, which shall be known as the 'Employer Compliance Fund' (referred to in this subsection as the 'Fund').

''(2) DEPOSITS.—There shall be deposited as offsetting receipts into the Fund all civil monetary penalties collected by the Secretary of Homeland Security under section 274A.

''(3) PURPOSE.—Amounts refunded to the Secretary from the Fund shall be used for the purposes of enhancing and enforcing employer compliance with section 274A.

''(4) AVAILABILITY OF FUNDS.—Amounts deposited into the Fund shall remain available until expended and shall be refunded out of the Fund by the Secretary of the Treasury, at least on a quarterly basis, to the Secretary of Homeland Security.''.

SEC. 203. ADDITIONAL WORKSITE ENFORCEMENT AND FRAUD DETECTION AGENTS.

(a) INCREASE IN NUMBER OF PERSONNEL.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, annually increase, by not less than 2,200, the number of personnel of the Bureau of Immigration and Customs Enforcement during the 5-year period beginning on the date of the enactment of this Act.

(b) USE OF PERSONNEL.—The Secretary of Homeland Security shall ensure that not less than 25 percent of all the hours expended by personnel of the Bureau of Immigration and Customs Enforcement shall be used to enforce compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324c).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for each

of the fiscal years 2008 through 2012 such sums as may be necessary to carry out this section.

SEC. 204. CLARIFICATION OF INELIGIBILITY FOR MISREPRESENTATION.

Section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(ii)(I)), is amended by striking ''citizen'' and inserting ''national''.

SEC. 205. ANTIDISCRIMINATION PROTECTIONS.

(a) APPLICATION OF PROHIBITION OF DISCRIMINATION TO VERIFICATION SYSTEM.—Section 274B(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(1)) is amended by inserting '', the verification of the individual's work authorization through the Electronic Employment Verification System described in section 274A(d),'' after ''the individual for employment''.

(b) CLASSES OF ALIENS AS PROTECTED INDIVIDUALS.—Section 274B(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)(B)) is amended to read as follows:

''(B) is an alien who is—

''(i) lawfully admitted for permanent residence;

''(ii) granted the status of an alien lawfully admitted for temporary residence under section 210(a) or 245(a)(1);

''(iii) admitted as a refugee under section 207;

''(iv) granted asylum under section 208;

''(v) granted the status of a nonimmigrant under section 101(a)(15)(H)(ii)(c);

''(vi) granted temporary protected status under section 244; or

''(vii) granted parole under section 212(d)(5).''.

(c) REQUIREMENTS FOR ELECTRONIC EMPLOYMENT VERIFICATION.—Section 274B(a) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)) is amended by adding at the end the following:

''(7) ANTIDISCRIMINATION REQUIREMENTS OF THE ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—It is an unfair immigration-related employment practice for a person or other entity, in the course of the electronic verification process described in section 274A(d)—

''(A) to terminate or undertake any adverse employment action due to a tentative nonconfirmation;

''(B) to use the verification system for screening of an applicant prior to an offer of employment;

''(C) except as described in section 274A(d)(3)(B), to use the verification system for a current employee after the first 3 days of employment, or for the reverification of an employee after the employee has satisfied the process described in section 274A(d); or

''(D) to require an individual to make an inquiry under the self-verification procedures established in section 274A(d)(8)(E)(iii).''.

(d) INCREASE IN CIVIL MONEY PENALTIES.—Section 274B(g)(2) of the Immigration and Nationality Act (8 U.S.C. 1324b(g)(2)) is amended—

(1) in subparagraph (B)(iv)—

(A) in subclause (I), by striking ''$250 and not more than $2,000'' and inserting ''$1,000 and not more than $4,000'';

(B) in subclause (II), by striking ''$2,000 and not more than $5,000'' and inserting ''$4,000 and not more than $10,000'';

(C) in subclause (III), by striking ''$3,000 and not more than $10,000'' and inserting ''$6,000 and not more than $20,000''; and

(D) in subclause (IV), by striking ''$100 and not more than $1,000'' and inserting ''$500 and not more than $5,000''.

(e) INCREASED FUNDING OF INFORMATION CAMPAIGN.—Section 274B(l)(3) of the Immigration and Nationality Act (8 U.S.C. 1324b(l)(3)) is amended by inserting ''and an additional $40,000,000 for each of fiscal years 2008 through 2010'' before the period at the end.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act and shall apply to violations occurring on or after such date.

SA 144. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE II—UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 201. UNLAWFUL EMPLOYMENT OF ALIENS.

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

''SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.

''(a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

''(1) IN GENERAL.—It is unlawful for an employer—

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

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

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

''(3) USE OF LABOR THROUGH CONTRACT.—

''(A) IN GENERAL.—An employer who uses a contract, subcontract, or exchange to obtain the labor of an alien in the United States knowing, or with reckless disregard—

''(i) that the alien is an unauthorized alien with respect to performing such labor, shall be considered to have hired the alien in violation of paragraph (1)(A); or

''(ii) that the person hiring such alien failed to comply with the requirements of subsections (c) and (d) shall be considered to have hired the alien in violation of paragraph (1)(B).

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

''(C) REPORTING REQUIREMENT.—The employer shall submit to the Electronic Verification System established under subsection (d), in a manner prescribed by the Secretary, the employer identification number provided by the person hiring the alien. Failure to submit such number shall be considered a recordkeeping violation under subsection (e)(4)(B).

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

''(4) DEFENSE.—

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

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

''(b) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

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

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

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

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

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

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

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

''(1) ATTESTATION BY EMPLOYER.—

''(A) REQUIREMENTS.—

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

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

''(iii) STANDARDS FOR EXAMINATION.—The employer has complied with the requirement of this paragraph with respect to examination of documentation if a reasonable person would conclude that the document examined is genuine and relates to the individual whose identity and eligibility for employment in the United States is being verified. If the individual provides a document sufficient to meet the requirements of this paragraph, nothing in this paragraph shall be construed as requiring an employer to solicit any other document or as requiring the individual to produce any other document.

''(B) IDENTIFICATION DOCUMENTS.—A document described in this subparagraph is—

''(i) in the case of an individual who is a national of the United States—

''(I) a United States passport; or

''(II) a driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying

possession of the United States that satisfies the requirements of division B of Public Law 109–13 (119 Stat. 302);

''(ii) in the case of an alien lawfully admitted for permanent residence in the United States, a permanent resident card, as specified by the Secretary;

''(iii) in the case of an alien who is authorized under this Act or by the Secretary to be employed in the United States, an employment authorization card, as specified by the Secretary that—

''(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

''(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use;

''(iv) in the case of an individual who is unable to obtain a document described in clause (i), (ii), or (iii), a document designated by the Secretary that—

''(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

''(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use; or

''(v) until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (d) or is participating in such System on a voluntary basis, a document, or a combination of documents, of such type that, as of the date of the enactment of the Fair Minimum Wage Act of 2007, the Secretary had established by regulation were sufficient for purposes of this section.

''(C) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—

''(i) AUTHORITY.—If the Secretary finds that a document or class of documents described in subparagraph (B) is not reliable to establish identity or is being used fraudulently to an unacceptable degree, the Secretary shall prohibit, or impose conditions, on the use of such document or class of documents for purposes of this subsection.

''(ii) REQUIREMENT FOR PUBLICATION.—The Secretary shall publish notice of any findings under clause (i) in the Federal Register.

''(2) ATTESTATION OF EMPLOYEE.—

''(A) REQUIREMENTS.—

''(i) IN GENERAL.—The individual shall attest, under penalty of perjury on the form described in paragraph (1)(A)(i), that the individual is a national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be hired, or to be recruited or referred for a fee, in the United States.

''(ii) SIGNATURE FOR EXAMINATION.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

''(B) PENALTIES.—An individual who falsely represents that the individual is eligible for employment in the United States in an attestation required by subparagraph (A) shall, for each such violation, be subject to a fine of not more than $5,000, a term of imprisonment not to exceed 3 years, or both.

''(3) RETENTION OF ATTESTATION.—The employer shall retain a paper, microfiche, microfilm, or electronic version of the attestations made under paragraph (1) and (2) and make such attestations available for inspection by an officer of the Department of Homeland Security, any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor during a period beginning on the date of the hiring, or recruiting or referring for a fee, of the individual and ending—

''(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referral; or

''(B) in the case of the hiring of an individual the later of—

''(i) 5 years after the date of such hiring;

''(ii) 1 year after the date the individual's employment is terminated; or

''(iii) in the case of an employer or class of employers, a period that is less than the applicable period described in clause (i) or (ii) if the Secretary reduces such period for such employer or class of employers.

''(4) DOCUMENT RETENTION AND RECORDKEEPING REQUIREMENTS.—

''(A) RETENTION OF DOCUMENTS.—Notwithstanding any other provision of law, an employer shall retain, for the applicable period described in paragraph (3), the following documents:

''(i) IN GENERAL.—The employer shall copy all documents presented by an individual described in paragraph (1)(B) and shall retain paper, microfiche, microfilm, or electronic copies of such documents. Such copies shall be designated as copied documents.

''(ii) OTHER DOCUMENTS.—The employer shall maintain records of any action taken and copies of any correspondence written or received with respect to the verification of an individual's identity or eligibility for employment in the United States.

''(B) USE OF RETAINED DOCUMENTS.—An employer shall use copies retained under clause (i) or (ii) of subparagraph (A) only for the purposes of complying with the requirements of this subsection, except as otherwise permitted under law.

''(5) PENALTIES.—An employer that fails to comply with the recordkeeping requirements of this subsection shall be subject to the penalties described in subsection (e)(4)(B).

''(6) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section may be construed to authorize, directly or indirectly, the issuance, use, or establishment of a national identification card.

''(d) ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—

''(1) REQUIREMENT FOR SYSTEM.—The Secretary, in cooperation with the Commissioner of Social Security, shall implement an Electronic Employment Verification System (referred to in this subsection as the 'System') to determine whether—

''(A) the identifying information submitted by an individual is consistent with the information maintained by the Secretary or the Commissioner of Social Security; and

''(B) such individual is eligible for employment in the United States.

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

''(3) OTHER PARTICIPATION IN SYSTEM.—Notwithstanding paragraph (2), the Secretary has the authority—

''(A) to permit any employer that is not required to participate in the System under paragraph (2) to participate in the System on a voluntary basis; and

''(B) to require any employer or class of employers to participate on a priority basis in the System with respect to individuals employed as of, or hired after, the date of enactment of the Fair Minimum Wage Act of 2007—

''(i) if the Secretary designates such employer or class of employers as a critical employer based on an assessment of homeland security or national security needs; or

''(ii) if the Secretary has reasonable cause to believe that the employer has engaged in material violations of paragraph (1), (2), or (3) of subsection (a).

''(4) REQUIREMENT TO NOTIFY.—The Secretary shall notify the employer or class of employers in writing regarding the requirement for participation in the System under paragraph (3)(B) not less than 60 days prior to the effective date of such requirement. Such notice shall include the training materials described in paragraph (8)(E)(v).

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

''(6) ADDITIONAL GUIDANCE.—A registered employer shall be permitted to utilize any technology that is consistent with this section and with any regulation or guidance from the Secretary to streamline the procedures to facilitate compliance with—

''(A) the attestation requirement in subsection (c); and

''(B) the employment eligibility verification requirements in this subsection.

''(7) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required to participate in the System and fails to comply with the requirements of the System with respect to an employee—

''(A) such failure shall be treated as a violation of subsection (a)(1)(B); and

''(B) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A), however, such presumption may not apply to a prosecution under subsection (f)(1).

''(8) DESIGN AND OPERATION OF SYSTEM.—

''(A) IN GENERAL.—The Secretary shall, through the System—

''(i) respond to each inquiry made by a registered employer through the Internet or other electronic media, or over a toll-free telephone line regarding an individual's identity and eligibility for employment in the United States; and

''(ii) maintain a record of each such inquiry and the information provided in response to such inquiry.

''(B) INITIAL INQUIRY.—

''(i) INFORMATION REQUIRED.—A registered employer shall, with respect to the hiring, or recruiting or referring for a fee, any individual for employment in the United States, obtain from the individual and record on the form described in subsection (c)(1)(A)(i)—

''(I) the individual's name and date of birth and, if the individual was born in the United States, the State in which such individual was born;

''(II) the individual's social security account number;

''(III) the employment identification number of the individual's employer during any one of the 5 most recently completed calendar years; and

''(IV) in the case of an individual who does not attest that the individual is a national of the United States under subsection (c)(1)(A)(i), such alien identification or authorization number that the Secretary shall require.

''(ii) SUBMISSION TO SYSTEM.—A registered employer shall submit an inquiry through the System to seek confirmation of the individual's identity and eligibility for employment in the United States—

''(I) not later than 3 days after the date of the hiring, or recruiting or referring for a fee, of the individual (as the case may be); or

''(II) in the case of an employee hired by a critical employer designated by the Secretary under paragraph (3)(B) at such time as the Secretary shall specify.

''(iii) EIN REQUIREMENTS.—

''(I) REQUIREMENT TO PROVIDE.—An employer shall provide the employer identification number issued to such employer to the individual, upon request, for purposes of providing the information under clause (i)(III).

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

''(C) INITIAL RESPONSE.—Not later than 10 days after an employer submits an inquiry to the System regarding an individual, the Secretary shall provide, through the System, to the employer—

''(i) if the System is able to confirm the individual's identity and eligibility for employment in the United States, a confirmation notice, including the appropriate codes on such confirmation notice; or

''(ii) if the System is unable to confirm the individual's identity or eligibility for employment in the United States, and after a secondary manual verification has been conducted, a tentative nonconfirmation notice, including the appropriate codes on such tentative nonconfirmation notice.

''(D) CONFIRMATION OR NONCONFIRMATION.—

''(i) CONFIRMATION UPON INITIAL INQUIRY.—If an employer receives a confirmation notice under paragraph (C)(i) for an individual, the employer shall record, on the form described in subsection (c)(1)(A)(i), the appropriate code provided in such notice.

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

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

''(iv) CONTEST.—If the individual contests the tentative nonconfirmation notice, the individual shall submit appropriate information to contest such notice under the procedures established in subparagraph (E)(iii) not later than 10 days after receiving the notice from the individual's employer.

''(v) EFFECTIVE PERIOD OF TENTATIVE NONCONFIRMATION NOTICE.—A tentative nonconfirmation notice shall remain in effect until such notice becomes final under clause (iii), or the earlier of—

''(I) a final confirmation notice or final nonconfirmation notice is issued through the System; or

''(II) 30 days after the individual contests a tentative nonconfirmation under clause (iv).

''(vi) AUTOMATIC FINAL NOTICE.—

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

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

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

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

''(vii) EFFECTIVE PERIOD OF FINAL NOTICE.—A final confirmation notice issued under this paragraph for an individual shall remain in effect—

''(I) during any continuous period of employment of such individual by such employer, unless the Secretary determines the final confirmation was the result of identity fraud; or

''(II) in the case of an alien authorized to be employed in the United States for a temporary period, during such period.

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

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

''(x) CONSEQUENCES OF NONCONFIRMATION.—If the employer has received a final nonconfirmation regarding an individual, the employer shall terminate the employment, recruitment, or referral of the individual. Such employer shall provide to the Secretary any information relating to the individual that the Secretary determines would assist the Secretary in enforcing or administering the immigration laws. If the employer continues to employ, recruit, or refer the individual after receiving final nonconfirmation, a rebuttable presumption is created that the employer has violated subsections (a)(1)(A) and (a)(2). Such presumption may not apply to a prosecution under subsection (f)(1).

''(E) RESPONSIBILITIES OF THE SECRETARY.—

''(i) IN GENERAL.—The Secretary shall establish a reliable, secure method to provide through the System, within the time periods required by this subsection—

''(I) a determination of whether the name and alien identification or authorization number provided in an inquiry by an employer is consistent with such information maintained by the Secretary in order to confirm the validity of the information provided; and

''(II) a determination of whether the individual is authorized to be employed in the United States.

''(ii) ANNUAL REPORT AND CERTIFICATION.—Not later than the date that is 24 months after the date that not less than $400,000,000 have been appropriated and made available to the Secretary to implement this subsection, and annually thereafter, the Secretary shall submit to Congress a report that includes—

''(I) an assessment of whether the System is able to correctly issue, within the period described in subparagraph (D)(v)(II), a final notice in at least 99 percent of the cases in which the final notice relates to an individual who is eligible for employment in the United States (excluding an individual who fails to contest a tentative nonconfirmation notice); and

''(II) if the assessment under subclause (I) is that the System is able to correctly issue within the specified time period a final notice in at least 99 percent of the cases described in such subclause, a certification of such assessment.

''(iii) CONTEST AND SELF-VERIFICATION.—The Secretary in consultation with the Commissioner of Social Security, shall establish procedures to permit an individual who contests a tentative or final nonconfirmation notice, or seeks to verify the individual's own employment eligibility prior to obtaining or changing employment, to contact the appropriate agency and, in a timely manner, correct or update the information used by the System.

''(iv) INFORMATION TO EMPLOYEE.—The Secretary shall develop a written form for employers to provide to individuals who receive a tentative or final nonconfirmation notice. Such form shall be made available in a language other than English, as necessary and reasonable, and shall include—

''(I) information about the reason for such notice;

''(II) the right to contest such notice;

''(III) contact information for the appropriate agency and instructions for initiating such contest; and

''(IV) a 24-hour toll-free telephone number to respond to inquiries related to such notice.

''(v) TRAINING MATERIALS.—The Secretary shall make available or provide to the employer, upon request, not later than 60 days prior to such employer's participation in the System, appropriate training materials to facilitate compliance with this subsection, and sections 274B(a)(7) and 274C(a).

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

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

''(10) ADMINISTRATIVE REVIEW.—

''(A) IN GENERAL.—An individual who is terminated from employment as a result of a final nonconfirmation notice may, not later

than 60 days after the date of such termination, file an appeal of such notice.

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

''(C) REVIEW FOR ERRORS.—If a final determination on an appeal filed under subparagraph (A) results in a confirmation of an individual's eligibility to work in the United States, the administrative review process shall require the Secretary to determine if the final nonconfirmation notice issued for the individual was the result of—

''(i) an error or negligence on the part of an employee or official operating or responsible for the System;

''(ii) the decision rules, processes, or procedures utilized by the System; or

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

''(D) COMPENSATION FOR ERROR.—

''(i) IN GENERAL.—If the Secretary makes a determination under subparagraph (C) that the final nonconfirmation notice issued for an individual was not caused by an act or omission of the individual, the Secretary shall compensate the individual for lost wages.

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

''(E) LIMITATION ON COMPENSATION.—For purposes of determining an individual's compensation for the loss of employment, such compensation shall not include any period in which the individual was ineligible for employment in the United States.

''(F) SOURCE OF FUNDS.—Compensation or reimbursement provided under this paragraph shall not be provided from funds appropriated in annual appropriations Acts to the Secretary for the Department of Homeland Security.

''(11) JUDICIAL REVIEW.—

''(A) IN GENERAL.—After the Secretary makes a final determination on an appeal filed by an individual under the administrative review process described in paragraph (10), the individual may obtain judicial review of such determination by a civil action commenced not later than 60 days after the date of such decision, or such further time as the Secretary may allow.

''(B) JURISDICTION.—A civil action for such judicial review shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has a principal place of business, or, if the plaintiff does not reside or have a principal place of business within any such judicial district, in the District Court of the United States for the District of Columbia.

''(C) ANSWER.—As part of the Secretary's answer to a complaint for such judicial review, the Secretary shall file a certified copy of the administrative record compiled during the administrative review under paragraph (10), including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming or reversing the result of that administrative review, with or without remanding the cause for a rehearing.

''(D) COMPENSATION FOR ERROR.—

''(i) IN GENERAL.—In cases in which such judicial review reverses the final determination of the Secretary made under paragraph (10), the court shall compensate the individual for lost wages.

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

''(12) LIMITATION ON COLLECTION AND USE OF DATA.—

''(A) LIMITATION ON COLLECTION OF DATA.—

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

''(I) information necessary to register employers under paragraph (5);

''(II) information necessary to initiate and respond to inquiries or contests under paragraph (8);

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

''(IV) information necessary to detect and prevent employment related identity fraud; and

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

''(ii) PENALTIES.—Any officer, employee, or contractor who willfully and knowingly collects and maintains data in the System other than data described in clause (i) shall be guilty of a misdemeanor and fined not more than $1,000 for each violation.

''(B) LIMITATION ON USE OF DATA.—Whoever willfully and knowingly accesses, discloses, or uses any information obtained or maintained by the System—

''(i) for the purpose of committing identity fraud, or assisting another person in committing identity fraud, as defined in section 1028 of title 18, United States Code;

''(ii) for the purpose of unlawfully obtaining employment in the United States or unlawfully obtaining employment in the United States for any other person; or

''(iii) for any purpose other than as provided for under any provision of law;

shall be guilty of a felony and upon conviction shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

''(C) EXCEPTIONS.—Nothing in subparagraph (A) or (B) may be construed to limit the collection, maintenance, or use of data by the Commissioner of Internal Revenue or the Commissioner of Social Security as provided by law.

''(13) MODIFICATION AUTHORITY.—The Secretary, after notice is submitted to Congress and provided to the public in the Federal Register, is authorized to modify the requirements of this subsection with respect to completion of forms, method of storage, attestations, copying of documents, signatures, methods of transmitting information, and other operational and technical aspects to improve the efficiency, accuracy, and security of the System.

''(14) ANNUAL GAO STUDY AND REPORT.—

''(A) REQUIREMENT.—The Comptroller General of the United States shall conduct an annual study of the System.

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

''(C) REPORT.—Not later than the date that is 24 months after the date that not less than $400,000,000 have been appropriated and made available to the Secretary to implement this subsection, and annually thereafter, the Comptroller General shall submit to Congress a report containing the findings of the study carried out under this paragraph. Each such report shall include, at a minimum, the following:

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

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

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

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

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

''(vi) An assessment of whether the Secretary and the Commissioner of Social Security have adequate resources to carry out the duties and responsibilities of this section.

''(e) COMPLIANCE.—

''(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary shall establish procedures—

''(A) for individuals and entities to file complaints regarding potential violations of subsection (a);

''(B) for the investigation of such complaints that the Secretary determines are appropriate to investigate; and

''(C) for the investigation of other violations of subsection (a) that the Secretary determines is appropriate.

''(2) AUTHORITY IN INVESTIGATIONS.—

''(A) IN GENERAL.—In conducting investigations and hearings under this subsection, officers and employees of the Department of Homeland Security—

''(i) shall have reasonable access to examine evidence regarding any employer being investigated; and

''(ii) if designated by the Secretary, may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection.

''(B) FAILURE TO COOPERATE.—In case of refusal to obey a subpoena lawfully issued under subparagraph (A)(ii), the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished by such court as contempt.

''(C) DEPARTMENT OF LABOR.—The Secretary of Labor shall have the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)) to ensure compliance with the provisions of this section.

''(3) COMPLIANCE PROCEDURES.—

''(A) PREPENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a violation of a requirement of this section and determines that further proceedings related to such violation are warranted, the Secretary shall issue to the employer concerned a written notice of the Secretary's intention to issue a claim for a fine or other penalty. Such notice shall—

''(i) describe the violation;

''(ii) specify the laws and regulations allegedly violated;

''(iii) specify the amount of fines or other penalties to be imposed;

''(iv) disclose the material facts which establish the alleged violation; and

''(v) inform such employer that the employer shall have a reasonable opportunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

''(B) REMISSION OR MITIGATION OF PENALTIES.—

''(i) REVIEW BY SECRETARY.—If the Secretary determines that such fine or other penalty was incurred erroneously, or determines the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate such fine or other penalty on the terms and conditions as the Secretary determines are reasonable and just, or order termination of any proceedings related to the notice.

''(ii) APPLICABILITY.—This subparagraph may not apply to an employer that has or is engaged in a pattern or practice of violations of paragraph (1), (2), or (3) of subsection (a) or of any other requirements of this section.

''(C) PENALTY CLAIM.—After considering evidence and representations offered by the employer, the Secretary shall determine whether there was a violation and promptly issue a written final determination setting forth the findings of fact and conclusions of law on which the determination is based and the appropriate penalty.

''(4) CIVIL PENALTIES.—

''(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates any provision of paragraph (1), (2), or (3) of subsection (a) shall pay civil penalties as follows:

''(i) Pay a civil penalty of not less than $500 and not more than $4,000 for each unauthorized alien with respect to each such violation.

''(ii) If the employer has previously been fined 1 time during the 12-month period preceding the violation under this subparagraph, pay a civil penalty of not less than $4,000 and not more than $10,000 for each unauthorized alien with respect to each such violation.

''(iii) If the employer has previously been fined more than 1 time during the 24-month period preceding the violation under this subparagraph or has failed to comply with a previously issued and final order related to any such provision, pay a civil penalty of not less than $6,000 and not more than $20,000 for each unauthorized alien with respect to each such violation.

''(B) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with the recordkeeping requirements of subsections (a), (c), and (d), shall pay a civil penalty as follows:

''(i) Pay a civil penalty of not less than $200 and not more than $2,000 for each such violation.

''(ii) If the employer has previously been fined 1 time during the 12-month period preceding the violation under this subparagraph, pay a civil penalty of not less than $400 and not more than $4,000 for each such violation.

''(iii) If the employer has previously been fined more than 1 time during the 24-month period preceding the violation under this subparagraph or has failed to comply with a previously issued and final order related to such requirements, pay a civil penalty of not less than $600 and not more than $6,000 for each such violation.

''(C) OTHER PENALTIES.—Notwithstanding subparagraphs (A) and (B), the Secretary may impose additional penalties for violations, including violations of cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the criminal penalty described in subsection (f).

''(5) JUDICIAL REVIEW.—An employer adversely affected by a final determination may, within 45 days after the date the final determination is issued, file a petition in any appropriate district court of the United States. The filing of a petition as provided in this paragraph shall stay the Secretary's determination until entry of judgment by the court. The burden shall be on the employer to show that the final determination was not supported by substantial evidence. The Secretary is authorized to require that the petitioner provide, prior to filing for review, security for payment of fines and penalties through bond or other guarantee of payment acceptable to the Secretary.

''(6) ENFORCEMENT OF ORDERS.—If an employer fails to comply with a final determination issued against that employer under this subsection, and the final determination is not subject to review as provided in paragraph (5), the Attorney General may file suit to enforce compliance with the final determination, not earlier than 46 days and not later than 180 days after the date the final determination is issued, in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final determination shall not be subject to review.

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

''(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

''(1) CRIMINAL PENALTY.—An employer that engages in a pattern or practice of knowing violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $20,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than 3 years for the entire pattern or practice, or both.

''(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—If the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary deems necessary.

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

''(h) PROHIBITION OF INDEMNITY BONDS.—

''(1) PROHIBITION.—It is unlawful for an employer, in the hiring, recruiting, or referring for a fee, of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

''(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for mitigation of the monetary penalty under subsection (e), to have violated paragraph (1) of this subsection shall be subject to a civil penalty of $10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the Employer Compliance Fund established under section 286(w).

''(i) PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS, AND AGREEMENTS.—

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

''(A) IN GENERAL.—If an employer who does not hold a Federal contract, grant, or cooperative agreement is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 5 years. The Secretary or the Attorney General shall advise the Administrator of General Services of such a debarment, and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 5 years.

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

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

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

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

''(C) WAIVER.—After consideration of the views of any agency or department that holds a contract, grant, or cooperative agreement with the employer, the Secretary may, in lieu of debarring the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years, waive operation of this subsection, limit the duration or scope of the debarment, or may refer to an appropriate lead agency the decision of whether to debar the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding. The decision of whether to debar or take alternate action under this subparagraph shall not be judicially reviewed.

''(3) SUSPENSION.—Indictments for violations of this section or adequate evidence of

actions that could form the basis for debarment under this subsection shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

''(j) MISCELLANEOUS PROVISIONS.—

''(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens eligible to be employed in the United States, the Secretary shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement (other than aliens lawfully admitted for permanent residence).

''(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

''(k) DEPOSIT OF AMOUNTS RECEIVED.—Except as otherwise specified, civil penalties collected under this section shall be deposited by the Secretary into the Employer Compliance Fund established under section 286(w).

''(l) DEFINITIONS.—In this section:

''(1) EMPLOYER.—The term 'employer' means any person or entity, including any entity of the Government of the United States, hiring, recruiting, or referring an individual for employment in the United States.

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

''(3) UNAUTHORIZED ALIEN.—The term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either—

''(A) an alien lawfully admitted for permanent residence; or

''(B) authorized to be so employed by this Act or by the Secretary.''.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS.—

(A) REPEAL OF BASIC PILOT.—Sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) are repealed.

(B) REPEAL OF REPORTING REQUIREMENTS.—

(i) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 290 of the Immigration and Nationality Act (8 U.S.C. 1360) is repealed.

(ii) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—Subsection (b) of section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1360 note) is repealed.

(2) CONSTRUCTION.—Nothing in this subsection or in subsection (d) of section 274A of the Immigration and Nationality Act, as amended by subsection (a), may be construed to limit the authority of the Secretary of Homeland Security to allow or continue to allow the participation of employers who participated in the basic pilot program under sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) in the Electronic Employment Verification System established pursuant to such subsection (d).

(c) TECHNICAL AMENDMENTS.—

(1) DEFINITION OF UNAUTHORIZED ALIEN.—The Immigration and Nationality Act is amended in sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8) (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C. 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C. 1324b(a)(1)) are amended by striking ''274A(h)(3)'' and inserting ''274A''.

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

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

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

(d) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended by adding at the end the following new subparagraphs:

''(I)(i) The Commissioner of Social Security shall, subject to the provisions of section 201(f)(2) of the Fair Minimum Wage Act of 2007, establish a reliable, secure method to provide through the Electronic Employment Verification System established pursuant to subsection (d) of section 274A of the Immigration and Nationality Act (referred to in this subparagraph as the 'System'), within the time periods required by paragraph (8) of such subsection—

''(I) a determination of whether the name, date of birth, employer identification number, and social security account number of an individual provided in an inquiry made to the System by an employer is consistent with such information maintained by the Commissioner in order to confirm the validity of the information provided;

''(II) a determination of the citizenship status associated with such name and social security account number, according to the records maintained by the Commissioner;

''(III) a determination of whether the name and number belongs to an individual who is deceased, according to the records maintained by the Commissioner;

''(IV) a determination of whether the name and number is blocked in accordance with clause (ii); and

''(V) a confirmation notice or a nonconfirmation notice described in such paragraph (8), in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the System.

''(ii) The Commissioner of Social Security shall prevent the fraudulent or other misuse of a social security account number by establishing procedures under which an individual who has been assigned a social security account number may block the use of such number under the System and remove such block.

''(J) In assigning social security account numbers to aliens who are authorized to work in the United States under section 218A of the Immigration and Nationality Act, the Commissioner of Social Security shall, to the maximum extent practicable, assign such numbers by employing the enumeration procedure administered jointly by the Commissioner, the Secretary of State, and the Secretary.''.

(e) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION.—

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

''(21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO DEPARTMENT OF HOMELAND SECURITY.—

''(A) IN GENERAL.—From taxpayer identity information which has been disclosed to the Social Security Administration and upon written request by the Secretary of Homeland Security, the Commissioner of Social Security shall disclose directly to officers, employees, and contractors of the Department of Homeland Security the following information:

''(i) DISCLOSURE OF EMPLOYER NO-MATCH NOTICES.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 during calendar year 2006, 2007, or 2008 which contains—

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

''(II) more than 10 names of employees (within the meaning of such section) with the same taxpayer identifying number.

''(ii) DISCLOSURE OF INFORMATION REGARDING USE OF DUPLICATE EMPLOYEE TAXPAYER IDENTIFYING INFORMATION.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of identity fraud due to the multiple use of the same taxpayer identifying number (assigned under section 6109) of an employee (within the meaning of section 6051).

''(iii) DISCLOSURE OF INFORMATION REGARDING NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of such person's failure to register and participate in the Electronic Employment Verification System authorized under section 274A(d) of the Immigration and Nationality Act (hereafter in this paragraph referred to as the 'System').

''(iv) DISCLOSURE OF INFORMATION REGARDING NEW EMPLOYEES OF NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) hired after the date a person identified in clause (iii) is required to participate in the System under section 274A(d)(2) or section 274A(d)(3)(B) of the Immigration and Nationality Act.

''(v) DISCLOSURE OF INFORMATION REGARDING EMPLOYEES OF CERTAIN DESIGNATED EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) of each person who is required to participate in the System under section 274A(d)(3)(B) of the Immigration and Nationality Act.

''(vi) DISCLOSURE OF NEW HIRE TAXPAYER IDENTITY INFORMATION.—Taxpayer identity information of each person participating in the System and taxpayer identity information of all employees (within the meaning of section 6051) of such person hired during the period beginning with the later of—

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

''(II) the date of the request immediately preceding the most recent request under this clause,

ending with the date of the most recent request under this clause.

''(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose taxpayer identity information under subparagraph (A) only for purposes of, and to the extent necessary in—

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

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

''(iii) the civil operation of the Alien Terrorist Removal Court.

''(C) REIMBURSEMENT.—The Commissioner of Social Security shall prescribe a reasonable fee schedule for furnishing taxpayer identity information under this paragraph

and collect such fees in advance from the Secretary of Homeland Security.

''(D) TERMINATION.—This paragraph shall not apply to any request made after the date which is 3 years after the date of the enactment of this paragraph.''.

(2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.—

(A) IN GENERAL.—Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

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

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

''(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor to determine compliance with such requirements,

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

''(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements.

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

(3) CONFORMING AMENDMENTS.—

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

(B) Section 6103(p)(3)(A) of such Code is amended by adding at the end the following new sentence: ''The Commissioner of Social Security shall provide to the Secretary such information as the Secretary may require in carrying out this paragraph with respect to return information inspected or disclosed under the authority of subsection (l)(21).''.

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

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

(ii) by striking ''or (20)'' each place it appears and inserting ''(20), or (21)''.

(D) Section 6103(p)(8)(B) of such Code is amended by inserting ''or paragraph (9)'' after ''subparagraph (A)''.

(E) Section 7213(a)(2) of such Code is amended by striking ''or (20)'' and inserting ''(20), or (21)''.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as are necessary to carry out the amendments made by this section.

(2) LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner's responsibilities in this title or the amendments made by this title, but only to the extent the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner's full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(2) SUBSECTION (e).—

(A) IN GENERAL.—The amendments made by subsection (e) shall apply to disclosures made after the date of the enactment of this Act.

(B) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (e)(2), shall be made with respect to calendar year 2008.

SEC. 202. EMPLOYER COMPLIANCE FUND.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

''(w) EMPLOYER COMPLIANCE FUND.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury, a separate account, which shall be known as the 'Employer Compliance Fund' (referred to in this subsection as the 'Fund').

''(2) DEPOSITS.—There shall be deposited as offsetting receipts into the Fund all civil monetary penalties collected by the Secretary of Homeland Security under section 274A.

''(3) PURPOSE.—Amounts refunded to the Secretary from the Fund shall be used for the purposes of enhancing and enforcing employer compliance with section 274A.

''(4) AVAILABILITY OF FUNDS.—Amounts deposited into the Fund shall remain available until expended and shall be refunded out of the Fund by the Secretary of the Treasury, at least on a quarterly basis, to the Secretary of Homeland Security.''.

SEC. 203. ADDITIONAL WORKSITE ENFORCEMENT AND FRAUD DETECTION AGENTS.

(a) INCREASE IN NUMBER OF PERSONNEL.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, annually increase, by not less than 2,200, the number of personnel of the Bureau of Immigration and Customs Enforcement during the 5-year period beginning on the date of the enactment of this Act.

(b) USE OF PERSONNEL.—The Secretary of Homeland Security shall ensure that not less than 25 percent of all the hours expended by personnel of the Bureau of Immigration and Customs Enforcement shall be used to enforce compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324c).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for each of the fiscal years 2008 through 2012 such sums as may be necessary to carry out this section.

SEC. 204. CLARIFICATION OF INELIGIBILITY FOR MISREPRESENTATION.

Section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(ii)(I)), is amended by striking ''citizen'' and inserting ''national''.

SEC. 205. ANTIDISCRIMINATION PROTECTIONS.

(a) APPLICATION OF PROHIBITION OF DISCRIMINATION TO VERIFICATION SYSTEM.—Section 274B(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(1)) is amended by inserting '', the verification of the individual's work authorization through the Electronic Employment Verification System described in section 274A(d),'' after ''the individual for employment''.

(b) CLASSES OF ALIENS AS PROTECTED INDIVIDUALS.—Section 274B(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)(B)) is amended to read as follows:

''(B) is an alien who is—

''(i) lawfully admitted for permanent residence;

''(ii) granted the status of an alien lawfully admitted for temporary residence under section 210(a) or 245(a)(1);

''(iii) admitted as a refugee under section 207;

''(iv) granted asylum under section 208;

''(v) granted the status of a nonimmigrant under section 101(a)(15)(H)(ii)(c);

''(vi) granted temporary protected status under section 244; or

''(vii) granted parole under section 212(d)(5).''.

(c) REQUIREMENTS FOR ELECTRONIC EMPLOYMENT VERIFICATION.—Section 274B(a) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)) is amended by adding at the end the following:

''(7) ANTIDISCRIMINATION REQUIREMENTS OF THE ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—It is an unfair immigration-related employment practice for a person or other entity, in the course of the electronic verification process described in section 274A(d)—

''(A) to terminate or undertake any adverse employment action due to a tentative nonconfirmation;

''(B) to use the verification system for screening of an applicant prior to an offer of employment;

''(C) except as described in section 274A(d)(3)(B), to use the verification system for a current employee after the first 3 days of employment, or for the reverification of an employee after the employee has satisfied the process described in section 274A(d); or

''(D) to require an individual to make an inquiry under the self-verification procedures established in section 274A(d)(8)(E)(iii).''.

(d) INCREASE IN CIVIL MONEY PENALTIES.—Section 274B(g)(2) of the Immigration and Nationality Act (8 U.S.C. 1324b(g)(2)) is amended—

(1) in subparagraph (B)(iv)—

(A) in subclause (I), by striking ''$250 and not more than $2,000'' and inserting ''$1,000 and not more than $4,000'';

(B) in subclause (II), by striking ''$2,000 and not more than $5,000'' and inserting ''$4,000 and not more than $10,000'';

(C) in subclause (III), by striking ''$3,000 and not more than $10,000'' and inserting ''$6,000 and not more than $20,000''; and

(D) in subclause (IV), by striking ''$100 and not more than $1,000'' and inserting ''$500 and not more than $5,000''.

(e) INCREASED FUNDING OF INFORMATION CAMPAIGN.—Section 274B(l)(3) of the Immigration and Nationality Act (8 U.S.C. 1324b(l)(3)) is amended by inserting ''and an additional $40,000,000 for each of fiscal years 2008 through 2010'' before the period at the end.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act and shall apply to violations occurring on or after such date.

SA 145. Mr. SESSIONS (for himself, Mr. INHOFE, and Mr. GRASSLEY) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. RESPONSIBLE GOVERNMENT CONTRACTOR REQUIREMENTS.

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

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

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

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

''(ii) PLACEMENT ON EXCLUDED LIST.—The Secretary of Homeland Security or the Attorney General shall advise the Administrator of General Services of the debarment of an employer under clause (i) and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 7 years.

''(iii) WAIVER.—

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

''(II) NOTIFICATION TO CONGRESS.—If the Administrator grants a waiver or limitation described in subclause (I), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such waiver or limitation.

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

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

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

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

''(iii) WAIVER.—

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

''(II) NOTIFICATION TO CONGRESS.—If the Administrator grants a waiver or limitation described in subclause (I), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such waiver or limitation.

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

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

SA 146. Mr. SESSIONS (for himself and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. RESPONSIBLE EMPLOYER REQUIREMENTS.

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

(1) in subsection (e)(4)—

(A) in subparagraph (A)(i), by striking ''not less than $250 and not more than $2,000'' and inserting ''not less than $5000 and not more than $7,500'';

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

(C) in subparagraph (A)(iii), by striking ''not less than $3,000 and not more than $10,000'' and inserting ''not less than $25,000 and not more than $40,00'';

(2) in subsection (e)(5)—

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

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

(C) by adding at the end the following sentence: ''Providing information to the basic pilot program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A) and shall not qualify for the exemption provided by (e)(10).'';

(3) by adding at the end of subsection (e) the following new paragraph:

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

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

''(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of paragraph (1) or (2) of subsection (a) shall be fined not less than $3,000 and more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year, or both, notwithstanding the provisions of any other Federal law relating to fine levels.''; and

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

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

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

''(4) COPYING AND RETENTION OF DOCUMENTATION.—

''(A) IN GENERAL.—A person or entity required to examine a document described in subparagraph (B), (C), or (D) of paragraph (1) or receive an attestation described in paragraph (2) shall retain a paper, microfiche, microfilm, or electronic version of each such document and attestation, indicate that each such version is a copied document, and make such versions available for inspection by an officer of the Department of Homeland Security or any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor during the period beginning on the date of the hiring, or recruiting or referring for a fee, of the individual and ending—

''(i) in the case of the recruiting or referral for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referral; or

''(ii) in the case of the hiring of an individual the later of—

''(I) 5 years after the date of such hiring; or

''(II) 1 year after the date the individual's employment is terminated.

''(B) OTHER RECORDS.—Such person or entity shall maintain records of any action taken and copies of any correspondence written or received with respect to the verification of an individual's identity or eligibility for employment in the United States.''.

(2) LIMITATION ON USE OF RETAINED DOCUMENTS.—Paragraph (5) of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(A) in the heading, by striking ''LIMITATION ON USE OF ATTESTATION FORM'' and inserting ''ATTESTATION FORM'';

(B) by redesignating such paragraph (5) as subparagraph (A);

(C) by indenting such subparagraph, as so designated, six ems from the left margin;

(D) by inserting before such subparagraph, as so designated, the following:

''(5) LIMITATION ON USE.—''; and

(E) by inserting after such subparagraph, as so designated, the following new subparagraph:

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

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

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

SA 147. Mr. SESSIONS (for himself and Mr. INHOFE) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. RESPONSIBLE EMPLOYER REQUIREMENTS.

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

(1) in subsection (e)(4)—

(A) in subparagraph (A)(i), by striking ''not less than $250 and not more than $2,000'' and inserting ''not less than $5000 and not more than $7,500'';

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

(C) in subparagraph (A)(iii), by striking ''not less than $3,000 and not more than $10,000'' and inserting ''not less than $25,000 and not more than $40,00'';

(2) in subsection (e)(5)—

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

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

(C) by adding at the end the following sentence: ''Providing information to the basic pilot program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A) and shall not qualify for the exemption provided by (e)(10).'';

(3) by adding at the end of subsection (e) the following new paragraph:

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

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

''(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of paragraph (1) or (2) of subsection (a) shall be fined not less than $3,000 and more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year, or both, notwithstanding the provisions of any other Federal law relating to fine levels.''; and

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

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

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

''(4) COPYING AND RETENTION OF DOCUMENTATION.—

''(A) IN GENERAL.—A person or entity required to examine a document described in subparagraph (B), (C), or (D) of paragraph (1) or receive an attestation described in paragraph (2) shall retain a paper, microfiche, microfilm, or electronic version of each such document and attestation, indicate that each such version is a copied document, and make such versions available for inspection by an officer of the Department of Homeland Security or any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor during the period beginning on the date of the hiring, or recruiting or referring for a fee, of the individual and ending—

''(i) in the case of the recruiting or referral for a fee (without hiring) of an individual, 5 years after the date of the recruiting or referral; or

''(ii) in the case of the hiring of an individual the later of—

''(I) 5 years after the date of such hiring; or

''(II) 1 year after the date the individual's employment is terminated.

''(B) OTHER RECORDS.—Such person or entity shall maintain records of any action taken and copies of any correspondence written or received with respect to the verification of an individual's identity or eligibility for employment in the United States.''.

(2) LIMITATION ON USE OF RETAINED DOCUMENTS.—Paragraph (5) of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended—

(A) in the heading, by striking ''LIMITATION ON USE OF ATTESTATION FORM'' and inserting ''ATTESTATION FORM'';

(B) by redesignating such paragraph (5) as subparagraph (A);

(C) by indenting such subparagraph, as so designated, six ems from the left margin;

(D) by inserting before such subparagraph, as so designated, the following:

''(5) LIMITATION ON USE.—''; and

(E) by inserting after such subparagraph, as so designated, the following new subparagraph:

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

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

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

SA 148. Mr. SESSIONS (for himself, Mr. INHOFE, and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. RESPONSIBLE GOVERNMENT CONTRACTOR REQUIREMENTS.

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

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

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

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

''(ii) PLACEMENT ON EXCLUDED LIST.—The Secretary of Homeland Security or the Attorney General shall advise the Administrator of General Services of the debarment of an employer under clause (i) and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 7 years.

''(iii) WAIVER.—

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

''(II) NOTIFICATION TO CONGRESS.—If the Administrator grants a waiver or limitation described in subclause (I), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives immediate notice of such waiver or limitation.

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

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

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

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

''(iii) WAIVER.—

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

''(II) NOTIFICATION TO CONGRESS.—If the Administrator grants a waiver or limitation described in subclause (I), the Administrator shall submit to each member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House

of Representatives immediate notice of such waiver or limitation.

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

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

SA 149. Mr. ENSIGN (for himself and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. PRECLUSION OF SOCIAL SECURITY CREDITS PRIOR TO ENUMERATION.

(a) INSURED STATUS.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by adding at the end, the following new subsection:

''(d)(1) Except as provided in paragraph (2), no quarter of coverage shall be credited for purposes of this section if, with respect to any individual who is assigned a social security account number on or after the date of enactment of the Fair Minimum Wage Act of 2007, such quarter of coverage is earned prior to the year in which such social security account number is assigned.

''(2) Paragraph (1) shall not apply with respect to any quarter of coverage earned by an individual who, at such time such quarter of coverage is earned, satisfies the criterion specified in subsection (c)(2).''.

(b) BENEFIT COMPUTATION.—Section 215(e) of such Act (42 U.S.C. 415(e)) is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(3) in computing the average indexed monthly earnings of an individual who is assigned a social security account number on or after the date of enactment of the Fair Minimum Wage Act of 2007, there shall not be counted any wages or self-employment income for which no quarter of coverage may be credited to such individual as a result of the application of section 214(d).''.

SA 150. Mr. ENSIGN (for himself, Mr. SESSIONS, Mr. CRAIG, Mrs. DOLE, Mr. THOMAS, Mr. CORNYN, Mr. INHOFE, Mr. ISAKSON, and Mr. COLEMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. TRANSMITTAL AND APPROVAL OF TOTALIZATION AGREEMENTS.

(a) IN GENERAL.—Section 233(e) of the Social Security Act (42 U.S.C. 433(e)) is amended to read as follows:

''(e)(1) Any agreement to establish a totalization arrangement which is entered into with another country under this section shall enter into force with respect to the United States if (and only if)—

''(A) the President, at least 90 calendar days before the date on which the President enters into the agreement, notifies each House of Congress of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register,

''(B) the President transmits the text of such agreement to each House of Congress as provided in paragraph (2), and

''(C) an approval resolution regarding such agreement has passed both Houses of Congress and has been enacted into law.

''(2)(A) Whenever an agreement referred to in paragraph (1) is entered into, the President shall transmit to each House of Congress a document setting forth the final legal text of such agreement and including a report by the President in support of such agreement. The President's report shall include the following:

''(i) An estimate by the Chief Actuary of the Social Security Administration of the effect of the agreement, in the short term and in the long term, on the receipts and disbursements under the social security system established by this title.

''(ii) A statement of any administrative action proposed to implement the agreement and how such action will change or affect existing law.

''(iii) A statement describing whether and how the agreement changes provisions of an agreement previously negotiated.

''(iv) A statement describing how and to what extent the agreement makes progress in achieving the purposes, policies, and objectives of this title.

''(v) An estimate by the Chief Actuary of the Social Security Administration, working in consultation with the Comptroller General of the United States, of the number of individuals who may become eligible for any benefits under this title or who may otherwise be affected by the agreement.

''(vi) An assessment of the integrity of the retirement data and records (including birth, death, and marriage records) of the other country that is the subject of the agreement.

''(vii) An assessment of the ability of such country to track and monitor recipients of benefits under such agreement.

''(B) If any separate agreement or other understanding with another country (whether oral or in writing) relating to an agreement to establish a totalization arrangement under this section is not disclosed to Congress in the transmittal to Congress under this paragraph of the agreement to establish a totalization arrangement, then such separate agreement or understanding shall not be considered to be part of the agreement approved by Congress under this section and shall have no force and effect under United States law.

''(3) For purposes of this subsection, the term 'approval resolution' means a joint resolution, the matter after the resolving clause of which is as follows: 'That the proposed agreement entered into pursuant to section 233 of the Social Security Act between the United States and _____ establishing totalization arrangements between the social security system established by title II of such Act and the social security system of _____, transmitted to Congress by the President on _____, is hereby approved.', the first two blanks therein being filled with the name of the country with which the United States entered into the agreement, and the third blank therein being filled with the date of the transmittal of the agreement to Congress.

''(4) Whenever a document setting forth an agreement entered into under this section and the President's report in support of the agreement is transmitted to Congress pursuant to paragraph (2), copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

''(5) On the day on which a document setting forth the agreement is transmitted to the House of Representatives and the Senate pursuant to paragraph (1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The resolution introduced in the House of Representatives shall be referred to the Committee on Ways and Means and the resolution introduced in the Senate shall be referred to the Committee on Finance.''.

(b) ADDITIONAL REPORTS AND EVALUATIONS.—Section 233 of the Social Security Act (42 U.S.C. 433) is amended by adding at the end the following new subsections:

''(f) BIENNIAL SSA REPORT ON IMPACT OF TOTALIZATION AGREEMENTS.—

''(1) REPORT.—For any totalization agreement transmitted to Congress on or after January 1, 2007, the Commissioner of Social Security shall submit a report to Congress and the Comptroller General that—

''(A) compares the estimates contained in the report submitted to Congress under clauses (i) and (v) of subsection (e)(2)(A) with respect to that agreement with the actual number of individuals affected by the agreement and the actual effect of the agreement on social security system receipts and disbursements; and

''(B) contains recommendations for adjusting the methods used to make the estimates.

''(2) DATES FOR SUBMISSION.—The report required under this subsection shall be provided not later than 2 years after the effective date of the totalization agreement that is the subject of the report and biennially thereafter.

''(g) GAO EVALUATION AND REPORT.—

''(1) EVALUATION OF INITIAL REPORT ON IMPACT OF TOTALIZATION AGREEMENTS.—With respect to each initial report regarding a totalization agreement submitted under subsection (f), the Comptroller General of the United States shall conduct an evaluation of the report that includes—

''(A) an evaluation of the procedures used for making the estimates required by subsection (e)(2)(A);

''(B) an evaluation of the procedures used for determining the actual number of individuals affected by the agreement and the effects of the totalization agreement on receipts and disbursements under the social security system; and

''(C) such recommendations as the Comptroller General determines appropriate.

''(2) REPORT.—Not later than 1 year after the date of submission of an initial report regarding a totalization agreement under subsection (f), the Comptroller General shall

submit to Congress a report setting forth the results of the evaluation conducted under paragraph (1).

''(3) DATA COLLECTION.—The Commissioner of Social Security shall collect and maintain the data necessary for the Comptroller General of the United States to conduct the evaluation required by paragraph (1).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to agreements establishing totalization arrangements entered into under section 233 of the Social Security Act which are transmitted to Congress on or after January 1, 2007.

SA 151. Mr. ENSIGN (for himself, Mr. DEMINT, Mr. GRAHAM, Mr. COBURN) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. NON-GROUP HIGH DEDUCTIBLE HEALTH PLAN PREMIUMS OPTIONS.

(a) IN GENERAL.—Section 223(d)(2)(C) of the Internal Revenue Code of 1986 (relating to exceptions) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) a high deductible health plan, other than a group health plan (as defined in section 5000(b)(1)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2007.

SA 152. Mr. ENSIGN (for himself and Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

At the appropriate place, insert the following:

SEC. ___. PRECLUSION OF SOCIAL SECURITY CREDITS PRIOR TO ENUMERATION.

(a) INSURED STATUS.—Section 214 of the Social Security Act (42 U.S.C. 414) is amended by adding at the end, the following new subsection:

''(d)(1) Except as provided in paragraph (2), no quarter of coverage shall be credited for purposes of this section if, with respect to any individual who is assigned a social security account number on or after the date of enactment of the Fair Minimum Wage Act of 2007, such quarter of coverage is earned prior to the year in which such social security account number is assigned.

''(2) Paragraph (1) shall not apply with respect to any quarter of coverage earned by an individual who, at such time such quarter of coverage is earned, satisfies the criterion specified in subsection (c)(2).''.

(b) BENEFIT COMPUTATION.—Section 215(e) of such Act (42 U.S.C. 415(e)) is amended—

(1) by striking ''and'' at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(3) in computing the average indexed monthly earnings of an individual who is assigned a social security account number on or after the date of enactment of the Fair Minimum Wage Act of 2007, there shall not be counted any wages or self-employment income for which no quarter of coverage may be credited to such individual as a result of the application of section 214(d).''.

SA 153. Mr. ENSIGN (for himself, Mr. SESSIONS, Mr. CRAIG, Mrs. DOLE, Mr. THOMAS, Mr. CORNYN, Mr. INHOFE, Mr. ISAKSON, and Mr. COLEMAN) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

At the appropriate place, insert the following:

SEC. ___. TRANSMITTAL AND APPROVAL OF TOTALIZATION AGREEMENTS.

(a) IN GENERAL.—Section 233(e) of the Social Security Act (42 U.S.C. 433(e)) is amended to read as follows:

''(e)(1) Any agreement to establish a totalization arrangement which is entered into with another country under this section shall enter into force with respect to the United States if (and only if)—

''(A) the President, at least 90 calendar days before the date on which the President enters into the agreement, notifies each House of Congress of the President's intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register,

''(B) the President transmits the text of such agreement to each House of Congress as provided in paragraph (2), and

''(C) an approval resolution regarding such agreement has passed both Houses of Congress and has been enacted into law.

''(2)(A) Whenever an agreement referred to in paragraph (1) is entered into, the President shall transmit to each House of Congress a document setting forth the final legal text of such agreement and including a report by the President in support of such agreement. The President's report shall include the following:

''(i) An estimate by the Chief Actuary of the Social Security Administration of the effect of the agreement, in the short term and in the long term, on the receipts and disbursements under the social security system established by this title.

''(ii) A statement of any administrative action proposed to implement the agreement and how such action will change or affect existing law.

''(iii) A statement describing whether and how the agreement changes provisions of an agreement previously negotiated.

''(iv) A statement describing how and to what extent the agreement makes progress in achieving the purposes, policies, and objectives of this title.

''(v) An estimate by the Chief Actuary of the Social Security Administration, working in consultation with the Comptroller General of the United States, of the number of individuals who may become eligible for any benefits under this title or who may otherwise be affected by the agreement.

''(vi) An assessment of the integrity of the retirement data and records (including birth, death, and marriage records) of the other country that is the subject of the agreement.

''(vii) An assessment of the ability of such country to track and monitor recipients of benefits under such agreement.

''(B) If any separate agreement or other understanding with another country (whether oral or in writing) relating to an agreement to establish a totalization arrangement under this section is not disclosed to Congress in the transmittal to Congress under this paragraph of the agreement to establish a totalization arrangement, then such separate agreement or understanding shall not be considered to be part of the agreement approved by Congress under this section and shall have no force and effect under United States law.

''(3) For purposes of this subsection, the term 'approval resolution' means a joint resolution, the matter after the resolving clause of which is as follows: 'That the proposed agreement entered into pursuant to section 233 of the Social Security Act between the United States and _____ establishing totalization arrangements between the social security system established by title II of such Act and the social security system of _____, transmitted to Congress by the President on _____, is hereby approved.', the first two blanks therein being filled with the name of the country with which the United States entered into the agreement, and the third blank therein being filled with the date of the transmittal of the agreement to Congress.

''(4) Whenever a document setting forth an agreement entered into under this section and the President's report in support of the agreement is transmitted to Congress pursuant to paragraph (2), copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

''(5) On the day on which a document setting forth the agreement is transmitted to the House of Representatives and the Senate pursuant to paragraph (1), an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself or herself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. The resolution introduced in the House of Representatives shall be referred to the Committee on Ways and Means and the resolution introduced in the Senate shall be referred to the Committee on Finance.''.

(b) ADDITIONAL REPORTS AND EVALUATIONS.—Section 233 of the Social Security Act (42 U.S.C. 433) is amended by adding at the end the following new subsections:

''(f) BIENNIAL SSA REPORT ON IMPACT OF TOTALIZATION AGREEMENTS.—

''(1) REPORT.—For any totalization agreement transmitted to Congress on or after January 1, 2007, the Commissioner of Social Security shall submit a report to Congress and the Comptroller General that—

''(A) compares the estimates contained in the report submitted to Congress under clauses (i) and (v) of subsection (e)(2)(A) with respect to that agreement with the actual number of individuals affected by the agreement and the actual effect of the agreement on social security system receipts and disbursements; and

''(B) contains recommendations for adjusting the methods used to make the estimates.

''(2) DATES FOR SUBMISSION.—The report required under this subsection shall be provided not later than 2 years after the effective date of the totalization agreement that

is the subject of the report and biennially thereafter.

''(g) GAO EVALUATION AND REPORT.—

''(1) EVALUATION OF INITIAL REPORT ON IMPACT OF TOTALIZATION AGREEMENTS.—With respect to each initial report regarding a totalization agreement submitted under subsection (f), the Comptroller General of the United States shall conduct an evaluation of the report that includes—

''(A) an evaluation of the procedures used for making the estimates required by subsection (e)(2)(A);

''(B) an evaluation of the procedures used for determining the actual number of individuals affected by the agreement and the effects of the totalization agreement on receipts and disbursements under the social security system; and

''(C) such recommendations as the Comptroller General determines appropriate.

''(2) REPORT.—Not later than 1 year after the date of submission of an initial report regarding a totalization agreement under subsection (f), the Comptroller General shall submit to Congress a report setting forth the results of the evaluation conducted under paragraph (1).

''(3) DATA COLLECTION.—The Commissioner of Social Security shall collect and maintain the data necessary for the Comptroller General of the United States to conduct the evaluation required by paragraph (1).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to agreements establishing totalization arrangements entered into under section 233 of the Social Security Act which are transmitted to Congress on or after January 1, 2007.

SA 154. Mr. ENSIGN (for himself, Mr. DEMINT, Mr. GRAHAM, and Mr. COBURN) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; as follows:

At the appropriate place, insert the following:

SEC. ___. NON-GROUP HIGH DEDUCTIBLE HEALTH PLAN PREMIUMS OPTIONS.

(a) IN GENERAL.—Section 223(d)(2)(C) of the Internal Revenue Code of 1986 (relating to exceptions) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) a high deductible health plan, other than a group health plan (as defined in section 5000(b)(1)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2007.

SA 155. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE COVERAGE.

(a) SPECIFICATION OF CONSTITUTIONAL AUTHORITY FOR ENACTMENT OF LAW.—This section is enacted pursuant to the power granted Congress under article I, section 8, clause 3, of the United States Constitution.

(b) COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE COVERAGE.—

(1) IN GENERAL.—Title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.) is amended by adding at the end the following new part:

''PART D—COOPERATIVE GOVERNING OF INDIVIDUAL HEALTH INSURANCE COVERAGE

''SEC. 2795. DEFINITIONS.

''In this part:

''(1) PRIMARY STATE.—The term 'primary State' means, with respect to individual health insurance coverage offered by a health insurance issuer, the State designated by the issuer as the State whose covered laws shall govern the health insurance issuer in the sale of such coverage under this part. An issuer, with respect to a particular policy, may only designate one such State as its primary State with respect to all such coverage it offers. Such an issuer may not change the designated primary State with respect to individual health insurance coverage once the policy is issued, except that such a change may be made upon renewal of the policy. With respect to such designated State, the issuer is deemed to be doing business in that State.

''(2) SECONDARY STATE.—The term 'secondary State' means, with respect to individual health insurance coverage offered by a health insurance issuer, any State that is not the primary State. In the case of a health insurance issuer that is selling a policy in, or to a resident of, a secondary State, the issuer is deemed to be doing business in that secondary State.

''(3) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning given such term in section 2791(b)(2), except that such an issuer must be licensed in the primary State and be qualified to sell individual health insurance coverage in that State.

''(4) INDIVIDUAL HEALTH INSURANCE COVERAGE.—The term 'individual health insurance coverage' means health insurance coverage offered in the individual market, as defined in section 2791(e)(1).

''(5) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of this title for the State with respect to the issuer.

''(6) HAZARDOUS FINANCIAL CONDITION.—The term 'hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a health insurance issuer is unlikely to be able—

''(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

''(B) to pay other obligations in the normal course of business.

''(7) COVERED LAWS.—The term 'covered laws' means the laws, rules, regulations, agreements, and orders governing the insurance business pertaining to—

''(A) individual health insurance coverage issued by a health insurance issuer;

''(B) the offer, sale, and issuance of individual health insurance coverage to an individual; and

''(C) the provision to an individual in relation to individual health insurance coverage of—

''(i) health care and insurance related services;

''(ii) management, operations, and investment activities of a health insurance issuer; and

''(iii) loss control and claims administration for a health insurance issuer with respect to liability for which the issuer provides insurance.

''(8) STATE.—The term 'State' means only the 50 States and the District of Columbia.

''(9) UNFAIR CLAIMS SETTLEMENT PRACTICES.—The term 'unfair claims settlement practices' means only the following practices:

''(A) Knowingly misrepresenting to claimants and insured individuals relevant facts or policy provisions relating to coverage at issue.

''(B) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under policies.

''(C) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under policies.

''(D) Failing to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear.

''(E) Refusing to pay claims without conducting a reasonable investigation.

''(F) Failing to affirm or deny coverage of claims within a reasonable period of time after having completed an investigation related to those claims.

''(10) FRAUD AND ABUSE.—The term 'fraud and abuse' means an act or omission committed by a person who, knowingly and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:

''(A) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker or its agent, false information as part of, in support of or concerning a fact material to one or more of the following:

''(i) An application for the issuance or renewal of an insurance policy or reinsurance contract.

''(ii) The rating of an insurance policy or reinsurance contract.

''(iii) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract.

''(iv) Premiums paid on an insurance policy or reinsurance contract.

''(v) Payments made in accordance with the terms of an insurance policy or reinsurance contract.

''(vi) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction.

''(vii) The financial condition of an insurer or reinsurer.

''(viii) The formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of a State by an insurer or reinsurer.

''(ix) The issuance of written evidence of insurance.

''(x) The reinstatement of an insurance policy.

''(B) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction.

''(C) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of insurance.

''(D) Attempt to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this paragraph.

''SEC. 2796. APPLICATION OF LAW.

''(a) IN GENERAL.—The covered laws of the primary State shall apply to individual health insurance coverage offered by a

health insurance issuer in the primary State and in any secondary State, but only if the coverage and issuer comply with the conditions of this section with respect to the offering of coverage in any secondary State.

''(b) EXEMPTIONS FROM COVERED LAWS IN A SECONDARY STATE.—Except as provided in this section, a health insurance issuer with respect to its offer, sale, renewal, and issuance of individual health insurance coverage in any secondary State is exempt from any covered laws of the secondary State (and any rules, regulations, agreements, or orders sought or issued by such State under or related to such covered laws) to the extent that such laws would—

''(1) make unlawful, or regulate, directly or indirectly, the operation of the health insurance issuer operating in the secondary State, except that any secondary State may require such an issuer—

''(A) to pay, on a nondiscriminatory basis, applicable premium and other taxes (including high risk pool assessments) which are levied on insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

''(B) to register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

''(C) to submit to an examination of its financial condition by the State insurance commissioner in any State in which the issuer is doing business to determine the issuer's financial condition, if—

''(i) the State insurance commissioner of the primary State has not done an examination within the period recommended by the National Association of Insurance Commissioners; and

''(ii) any such examination is conducted in accordance with the examiners' handbook of the National Association of Insurance Commissioners and is coordinated to avoid unjustified duplication and unjustified repetition;

''(D) to comply with a lawful order issued—

''(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (C); or

''(ii) in a voluntary dissolution proceeding;

''(E) to comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the issuer is in hazardous financial condition;

''(F) to participate, on a nondiscriminatory basis, in any insurance insolvency guaranty association or similar association to which a health insurance issuer in the State is required to belong;

''(G) to comply with any State law regarding fraud and abuse (as defined in section 2795(10)), except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction; or

''(H) to comply with any State law regarding unfair claims settlement practices (as defined in section 2795(9));

''(2) require any individual health insurance coverage issued by the issuer to be countersigned by an insurance agent or broker residing in that Secondary State; or

''(3) otherwise discriminate against the issuer issuing insurance in both the primary State and in any secondary State.

''(c) CLEAR AND CONSPICUOUS DISCLOSURE.—A health insurance issuer shall provide the following notice, in 12-point bold type, in any insurance coverage offered in a secondary State under this part by such a health insurance issuer and at renewal of the policy, with the 5 blank spaces therein being appropriately filled with the name of the health insurance issuer, the name of primary State, the name of the secondary State, the name of the secondary State, and the name of the secondary State, respectively, for the coverage concerned:

'This policy is issued by _____ and is governed by the laws and regulations of the State of _____, and it has met all the laws of that State as determined by that State's Department of Insurance. This policy may be less expensive than others because it is not subject to all of the insurance laws and regulations of the State of _____, including coverage of some services or benefits mandated by the law of the State of _____. Additionally, this policy is not subject to all of the consumer protection laws or restrictions on rate changes of the State of _____. As with all insurance products, before purchasing this policy, you should carefully review the policy and determine what health care services the policy covers and what benefits it provides, including any exclusions, limitations, or conditions for such services or benefits.'.

''(d) PROHIBITION ON CERTAIN RECLASSIFICATIONS AND PREMIUM INCREASES.—

''(1) IN GENERAL.—For purposes of this section, a health insurance issuer that provides individual health insurance coverage to an individual under this part in a primary or secondary State may not upon renewal—

''(A) move or reclassify the individual insured under the health insurance coverage from the class such individual is in at the time of issue of the contract based on the health-status related factors of the individual; or

''(B) increase the premiums assessed the individual for such coverage based on a health status-related factor or change of a health status-related factor or the past or prospective claim experience of the insured individual.

''(2) CONSTRUCTION.—Nothing in paragraph (1) shall be construed to prohibit a health insurance issuer—

''(A) from terminating or discontinuing coverage or a class of coverage in accordance with subsections (b) and (c) of section 2742;

''(B) from raising premium rates for all policy holders within a class based on claims experience;

''(C) from changing premiums or offering discounted premiums to individuals who engage in wellness activities at intervals prescribed by the issuer, if such premium changes or incentives—

''(i) are disclosed to the consumer in the insurance contract;

''(ii) are based on specific wellness activities that are not applicable to all individuals; and

''(iii) are not obtainable by all individuals to whom coverage is offered;

''(D) from reinstating lapsed coverage; or

''(E) from retroactively adjusting the rates charged an individual insured individual if the initial rates were set based on material misrepresentation by the individual at the time of issue.

''(e) PRIOR OFFERING OF POLICY IN PRIMARY STATE.—A health insurance issuer may not offer for sale individual health insurance coverage in a secondary State unless that coverage is currently offered for sale in the primary State.

''(f) LICENSING OF AGENTS OR BROKERS FOR HEALTH INSURANCE ISSUERS.—Any State may require that a person acting, or offering to act, as an agent or broker for a health insurance issuer with respect to the offering of individual health insurance coverage obtain a license from that State, except that a State many not impose any qualification or requirement which discriminates against a nonresident agent or broker.

''(g) DOCUMENTS FOR SUBMISSION TO STATE INSURANCE COMMISSIONER.—Each health insurance issuer issuing individual health insurance coverage in both primary and secondary States shall submit—

''(1) to the insurance commissioner of each State in which it intends to offer such coverage, before it may offer individual health insurance coverage in such State—

''(A) a copy of the plan of operation or feasibility study or any similar statement of the policy being offered and its coverage (which shall include the name of its primary State and its principal place of business);

''(B) written notice of any change in its designation of its primary State; and

''(C) written notice from the issuer of the issuer's compliance with all the laws of the primary State; and

''(2) to the insurance commissioner of each secondary State in which it offers individual health insurance coverage, a copy of the issuer's quarterly financial statement submitted to the primary State, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

''(A) a member of the American Academy of Actuaries; or

''(B) a qualified loss reserve specialist.

''(h) POWER OF COURTS TO ENJOIN CONDUCT.—Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

''(1) the solicitation or sale of individual health insurance coverage by a health insurance issuer to any person or group who is not eligible for such insurance; or

''(2) the solicitation or sale of individual health insurance coverage by, or operation of, a health insurance issuer that is in hazardous financial condition.

''(i) STATE POWERS TO ENFORCE STATE LAWS.—

''(1) IN GENERAL.—Subject to the provisions of subsection (b)(1)(G) (relating to injunctions) and paragraph (2), nothing in this section shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a health insurance issuer is not exempt under subsection (b).

''(2) COURTS OF COMPETENT JURISDICTION.—If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (h), such injunction must be obtained from a Federal or State court of competent jurisdiction.

''(j) STATES' AUTHORITY TO SUE.—Nothing in this section shall affect the authority of any State to bring action in any Federal or State court.

''(k) GENERALLY APPLICABLE LAWS.—Nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

''SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR BEFORE ISSUER MAY SELL INTO SECONDARY STATES.

''A health insurance issuer may not offer, sell, or issue individual health insurance coverage in a secondary State if the primary State does not meet the following requirements:

''(1) The State insurance commissioner must use a risk-based capital formula for the determination of capital and surplus requirements for all health insurance issuers.

''(2) The State must have legislation or regulations in place establishing an independent review process for individuals who are covered by individual health insurance coverage unless the issuer provides an independent review mechanism functionally equivalent (as determined by the primary State insurance commissioner or official) to

that prescribed in the 'Health Carrier External Review Model Act' of the National Association of Insurance Commissioners for all individuals who purchase insurance coverage under the terms of this part.

"SEC. 2798. ENFORCEMENT.

''(a) IN GENERAL.—Subject to subsection (b), with respect to specific individual health insurance coverage the primary State for such coverage has sole jurisdiction to enforce the primary State's covered laws in the primary State and any secondary State.

''(b) SECONDARY STATE'S AUTHORITY.—Nothing in subsection (a) shall be construed to affect the authority of a secondary State to enforce its laws as set forth in the exception specified in section 2796(b)(1).

''(c) COURT INTERPRETATION.—In reviewing action initiated by the applicable secondary State authority, the court of competent jurisdiction shall apply the covered laws of the primary State.

''(d) NOTICE OF COMPLIANCE FAILURE.—In the case of individual health insurance coverage offered in a secondary State that fails to comply with the covered laws of the primary State, the applicable State authority of the secondary State may notify the applicable State authority of the primary State.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to individual health insurance coverage offered, issued, or sold after the date of the enactment of this Act.

(c) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such to any other person or circumstance shall not be affected.

SEC. ___. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be—

''(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

(b) REPEAL OF FSA TERMINATION PROVISION.—

(1) IN GENERAL.—Subsection (e) of section 106 of the Internal Revenue Code of 1986, as added by the Tax Relief and Health Care Act of 2006, is amended by striking ''health flexible spending arrangement or'' each place it appears.

(2) CONFORMING AMENDMENTS.—

(A) The heading of section 106(e) of such Code is amended by striking ''FSA OR''.

(B) Section 223(c)(1)(B)(iii)(II) of such Code, as added by the Tax Relief and Health Care Act of 2006, is amended to read as follows:

''(II) the balance of such arrangement is contributed by the employer to a health savings account of the individual under section 125(h)(1)(B), in accordance with rules prescribed by the Secretary.''.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2010.

SEC. ___. EXPANSION OF USE OF HEALTH SAVINGS ACCOUNTS FOR HEALTH INSURANCE PREMIUM PAYMENTS FOR CERTAIN HIGH DEDUCTIBLE HEALTH PLANS.

(a) IN GENERAL.—Subparagraph (C) of section 223(d)(2) of the Internal Revenue Code of 1986 (relating to qualified medical expenses) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv), and by adding at the end the following new clause:

''(v) any high deductible health plan other than a group health plan (as defined in section 5000(b)(1)).''.

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

SA 156. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be—

''(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

(b) REPEAL OF FSA TERMINATION PROVISION.—

(1) IN GENERAL.—Subsection (e) of section 106 of the Internal Revenue Code of 1986, as added by the Tax Relief and Health Care Act of 2006, is amended by striking ''health flexible spending arrangement or'' each place it appears.

(2) CONFORMING AMENDMENTS.—

(A) The heading of section 106(e) of such Code is amended by striking ''FSA OR''.

(B) Section 223(c)(1)(B)(iii)(II) of such Code, as added by the Tax Relief and Health Care Act of 2006, is amended to read as follows:

''(II) the balance of such arrangement is contributed by the employer to a health savings account of the individual under section 125(h)(1)(B), in accordance with rules prescribed by the Secretary.''.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2010.

SA 157. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

In section 2 of the bill, strike subsection (a) and insert the following:

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2007, an amount equal to the minimum wage in effect on such date in the State in which such employee is employed (whether as a result of the application of Federal or State law) increased by $0.70;

''(B) beginning 12 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting '$1.40' for '$0.70'; and

''(C) beginning 24 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting '$2.10' for '$0.70';''.

SA 158. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

In section 101 of the amendment, strike subsection (a) and insert the following:

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2007, an amount equal to the minimum wage in effect on such date in the State in which such employee is employed (whether as a result of the application of Federal or State law) increased by $0.70;

''(B) beginning 12 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting '$1.40' for '$0.70'; and

''(C) beginning 24 months after that 60th day, the amount that would be determined under subparagraph (A) by substituting '$2.10' for '$0.70';''.

SA 159. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. PROTECTION OF WORKERS' POLITICAL RIGHTS.

Title III of the Labor Management Relations Act, 1947 (29 U.S.C. 185 et seq.) is amended by adding at the end the following:

"SEC. 304. PROTECTION OF WORKER'S POLITICAL RIGHTS.

''(a) PROHIBITION.—Except with the separate, prior, written, voluntary authorization of an individual, it shall be unlawful for any labor organization to collect from or assess its members or nonmembers any dues, initiation fee, or other payment if any part of such dues, fee, or payment will be used to lobby members of Congress or Congressional staff for the purpose of influencing legislation.

''(b) AUTHORIZATION.—An authorization described in subsection (a) shall remain in effect until revoked and may be revoked at any time.''.

SA 160. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. DEFERRED PAYMENT OF TAX BY CERTAIN SMALL BUSINESSES.

(a) IN GENERAL.—Subchapter B of chapter 62 (relating to extensions of time for payment of tax) is amended by adding at the end the following new section:

"SEC. 6168. EXTENSION OF TIME FOR PAYMENT OF TAX FOR CERTAIN SMALL BUSINESSES.

''(a) IN GENERAL.—An eligible small business may elect to pay the tax imposed by chapter 1 in 4 equal installments.

''(b) LIMITATION.—The maximum amount of tax which may be paid in installments under this section for any taxable year shall not exceed whichever of the following is the least:

''(1) The tax imposed by chapter 1 for the taxable year.

''(2) The amount contributed by the taxpayer into a BRIDGE Account during such year.

''(3) The excess of $250,000 over the aggregate amount of tax for which an election under this section was made by the taxpayer (or any predecessor) for all prior taxable years.

''(c) ELIGIBLE SMALL BUSINESS.—For purposes of this section—

''(1) IN GENERAL.—The term 'eligible small business' means, with respect to any taxable year, any person if—

''(A) such person meets the active business requirements of section 1202(e) throughout such taxable year,

''(B) the taxpayer has gross receipts of $10,000,000 or less for the taxable year,

''(C) the gross receipts of the taxpayer for such taxable year are at least 10 percent greater than the average annual gross receipts of the taxpayer (or any predecessor) for the 2 prior taxable years, and

''(D) the taxpayer uses an accrual method of accounting.

''(2) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (3) of section 448(c) shall apply for purposes of this subsection.

''(d) DATE FOR PAYMENT OF INSTALLMENTS; TIME FOR PAYMENT OF INTEREST.—

''(1) DATE FOR PAYMENT OF INSTALLMENTS.—

''(A) IN GENERAL.—If an election is made under this section for any taxable year, the first installment shall be paid on or before the due date for such installment and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

''(B) DUE DATE FOR FIRST INSTALLMENT.—The due date for the first installment for a taxable year shall be whichever of the following is the earliest:

''(i) The date selected by the taxpayer.

''(ii) The date which is 2 years after the date prescribed by section 6151(a) for payment of the tax for such taxable year.

''(2) TIME FOR PAYMENT OF INTEREST.—If the time for payment of any amount of tax has been extended under this section—

''(A) INTEREST FOR PERIOD BEFORE DUE DATE OF FIRST INSTALLMENT.—Interest payable under section 6601 on any unpaid portion of such amount attributable to the period before the due date for the first installment shall be paid annually.

''(B) INTEREST DURING INSTALLMENT PERIOD.—Interest payable under section 6601 on any unpaid portion of such amount attributable to any period after such period shall be paid at the same time as, and as a part of, each installment payment of the tax.

''(C) INTEREST IN THE CASE OF CERTAIN DEFICIENCIES.—In the case of a deficiency to which subsection (e)(3) applies for a taxable year which is assessed after the due date for the first installment for such year, interest attributable to the period before such due date, and interest assigned under subparagraph (B) to any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

''(e) SPECIAL RULES.—

''(1) APPLICATION OF LIMITATION TO PARTNERS AND S CORPORATION SHAREHOLDERS.—

''(A) IN GENERAL.—In applying this section to a partnership which is an eligible small business—

''(i) the election under subsection (a) shall be made by the partnership,

''(ii) the amount referred to in subsection (b)(1) shall be the sum of each partner's tax which is attributable to items of the partnership and assuming the highest marginal rate under section 1, and

''(iii) the partnership shall be treated as the taxpayer referred to in paragraphs (2) and (3) of subsection (b).

''(B) OVERALL LIMITATION ALSO APPLIED AT PARTNER LEVEL.—In the case of a partner in a partnership, the limitation under subsection (b)(3) shall be applied at the partnership and partner levels.

''(C) SIMILAR RULES FOR S CORPORATIONS.—Rules similar to the rules of subparagraphs (A) and (B) shall apply to shareholders in an S corporation.

''(2) ACCELERATION OF PAYMENT IN CERTAIN CASES.—

''(A) IN GENERAL.—If—

''(i) the taxpayer ceases to meet the requirement of subsection (c)(1)(A), or

''(ii) there is an ownership change with respect to the taxpayer,

then the extension of time for payment of tax provided in subsection (a) shall cease to apply, and the unpaid portion of the tax payable in installments shall be paid on or before the due date for filing the return of tax imposed by chapter 1 for the first taxable year following such cessation.

''(B) OWNERSHIP CHANGE.—For purposes of subparagraph, in the case of a corporation, the term 'ownership change' has the meaning given to such term by section 382. Rules similar to the rules applicable under the preceding sentence shall apply to a partnership.

''(3) PRORATION OF DEFICIENCY TO INSTALLMENTS.—Rules similar to the rules of section 6166(e) shall apply for purposes of this section.

''(f) BRIDGE ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'BRIDGE Account' means a trust created or organized in the United States for the exclusive benefit of an eligible small business, but only if the written governing instrument creating the trust meets the following requirements:

''(A) No contribution will be accepted for any taxable year in excess of the amount allowed as a deferral under subsection (b) for such year.

''(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

''(C) The assets of the trust consist entirely of cash or of obligations which have adequate stated interest (as defined in section 1274(c)(2)) and which pay such interest not less often than annually.

''(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

''(E) Amounts in the trust may be used only—

''(i) as security for a loan to the business or for repayment of such loan, or

''(ii) to pay the installments under this section.

''(2) ACCOUNT TAXED AS GRANTOR TRUST.—The grantor of a BRIDGE Account shall be treated for purposes of this title as the owner of such Account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

''(3) TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to a BRIDGE Account on the last day of a taxable year if such payment is made on account of such taxable year and is made within 3½ months after the close of such taxable year.

''(g) REPORTS.—The Secretary may require such reporting as the Secretary determines to be appropriate to carry out this section.

''(h) APPLICATION OF SECTION.—This section shall apply to taxes imposed for taxable years beginning after December 31, 2010, and before January 1, 2015.''

(b) PRIORITY OF LENDER.—Subsection (b) of section 6323 is amended by adding at the end the following new paragraph:

''(11) LOANS SECURED BY BRIDGE ACCOUNTS.—With respect to a BRIDGE account (as defined in section 6168(f)) with any bank (as defined in section 408(n)), to the extent of any loan made by such bank without actual notice or knowledge of the existence of such lien, as against such bank, if such loan is secured by such account.''

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 62 is amended by adding at the end the following new item:

''Sec. 6168. Extension of time for payment of tax for certain small businesses.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

(e) STUDY BY GENERAL ACCOUNTING OFFICE.—

(1) STUDY.—In consultation with the Secretary of the Treasury, the Comptroller General of the United States shall undertake a study to evaluate the applicability (including administrative aspects) and impact of the BRIDGE Act of 2007 including how it affects the capital funding needs of businesses under the Act and number of businesses benefitting.

(2) REPORT.—Not later than March 31, 2014, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the study conducted pursuant to this subsection, together with such recommendations for legislative or administrative changes as the Comptroller General determines are appropriate.

SA 161. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. FLEXIBLE SCHEDULE PROGRAMS.

(a) PROHIBITION OF USE OF FLEXIBLE SCHEDULES FOR FEDERAL EMPLOYEES UNTIL FLEXIBLE SCHEDULES ARE AVAILABLE TO PRIVATE EMPLOYEES.—

(1) PROHIBITION OF USE OF FLEXIBLE SCHEDULES FOR FEDERAL EMPLOYEES.—Notwithstanding any provision of subchapter II of chapter 61 of title 5, United States Code, no agency may establish, administer, or use any flexible schedule program authorized under section 6122 of that title.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect 1 year after the date of enactment of this Act, unless during such 1 year period, the Secretary of Labor submits certification to the Office of Personnel Management that a statute has been enacted that allows employers covered by the Fair Labor Standards Act of 1938 to provide for the use of a flexible schedule similar to the flexible schedule program authorized under section 6122 of title 5, United States Code, for employees engaged in commerce or in the production of goods for commerce.

(b) TERMINATION OF PROHIBITION.—If the prohibition under subsection (a) takes effect, that subsection shall cease to have any force or effect on the date that the Secretary of Labor submits a certification described in subsection (a)(2) to the Office of Personnel Management.

SA 162. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. ENTERPRISE ENGAGED IN COMMERCE.

(a) ANNUAL GROSS VOLUME OF SALES.—Section 3(s)(1)(A)(ii) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)(1)(A)(ii)) is amended by striking ''$500,000'' and inserting ''$1,080,000''.

(b) APPLICABILITY OF MINIMUM WAGE.—Section 6 of the Fair Labor Standards Act of 1938 (20 U.S.C. 206) is amended—

(1) in subsection (a), by striking ''is engaged in commerce or in the production of goods for commerce, or''; and

(2) in subsection (b), by striking ''is engaged in commerce or in the production of goods for commerce, or''.

SA 163. Ms. SNOWE (for herself and Mr. FEINGOLD) submitted an amendment intended to be proposed by her to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. EQUAL ACCESS FOR SMALL PARTIES IN CIVIL AND ADMINISTRATIVE PROCEEDINGS.

(a) ELIGIBILITY OF SMALL BUSINESSES FOR FEE AWARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—

(A) IN GENERAL.—Section 504(b)(1)(B)(ii) of title 5, United States Code, is amended by striking ''$7,000,000'' and inserting ''$10,000,000''.

(B) ADJUSTMENT IN NET WORTH LIMITATION.—Section 504(b) of title 5, United States Code, is amended by adding at the end the following:

''(3) Beginning on January 1 of the 5th year following the date of enactment of this paragraph, and on January 1 every 5 years thereafter, the dollar amount under paragraph (1)(B)(ii) shall be adjusted by the Producer Price Index as determined by the Secretary of the Treasury, in collaboration with the Bureau of Labor Statistics.''.

(2) JUDICIAL PROCEEDINGS.—

(A) IN GENERAL.—Section 2412(d)(2)(B)(ii) of title 28, United States Code, is amended by striking ''$7,000,000'' and inserting ''$10,000,000''.

(B) ADJUSTMENT IN NET WORTH LIMITATION.—Section 2412(d) of title 28, United States Code, is amended by adding at the end the following:

''(5) Beginning on January 1 of the 5th year following the date of enactment of this paragraph, and on January 1 every 5 years thereafter, the dollar amount under paragraph (2)(B)(ii) shall be adjusted by the Producer Price Index as determined by the Secretary of the Treasury, in collaboration with the Bureau of Labor Statistics.''.

(b) ELIMINATION OF RATE CAP.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A) of title 5, United States Code, is amended—

(A) by striking ''(i)''; and

(B) by striking ''by the agency involved'' and all that follows through ''a higher fee'' and inserting ''by the agency involved''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A) of title 28, United States Code, is amended—

(A) by striking ''(i)''; and

(B) by striking ''by the United States'' and all that follows through ''a higher fee'' and inserting ''by the United States''.

(c) APPLICABILITY.—The amendments made by this section shall—

(1) take effect 30 days after the date of the enactment of this Act; and

(2) apply to any proceeding pending on, or commenced on or after, the effective date of this section.

SA 164. Ms. SNOWE submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REGULATORY FLEXIBILITY REFORM FOR SMALL BUSINESSES.

(a) REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.—

(1) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603 of title 5, United States Code, is amended by adding at the end the following:

''(d) An agency shall notify the Chief Counsel for Advocacy of the Small Business Administration of any draft rules that may have a significant economic impact on a substantial number of small entities either—

''(1) when the agency submits a draft rule to the Office of Information and Regulatory Affairs at the Office of Management and Budget under Executive Order 12866, if that order requires such submission; or

''(2) if no submission to the Office of Information and Regulatory Affairs is so required, at a reasonable time prior to publication of the rule by the agency.''.

(2) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

(A) INCLUSION OF RESPONSE TO COMMENTS ON CERTIFICATION OF PROPOSED RULE.—Section 604(a)(2) of title 5, United States Code, is amended by inserting ''(or certification of the proposed rule under section 605(b))'' after ''initial regulatory flexibility analysis''.

(B) INCLUSION OF RESPONSE TO COMMENTS FILED BY CHIEF COUNSEL FOR ADVOCACY.—Section 604(a) of title 5, United States Code, is amended by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and inserting after paragraph (2) the following:

''(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any changes made to the proposed rule in the final rule as a result of such comments;''.

(C) PUBLICATION OF ANALYSIS ON WEB SITE, ETC.—Section 604(b) of title 5, United States Code, is amended to read as follows:

''(b) The agency shall make copies of the final regulatory flexibility analysis available to the public, including placement of the entire analysis on the agency's Web site, and shall publish in the Federal Register the final regulatory flexibility analysis, or a summary thereof that includes the telephone number, mailing address, and link to the Web site where the complete analysis may be obtained.''.

(3) CROSS-REFERENCES TO OTHER ANALYSES.—Section 605(a) of title 5, United States Code, is amended to read as follows:

''(a) A Federal agency shall be treated as satisfying any requirement regarding the content of an agenda or regulatory flexibility analysis under section 602, 603, or 604, if such agency provides in such agenda or analysis a cross-reference to the specific portion of another agenda or analysis that is required by any other law and which satisfies such requirement.''.

(4) CERTIFICATIONS.—The second sentence of section 605(b) of title 5, United States Code, is amended—

(A) by inserting ''detailed'' before ''statement''; and

(B) by inserting ''and legal'' after ''factual''.

(5) QUANTIFICATION REQUIREMENTS.—Section 607 of title 5, United States Code, is amended to read as follows:

''§ 607. Quantification requirements

''In complying with sections 603 and 604, an agency shall provide—

''(1) a quantifiable or numerical description of the effects of the proposed or final rule and alternatives to the proposed or final rule; or

''(2) a more general descriptive statement and a detailed statement explaining why quantification is not practicable or reliable.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) HEADING.—The heading of section 605 of title 5, United States Code, is amended to read as follows:

''§ 605. Incorporations by reference and certifications''.

(2) TABLE OF SECTIONS.—The table of sections for chapter 6 of title 5, United States Code, is amended—

(A) by striking the item relating to section 605 and inserting the following:

''605. Incorporations by reference and certifications.''; and

(B) by striking the item relating to section 607 and inserting the following:

''607. Quantification requirements.''.

SA 165. Mr. SMITH (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. TREATMENT OF CERTAIN PENSION PLANS OF INDIAN TRIBAL GOVERNMENTS.

(a) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—The last sentence of section 414(d) of the Internal Revenue Code of 1986 (definition of governmental plan) is amended to read as follows: ''The term 'governmental plan' includes a plan established or maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal, State, or tribal law which is wholly owned or controlled by any of the foregoing.''.

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—The last sentence of section 3(32) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32)) is amended to read as follows: ''The term 'governmental plan' includes a plan established or maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal, State, or tribal law that is wholly owned or controlled by any of the foregoing.''.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (14) of section 4021(b) of such Act (29 U.S.C. 1321(b)(14)) is amended to read as follows:

''(14) established or maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal, State, or tribal law that is wholly owned or controlled by any of the foregoing.''.

(B) Section 4021(b)(2) of such Act (29 U.S.C. 1321(b)(2) is amended by striking ''or which is described in the last sentence of section 3(32)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 906 of the Pension Protection Act of 2006.

SA 166. Mr. SMITH submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. EXPANSION OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for—

''(A) the taxpayer,

''(B) the taxpayer's spouse,

''(C) the taxpayer's dependents,

''(D) any individual—

''(i) who was not the spouse, determined without regard to section 7703, of the taxpayer at any time during the taxable year of the taxpayer,

''(ii) who—

''(I) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins, or

''(II) is a student who has not attained the age of 24 as of the close of such calendar year,

''(iii) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household, and

''(iv) with respect to whom the taxpayer provides over one-half of the individual's support for the calendar year in which the taxpayer's taxable year begins, and

''(E) an individual—

''(i) who is designated by the taxpayer for purposes of this paragraph,

''(ii) who is not the spouse or qualifying child of such taxpayer or any other taxpayer for any taxable year beginning in the calendar year in which the taxpayer's taxable year begins, and

''(iii) who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

For purposes of subparagraph (E)(i), not more than 1 person may be designated by the taxpayer for any taxable year.''.

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 162(l)(2) of the Internal Revenue Code of 1986 is amended by striking ''or of the spouse of the taxpayer'' and inserting '', of the spouse of the taxpayer, or of any individual described in paragraph (1)(E)''.

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

SA 167. Mrs. FEINSTEIN (for herself and Mr. CRAIG) submitted an amendment intended to be proposed to amendment SA 118 submitted by Mr. CHAMBLISS (for himself, Mr. ISAKSON, and Mr. BURR) and intended to be proposed to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE II—AGJOBS ACT OF 2007

SEC. 201. SHORT TITLE.

This title may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2007'' or the ''AgJOBS Act of 2007''.

SEC. 202. DEFINITIONS.

In this title:

(1) AGRICULTURAL EMPLOYMENT.—The term ''agricultural employment'' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 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 211(a).

(3) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(4) EMPLOYER.—The term ''employer'' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

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

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

(7) WORK DAY.—The term ''work day'' means any day in which the individual is employed 5.75 or more hours in agricultural employment.

Subtitle A—Pilot Program for Earned Status Adjustment of Agricultural Workers

PART I—BLUE CARD STATUS

SEC. 211. REQUIREMENTS FOR BLUE CARD STATUS.

(a) REQUIREMENT TO GRANT BLUE CARD STATUS.—Notwithstanding any other 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 215(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 213, 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 215(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 213(a)(1)(A) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in section 213(a)(3).

(e) RECORD OF EMPLOYMENT.—

(1) IN GENERAL.—Each employer of an alien granted blue card status under this section shall annually—

(A) provide a written record of employment to the alien; and

(B) provide a copy of such record to the Secretary.

(2) SUNSET.—The obligation under paragraph (1) shall terminate on the date that is 6 years after the date of the enactment of this Act.

(f) REQUIRED FEATURES OF IDENTITY CARD.—The Secretary shall provide each alien granted blue card status, and the spouse and any child of each such alien residing in the United States, with a card that contains—

(1) an encrypted, machine-readable, electronic identification strip that is unique to the alien to whom the card is issued;

(2) biometric identifiers, including fingerprints and a digital photograph; and

(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

(g) 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. 212. TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.

(a) IN GENERAL.—Except as otherwise provided under this section, an alien granted blue card status shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien granted blue card status shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the alien is granted an adjustment of status under section 213.

(c) TERMS OF EMPLOYMENT.—

(1) PROHIBITION.—No alien granted blue card status may be 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 213(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 211(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. 213. ADJUSTMENT TO PERMANENT RESIDENCE.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary shall adjust the status of an alien granted blue card status to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

(1) QUALIFYING EMPLOYMENT.—

(A) IN GENERAL.—Subject to 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 211(e); or

(B) such documentation as may be submitted under section 214(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 215(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 211.

(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 215(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. 214. APPLICATIONS.

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

(1) applications for blue card status under section 211 may be submitted—

(A) to the Secretary if the applicant is represented by an attorney or 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 213 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 211(a)(1) or 213(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 211(a) or 213(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 211(a)(1) or 213(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 211(a)(1) or 213(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 211 or an adjustment of status under section 213 has been convicted of a crime at any time may be used or released for immigration enforcement or law enforcement purposes.

(4) 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 211 or an adjustment of status under section 213 and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or 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 211 or an adjustment of status under section 213.

(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 211 or for an adjustment of status under section 213; and

(B) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(2) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge 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 211 or an adjustment of status under section 213.

SEC. 215. WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.

(a) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 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 213.

(b) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under section 211(a) or an alien's eligibility for adjustment of status under section 213(b)(2)(A) the following rules shall apply:

(1) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) WAIVER OF OTHER GROUNDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes, to 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 211 or an adjustment of status under section 213 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 211(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 211(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. 216. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for blue card status under section 211 or adjustment of status under section 213 except in accordance with this section.

(b) ADMINISTRATIVE REVIEW.—

(1) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(2) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(c) JUDICIAL REVIEW.—

(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. 217. USE OF INFORMATION.

Beginning not later than the first day of the application period described in section 211(a)(2), the Secretary, in cooperation with qualified designated entities (as that term is defined in section 214(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. 218. 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.

PART II—CORRECTION OF SOCIAL SECURITY RECORDS

SEC. 221. 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.

Subtitle B—Reform of H–2A Worker Program

SEC. 231. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by 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 ⅕ 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.''.

Subtitle C—Miscellaneous Provisions

SEC. 241. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens pursuant to the amendment made by section 231(a) of this Act and a collection process for such fees from employers. Such fees shall be the only fees chargeable to employers for services provided under such amendment.

(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 231 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 231(a) of this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

(A) IN GENERAL.—In establishing and 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 231(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 231 of this Act, and the provisions of this title.

SEC. 242. 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 title and the amendments made by this title.

(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 title and the amendments made by this title.

(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 title and the amendments made by this title.

(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 231 of this Act, shall take effect on the effective date of section 231 and shall be issued not later than 1 year after the date of enactment of this Act.

SEC. 243. 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 211(a);

(5) the number of such aliens whose status was adjusted under section 211(a);

(6) the number of aliens who applied for permanent residence pursuant to section 213(c); and

(7) the number of such aliens who were approved for permanent residence pursuant section 213(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. 244. EFFECTIVE DATE.

Except as otherwise provided, sections 231 and 241 shall take effect 1 year after the date of the enactment of this Act.

SA 168. Mrs. FEINSTEIN (for herself and Mr. CRAIG) submitted an amendment intended to be proposed to amendment SA 117 submitted by Mr. CHAMBLISS (for himself, Mr. BURR, and Mr. ISAKSON) and intended to be proposed to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

TITLE II—AGJOBS ACT OF 2007

SEC. 201. SHORT TITLE.

This title may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2007'' or the ''AgJOBS Act of 2007''.

SEC. 202. DEFINITIONS.

In this title:

(1) AGRICULTURAL EMPLOYMENT.—The term ''agricultural employment'' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 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 211(a).

(3) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(4) EMPLOYER.—The term ''employer'' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

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

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

(7) WORK DAY.—The term ''work day'' means any day in which the individual is employed 5.75 or more hours in agricultural employment.

Subtitle A—Pilot Program for Earned Status Adjustment of Agricultural Workers

PART I—BLUE CARD STATUS

SEC. 211. REQUIREMENTS FOR BLUE CARD STATUS.

(a) REQUIREMENT TO GRANT BLUE CARD STATUS.—Notwithstanding any other 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 215(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 213, 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 215(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 213(a)(1)(A) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in section 213(a)(3).

(e) RECORD OF EMPLOYMENT.—

(1) IN GENERAL.—Each employer of an alien granted blue card status under this section shall annually—

(A) provide a written record of employment to the alien; and

(B) provide a copy of such record to the Secretary.

(2) SUNSET.—The obligation under paragraph (1) shall terminate on the date that is 6 years after the date of the enactment of this Act.

(f) REQUIRED FEATURES OF IDENTITY CARD.—The Secretary shall provide each alien granted blue card status, and the spouse and any child of each such alien residing in the United States, with a card that contains—

(1) an encrypted, machine-readable, electronic identification strip that is unique to the alien to whom the card is issued;

(2) biometric identifiers, including fingerprints and a digital photograph; and

(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

(g) 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. 212. TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.

(a) IN GENERAL.—Except as otherwise provided under this section, an alien granted blue card status shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien granted blue card status shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the alien is granted an adjustment of status under section 213.

(c) TERMS OF EMPLOYMENT.—

(1) PROHIBITION.—No alien granted blue card status may be 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 213(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 211(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. 213. ADJUSTMENT TO PERMANENT RESIDENCE.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary shall adjust the status of an alien granted blue card status to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

(1) QUALIFYING EMPLOYMENT.—

(A) IN GENERAL.—Subject to 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 211(e); or

(B) such documentation as may be submitted under section 214(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 215(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 211.

(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 215(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. 214. APPLICATIONS.

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

(1) applications for blue card status under section 211 may be submitted—

(A) to the Secretary if the applicant is represented by an attorney or 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 213 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 211(a)(1) or 213(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 211(a) or 213(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 211(a)(1) or 213(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 211(a)(1) or 213(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 211 or an adjustment of status under section 213 has been convicted of a crime at any time may be used or released for immigration enforcement or law enforcement purposes.

(4) 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 211 or an adjustment of status under section 213 and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or 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 211 or an adjustment of status under section 213.

(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 211 or for an adjustment of status under section 213; and

(B) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(2) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge 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 211 or an adjustment of status under section 213.

SEC. 215. WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.

(a) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 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 213.

(b) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under section 211(a) or an alien's eligibility for adjustment of status under section 213(b)(2)(A) the following rules shall apply:

(1) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) WAIVER OF OTHER GROUNDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes, to 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 211 or an adjustment of status under section 213 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 211(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 211(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. 216. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for blue card status under section 211 or adjustment of status under section 213 except in accordance with this section.

(b) ADMINISTRATIVE REVIEW.—

(1) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(2) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(c) JUDICIAL REVIEW.—

(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. 217. USE OF INFORMATION.

Beginning not later than the first day of the application period described in section 211(a)(2), the Secretary, in cooperation with qualified designated entities (as that term is defined in section 214(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. 218. 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.

PART II—CORRECTION OF SOCIAL SECURITY RECORDS

SEC. 221. 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.

Subtitle B—Reform of H–2A Worker Program

SEC. 231. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by 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 ⅕ 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.''.

Subtitle C—Miscellaneous Provisions

SEC. 241. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens pursuant to the amendment made by section 231(a) of this Act and a collection process for such fees from employers. Such fees shall be the only fees chargeable to employers for services provided under such amendment.

(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 231 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 231(a) of this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

(A) IN GENERAL.—In establishing and 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 231(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 231 of this Act, and the provisions of this title.

SEC. 242. 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 title and the amendments made by this title.

(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 title and the amendments made by this title.

(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 title and the amendments made by this title.

(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 231 of this Act, shall take effect on the effective date of section 231 and shall be issued not later than 1 year after the date of enactment of this Act.

SEC. 243. 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 211(a);

(5) the number of such aliens whose status was adjusted under section 211(a);

(6) the number of aliens who applied for permanent residence pursuant to section 213(c); and

(7) the number of such aliens who were approved for permanent residence pursuant section 213(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. 244. EFFECTIVE DATE.

Except as otherwise provided, sections 231 and 241 shall take effect 1 year after the date of the enactment of this Act.

SA 169. Mr. ALLARD submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the end, add the following new section:

SEC. 4. SHARING OF SOCIAL SECURITY DATA FOR IMMIGRATION ENFORCEMENT PURPOSES.

(a) SOCIAL SECURITY ACCOUNT NUMBERS.—Section 264(f) of the Immigration and Nationality Act (8 U.S.C. 1304(f)) is amended to read as follows:

''(f) Notwithstanding any other provision of law (including section 6103 of the Internal Revenue Code of 1986), the Secretary of Homeland Security, the Secretary of Labor, and the Attorney General are authorized to require any individual to provide his or her own social security account number for purposes of inclusion in any record of the individual maintained by either such Secretary or the Attorney General, or of inclusion in any application, document, or form provided under or required by the immigration laws.''.

(b) EXCHANGE OF INFORMATION.—Section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)) is amended by striking paragraph (2) and inserting the following new paragraphs:

''(2)(A) Notwithstanding any other provision of law (including section 6103 of the Internal Revenue Code of 1986) if earnings are reported on or after January 1, 1997, to the Social Security Administration on a social security account number issued to an alien not authorized to work in the United States, the Commissioner of Social Security shall provide the Secretary of Homeland Security with information regarding the name, date of birth, and address of the alien, the name and address of the person reporting the earnings, and the amount of the earnings.

''(B) The information described in subparagraph (A) shall be provided in an electronic form agreed upon by the Commissioner and the Secretary.

''(3)(A) Notwithstanding any other provision of law (including section 6103 of the Internal Revenue Code of 1986), if a social security account number was used with multiple names, the Commissioner of Social Security shall provide the Secretary of Homeland Security with information regarding the name, date of birth, and address of each individual who used that social security account number, and the name and address of the person reporting the earnings for an individual who used that social security account number.

''(B) The information described in subparagraph (A) shall be provided in an electronic form agreed upon by the Commissioner and the Secretary for the sole purpose of enforcing the immigration laws.

''(C) The Secretary, in consultation with the Commissioner, may limit or modify the requirements of this paragraph, as appropriate, to identify the cases posing the highest possibility of fraudulent use of social security account numbers related to violation of the immigration laws.

''(4)(A) Notwithstanding any other provision of law (including section 6103 of the Internal Revenue Code of 1986), if more than one person reports earnings for an individual during a single tax year, the Commissioner of Social Security shall provide the Secretary of Homeland Security information regarding the name, date of birth, and address of the individual, and the name and address of the each person reporting earnings for that individual.

''(B) The information described in subparagraph (A) shall be provided in an electronic form agreed upon by the Commissioner and the Secretary for the sole purpose of enforcing the immigration laws.

''(C) The Secretary, in consultation with the Commissioner, may limit or modify the requirements of this paragraph, as appropriate, to identify the cases posing the highest possibility of fraudulent use of social security account numbers related to violation of the immigration laws.

''(5)(A) The Commissioner of Social Security shall perform, at the request to the Secretary of Homeland Security, any search or manipulation of records held by the Commissioner if the Secretary certifies that the purpose of the search or manipulation is to obtain information that is likely to assist in identifying individuals (and their employers) who are using false names or social security numbers, who are sharing a single valid name and social security number among multiple individuals, who are using the social security number of a person who is deceased, too young to work, or not authorized to work, or who are otherwise engaged in a violation of the immigration laws. The Commissioner shall provide the results of such search or manipulation to the Secretary, notwithstanding any other provision law (including section 6103 of the Internal Revenue Code of 1986).

''(B) The Secretary shall transfer to the Commissioner the funds necessary to cover the costs directly incurred by the Commissioner in carrying out each search or manipulation requested by the Secretary under subparagraph (A).''.

(c) FALSE CLAIMS OF CITIZENSHIP BY NATIONALS OF THE UNITED STATES.—Section 212(a)(6)(C)(ii)(I) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(ii)(I)) is amended by inserting ''or national'' after ''citizen''.

SA 170. Mr. GREGG (for himself, Mr. SUNUNU, and Mr. ISAKSON) submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. EMPLOYEE OPTION TIME.

(a) BIWEEKLY WORK PROGRAMS.—

(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

''SEC. 13A. BIWEEKLY WORK PROGRAMS.

''(a) VOLUNTARY PARTICIPATION.—

''(1) OPTION OF EMPLOYEE.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

''(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required to participate in such a program in accordance with the agreement.

''(b) BIWEEKLY WORK PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs that—

''(A) allow the use of a biweekly work schedule—

''(i) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

''(ii) in which more than 40 hours of the work requirement may occur in a week of the period, except that no more than 10 hours may be shifted between the 2 weeks involved; and

''(B) provides that an employee participating in the program is compensated for overtime hours in accordance with paragraph (4).

''(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

''(ii) in the case of an employee who is not represented by a labor organization described in clause (i), a written agreement arrived at between the employer and employee before the performance of the work involved if the agreement was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT OF VOLUNTARY PARTICIPATION.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written statement that is made, kept, and preserved in accordance with section 11(c), that the employee has voluntarily chosen to participate in the program.

''(C) MINIMUM SERVICE.—No employee may participate, or agree to participate, in the program unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(3) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

''(4) OVERTIME COMPENSATION PROVISION.—An employee participating in such a biweekly work program shall be compensated for each overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1).

''(5) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement described in paragraph (2)(A)(ii) at the end of any 2-week period described in paragraph (1)(A)(i), by submitting a written notice of withdrawal to the employer of the employee.

''(c) PROHIBITION OF COERCION.—

''(1) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule.

''(2) DEFINITION.—In paragraph (1), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

''(d) DEFINITIONS.—In this section:

''(1) BASIC WORK REQUIREMENT.—The term 'basic work requirement' means the number of hours, excluding overtime hours, that an employee is required to work or is required to account for by leave or otherwise.

''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

''(4) EMPLOYEE.—The term 'employee' means an individual—

''(A) who is an employee (as defined in section 3);

''(B) who is not an employee of a public agency; and

''(C) to whom section 7(a) applies.

''(5) EMPLOYER.—The term 'employer' does not include a public agency.

''(6) OVERTIME HOURS.—The term 'overtime hours' when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved, in excess of the allotted 50 hours a week, or in excess of the allotted 80 hours in the 2-week period involved, that are requested in advance by an employer.

''(7) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

(2) REMEDIES.—

(A) PROHIBITIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(i) by inserting ''(A)'' after ''(3)'';

(ii) by adding ''or'' after the semicolon; and

(iii) by adding at the end the following:

''(B) to violate any of the provisions of section 13A;''.

(B) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(i) in subsection (c)—

(I) in the first sentence—

(aa) by inserting after ''7 of this Act'' the following: '', or of the appropriate legal or monetary equitable relief owing to any employee or employees under section 13A''; and

(bb) by striking ''wages or unpaid overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and'';

(II) in the second sentence, by striking ''wages or overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and''; and

(III) in the third sentence—

(aa) by inserting after ''first sentence of such subsection'' the following: '', or the second sentence of such subsection in the event of a violation of section 13A,''; and

(bb) by striking ''wages or unpaid overtime compensation under sections 6 and 7 or'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, or''; and

(ii) in subsection (e)—

(I) in the second sentence, by striking ''section 6 or 7'' and inserting ''section 6, 7, or 13A''; and

(II) in the fourth sentence, in paragraph (3), by striking ''15(a)(4) or'' and inserting ''15(a)(4), a violation of section 15(a)(3)(B), or''.

(3) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this section, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to employees so that the notice reflects the amendments made to the Act by this section.

(b) CONGRESSIONAL COVERAGE.—Section 203 of the Congressional Accountability Act of 1995 (2 U.S.C. 1313) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''and section 12(c)'' and inserting ''section 12(c), and section 13A''; and

(B) by striking paragraph (3);

(2) in subsection (b)—

(A) by striking ''The remedy'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), the remedy''; and

(B) by adding at the end the following:

''(2) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOURS PROGRAMS.—The remedy for a violation of subsection (a) relating to the requirements of section 13A of the Fair Labor Standards Act of 1938 shall be such remedy as would be appropriate if awarded under sections 16 and 17 of such Act (29 U.S.C. 216, 217) for such a violation.''; and

(3) in subsection (c), by striking paragraph (4).

(c) TERMINATION.—The authority provided by this section and the amendments made by this section terminates 5 years after the date of enactment of this section.

SA 171. Mr. GREGG (for himself, Mr. SUNUNU, and Mr. ISAKSON) submitted an amendment intended to be proposed to amendment SA 100 proposed by Mr. REID (for Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. EMPLOYEE OPTION TIME.

(a) BIWEEKLY WORK PROGRAMS.—

(1) IN GENERAL.—The Fair Labor Standards Act of 1938 is amended by inserting after section 13 (29 U.S.C. 213) the following:

''SEC. 13A. BIWEEKLY WORK PROGRAMS.

''(a) VOLUNTARY PARTICIPATION.—

''(1) OPTION OF EMPLOYEE.—Except as provided in paragraph (2), no employee may be required to participate in a program described in this section. Participation in a program described in this section may not be a condition of employment.

''(2) COLLECTIVE BARGAINING AGREEMENT.—In a case in which a valid collective bargaining agreement exists between an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law, an employee may only be required to participate in such a program in accordance with the agreement.

''(b) BIWEEKLY WORK PROGRAMS.—

''(1) IN GENERAL.—Notwithstanding section 7, an employer may establish biweekly work programs that—

''(A) allow the use of a biweekly work schedule—

''(i) that consists of a basic work requirement of not more than 80 hours, over a 2-week period; and

''(ii) in which more than 40 hours of the work requirement may occur in a week of the period, except that no more than 10 hours may be shifted between the 2 weeks involved; and

''(B) provides that an employee participating in the program is compensated for overtime hours in accordance with paragraph (4).

''(2) CONDITIONS.—An employer may carry out a biweekly work program described in paragraph (1) for employees only pursuant to the following:

''(A) AGREEMENT.—The program may be carried out only in accordance with—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization that has been certified or recognized as the representative of the employees under applicable law; or

''(ii) in the case of an employee who is not represented by a labor organization described in clause (i), a written agreement arrived at between the employer and employee before the performance of the work involved if the agreement was entered into knowingly and voluntarily by such employee and was not a condition of employment.

''(B) STATEMENT OF VOLUNTARY PARTICIPATION.—The program shall apply to an employee described in subparagraph (A)(ii) if such employee has affirmed, in a written statement that is made, kept, and preserved in accordance with section 11(c), that the employee has voluntarily chosen to participate in the program.

''(C) MINIMUM SERVICE.—No employee may participate, or agree to participate, in the program unless the employee has been employed for at least 12 months by the employer, and for at least 1,250 hours of service with the employer during the previous 12-month period.

''(3) COMPENSATION FOR HOURS IN SCHEDULE.—Notwithstanding section 7, in the case of an employee participating in such a biweekly work program, the employee shall be compensated for each hour in such a biweekly work schedule at a rate not less than the regular rate at which the employee is employed.

''(4) OVERTIME COMPENSATION PROVISION.—An employee participating in such a biweekly work program shall be compensated for each overtime hour at a rate not less than one and one-half times the regular rate at which the employee is employed, in accordance with section 7(a)(1).

''(5) DISCONTINUANCE OF PROGRAM OR WITHDRAWAL.—

''(A) DISCONTINUANCE OF PROGRAM.—An employer that has established a biweekly work program under paragraph (1) may discontinue the program for employees described in paragraph (2)(A)(ii) after providing 30 days' written notice to the employees who are subject to an agreement described in paragraph (2)(A)(ii).

''(B) WITHDRAWAL.—An employee may withdraw an agreement described in paragraph (2)(A)(ii) at the end of any 2-week period described in paragraph (1)(A)(i), by submitting a written notice of withdrawal to the employer of the employee.

''(c) PROHIBITION OF COERCION.—

''(1) IN GENERAL.—An employer shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any employee for the purpose of interfering with the rights of the employee under this section to elect or not to elect to work a biweekly work schedule.

''(2) DEFINITION.—In paragraph (1), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

''(d) DEFINITIONS.—In this section:

''(1) BASIC WORK REQUIREMENT.—The term 'basic work requirement' means the number of hours, excluding overtime hours, that an

employee is required to work or is required to account for by leave or otherwise.

''(2) COLLECTIVE BARGAINING.—The term 'collective bargaining' means the performance of the mutual obligation of the representative of an employer and the labor organization that has been certified or recognized as the representative of the employees of the employer under applicable law to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph shall not compel either party to agree to a proposal or to make a concession.

''(3) COLLECTIVE BARGAINING AGREEMENT.—The term 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining.

''(4) EMPLOYEE.—The term 'employee' means an individual—

''(A) who is an employee (as defined in section 3);

''(B) who is not an employee of a public agency; and

''(C) to whom section 7(a) applies.

''(5) EMPLOYER.—The term 'employer' does not include a public agency.

''(6) OVERTIME HOURS.—The term 'overtime hours' when used with respect to biweekly work programs under subsection (b), means all hours worked in excess of the biweekly work schedule involved, in excess of the allotted 50 hours a week, or in excess of the allotted 80 hours in the 2-week period involved, that are requested in advance by an employer.

''(7) REGULAR RATE.—The term 'regular rate' has the meaning given the term in section 7(e).''.

(2) REMEDIES.—

(A) PROHIBITIONS.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(i) by inserting ''(A)'' after ''(3)'';

(ii) by adding ''or'' after the semicolon; and

(iii) by adding at the end the following:

''(B) to violate any of the provisions of section 13A;''.

(B) REMEDIES AND SANCTIONS.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended—

(i) in subsection (c)—

(I) in the first sentence—

(aa) by inserting after ''7 of this Act'' the following: '', or of the appropriate legal or monetary equitable relief owing to any employee or employees under section 13A''; and

(bb) by striking ''wages or unpaid overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and'';

(II) in the second sentence, by striking ''wages or overtime compensation and'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, and''; and

(III) in the third sentence—

(aa) by inserting after ''first sentence of such subsection'' the following: '', or the second sentence of such subsection in the event of a violation of section 13A,''; and

(bb) by striking ''wages or unpaid overtime compensation under sections 6 and 7 or'' and inserting ''wages, unpaid overtime compensation, or legal or monetary equitable relief, as appropriate, or''; and

(ii) in subsection (e)—

(I) in the second sentence, by striking ''section 6 or 7'' and inserting ''section 6, 7, or 13A''; and

(II) in the fourth sentence, in paragraph (3), by striking ''15(a)(4) or'' and inserting ''15(a)(4), a violation of section 15(a)(3)(B), or''.

(3) NOTICE TO EMPLOYEES.—Not later than 30 days after the date of enactment of this section, the Secretary of Labor shall revise the materials the Secretary provides, under regulations contained in section 516.4 of title 29, Code of Federal Regulations, to employers for purposes of a notice explaining the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) to employees so that the notice reflects the amendments made to the Act by this section.

(b) CONGRESSIONAL COVERAGE.—Section 203 of the Congressional Accountability Act of 1995 (2 U.S.C. 1313) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''and section 12(c)'' and inserting ''section 12(c), and section 13A''; and

(B) by striking paragraph (3);

(2) in subsection (b)—

(A) by striking ''The remedy'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), the remedy''; and

(B) by adding at the end the following:

''(2) BIWEEKLY WORK PROGRAMS AND FLEXIBLE CREDIT HOURS PROGRAMS.—The remedy for a violation of subsection (a) relating to the requirements of section 13A of the Fair Labor Standards Act of 1938 shall be such remedy as would be appropriate if awarded under sections 16 and 17 of such Act (29 U.S.C. 216, 217) for such a violation.''; and

(3) in subsection (c), by striking paragraph (4).

(c) TERMINATION.—The authority provided by this section and the amendments made by this section terminates 5 years after the date of enactment of this section.

SA 172. Mr. ROBERTS submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ____. AGRICULTURAL CHEMICALS SECURITY CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

''SEC. 45O. AGRICULTURAL CHEMICALS SECURITY CREDIT.

''(a) IN GENERAL.—For purposes of section 38, in the case of an eligible agricultural business, the agricultural chemicals security credit determined under this section for the taxable year is 30 percent of the qualified security expenditures for the taxable year.

''(b) FACILITY LIMITATION.—The amount of the credit determined under subsection (a) with respect to any facility for any taxable year shall not exceed—

''(1) $100,000, reduced by

''(2) the aggregate amount of credits determined under subsection (a) with respect to such facility for the 5 prior taxable years.

''(c) ANNUAL LIMITATION.—The amount of the credit determined under subsection (a) with respect to any taxpayer for any taxable year shall not exceed $2,000,000.

''(d) QUALIFIED CHEMICAL SECURITY EXPENDITURE.—For purposes of this section, the term 'qualified chemical security expenditure' means, with respect to any eligible agricultural business for any taxable year, any amount paid or incurred by such business during such taxable year for—

''(1) employee security training and background checks,

''(2) limitation and prevention of access to controls of specified agricultural chemicals stored at the facility,

''(3) tagging, locking tank valves, and chemical additives to prevent the theft of specified agricultural chemicals or to render such chemicals unfit for illegal use,

''(4) protection of the perimeter of specified agricultural chemicals,

''(5) installation of security lighting, cameras, recording equipment, and intrusion detection sensors,

''(6) implementation of measures to increase computer or computer network security,

''(7) conducting a security vulnerability assessment,

''(8) implementing a site security plan, and

''(9) such other measures for the protection of specified agricultural chemicals as the Secretary may identify in regulation.

Amounts described in the preceding sentence shall be taken into account only to the extent that such amounts are paid or incurred for the purpose of protecting specified agricultural chemicals.

''(e) ELIGIBLE AGRICULTURAL BUSINESS.—For purposes of this section, the term 'eligible agricultural business' means any person in the trade or business of—

''(1) selling agricultural products, including specified agricultural chemicals, at retail predominantly to farmers and ranchers, or

''(2) manufacturing, formulating, distributing, or aerially applying specified agricultural chemicals.

''(f) SPECIFIED AGRICULTURAL CHEMICAL.—For purposes of this section, the term 'specified agricultural chemical' means—

''(1) any fertilizer commonly used in agricultural operations which is listed under—

''(A) section 302(a)(2) of the Emergency Planning and Community Right-to-Know Act of 1986,

''(B) section 101 of part 172 of title 49, Code of Federal Regulations, or

''(C) part 126, 127, or 154 of title 33, Code of Federal Regulations, and

''(2) any pesticide (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act), including all active and inert ingredients thereof, which is customarily used on crops grown for food, feed, or fiber.

''(g) CONTROLLED GROUPS.—Rules similar to the rules of paragraphs (1) and (2) of section 41(f) shall apply for purposes of this section.

''(h) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

''(1) provide for the proper treatment of amounts which are paid or incurred for purpose of protecting any specified agricultural chemical and for other purposes, and

''(2) provide for the treatment of related properties as one facility for purposes of subsection (b).

''(i) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 2010.''.

(b) CREDIT ALLOWED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) is amended by striking ''plus'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', plus'', and by adding at the end the following new paragraph:

''(32) in the case of an eligible agricultural business (as defined in section 45O(e)), the agricultural chemicals security credit determined under section 45O(a).''.

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C is amended by adding at the end the following new subsection:

''(f) CREDIT FOR SECURITY OF AGRICULTURAL CHEMICALS.—No deduction shall be allowed for that portion of the expenses (otherwise allowable as a deduction) taken into account in determining the credit under section 45O for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45O(a).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 45O. Agricultural chemicals security credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2006.

SA 173. Mr. KERRY submitted an amendment intended to be proposed to amendment SA 112 submitted by Mr. SUNUNU to the amendment SA 100 proposed by Mr. REID (Mr. BAUCUS) to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. ___. SUSTAINABILITY PROGRAM.

(a) IN GENERAL.—Section 29(l) of the Small Business Act (15 U.S.C. 656(l)) is amended—

(1) in the subsection heading, by striking ''PILOT'';

(2) in paragraph (1), by striking ''4-year pilot''; and

(3) in paragraph (5), by striking ''pilot''.

(b) CONFORMING AMENDMENTS.—Section 29(k) of the Small Business Act (15 U.S.C. 656(k)) is amended—

(1) in paragraph (1), by striking ''pilot'';

(2) in paragraph (4)—

(A) in the paragraph heading, by striking ''PILOT'';

(B) in subparagraph (A), by adding at the end the following:

''(v) For fiscal years 2007 and 2008, not less than 41 percent.''; and

(C) in the heading for subparagraph (B), by striking ''PILOT''.

SA 174. Mr. KERRY submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. SUSTAINABILITY PROGRAM.

(a) IN GENERAL.—Section 29(l) of the Small Business Act (15 U.S.C. 656(l)) is amended—

(1) in the subsection heading, by striking ''PILOT'';

(2) in paragraph (1), by striking ''4-year pilot''; and

(3) in paragraph (5), by striking ''pilot''.

(b) CONFORMING AMENDMENTS.—Section 29(k) of the Small Business Act (15 U.S.C. 656(k)) is amended—

(1) in paragraph (1), by striking ''pilot'';

(2) in paragraph (4)—

(A) in the paragraph heading, by striking ''PILOT'';

(B) in subparagraph (A), by adding at the end the following:

''(v) For fiscal years 2007 and 2008, not less than 41 percent.''; and

(C) in the heading for subparagraph (B), by striking ''PILOT''.

SA 175. Mr. HATCH submitted an amendment intended to be proposed by him to the bill H.R. 2, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. PROVISIONS TO IMPROVE AND EXPAND THE AVAILABILITY OF HEALTH SAVINGS ACCOUNTS.

(a) PROVISIONS RELATING TO ELIGIBILITY TO CONTRIBUTE TO HSAS.—

(1) INDIVIDUALS ELIGIBLE FOR REIMBURSEMENT UNDER SPOUSE'S FLEXIBLE SPENDING ARRANGEMENT.—Section 223(c)(1) (defining eligible individual) is amended by adding at the end the following new subparagraph:

''(C) SPECIAL RULE FOR CERTAIN FLEXIBLE SPENDING ARRANGEMENTS.—For purposes of subparagraph (A)(ii), an individual shall not be treated as covered under a health plan described in such subparagraph merely because the individual is covered under a flexible spending arrangement (within the meaning of section 106(c)(2)) which is maintained by an employer of the spouse of the individual, but only if—

''(i) the employer is not also the employer of the individual, and

''(ii) the individual certifies to the employer and to the Secretary (in such form and manner as the Secretary may prescribe) that the individual and the individual's spouse will not accept reimbursement under the arrangement for any expenses for medical care provided to the individual.''.

(2) INDIVIDUALS OVER AGE 65 AUTOMATICALLY ENROLLED IN MEDICARE PART A.—Section 223(b)(7) (relating to contribution limitation on medicare eligible individuals) is amended by adding at the end the following new sentence: ''This paragraph shall not apply to any individual during any period the individual's only entitlement to such benefits is an entitlement to hospital insurance benefits under part A of title XVIII of such Act pursuant to an automatic enrollment for such hospital insurance benefits under the regulations under section 226(a)(1) of such Act.''

(3) INDIVIDUALS ELIGIBLE FOR CERTAIN VETERANS BENEFITS.—Section 223(c)(1) (defining eligible individual), as amended by subsection (a), is amended by adding at the end the following new subparagraph:

''(D) SPECIAL RULE FOR INDIVIDUALS ELIGIBLE FOR CERTAIN VETERANS BENEFITS.—For purposes of subparagraph (A)(ii), an individual shall not be treated as covered under a health plan described in such subparagraph merely because the individual receives periodic hospital care or medical services for a service-connected disability under any law administered by the Secretary of Veterans Affairs but only if the individual is not eligible to receive such care or services for any condition other than a service-connected disability.''.

(b) FAMILY PLAN MAY HAVE INDIVIDUAL ANNUAL DEDUCTIBLE LIMIT.—Section 223(c)(2) (defining high deductible health plan) is amended by adding at the end the following new subparagraph:

''(E) SPECIAL RULE FOR FAMILY COVERAGE.—A health plan providing family coverage shall not fail to meet the requirements of subparagraph (A)(i)(II) merely because the plan elects to provide both—

''(i) an aggregate annual deductible limit for all individuals covered by the plan which is not less than the amount in effect under subparagraph (A)(i)(II), and

''(ii) an annual deductible limit for each individual covered by the plan which is not less than the amount in effect under subparagraph (A)(i)(I).''.

(c) DEFINITION OF QUALIFIED MEDICAL EXPENSES.—

(1) PREMIUMS FOR LOW PREMIUM HEALTH PLANS TREATED AS QUALIFIED MEDICAL EXPENSES.—Subparagraph (C) of section 223(d)(2) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) a high deductible health plan, but only if the expenses are for coverage for a month with respect to which the account beneficiary is an eligible individual by reason of the coverage under the plan.''.

(2) SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES INCURRED BEFORE ESTABLISHMENT OF ACCOUNT.—Paragraph (2) of section 223(d) is amended by adding at the end the following new subparagraph:

''(D) CERTAIN MEDICAL EXPENSES INCURRED BEFORE ESTABLISHMENT OF ACCOUNT TREATED AS QUALIFIED.—An expense shall not fail to be treated as a qualified medical expense solely because such expense was incurred before the establishment of the health savings account if such expense was incurred—

''(i) during either—

''(I) the taxable year in which the health savings account was established, or

''(II) the preceding taxable year in the case of a health savings account established after the taxable year in which such expense was incurred but before the time prescribed by law for filing the return for such taxable year (not including extensions thereof), and

''(ii) for medical care of an individual during a period that such individual was an eligible individual.

For purposes of clause (ii), an individual shall be treated as an eligible individual for any portion of a month the individual is described in subsection (c)(1), determined without regard to whether the individual is covered under a high deductible health plan on the 1st day of such month.''.

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

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Tuesday, February 13, 2007, at 10:00 a.m. in room SD–106 of the Dirksen Senate Office Building.

The purpose of this hearing is to receive testimony on the Stern Review of the Economics of Climate Change, examining the economic impacts of climate change and stabilizing greenhouse gases in the atmosphere.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Jonathan Black at (202) 224–6722 or Amanda Kelly at (202) 224–5836.