Many questioned that estimate as too large. They said the problem existed, but it wasn't nearly as big as 10 percent. Then, as you know, last year the Inspector General conducted the first-ever detailed audit of Medicare payments. That Chief Financial Officer Act audit found that fully 14 percent of Medicare payments in 1996, or $23 billion, had been made improperly.

That's a $23 billion ''waste tax'' on the American people. And the purpose of today's summit to figure out the best way to cut that tax. So, how do you cut this tax? I know there are no ''magic-wand'' solutions—this is a complex problem with many components. But basically, you need four things: well thought out laws, adequate resources, effective implementation and the help of seniors and health providers. We've made progress on each of these fronts over the last couple of years, but much more remains to be done.

First, the reforms embodied in the Health Insurance Portability Act and the Balanced Budget Act must be effectively implemented. Effective implementation of these new reforms are vital and must be given high priority. And, Medicare, the Inspector General and the Justice Department must continue to aggressively use new authority to crack down on Medicare fraud.

The Medicare Waste Tax Reduction Act I am introducing today will take a number of important steps to stop the ravaging of Medicare.

This Bill for example, would direct HCFA to double and better target audits and reviews to detect and discourage mispayments. Currently only a tiny fraction of Medicare claims are reviewed before being paid and less than 2 percent of providers receive a comprehensive audit annually. We must have the ability to separate needed care from bill padding and abuse.

It would also require Medicare to aggressively use it's newly improved ''inherent reasonableness'' authority. It is vitally important that Medicare carriers be held accountable for their performance in protecting the program from abuse. Preventing abuse and other inappropriate payments should be the most important performance criteria these entities are measured by.

Our bill would also expand the Medicare Senior Waste Patrol Nationwide. Seniors are our front line of defense against Medicare fraud, waste and abuse. However, too often, seniors don't have the information they need to detect and report suspected mistakes and fraud. By moving the Waste Patrol nationwide, implementing important BBA provisions and assuring seniors have access to itemized bills we will strike an important blow to Medicare waste.

The bill would also give Medicare the authority to be a more prudent purchaser. As passed by the Senate, the Balanced Budget Act gave Medicare the authority to quickly reduce Part B payment rates (except those made for physician services) it finds to be grossly excessive when compared to rates paid by other government programs and the private sector. In conference, the provision was limited to reductions of no more than 15 percent. This bill would restore the original Senate language. In addition, to assure that Medicare gets the price it deserves given its status as by far the largest purchaser of medical supplies and equipment, Medicare would pay no more than any other government program for these items. Finally, overpayments for prescription drugs and biologicals would be eliminated by lowering Medicare's rate to the lowest of either the actual acquisition cost or 95% of the wholesale cost.

The Medicare Waste Tax reduction Act of 1998 would also ensure that Medicare does not pay for claims owed by other plans. Too often, Medicare pays claims that are owed by private insurers because it has know way of knowing a beneficiary is working and has private insurance that should pay first. This provision would reduce Medicare losses by requiring insurers to report any Medicare beneficiaries they insure. Also, Medicare would be given the authority to recover double the amount owed by insurers who purposely let Medicare pay claims they should have paid.

Additionally, coordination between Medicare and private insurers would be strengthened. Often, those ripping off Medicare are also defrauding private health plans. Yet, too little information on fraud cases is shared between Medicare and private plans. In order to encourage better coordination, health plans and their employees could not be held liable for sharing information with Medicare regarding health care fraud as long as the information is not false, or the person providing the information had no reason to believe the information was false.

Another critical component of any successful comprehensive plan to cut the Medicare waste tax is to focus on prevention. Most of our efforts now look at finding and correcting the problem after they occur. While this is important and we need to do even more of it, we all know that prevention is much more cost effective. The old adage ''A stitch in time saves nine'' was never more true. A major component of an enhanced prevention effort would be the provision of increased assistance and education for providers to comply with Medicare rules.

A good deal of the mis-payments made by Medicare are the result not of fraud or abuse, but of simple misunderstanding of Medicare billing rules by providers. Therefore, this bill provides $10 million a year to fund a major expansion of assistance and education for providers on program integrity requirements. This bill would also ensure the reduction of paperwork and administrative hassle that could prove daunting to providers. Health professionals have to spend too much time completing paperwork and dealing with administrative hassles associated with Medicare and private health plans. In order to reduce this hassle and provide more time for patient care, the Institute of Medicine would be charged with developing a comprehensive plan by no later than June 1, 1999. Their recommendations are to include the streamlining of variations between Medicare and other payers.

Mr. President, while we have made changes to medicare in attempts to extend its solvency thru the next decade, we urgently need to take other steps to protect and preserve the program for the long-term. We should enact the reforms in this bill to weed out waste, fraud and abuse as a first priority in this effort. I urge all my colleagues to review this proposal and hope that they will join me in working to pass it yet this year.

Mr. President, I also ask unanimous consent a summary of my bill be printed in the RECORD.

By Mr. HARKIN (for himself and Mr. HOLLINGS):

S. 2335. A bill to amend title XVIII of the Social Security Act to improve efforts to combat Medicare fraud, waste, and abuse; to the Committee on Finance.

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

MEDICARE WASTE TAX REDUCTION ACT OF 1998—SUMMARY

Doubling and Better Targeting Audits and Reviews To Detect and Discourage Abuse. Only a tiny fraction of Medicare claims are reviewed before being paid and less than 2 percent of providers receive a comprehensive audit annually. In order to better detect mistakes and abuses and to provide a more significant deterrent to abuse, the number of medical, utilization and fraud reviews would be doubled. In addition, at least 15% of provider cost reports submitted by home health agencies, skilled nursing facilities and durable medical equipment would be subject to annual audits. The increased reviews would be targeted at services and providers most likely to be subject to abuse.

Expanding Medicare Senior Waste Patrol Nationwide—Seniors are our front line of defense against Medicare fraud, waste and abuse. However, too often, seniors don't have the information they need to detect and report suspected mistakes and fraud. A program to recruit and train retired nurses, doctors, accountants and others to serve as volunteer resources to meet this need at the local level was established as part of the FY 97 Labor-HHS appropriations bill. This 12 state program has proven successful and would be expanded nationwide.

Increased Assistance and Education for Providers to Comply with Medicare Rules—A good deal of the mispayments made by Medicare are the result not of fraud or abuse, but of simple misunderstanding of Medicare billing rules by providers. Therefore, this bill provides $10 million a year to fund a major expansion of assistance and education for providers on program integrity requirements.

Reducing Paperwork and Administrative Hassle for Providers—Health professionals have to spend too much time completing paperwork and dealing with administrative hassles associated with Medicare and private health plans. In order to reduce this hassle and provide more time for patient care, the

Institute of Medicine would be charged with developing a comprehensive plan by no later than June 1, 1999. Their recommendations are to include the streamlining of variations between Medicare and other payers.

Making Medicare a More Prudent Purchaser—As passed by the Senate, the Balanced Budget Act gave Medicare the authority to quickly reduce Part B payment rates (except those made for physician services) it finds to be grossly excessive when compared to rates paid by other government programs and the private sector. In conference, the provision was limited to reductions of no more than 15 percent. This bill would restore the original Senate language. In addition, to assure that Medicare gets the price it deserves given its status as by far the largest purchaser of medical supplies and equipment, Medicare would pay no more than any other government program for these items. Finally, overpayments for prescription drugs and biologicals would be eliminated by lowering Medicare's rate to the lowest of either the actual acquisition cost or 95% of the wholesale cost.

Using State of the Art Private Sector Technology to Reduce Billing Errors and Abuse—The GAO and Medicare agree that taxpayers could save over $400 million a year simply by employing up to date computer software developed by the private sector to detect and stop billing errors and abuse. This bill would require Medicare to promptly employ private sector edits determined compatible with Medicare payment policy.

Improving Oversight of Home Health Agencies—Medicare oversight of home health care services would be strengthened. The Secretary would be required to conduct validation surveys of at least 5 percent of the agencies surveyed by every state. This would provide greater assurance that problem agencies are identified and help to reduce variation among states in inspection and enforcement.

Closing Loophole in Anti-Kickback Law for Managed Care—Provisions of HIPAA created a broadened exception from Medicare's anti-kickback rules for any arrangement where a medical provider is at ''substantial financial risk'' through ''any risk arrangement.'' This broad exception may be serving as a loophole to get around important anti-kickback protections. It would be eliminated, returning to pre-HIPAA law.

Expanding Criminal Penalties For Kickbacks—Criminal penalties upon persons violating the federal anti-kickback provisions with respect to private health care benefit programs. It will also authorize the Attorney General to bring civil actions in U.S. District Courts to impose civil penalties and treble damages on violators. There will be no diminution of the existing authority of any agency of the U.S. Government to administer and enforce the criminal laws of the United States.

Extending Subpoena And Injunction Authority—Medicare's ability to gather evidence in fraud and abuse cases would be strengthened by extending the Secretary's testimonial subpoena power and injunctive authority for civil monetary penalties to other administrative sanctions such as exclusions from the program.

Stopping Abusive Billings for Services Ordered by Excluded Providers—While current law provides for penalties against billing for services directly rendered by a provider who has been excluded from Medicare for criminal or other serious violations, no such authority exists for services or items prescribed or ordered by these providers. This provision would close the loophole by establishing civil monetary penalties for anyone who knows or should know that they are submitting claims for services ordered or prescribed by an excluded provider.

Combating Abuse of Hospice and Partial Hospitalization Benefits—Recent reviews have identified significant waste and abuse in the new Medicare partial hospitalizatio benefit. Abuse would be deterred by making a number of reforms to this benefit and authorize the Secretary to begin a prospective payment system. A new civil monetary penalty against doctors who knowingly provide false certification that an individual meets Medicare requirements to receive these services would also be established. A similar provision already exists for false certification of home health services.

Protecting Medicare Against Bankruptcy Abuses—Under current law it is possible for providers to use bankruptcy as a shield against Medicare and Medicaid penalties and overpayment recoveries. This provision would protect Medicare in a number of ways, including: A provider would still be liable to refund overpayments and pay penalties and fines even if he or she filed for bankruptcy. If Medicare law and bankruptcy law conflict, Medicare law would prevail. Bankruptcy courts would not be able to re-adjudicate Medicare coverage or payment decisions.

Ensuring Medicare Does Not Pay for Claims Owed by Other Plans—Too often, Medicare pays claims that are owed by private insurers because it has no way of knowing a beneficiary is working and has private insurance that should pay first. This provision would reduce Medicare losses by requiring insurers to report any Medicare beneficiaries they insure. Also, Medicare would be given the authority to recover double the amount owed by insurers who purposely let Medicare pay claims they should have paid.

Improving Coordination with Private Sector in Combating Medicare Fraud—Often, those ripping off Medicare are also defrauding private health plans. Yet, too little information on fraud cases is shared between Medicare and private plans. In order to encourage better coordination, health plans and their employees could not be held liable for sharing information with Medicare regarding health care fraud as long as the information is not false, or the person providing the information had no reason to believe the information was false.

Self-Funding Plan for Medicare Provider and Supplier Agreements—In order to provide the resources necessary to stop bogus or unqualified providers from billing Medicare, the Secretary may impose fees for the initial and or renewal of provider agreements. This will allow for more on-site visits of those seeking provider numbers to assure that the provider or supplier actually exists and is legitimate.

Balanced Budget Act Technical Changes—Several technical changes to Balanced Budget Act provisions relating to health care fraud are made.●

By Mr. SANTORUM (for himself and Mr. SPECTER):

S. 2336. A bill to amend chapter 5 of title 28, United States Code, to transfer Schuylkill County, Pennsylvania, from the Eastern Judicial District of Pennsylvania to the Middle Judicial District of Pennsylvania; to the Committee on the Judiciary.

UNITED STATES DISTRICT COURT LEGISLATION

● Mr. SANTORUM. Mr. President, today I introduce legislation transferring Schuylkill County from the Eastern Judicial District of Pennsylvania to the Middle District. I am pleased to work on this needed effort with the senior Senator from Pennsylvania Senator SPECTOR, who has signed on as an original cosponsor.

Many of the residents of Schuylkill County have voiced concern about the hardship they face in performing jury duty as they are often forced to travel as far as Philadelphia. Most of the counties adjacent to Schuylkill County are in the Middle District, where courtrooms are generally twice as close as those in Philadelphia. In addition, transferring Schuylkill County will help relieve the Eastern District of its much larger caseload.

Both the Chief Judge of the Eastern District, Edward Cahn, and of the Middle District, Sylvia Rambo, have raised no objections with this transfer. The Schuylkill County Bar Association, the Schuylkill County District Attorney, and numerous judges and attorneys have expressed strong support.

This legislation serves as a companion bill to H.R. 2123, a bill introduced by my esteemed colleague in the House of Representatives, Representative TIM HOLDEN, whose district includes Schuylkill County. Representative HOLDEN has worked diligently on passage of his bill or over a year, including a successful effort at incorporating its provisions into the Federal Courts Improvement Act of 1998. H.R. 2294, which passed the House on March 18, 1998. I congratulate my colleague on his success. Now, it is the responsibility of myself and Senator SPECTER to shepherd this legislation through the Senate.

I look forward to working with the Chairman of the Judiciary Committee, Senator HATCH, and the Ranking Member, Senator LEAHY, and the rests of my colleagues in securing passage of much needed legislation.

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

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

S. 2336

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

SECTION 1. TRANSFER OF COUNTY.

Section 118 of title 28, United States Code, is amended—

(1) in subsection (a) by striking ''Philadelphia, and Schuylkill'' and inserting ''and Philadelphia''; and

(2) in subsection (b) by inserting ''Schuylkill,'' after ''Potter,''.

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

(b) PENDING CASES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending on such date in the United States District Court for the Eastern District of Pennsylvania.

(c) JURIES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, impaneled, or actually serving on the effective date of this Act.●

By Mr. SMITH of Oregon (for himself, Mr. WYDEN, Mr. CRAIG, Mr. GRAHAM, Mr. GORTON, Mr. BUMPERS, Mr. HATCH, Mr. MCCONNELL, and Mr. MACK):

S. 2337. A bill to establish a system of registries of temporary agricultural workers to provide for a sufficient supply of such workers and to amend the Immigration and Nationality Act to streamline procedures for the admission and extension of stay of nonimmigrant agricultural workers, and for other purposes; to the Committee on the Judiciary.

AGRICULTURE JOB OPPORTUNITY BENEFITS AND SECURITY ACT OF 1998

Mr. CRAIG. Mr. President, today legislation is being introduced by my colleague from Oregon, GORDON SMITH, along with Senators WYDEN, GRAHAM of Florida, GORTON, BUMPERS, and MCCONNELL. This bill would deal with a situation that is a problem today and could well be a crisis tomorrow. The Senate now has an opportunity to do what our Federal Government does all too rarely, and that is fix a problem in a timely and commonsense fashion before it inflicts great hurt on millions of Americans.

Mr. President, I am talking about agricultural growers and their need for a stable, predictable, legal workforce that would receive good, fair, market-based compensation.

I am talking about unemployed workers and those hoping to move from welfare to work, who want and need to be matched up with agricultural jobs, if possible. American citizens should have first claim to American jobs. All workers would rather be working legally and know they can claim full legal protections only when their employment situation is open and lawful.

Farm employers need to be provided with a secure work force. Workers need to be assured of basic legal and labor standard protections.

These goals are not being met today. In fact, current federal law, and its bureaucratic implementation, are hurting growers and workers.

In fact, current Federal laws and their bureaucratic implementation are hurting both growers and workers. This is why I am pleased to join with my colleagues in the introduction of what we will call AgJOBS. This stands for the Agricultural Job Opportunity, Benefits and Security Act.

This bill will represent the culmination of work that has been going on for years amongst our colleagues, to resolve the issue of the necessary labor force for American agriculture. We have examined all of the issues involved with trying to ensure a supply of legal temporary and seasonal labor. We understand that that employers in many cases need guest workers and that employees, domestic and guest workers, need more and better jobs. We have looked at all sides. The result is a consensus bill that we think is nothing less than remarkable, and I commend my colleagues on this very important bipartisan effort.

The key elements of our bipartisan proposal would include the following: The creation of a new, voluntary, national registry of migrant farm workers to which growers can turn for workers they know are legal. If enough domestic workers could not be supplied through the registry, growers could apply for legal guest workers through an expedited, reformed H–2A program. The new program would resemble the current H–2A program, but it would have much, much faster turnaround, less red tape, and greater certainty for employers, continued protections for workers, and greater flexibility for employers, related to conditions of employment such as housing, transportation, and market-based wages.

The crisis is at hand not only on the farm but with the worker who is attempting to get across our borders today. With the tremendous heat in the South right now, there are warnings out to workers hoping for a job opportunity in this country: Do not try to traffic the area or you could die—simply by using the transportation methods in which so many workers are travelling today. Current law has created a phenomenal situation that is most inhumane.

Two years ago, Senators WYDEN, GORTON, and others joined with me in requiring the General Accounting Office to study the current H–2A Guest Worker Program.

As a result, the GAO has estimated that at least 37 percent of all farm workers in the United States are not here legally, not legally qualified to work. How they got the figure is amazing: They went out and asked, and the workers, by self-disclosure, admitted that they were here illegally.

The current H–2A program has been a red tape nightmare.

Too often, when growers need a timely response to their needs, with produce in the field, it cannot be done.

Even when growers meet all the deadlines the Government sets for them, then the Government fails to meet its own deadlines. In fact, GAO's study found that, when growers made timely applications, the Department of Labor still missed statutory deadlines 40 percent of the time.

The bureaucracy grinds to a halt sometimes because it doesn't understand the needs in the field, and sometimes because it doesn't want to supply the workforce.

Current H–2A has been completely ineffective as a means of obtaining temporary and seasonal workers, supplying only about 24,000 out of the 1.6 million farm workers necessary on an annual basis.

In the 1996 immigration law, and in appropriations over recent years, Congress has made it a priority to secure our borders and crack down on illegal immigrants.

That is exactly what we want and what our citizens want.

But as a result, serious spot shortages of farm labor are multiplying from Florida to New England, Kentucky to Colorado—to California and Idaho, and across the Nation.

For example, California growers and local officials have made a real effort to address the shortfall with welfare-to-work efforts. But it is not happening. We are at near full employment in our economy. People are simply not available to do agricultural-style work. And sometimes the needs of agriculture are uniquely not matched to the needs or capabilities of available domestic workers.

Because of the robust counterfeit ID industry and current Federal laws, we have many of these illegals moving into our country who are, in fact, carrying what appear to be legal credentials. Employers do not want that to happen, but the law actually punishes them if they are too diligent in inquiring about the legal status of job applicants. Current law has created an unwinnable Catch-22 for employers. Most have no realistic way of ensuring their work force is entirely legal.

A single Immigration and Naturalization Service raid, netting a handful of illegal workers, can scare and clean out thousands of workers in surrounding counties. It happened just a few weeks ago in the Georgia onion fields. The employers in such cases typically have complied with the law. But, of course, the crops were left rotting in the fields. That is not what the American farmer needs. It is certainly not what the American consumers need.

As workers disappear from U.S. fields, and crops stay there instead of moving to the stores, not only are the farmers hurt, as I mentioned, but consumers are hurt. And then we have to reach inevitably toward an effort to import foods, much of which may not meet our health and safety standards. This means a mainstay of our economy, the U.S. agriculture industry, is threatened with a major breakdown. This means that our families are threatened with the increased risk of exposure to food-borne illnesses on imported, foreign foods. And it happens simply because the current H–2A system won't supply the kind of labor that is necessary.

Let's be humane and let's be responsible. Let's move the AgJOBS bill introduced today, so it can be signed on the President's desk and become law this year. It is critically necessary that we do this.

We have reached out to the Department of Labor to work with them and be sensitive to their concerns in the crafting of this legislation to streamline the H–2A program. We have tried to anticipate and answer every objection that might be raised to this kind of reform. We have tried to solve problems before bringing this bill to the floor.

I thank my colleagues for this tremendous effort, especially Senator GORDON SMITH of Oregon, Senator WYDEN, Senator GRAHAM of Florida, and Senator GORTON, who have worked

very closely, to make this legislation a reality.

We think this bill will create a win-win situation so those who wish to enter our country to work at our agricultural jobs can enter legally, so they can enter in a safe way instead of in the backs of trucks or almost literally in tin cans where, as a result of tragic accidents, they oftentimes lose their lives. We saw another tragic example of this in recent days.

We can do better. We can pass the AgJOBS reforms. I am pleased to be a part of the introduction of this legislation today.

Mr. SMITH of Oregon. Mr. President, I rise today with Senators WYDEN, CRAIG, GRAHAM of Florida, GORTON, BUMPERS, HATCH, MCCONNELL, and MACK to introduce the Agricultural Job Opportunity Benefits and Security Act of 1998, also known as AgJOBS. Our bill will create a streamlined guest worker program to allow for a reliable supply of legal, temporary, agricultural workers.

Mr. President, we are facing a crisis in agriculture—a crisis born of an inadequate labor supply. For many years, farmers and nurserymen have struggled to hire enough legal agricultural workers to harvest their produce and plants. The labor pool is competitive, especially in my state of Oregon, where jobs are many and domestic workers willing to do farm work are few. The General Accounting Office even confirmed that there have been local, regional and crop-based labor shortages and losses.

Labor intensive agriculture is the most rapidly growing area of agricultural production in this country and we can only expect the demand for agricultural labor jobs to continue to rise. When coupled with the lowest unemployment rates in decades and a crackdown on illegal immigration, the agriculture industry—and ultimately its consumers—face a crisis.

Currently, the H–2A program is the only legal, temporary, foreign agricultural worker program in the United States. This program is not practicable for the agriculture and horticulture industries because it is loaded with burdensome regulations, excessive paperwork, a bureaucratic certification process and untimely and inconsistent decision-making by the U.S. Department of Labor. Also, as reported by the recent Department of Labor Inspector General, the H–2A program does not meet the interests of domestic workers because it does a poor job of placing domestic workers in agricultural jobs.

I am proud to announce legislation that is the product of a bipartisan effort put forth today by several of my colleagues. With their help, we have been able to develop a consensus solution that will create a workable system for recruiting workers domestically and preventing crops from rotting in the fields. The bipartisan support for this bill reflects months of hard work by members of both parties.

Mr. President, as we introduce this balanced bill, we have two goals in mind—to make it easier for employers to hire legal workers to harvest their crops, and to ensure that workers are treated fairly in the process. These workers deserve the dignity of legal status when they are here doing work that benefits all of us.

I'm very concerned that workers are protected, but let's not forget that growers have been victimized by this process too. In order to feed their families—and ours—the growers need to harvest their crops on time, meet payroll, and ultimately maintain their bottom line. Without achieving those things, farms go out of business and the jobs they create are lost along with them. So it is in all of our best interests—workers, growers, and consumers alike—that growers have the means by which to hire needed workers. I believe our legislation will help achieve that goal.

Mr. President, let me briefly summarize the improvements our bill makes over the current H–2A program.

First and foremost, all of the labor protections currently in place for workers have been preserved. In fact, they have been improved substantially. Domestic workers under the new program will now receive unemployment insurance and all complaints filed by workers will be investigated by the Department of Labor. Also, foreign workers under the new program will retain their ability to transfer to other H–2A farms once they've completed work with their current employer. These provisions will ensure that the rights of workers—both foreign and domestic—continue to be protected.

We've also improved the housing provision in the existing H–2A program, currently another barrier for many farmers. For instance, in my state of Oregon, our strict land use laws prohibit building on farm land. This means that many farms do not have housing to offer and therefore cannot use the H–2A program. Under our new bill, we allow employers the option of providing a housing allowance to workers if housing cannot be provided. This change will make it possible for many more farmers to use the guest worker program, and guest workers will still receive housing benefits.

To be fair to domestic workers, we also created a process that would make agriculture jobs available to them first. The bureaucratic and untimely labor certification process of the H–2A program will be replaced by a registry which uses existing DOL job bank computers to match domestic workers seeking jobs with employers seeking workers. If job openings still exist, then employers will be allowed to bring in temporary foreign workers to fill the open jobs.

In order for employers to offer these and other protections, the program has to be more practical to use. In our bill, we have streamlined the impractical time-frame requirements for applying to the program. Currently, farmers must apply for H–2A workers 60 days before they think they will need workers. In a very unpredictable industry, this requirement is a barrier for many farmers. In our bill, we have reduced this time period to 21 days, making the program much more responsive to the unpredictable nature of agriculture crops and much more practical for use by farmers.

Our legislation makes many other improvements to the existing H–2A program—for both employers and workers. As a result, we can expect more growers to use it, and consequently, we can expect more domestic and foreign workers to benefit from the ample wage and labor protections afforded by it.

Let's not make fugitives out of farmworkers and felons out of farmers. That is the effect of our current guest worker program.

I urge my fellow colleagues to join Senators WYDEN, CRAIG, GRAHAM, GORTON, BUMPERS, HATCH, FEINSTEIN, MCCONNELL, MACK and me as we introduce this important bipartisan legislation.

Mr. President, I ask unanimous consent that this legislation, along with the list of over 100 agriculture-related associations that endorse this bill, be printed in the RECORD.

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

S. 2337

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Agricultural Job Opportunity Benefits and Security Act of 1998''.

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

SEC. 2. DEFINITIONS.

In this Act:

(1) ADVERSE EFFECT WAGE RATE.—The term ''adverse effect wage rate'' means the rate of pay for an agricultural occupation that is 5-percent above the prevailing rate of pay for that agricultural occupation in an area of intended employment, if the average hourly equivalent of the prevailing rate of pay for the occupation is less than the prior year's average hourly earnings of field and livestock workers for the State (or region that includes the State), as determined by the

Secretary of Agriculture. No adverse effect wage rate shall be more than the prior year's average hourly earnings of field and livestock workers for the State (or region that includes the State), as determined by the Secretary of Agriculture.

(2) AGRICULTURAL EMPLOYMENT.—The term ''agricultural employment'' means any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1986 and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

(3) ELIGIBLE.—The term ''eligible'' as used with respect to workers or individuals, means individuals authorized to be employed in the United States as provided for in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1188).

(4) EMPLOYER.—The term ''employer'' means any person or entity, including any independent contractor and any agricultural association, that employs workers.

(5) JOB OPPORTUNITY.—The term ''job opportunity'' means a specific period of employment for a worker in one or more specified agricultural activities.

(6) PREVAILING WAGE.—The term ''prevailing wage'' means with respect to an agricultural activity in an area of intended employment, the rate of wages that includes the 51st percentile of employees in that agricultural activity in the area of intended employment, expressed in terms of the prevailing method of pay for the agricultural activity in the area of intended employment.

(7) REGISTERED WORKER.—The term ''registered worker'' means an individual whose name appears in a registry.

(8) REGISTRY.—The term ''registry'' means an agricultural worker registry established under section 3(a).

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

(10) UNITED STATES WORKER.—The term ''United States worker'' means any worker, whether a United States citizen, a United States national, or an alien who is authorized to work in the job opportunity within the United States other than an alien admitted pursuant to section 101(a)(15)(H)(ii)(a) or 218 of the Immigration and Nationality Act, as in effect on the effective date of this Act.

SEC. 3. AGRICULTURAL WORKER REGISTRIES.

(a) ESTABLISHMENT OF REGISTRIES.—

(1) IN GENERAL.—The Secretary of Labor shall establish and maintain a system of registries containing a current database of eligible United States workers who seek to perform temporary or seasonal agricultural work and the employment status of such workers—

(A) to ensure that eligible United States workers are informed about available agricultural job opportunities;

(B) to maximize the work period for eligible United States workers; and

(C) to provide timely referral of such workers to temporary and seasonal agricultural job opportunities in the United States.

(2) COVERAGE.—

(A) SINGLE STATE OR GROUP OF STATES.—Each registry established under paragraph (1) shall include the job opportunities in a single State, or a group of contiguous States that traditionally share a common pool of seasonal agricultural workers.

(B) REQUESTS FOR INCLUSION.—Each State requesting inclusion in a registry, or having any group of agricultural producers seeking to utilize the registry, shall be represented by a registry or by a registry of contiguous States.

(b) REGISTRATION.—

(1) IN GENERAL.—An eligible individual who seeks employment in temporary or seasonal agricultural work may apply to be included in the registry for the State or States in which the individual seeks employment. Such application shall include—

(A) the name and address of the individual;

(B) the period or periods of time (including beginning and ending dates) during which the individual will be available for temporary or seasonal agricultural work;

(C) the registry or registries on which the individual desires to be included;

(D) the specific qualifications and work experience possessed by the applicant;

(E) the type or types of temporary or seasonal agricultural work the applicant is willing to perform;

(F) such other information as the applicant wishes to be taken into account in referring the applicant to temporary or seasonal agricultural job opportunities; and

(G) such other information as may be required by the Secretary.

(2) VALIDATION OF EMPLOYMENT AUTHORIZATION.—No person may be included on any registry unless the Attorney General has certified to the Secretary of Labor that the person is authorized to be employed in the United States.

(3) WORKERS REFERRED TO JOB OPPORTUNITIES.—The name of each registered worker who is referred and accepts employment with an employer pursuant to section 5 shall be classified as inactive on each registry on which the worker is included during the period of employment involved in the job to which the worker was referred, unless the worker reports to the Secretary that the worker is no longer employed and is available for referral to another job opportunity. A registered worker classified as inactive shall not be referred pursuant to section 5.

(4) REMOVAL OF NAMES FROM A REGISTRY.—The Secretary shall remove from all registries the name of any registered worker who, on 3 separate occasions within a 3-month period, is referred to a job opportunity pursuant to this section, and who declines such referral or fails to report to work in a timely manner.

(5) VOLUNTARY REMOVAL.—A registered worker may request that the worker's name be removed from a registry or from all registries.

(6) REMOVAL BY EXPIRATION.—The application of a registered worker shall expire, and the Secretary shall remove the name of such worker from all registries if the worker has not accepted a job opportunity pursuant to this section within the preceding 12-month period.

(7) REINSTATEMENT.—A worker whose name is removed from a registry pursuant to paragraph (4), (5), or (6) may apply to the Secretary for reinstatement to such registry at any time.

(c) CONFIDENTIALITY OF REGISTRIES.—The Secretary shall maintain the confidentiality of the registries established pursuant to this section, and the information in such registries shall not be used for any purposes other than those authorized in this Act.

(d) ADVERTISING OF REGISTRIES.—The Secretary shall widely disseminate, through advertising and other means, the existence of the registries for the purpose of encouraging eligible United States workers seeking temporary or seasonal agricultural job opportunities to register.

SEC. 4. EMPLOYER APPLICATIONS AND ASSURANCES.

(a) APPLICATIONS TO THE SECRETARY.—

(1) IN GENERAL.—Not later than 21 days prior to the date on which an agricultural employer desires to employ a registered worker in a temporary or seasonal agricultural job opportunity, the employer shall apply to the Secretary for the referral of a United States worker through a search of the appropriate registry, in accordance with section 5. Such application shall—

(A) describe the nature and location of the work to be performed;

(B) list the anticipated period (expected beginning and ending dates) for which workers will be needed;

(C) indicate the number of job opportunities in which the employer seeks to employ workers from the registry;

(D) describe the bona fide occupational qualifications that must be possessed by a worker to be employed in the job opportunity in question;

(E) describe the wages and other terms and conditions of employment the employer will offer, which shall not be less (and are not required to be more) than those required by this section;

(F) contain the assurances required by subsection (c); and

(G) specify the foreign country or region thereof from which alien workers should be admitted in the case of a failure to refer United States workers under this Act.

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

(A) IN GENERAL.—An agricultural association may file an application under paragraph (1) for registered workers on behalf of its employer members.

(B) EMPLOYERS.—An application under subparagraph (A) shall cover those employer members of the association that the association certifies in its application have agreed in writing to comply with the requirements of this Act.

(b) AMENDMENT OF APPLICATIONS.—Prior to receiving a referral of workers from a registry, an employer may amend an application under this subsection if the employer's need for workers changes. If an employer amends an application on a date which is later than 21 days prior to the date on which the workers on the amended application are sought to be employed, the Secretary may delay issuance of the report described in section 5(b) by the number of days by which the filing of the amended application is later than 21 days before the date on which the employer desires to employ workers.

(c) ASSURANCES.—The assurances referred to in subsection (a)(1)(F) are the following:

(1) ASSURANCE THAT THE JOB OPPORTUNITY IS NOT A RESULT OF A LABOR DISPUTE.—The employer shall assure that the job opportunity for which the employer requests a registered worker is not vacant because a worker is involved in a strike, lockout, or work stoppage in the course of a labor dispute involving the job opportunity at the place of employment.

(2) ASSURANCE THAT THE JOB OPPORTUNITY IS TEMPORARY OR SEASONAL.—

(A) REQUIRED ASSURANCE.—The employer shall assure that the job opportunity for which the employer requests a registered worker is temporary or seasonal.

(B) SEASONAL BASIS.—For purposes of this Act, labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year.

(C) TEMPORARY BASIS.—For purposes of this Act, a worker is employed on a temporary basis where the employment is intended not to exceed 10 months.

(3) ASSURANCE OF PROVISION OF REQUIRED WAGES AND BENEFITS.—The employer shall assure that the employer will provide the wages and benefits required by subsections (a), (b), and (c) of section 7 to all workers employed in job opportunities for which the

employer has applied under subsection (a) and to all other workers in the same occupation at the place of employment.

(4) ASSURANCE OF EMPLOYMENT.—The employer shall assure that the employer will refuse to employ individuals referred under section 5, or terminate individuals employed pursuant to this Act, only for lawful job-related reasons, including lack of work.

(5) ASSURANCE OF COMPLIANCE WITH LABOR LAWS.—

(A) IN GENERAL.—An employer who requests registered workers shall assure that, except as otherwise provided in this Act, 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.

(B) LIMITATIONS.—The disclosure required under section 201(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1821(a)) may be made at any time prior to the time the alien is issued a visa permitting entry into the United States.

(6) ASSURANCE OF ADVERTISING OF THE REGISTRY.—The employer shall assure that the employer will, from the day an application for workers is submitted under subsection (a), and continuing throughout the period of employment of any job opportunity for which the employer has applied for a worker from the registry, post in a conspicuous place a poster to be provided by the Secretary advertising the availability of the registry.

(7) ASSURANCE OF CONTACTING FORMER WORKERS.—The employer shall assure that the employer has made reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any eligible worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for registered 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 worker, 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.

(8) ASSURANCE OF PROVISION OF WORKERS COMPENSATION.—The employer shall assure that if the job opportunity is not covered by the State workers' compensation law, that 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 workers' compensation law for comparable employment.

(9) ASSURANCE OF UNEMPLOYMENT INSURANCE COVERAGE.—The employer shall assure that if the employer's employment is not covered employment under the State's unemployment insurance law, the employer will provide unemployment insurance coverage for the employer's United States workers at the place of employment for which the employer has applied for workers under subsection (a).

(d) WITHDRAWAL OF APPLICATIONS.—

(1) IN GENERAL.—An employer may withdraw an application under subsection (a), except that, if the employer is an agricultural association, the association may withdraw an application under subsection (a) with respect to one or more of its members. To withdraw an application, the employer shall notify the Secretary in writing, and the Secretary 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 this Act 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 recruitment of United States 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 OF APPLICATION.—

(1) IN GENERAL.—Promptly upon receipt of an application by an employer under subsection (a), the Secretary shall review the application for compliance with the requirements of such subsection.

(2) APPROVAL OF APPLICATIONS.—If the Secretary determines that an application meets the requirements of subsection (a), and the employer is not ineligible to apply under paragraph (2), (3), or (4) of section 8(b), the Secretary shall, not later than 7 days after the receipt of such application, approve the application and so notify the employer.

(3) REJECTION OF APPLICATIONS.—If the Secretary determines that an application fails to meet 1 or more of the requirements of subsection (a), the Secretary, as expeditiously as possible, but in no case later than 7 days after the receipt of such application, shall—

(A) notify the employer of the rejection of the application and the reasons for such rejection, and provide the opportunity for the prompt resubmission of an amended application; and

(B) offer the applicant an opportunity to request an expedited administrative review or a de novo administrative hearing before an administrative law judge of the rejection of the application.

(4) REJECTION FOR PROGRAM VIOLATIONS.—The Secretary shall reject the application of an employer under this section if the employer has been determined to be ineligible to employ workers under section 8(b) or subsection (b)(2) of section 218 of the Immigration and Nationality Act (8 U.S.C. 1188).

SEC. 5. SEARCH OF REGISTRY.

(a) SEARCH PROCESS AND REFERRAL TO THE EMPLOYER.—Upon the approval of an application under section 4(e), the Secretary shall promptly begin a search of the registry of the State (or States) in which the work is to be performed to identify registered workers with the qualifications requested by the employer. The Secretary shall contact such qualified registered workers and determine, in each instance, whether the worker is ready, willing, and able to accept the employer's job opportunity and will commit to work for the employer at the time and place needed. The Secretary shall provide to each worker who commits to work for the employer the employer's name, address, telephone number, the location where the employer has requested that employees report for employment, and a statement disclosing the terms and conditions of employment.

(b) DEADLINE FOR COMPLETING SEARCH PROCESS; REFERRAL OF WORKERS.—As expeditiously as possible, but not later than 7 days before the date on which an employer desires work to begin, the Secretary shall complete the search under subsection (a) and shall transmit to the employer a report containing the name, address, and social security account number of each registered worker who has committed to work for the employer on the date needed, together with sufficient information to enable the employer to establish contact with the worker. The identification of such registered workers in a report shall constitute a referral of workers under this section.

(c) NOTICE OF INSUFFICIENT WORKERS.—If the report provided to the employer under subsection (b) does not include referral of a sufficient number of registered workers to fill all of the employer's job opportunities in the occupation for which the employer applied under section 4(a), the Secretary shall indicate in the report the number of job opportunities for which registered workers could not be referred, and promptly transmit a copy of the report to the Attorney General and the Secretary of State, by electronic or other means ensuring next day delivery.

SEC. 6. ISSUANCE OF VISAS AND ADMISSION OF ALIENS.

(a) IN GENERAL.—

(1) NUMBER OF ADMISSIONS.—The Secretary of State shall promptly issue visas to, and the Attorney General shall admit, a sufficient number of eligible aliens designated by the employer to fill the job opportunities of the employer—

(A) upon receipt of a copy of the report described in section 5(c);

(B) upon receipt of an application (or copy of an application under subsection (b));

(C) upon receipt of the report required by subsection (c)(1)(B); or

(D) upon receipt of a report under subsection (d).

(2) PROCEDURES.—The admission of aliens under paragraph (1) shall be subject to the procedures of section 218A of the Immigration and Nationality Act, as added by this Act.

(3) AGRICULTURAL ASSOCIATIONS.—Aliens admitted pursuant to a report described in paragraph (1) may be employed by any member of the agricultural association that has made the certification required by section 4(a)(2)(B).

(b) DIRECT APPLICATION UPON FAILURE TO ACT.—

(1) APPLICATION TO THE SECRETARY OF STATE.—If the employer has not received a referral of sufficient workers pursuant to section 5(b) or a report of insufficient workers pursuant to section 5(c), by the date that is 7 days before the date on which the work is anticipated to begin, the employer may submit an application for alien workers directly to the Secretary of State, with a copy of the application provided to the Attorney General, seeking the issuance of visas to and the admission of aliens for employment in the job opportunities for which the employer has not received referral of registered workers. Such an application shall include a copy of the employer's application under section 4(a), together with evidence of its timely submission. The Secretary of State may consult with the Secretary of Labor in carrying out this paragraph.

(2) EXPEDITED CONSIDERATION BY SECRETARY OF STATE.—The Secretary of State shall, as expeditiously as possible, but not later than 5 days after the employer files an application under paragraph (1), issue visas to, and the Attorney General shall admit, a sufficient number of eligible aliens designated by the employer to fill the job opportunities for which the employer has applied under that paragraph.

(c) REDETERMINATION OF NEED.—

(1) REQUESTS FOR REDETERMINATION.—

(A) IN GENERAL.—An employer may file a request for a redetermination by the Secretary of the needs of the employer if—

(i) a worker referred from the registry is not at the place of employment on the date of need shown on the application, or the date the work for which the worker is needed has begun, whichever is later;

(ii) the worker is not ready, willing, able, or qualified to perform the work required; or

(iii) the worker abandons the employment or is terminated for a lawful job-related reason.

(B) ADDITIONAL AUTHORIZATION OF ADMISSIONS.—The Secretary shall expeditiously, but in no case later than 72 hours after a redetermination is requested under subparagraph (A), submit a report to the Secretary of State and the Attorney General providing notice of a need for workers under this subsection.

(2) JOB-RELATED REQUIREMENTS.—An employer shall not be required to initially employ a worker who fails to meet lawful job-related employment criteria, nor to continue the employment of a worker who fails to meet lawful, job-related standards of conduct and performance, including failure to meet minimum production standards after a 3-day break-in period.

(d) EMERGENCY APPLICATIONS.—Notwithstanding subsections (b) and (c), the Secretary may promptly transmit a report to the Attorney General and Secretary of State providing notice of a need for workers under this subsection for an employer—

(1) who has not employed aliens under this Act in the occupation in question in the prior year's agricultural season;

(2) who faces an unforeseen need for workers (as determined by the Secretary); and

(3) with respect to whom the Secretary cannot refer able, willing, and qualified workers from the registry who will commit to be at the employer's place of employment and ready for work within 72 hours or on the date the work for which the worker is needed has begun, whichever is later.

(e) REGULATIONS.—The Secretary of State shall prescribe regulations to provide for the designation of aliens under this section.

SEC. 7. EMPLOYMENT REQUIREMENTS.

(a) REQUIRED WAGES.—

(1) IN GENERAL.—An employer applying under section 4(a) for workers shall offer to pay, and shall pay, all workers in the occupation or occupations for which the employer has applied for workers from the registry, 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.

(2) PAYMENT OF PREVAILING WAGE DETERMINED BY A STATE EMPLOYMENT SECURITY AGENCY SUFFICIENT.—In complying with paragraph (1), an employer may request and obtain a prevailing wage determination from the State employment security agency. If the employer requests such a determination, and pays the wage required by paragraph (1) based upon such a determination, such payment shall be considered sufficient to meet the requirement of paragraph (1).

(3) RELIANCE ON WAGE SURVEY.—In lieu of the procedure of paragraph (2), an employer may rely on other information, such as an employer-generated prevailing wage survey and determination that meets criteria specified by the Secretary.

(4) ALTERNATIVE METHODS OF PAYMENT PERMITTED.—

(A) IN GENERAL.—A prevailing wage may be expressed as an hourly wage, a piece rate, a task rate, or other incentive payment method, including a group rate. The requirement to pay at least the prevailing wage in the occupation and area of intended employment does not require an employer to pay by the method of pay in which the prevailing rate is expressed, except that, if the employer adopts a method of pay other than the prevailing rate, the burden of proof is on the employer to demonstrate that the employer's method of pay is designed to produce earnings equivalent to the earnings that would result from payment of the prevailing rate.

(B) COMPLIANCE WHEN PAYING AN INCENTIVE RATE.—In the case of an employer that pays a piece rate or task rate or uses any other incentive payment method, including a group rate, the employer shall be considered to be in compliance with any applicable hourly wage requirement if the average of the hourly earnings of the workers, taken as a group, the activity for which a piece rate, task rate, or other incentive payment, including a group rate, is paid, for the pay period, is at least equal to the required hourly wage.

(C) TASK RATE.—For purposes of this paragraph, the term ''task rate'' means an incentive payment method based on a unit of work performed such that the incentive rate varies with the level of effort required to perform individual units of work.

(D) GROUP RATE.—For purposes of this paragraph, the term ''group rate'' means an incentive payment method in which the payment is shared among a group of workers working together to perform the task.

(b) REQUIREMENT TO PROVIDE HOUSING.—

(1) IN GENERAL.—An employer applying under section 4(a) for registered workers shall offer to provide housing at no cost (except for charges permitted by paragraph (5)) to all workers employed in job opportunities to which the employer has applied under that section, and to all other workers in the same occupation at the place of employment, whose permanent place of residence is beyond normal commuting distance.

(2) TYPE OF HOUSING.—In complying with paragraph (1), 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.

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

(4) LIMITATION.—Nothing in this subsection 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.

(5) CHARGES FOR HOUSING.—

(A) UTILITIES AND MAINTENANCE.—An employer who provides housing to a worker pursuant to paragraph (1) may charge an amount equal to the fair market value (but not greater than the employer's actual cost) for maintenance and utilities, or such lesser amount as permitted by law.

(B) SECURITY DEPOSIT.—An employer who provides housing to workers pursuant to paragraph (1) may require, as a condition for providing such housing, a deposit not to exceed $50 from workers occupying such housing to protect against gross negligence or willful destruction of property.

(C) DAMAGES.—An employer who provides housing to workers pursuant to paragraph (1) 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.

(6) REDUCED USER FEE FOR WORKERS PROVIDED HOUSING.—An employer shall receive a credit of 40 percent of the payment otherwise due pursuant to section 218(b) of the Immigration and Nationality Act on the earnings of alien workers to whom the employer provides housing pursuant to paragraph (1).

(7) HOUSING ALLOWANCE AS ALTERNATIVE.—

(A) IN GENERAL.—In lieu of offering housing pursuant to paragraph (1), subject to subparagraphs (B) through (D), the employer may on a case-by-case basis provide a reasonable housing allowance. An employer who offers a housing allowance to a worker pursuant to this subparagraph shall not be deemed to be 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.

(B) LIMITATION.—At any time after the date that is 3 years after the effective date of this Act, the governor of the State may certify to the Secretary that there is not sufficient housing available in an area of intended employment of migrant farm workers or aliens provided status pursuant to this Act who are seeking temporary housing while employed at farm work. Such certification may be canceled by the governor of the State at any time, and shall expire after 5 years unless renewed by the governor of the State.

(C) EFFECT OF CERTIFICATION.—If the governor of the State makes the certification of insufficient housing described in subparagraph (A) with respect to an area of employment, employers of workers in that area of employment may not offer the housing allowance described in subparagraph (A) after the date that is 5 years after such certification of insufficient housing for such area, unless the certification has expired or been canceled pursuant to subparagraph (B).

(D) AMOUNT OF ALLOWANCE.—The amount of a housing allowance under this paragraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State in which the employment occurs, 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.

(c) REIMBURSEMENT OF TRANSPORTATION.—

(1) TO PLACE OF EMPLOYMENT.—A worker who is referred to a job opportunity under section 5(a), or an alien employed pursuant to this Act, who completes 50 percent of the period of employment of the job opportunity for which the worker was hired, may apply to the Secretary for reimbursement of the cost of the worker's transportation and subsistence from the worker's permanent place of residence (or place of last employment, if the worker traveled from such place) to the place of employment to which the worker was referred under section 5(a).

(2) FROM PLACE OF EMPLOYMENT.—A worker who is referred to a job opportunity under section 5(a), or an alien employed pursuant to this Act, who completes the period of employment for the job opportunity involved, may apply to the Secretary for reimbursement of the cost of the worker's transportation and subsistence from the place of employment to the worker's permanent place of residence (or place of next employment, if the worker travels from the place of current employment to a subsequent place of employment and is otherwise ineligible for reimbursement under paragraph (1) with respect to such subsequent place of employment).

(3) LIMITATION.—

(A) AMOUNT OF REIMBURSEMENT.—Except as provided in subparagraph (B), the amount of reimbursement provided under paragraph (1) or (2) 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 transportation and subsistence costs that would have been incurred had the worker or alien used an appropriate common carrier, as determined by the Secretary.

(B) DISTANCE TRAVELED.—No reimbursement under paragraph (1) or (2) shall be required if the distance traveled is 100 miles or less.

(4) USE OF TRUST FUND.—Reimbursements made by the Secretary to workers or aliens under this subsection shall be considered to be administrative expenses for purposes of section 218A(b)(4) of the Immigration and Nationality Act, as added by this Act.

(d) ESTABLISHMENT OF PILOT PROGRAM FOR ADVANCING TRANSPORTATION COSTS.—

(1) IN GENERAL.—The Secretary shall establish a pilot program for the issuance of vouchers to United States workers who are referred to job opportunities under section 5(a) for the purpose of enabling such workers to purchase common carrier transportation to the place of employment.

(2) LIMITATION.—A voucher may only be provided to a worker under paragraph (1) if the job opportunity involved requires that the worker temporarily relocate to a place of employment that is more than 100 miles from the worker's permanent place of residence or last place of employment, and the worker attests that the worker cannot travel to the place of employment without such assistance from the Secretary.

(3) NUMBER OF VOUCHERS.—The Secretary shall award vouchers under the pilot program under paragraph (1) to workers referred from each registry in proportion to the number of workers registered with each such registry.

(4) REIMBURSEMENT.—

(A) USE OF TRUST FUND.—Reimbursements for the cost of vouchers provided by the Secretary under this subsection for workers who complete at least 50 percent of the period of employment of the job opportunity for which the worker was hired shall be considered to be administrative expenses for purposes of section 218A(b)(4) of the Immigration and Nationality Act, as added by this Act.

(B) OF SECRETARY.—A worker who receives a voucher under this subsection who fails to complete at least 50 percent of the period of employment of the job opportunity for which the worker was hired under the job opportunity involved shall reimburse the Secretary for the cost of the voucher.

(5) REPORT AND CONTINUATION OF PROGRAM.—

(A) COLLECTION OF DATA.—The Secretary shall collect data on—

(i) the extent to which workers receiving vouchers under this subsection report, in a timely manner, to the jobs to which such workers have been referred;

(ii) whether such workers complete the job opportunities involved; and

(iii) the extent to which such workers do not complete at least 50 percent of the period of employment the job opportunities for which the workers were hired.

(B) REPORT.—Not later than 6 months after the expiration of the second fiscal year during which the program under this subsection is in operation, the Secretary, in consultation with the Secretary of Agriculture, shall prepare and submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, a report, based on the data collected under subparagraph (A), concerning the results of the program established under this section. Such report shall contain the recommendations of the Secretary concerning the termination or continuation of such program.

(C) TERMINATION OF PROGRAM.—The recommendations of the Secretary in the report submitted under subparagraph (B) shall become effective upon the expiration of the 90-day period beginning on the date on which such report is submitted unless Congress enacts a joint resolution disapproving such recommendations.

(d) CONTINUING OBLIGATION TO EMPLOY UNITED STATES WORKERS.—

(1) IN GENERAL.—An employer that applies for registered workers under section 4(a) shall, as a condition for the approval of such application, continue to offer employment to qualified, eligible United States workers who are referred under section 5(b) after the employer receives the report described in section 5(b).

(2) LIMITATION.—An employer shall not be obligated to comply with paragraph (1)—

(A) after 50 percent of the anticipated period of employment shown on the employer's application under section 4(a) has elapsed; or

(B) during any period in which the employer is employing no aliens in the occupation for which the United States worker was referred; or

(C) during any period when the Secretary is conducting a search of a registry for job opportunities in the occupation and area of intended employment to which the worker has been referred, or other occupations in the area of intended employment for which the worker is qualified that offer substantially similar terms and conditions of employment.

(3) LIMITATION ON REQUIREMENT TO PROVIDE HOUSING.—Notwithstanding any other provision of this Act, an employer to whom a registered worker is referred pursuant to paragraph (1) may provide a reasonable housing allowance to such referred worker in lieu of providing housing if the employer does not have sufficient housing to accommodate the referred worker and all other workers for whom the employer is providing housing or has committed to provide housing.

(4) REFERRAL OF WORKERS DURING 50-PERCENT PERIOD.—The Secretary shall make all reasonable efforts to place a registered worker in an open job acceptable to the worker, including available jobs not listed on the registry, before referring such worker to an employer for a job opportunity already filled by, or committed to, an alien admitted pursuant to this Act.

SEC. 8. ENFORCEMENT AND PENALTIES.

(a) ENFORCEMENT AUTHORITY.—

(1) INVESTIGATION OF COMPLAINTS.—

(A) IN GENERAL.—The Secretary shall establish a process for the receipt, investigation, and disposition of complaints respecting an employer's failure to meet a condition specified in section 4 or an employer's misrepresentation of material facts in an application under that section. Complaints may be filed by any aggrieved person or any 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, as the case may be. The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

(B) STATUTORY CONSTRUCTION.—Nothing in this Act limits 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 paragraph, under this Act.

(2) WRITTEN NOTICE OF FINDING AND OPPORTUNITY FOR APPEAL.—After an investigation has been conducted, the Secretary shall issue a written determination as to whether or not any violation described in subsection (b) has been committed. The Secretary's determination shall be served on the complainant and the employer, and shall provide an opportunity for an appeal of the Secretary's decision to an administrative law judge, who may conduct a de novo hearing.

(b) REMEDIES.—

(1) BACK WAGES.—Upon a final determination that the employer has failed to pay wages as required under this section, the Secretary may assess payment of back wages due to any United States worker or alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act employed by the employer in the specific employment in question. The back wages 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) FAILURE TO PAY WAGES.—Upon a final determination that the employer has failed to pay the wages required under this Act, the Secretary may assess a civil money penalty up to $1,000 for each failure, and may recommend to the Attorney General the disqualification of the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act for a period of time determined by the Secretary not to exceed 1 year.

(3) OTHER VIOLATIONS.—If the Secretary, as a result of an investigation pursuant to a complaint, determines that an employer covered by an application under section 4(a) has—

(A) filed an application that misrepresents a material fact; or

(B) failed to meet a condition specified in section 4,

the Secretary may assess a civil money penalty not to exceed $1,000 for each violation and may recommend to the Attorney General the disqualification of the employer for substantial violations in the employment of any United States workers or aliens described in section 101(a)(15)(ii)(a) of the Immigration and Nationality Act for a period of time determined by the Secretary not to exceed 1 year. In determining the amount of civil money penalty to be assessed, or whether to recommend disqualification of the employer, the Secretary shall consider the seriousness of the violation, the good faith of the employer, the size of the business of the employer being charged, the history of previous violations by the employer, whether the employer obtained a financial gain from the violation, whether the violation was willful, and other relevant factors.

(4) PROGRAM DISQUALIFICATION.—

(A) 3 YEARS FOR SECOND VIOLATION.—Upon a second final determination that an employer has failed to pay the wages required under this Act or committed other substantial violations under paragraph (3), the Secretary shall report such determination to the Attorney General and the Attorney General shall disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act for a period of 3 years.

(B) PERMANENT FOR THIRD VIOLATION.—Upon a third final determination that an employer has failed to pay the wages required under this section, or committed other substantial violations under paragraph (3), the Secretary shall report such determination to the Attorney General, and the Attorney General shall disqualify the employer from any subsequent employment of aliens described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act.

(c) 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 this Act, as though the employer had filed the application itself. If such an employer is determined to have violated a requirement of this section, the penalty for such violation shall be assessed against the employer who committed the violation and not against the association or other members of the association.

(2) VIOLATION BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application on its own behalf as an employer is determined to have committed a violation under this subsection which results in disqualification from the program under subsection (b), no individual member of such association may be the beneficiary of the services of an alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act in an occupation in which such alien was employed by the association during the period such disqualification is in effect, unless such member files an application as an individual employer or such application is filed on the employer's behalf by an association with which the employer has an agreement that the employer will comply with the requirements of this Act.

SEC. 9. ALTERNATIVE PROGRAM FOR THE ADMISSION OF TEMPORARY H–2A WORKERS.

(a) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—

(1) ELECTION OF PROCEDURES.—Section 214(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(1)) is amended—

(A) by striking the fifth and sixth sentences;

(B) by striking ''(c)(1) The'' and inserting ''(c)(1)(A) Except as provided in subparagraph (B), the''; and

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

''(B) Notwithstanding subparagraph (A), in the case of the importing of any nonimmigrant alien described in section 101(a)(15)(H)(ii)(a), the importing employer may elect to import the alien under the procedures of section 218 or section 218A, except that any employer that applies for registered workers under section 4(a) of the Agricultural Job Opportunity Benefits and Security Act of 1998 shall import nonimmigrants described in section 101(a)(15)(H)(ii)(a) only in accordance with section 218A. For purposes of subparagraph (A), with respect to the importing of nonimmigrants under section 218, the term 'appropriate agencies of Government' means the Department of Labor and includes the Department of Agriculture.''.

(2) ALTERNATIVE PROGRAM.—The Immigration and Nationality Act is amended by inserting after section 218 (8 U.S.C. 1188) the following new section:

''ALTERNATIVE PROGRAM FOR THE ADMISSION OF TEMPORARY H–2A WORKERS

''SEC. 218A. (a) PROCEDURE FOR ADMISSION OR EXTENSION OF ALIENS.—

''(1) ALIENS WHO ARE OUTSIDE THE UNITED STATES.—

''(A) CRITERIA FOR ADMISSIBILITY.—

''(i) IN GENERAL.—An alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act shall be admissible under this section if the alien is designated pursuant to section 6 of the Agricultural Job Opportunity Benefits and Security Act of 1998, otherwise admissible under this Act, and the alien is not ineligible under clause (ii).

''(ii) DISQUALIFICATION.—An alien shall be ineligible for admission to the United States or being provided status under this section if the alien has, at any time during the past 5 years—

''(I) 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

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

''(iii) INITIAL WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—An alien who has not previously been admitted to the United States pursuant to this section, and who is otherwise eligible for admission in accordance with clauses (i) and (ii), shall not be deemed inadmissible by virtue of section 212(a)(9)(B).

''(B) PERIOD OF ADMISSION.—The alien shall be admitted for the period requested by the employer not to exceed 10 months, or the ending date of the anticipated period of employment on the employer's application for registered workers, whichever is less, plus an additional period of 14 days, during which the alien shall seek authorized employment in the United States. During the 14-day period following the expiration of the alien's work authorization, the alien is not authorized to be employed unless an employer who is authorized to employ such worker has filed an extension of stay on behalf of the alien pursuant to paragraph (2).

''(C) ABANDONMENT OF EMPLOYMENT.—

''(i) IN GENERAL.—An alien admitted or provided status under this section who abandons the employment which was the basis for such admission or providing status shall be considered to have failed to maintain nonimmigrant status as an alien described in section 101(a)(15)(H)(ii)(a) and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

''(ii) REPORT BY EMPLOYER.—The employer (or association acting as agent for the employer) shall notify the Attorney General within 7 days of an alien admitted or provided status under this Act who prematurely abandons the alien's employment.

''(D) ISSUANCE OF IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—

''(i) IN GENERAL.—The Attorney General shall cause to be issued to each alien admitted under this section a card in a form which is resistant to counterfeiting and tampering for the purpose of providing proof of identity and employment eligibility under section 274A.

''(ii) DESIGN OF CARD.—Each card issued pursuant to clause (i) shall be designed in such a manner and contain a photograph and other identifying information (such as date of birth, sex, and distinguishing marks) that would allow an employer to determine with reasonable certainty that the bearer is not claiming the identity of another individual, and shall—

''(I) specify the date of the alien's acquisition of status under this section;

''(II) specify the expiration date of the alien's work authorization; and

''(III) specify the alien's admission number or alien file number.

''(2) EXTENSION OF STAY OF ALIENS IN THE UNITED STATES.—

''(A) EXTENSION OF STAY.—If an employer with respect to whom a report or application described in section 6(a)(1) of the Agricultural Job Opportunity Benefits and Security Act of 1998 has been submitted seeks to employ an alien who has acquired status under this section and who is present in the United States, the employer shall file with the Attorney General an application for an extension of the alien's stay or a change in the alien's authorized employment. The application shall be accompanied by a copy of the appropriate report or application described in section 6 of the Agricultural Job Opportunity Benefits and Security Act of 1998.

''(B) LIMITATION ON FILING AN APPLICATION FOR EXTENSION OF STAY.—An application may not be filed for an extension of an alien's stay for a period of more than 10 months, or later than a date which is 3 years from the date of the alien's last admission to the United States under this section, whichever occurs first.

''(C) WORK AUTHORIZATION UPON FILING AN APPLICATION FOR EXTENSION OF STAY.—An employer may begin employing an alien who is present in the United States who has acquired status under this Act on the day the employer files an application for extension of stay. For the purpose of this requirement, the term 'filing' means sending the application 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 sending and receipt of the application. The employer shall provide a copy of the employer's application to the alien, who shall keep the application with the alien's identification and employment eligibility document as evidence that the application has been filed and that the alien is authorized to work in the United States. Upon approval of an application for an extension of stay or change in the alien's authorized employment, the Attorney General 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 application.

''(D) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY CARD.—An expired identification and employment eligibility document, together with a copy of an application for extension of stay or change in the alien's authorized employment, shall constitute a valid work authorization document for a period of not more than 60 days from the date of application for the extension of stay, after which time only a currently valid identification and employment eligibility document shall be acceptable.

''(E) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—An alien having status under this section may not have the status extended for a continuous period longer than 3 years unless the alien remains outside the United States for an uninterrupted period of 6 months. An absence from the United States may break the continuity of the period for which a nonimmigrant visa issued under section 101(a)(15)(H)(ii)(a) is valid. If the alien has resided in the United States 10 months or less, an absence breaks the continuity of the period if its lasts for at least 2 months. If the alien has resided in the United States 10 months or more, an absence breaks the continuity of the period if it lasts for at least one-fifth the duration of the stay.

''(b) TRUST FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund (in this section referred to as the 'Trust Fund') for the purpose of funding the costs of administering this section and, in the event of an adverse finding by the Attorney General under subsection (c), for the purpose of providing a monetary incentive for aliens described in section 101(a)(15)(H)(ii)(a) to return to their country of origin upon expiration of their visas under this section.

''(2) TRANSFERS TO TRUST FUND.—

''(A) IN GENERAL.—There is appropriated to the Trust Fund amounts equivalent to the sum of the following:

''(i) Such employers shall pay to the Secretary of the Treasury a user fee in an amount equivalent to so much of the Federal tax that is not transferred to the States on the earnings of such aliens that the employer would be obligated to pay under the Federal Unemployment Tax Act and the Federal Insurance Contributions Act if the earnings were subject to such Acts. Such payment shall be in lieu of any other employer fees for the benefits provided to employers pursuant to this Act or in connection with the admission of aliens pursuant to section 218A.

''(ii) In the event of an adverse finding by the Attorney General under subsection (c), employers of aliens under this section shall withhold from the wages of such aliens an amount equivalent to 20 percent of the earnings of each alien and pay such withheld amount to the Secretary of the Treasury.

''(B) TREATMENT OF AMOUNTS.—Amounts paid to the Secretary of the Treasury under subparagraph (A) shall be treated as employment taxes for purposes of subtitle C of the Internal Revenue Code of 1986.

''(C) TREATMENT AS OFFSETTING RECEIPTS.—Amounts appropriated to the Trust Fund under this paragraph shall be treated as offsetting receipts.

''(3) ADMINISTRATIVE EXPENSES.—Amounts transferred to the Trust Fund pursuant to paragraph (2)(A)(ii), shall, without further appropriation, be paid to the Attorney General, the Secretary of Labor, the Secretary of State, and the Secretary of Agriculture in amounts equivalent to the expenses incurred by such officials in the administration of section 101(a)(15)(H)(ii)(a) and this section.

''(4) DISTRIBUTION OF FUNDS.—In the event of an adverse finding by the Attorney General under subsection (c), amounts transferred to the Trust Fund pursuant to paragraph (2)(A)(ii), and interest earned thereon under paragraph (6), shall be held on behalf of an alien and shall be available, without further appropriation, to the Attorney General for payment to the alien if—

''(A) the alien applies to the Attorney General (or the designee of the Attorney General) for payment within 30 days of the expiration of the alien's last authorized stay in the United States;

''(B) in such application the alien establishes that the alien has complied with the terms and conditions of this section; and

''(C) in connection with the application, the alien tenders the identification and employment authorization card issued to the alien pursuant to subsection (a)(1)(D) and establishes that the alien is identified as the person to whom the card was issued based on the biometric identification information contained on the card.

''(5) MIGRANT AGRICULTURAL WORKER HOUSING.—Such funds as remain in the Trust Fund after the payments described in paragraph (4) shall be used by the Secretary of Agriculture, in consultation with the Secretary, for the purpose of increasing the stock of in-season migrant worker housing in areas where such housing is determined to be insufficient to meet the needs of migrant agricultural workers, including aliens admitted under this section.

''(6) REGULATIONS.—The Secretary of the Treasury, in consultation with the Attorney General, shall prescribe regulations to carry out this subsection.

''(7) INVESTMENT OF PORTION OF TRUST FUND.—

''(A) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the amounts transferred to the Trust Fund pursuant to paragraph (2)(A)(i), and, if applicable paragraph (2)(A)(ii), as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired—

''(i) on original issue at the price; or

''(ii) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt, except that where such average rate is not a multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

''(B) SALE OF OBLIGATION.—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

''(C) CREDITS TO TRUST FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the amounts transferred to the Trust Fund pursuant to paragraph (2)(A)(i).

''(D) REPORT TO CONGRESS.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Attorney General) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and a Senate document of the session of the Congress to which the report is made.

''(c) STUDY BY THE ATTORNEY GENERAL.—The Attorney General shall conduct a study to determine whether aliens under this section depart the United States in a timely manner upon the expiration of their period of authorized stay. If the Attorney General finds that a significant number of aliens do not so depart and that a financial inducement is necessary to assure such departure, then the Attorney General shall so report to Congress and, upon receipt of the report, subsections (b)(2)(A)(ii) and (b)(4) shall take effect.''.

(b) NO FAMILY MEMBERS PERMITTED.—Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking ''specified in this paragraph'' and inserting ''specified in this subparagraph (other than in clause (ii)(a))''.

(c) CONFORMING AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 218 the following new item:

''Sec. 218A. Alternative program for the admission of H–2A workers.''.

(d) REPEAL AND ADDITIONAL CONFORMING AMENDMENTS.—

(1) REPEAL.—Section 218 of the Immigration and Nationality Act is repealed.

(2) TECHNICAL AMENDMENTS.—(A) Section 218A of the Immigration and Nationality Act is redesignated as section 218.

(B) The table of contents of that Act is amended by striking the item relating to section 218A.

(C) The section heading for section 218 of that Act is amended by striking ''ALTERNATIVE PROGRAM FOR''.

(3) TERMINATION OF EMPLOYER ELECTION.—Section 214(c)(1)(B) of the Immigration and Nationality Act is amended to read as follows:

''(B) Notwithstanding subparagraph (A), the procedures of section 218 shall apply to the importing of any nonimmigrant alien described in section 101(a)(15)(H)(ii)(a).''.

(4) MAINTENANCE OF CERTAIN SECTION 218 PROVISIONS.—Section 218 (as redesignated by paragraph (2) of this subsection) is amended by adding at the end the following:

''(d) MISCELLANEOUS PROVISIONS.—(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A.

''(2) The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.''.

(5) EFFECTIVE DATE.—The repeal and amendments made by this subsection shall take effect 5 years after the date of enactment of this Act.

SEC. 10. INCLUSION IN EMPLOYMENT-BASED IMMIGRATION PREFERENCE ALLOCATION.

(a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Section 203(b)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(3)(A)) is amended—

(1) by redesignating clause (iii) as clause (iv); and

(2) by inserting after clause (ii) the following:

''(iii) AGRICULTURAL WORKERS.—Qualified immigrants who have completed at least 6 months of work in the United States in each of 4 consecutive calendar years under section 101(a)(15)(H)(ii)(a), and have complied with all terms and conditions applicable to that section.''.

(b) CONFORMING AMENDMENT.—Section 203(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(3)(A)) is amended by striking ''subparagraph (A)(iii)'' and inserting ''subparagraph (A)(iv)''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to aliens described in section 101(a)(15)(H)(ii)(a) admitted to the United States before, on, or after the effective date of this Act.

SEC. 11. MIGRANT AND SEASONAL HEAD START PROGRAM.

(a) IN GENERAL.—Section 637(12) of the Head Start Act (42 U.S.C. 9832(12)) is amended—

(1) by inserting ''and seasonal'' after ''migrant''; and

(2) by inserting before the period the following: '', or families whose incomes or labor is primarily dedicated to performing seasonal agricultural labor for hire but whose places of residency have not changed to another geographic location in the preceding 2-year period''.

(b) FUNDS SET-ASIDE.—Section 640(a) (42 U.S.C. 9835(a)) is amended—

(1) in paragraph (2), strike ''13'' and insert ''14'';

(2) in paragraph (2)(A), by striking ''1994'' and inserting ''1998''; and

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

''(8) In determining the need for migrant and seasonal Head Start programs and services, the Secretary shall consult with the

Secretary of Labor, other public and private entities, and providers. Notwithstanding paragraph (2)(A), after conducting such consultation, the Secretary shall further adjust the amount available for such programs and services, taking into consideration the need and demand for such services.''.

SEC. 12. REGULATIONS.

(a) REGULATIONS OF THE ATTORNEY GENERAL.—The Attorney General shall consult with the Secretary and the Secretary of Agriculture on all regulations to implement the duties of the Attorney General under this Act.

(b) REGULATIONS OF THE SECRETARY OF STATE.—The Secretary of State shall consult with the Attorney General on all regulations to implement the duties of the Secretary of State under this Act.

SEC. 13. FUNDING FROM WAGNER-PEYSER ACT.

If additional funds are necessary to pay the start-up costs of the registries established under section 3(a), such costs may be paid out of amounts available to Federal or State governmental entities under the Wagner-Peyser Act (29 U.S.C. 49 et seq.).

SEC. 14. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

ENDORSING ORGANIZATIONS

National Council of Agricultural Employers; American Farm Bureau Federation; AgriBank; Agricultural Affiliates, Inc.; Agricultural Council of California; Agricultural Producers; Allied Grape Growers; Almond Hullers & Processors Association, Inc.; American Mushroom Institute; American Nursery & Landscape Association; American Sheep Industry Association; Apple Growers of Dutchess County; California Apple Commission; California Association of Winegrape Growers; California Beet Growers Association; California Citrus Mutual; California Cherry Export Association; California Cotton Ginners & Growers Association; California Cotton Growers Association; California Cut Flower Commission; California Farm Bureau Federation; California Floral Council; California Grape & Tree Fruit League; California Tomato Growers Association; Colorado Onion Association; Colorado Sugarbeet Growers Association; Fagerberg Produce; Farm Credit Services of North Central Wisconsin; Florida Citrus Mutual; Florida Citrus Packers; Florida Citrus Processors Association; Florida Farm Bureau Federation; Florida Fruit & Vegetable Association; Florida Nurserymen & Growers Association; Florida Strawberry Growers Association; Frederick County Fruit Growers Association, Inc.; Fresno County Farm Bureau; Georgia Agribusiness Council, Inc.; Grower-Shipper Vegetable Association of Central California; Grower-Shipper Vegetable Association of San Luis Obispo & Santa Barbara Counties; Gulf Citrus Growers Association, Inc.; Hood River Grower-Shipper Association; Idaho Grower Shippers Association; Imperial Valley Vegetable Growers Association; Jackson County Fruit Growers League; Marsing Agriculture Labor Association; Michigan Asparagus Advisory Board; Michigan Farm Bureau; Midwest Food Processors Association; Midwest Sod Council; National Christmas Tree Association; National Cotton Council of America; National Cotton Ginners' Association; National Watermelon Association; New England Apple Council; New Jersey Farm Bureau Federation; New York Apple Association, Inc.; New York Cherry Growers Association, Inc.; New York Farm Bureau; Nisei Farmers League; North Carolina Growers Association, Inc.; North Carolina Sweet Potato Commission, Inc.; Northern California Growers Association; Northern Christmas Trees & Nursery; Northwest Horticultural Council; Ohio Farm Bureau Federation, Inc.; Ohio Fruit Growers Society; Ohio Vegetable & Potato Growers Association; Olive Growers Council; Oregon Association of Nurserymen, Inc.; Oregon Farm Bureau Federation; Oregon Hop Growers Association; Oregon Raspberry & blackberry Commission; Oregon Strawberry Commission; Peach Commission; Raisin Bargaining Association; San Joaquin Valley Dairymen; Snake River Farmers Association; Society of American Florists; Sod Growers Association of Mid-America; South Carolina Farm Bureau Federation; Southeast Cotton Ginners Association, Inc.; Southeast Forestry Contractors' Association; Southern Cotton Growers Association; State Horticultural Association of Pennsylvania; Sugar Cane Growers Cooperative of Florida; Texas Cotton Ginners Association; Texas Produce Association; Turfgrass Producers International; United Fresh Fruit & Vegetable Association; United States Apple Association; United States Sugar Corporation; Vegetable Growers Association of New Jersey; Ventura County Agricultural Association; Wasco County Fruit & Produce League; Washington Growers Clearing House Association; Washington Growers League; Washington State Farm Bureau; Washington Women for Agriculture; Wenatchee Valley Traffic Association; Western Growers Association; Western Range Association; Western United Dairymen; Wisconsin Christmas Tree Producers; Wisconsin Farm Bureau; and Yakima Valley Grower-Shipper Association.

Mr. GORTON. Mr. President, a recent GAO report concluded that approximately one-third of the U.S. agricultural labor force in the United States is illegal. Many estimate that the percentage is in fact much higher. For too long, Congress has failed to respond to the lack of legal agricultural workers, and simply left on the books, and largely unused, a guestworker program that is too administratively complex and expensive to be workable. With recent crackdowns by INS, our farmers and growers face a labor shortage crisis. Congress must act, and it must act now.

I rise today, and join my colleagues on both sides of the aisle in introducing the Agricultural Job Opportunity Benefits and Security Act of 1998, a bill to address this problem. This legislation is long past due and urgently needed. As the Senator from Florida described earlier today, the bill is a win-win-win proposition. It is a win for farmers and growers because it provides them a method of obtaining a legal, reliable workforce. It is a win for workers both domestic and foreign. For domestic workers, the bill, through a work registry, gives them first preference on jobs, benefits above those they are currently receiving, and continued employment by ensuring that American farms remain economically viable and that production is not lost to other countries. For foreign workers, the bill provides the dignity, freedom from fear, and mobility that attends a legal status, as well as significant worker protection and benefits. Finally, the bill is a win for consumers because it ensures them a ready, affordable supply of American agricultural products. I applaud this carefully considered, balanced legislation and will work actively for its quick enactment.

Mr. MCCONNELL. Mr. President, the Kentucky Farm Bureau and the hundreds of farmers that I met with on my recent farm belt tour convinced me that one of the most pressing issues facing Kentucky farmers is the problem of finding legal, migrant farm workers.

Kentucky farmers depend heavily on migrant agricultural workers that come to Kentucky under H–2A visas to help harvest tobacco and other crops. Kentucky depends on the H–2A visa program more than every other state, except North Carolina and Virginia.

The current H–2A process is slow, tedious and complex. It subjects farmers to unreasonable costs, excessive bureaucracy, and mountains of paperwork.

To add to the injustice, farmers are faced with frivolous lawsuits and IRS raids—often at the peak time of the harvest.

The Agriculture Job Opportunity Benefits and Security Act would lift the unfair burdens placed on farmers by reforming the H–2A visa program and reducing: the mountains of paperwork, the excessive bureaucracy, and the unfair threats of frivolous litigation.

In order to get migrant workers, a Kentucky farmer has to find his way through the Kentucky Department of Labor, the U.S. Department of Labor, and the Immigration and Naturalization Service—paying fees and filling out cumbersome, confusing paperwork all along the way.

Most farmers will tell you that it's easier to wade through the tax code and file a 1040 tax form every year than it is to slog through multiple government agencies and mountains of paperwork just to hire a migrant farm worker to help bale hay.

In fact, the Department of Labor needs a 325-page handbook to help farmers find their way to migrant farm workers. The Government Accounting Office managed to get through this handbook and found it to be outdated, incomplete and very confusing.

You shouldn't have to hire a lawyer just to hire a migrant farmer.

I'd like to take a couple of minutes to walk through some of the common problems faced by farmers and the common sense solutions offered by the bill we are introducing today.

Problem: Farmers are hesitant to use the process because it is too slow and complicated.

Solution: A simplified, streamlined H–2A visa program would encourage more farmers to go through the system to hire legal migrant farm workers.

Problem: Farmers must pay multiple fees, go through multiple agencies, and fill-out multiple documents.

Solution: A Department of Labor computer registry would be established to replace the current cumbersome and bureaucratic process. Farmers would submit a simple form asking for a certain number of workers at a specified

time. If there is an insufficient number of domestic workers available, then the DOL would contact the INS to initiate an expedited visa approval process for migrant farm workers. (All program costs would be paid for by employer user fees.)

Problem: Farmers must apply for workers 60 days in advance—even though they may not know exactly how many workers they will need or exactly when they will need them.

Solution: Farmers do not have to begin process two months in advance. They may apply any time prior to actually hiring foreign workers. The total process from initial application to actual hiring should take no more than 21 days.

Problem: DOL slows the process by failing to timely process applications. A GAO study found that DOL missed statutory deadlines in at least 40 percent of the cases.

Solution: Farmers do not have to wait for DOL. If the DOL does not either meet the deadline or issue a specific objection, then the INS is authorized to go ahead and issue visas for migrant workers.

Problem: Farmers have to spend hundreds of dollars advertising in the newspaper or on the radio to prove what they already know—that is, there is a shortage of domestic workers who will labor in the fields.

Solution: Farmers will not be required to engage in costly radio and newspaper advertising, but may recruit domestic workers by simply using the existing DOL job bank for available domestic workers. DOL will match domestic workers with jobs.

Problem: Farmers are required to pay wages that are often higher than both the minimum wage and the prevailing wage because the legal wage is calculated based on wages paid for all farming jobs, not the specific job in which the migrant worker employed.

Solution: Farmers would not have to pay exorbitant wages to migrant farm workers. They would be required to pay wages only up to the prevailing wage for the type of occupation in which the grower is actually employed. The wage would not be based on the wages earned by all persons in all farming jobs.

Problem: Farmers are faced with the threat of frivolous litigation for failing to meet vague and open-ended statutory and regulatory requirements.

Solution: The threat of litigation would be reduced by removing unfair burdens on farmers and by clearly spelling out statutory requirements.

Finally, let me respond to the critics of this compromise bill.

Critics wrongly claim the new alternative program has no labor protections.

The alternative program provides foreign and domestic workers with all the labor protections of federal and state labor laws. In addition, it imposes special obligations on participating employers such as payment of at least the prevailing wage.

The pilot program is modeled after the existing H–lB program for specialty and high-tech occupations. It requires employers to recruit domestic workers, and assures that domestic workers receive first preference for jobs.

Finally, the new program provides strict penalties for employers who fail to meet labor standards, including fines, back wages, and debarment from future program participation.

I wanted to commend the bipartisan group of Senators, led by GORDON SMITH, who have worked together to craft a comprehensive and meaningful solution for our nation's farmers.

I was proud to be a cosponsor of Senator SMITH's original bill, S. 1563, and am equally pleased to be a part of this compromise bill.

I look forward to working with the American Farm Bureau and the Kentucky Farm Bureau to move this bill in the Senate as soon as possible.

Mr. GRAHAM. Mr. President, I rise today to join my colleagues in introducing legislation that will simplify and streamline one of the most frustrating aspects in the life of a farmer: Finding qualified, legal farmworkers.

There are two large issues that cause this problem: (1) According to the December 1997 GAO report, there are at least 600,000 farm workers in the United States illegally—and most have false, but realistic-looking, documents.

The farmer can go to extreme lengths to verify his workforce, and still be vulnerable to INS enforcement action.

Our bill, through an Agricultural Registry of workers, ensures that a farmer is able to get a legal, reliable workforce, and our bill ensures that these American workers are paid a premium wage and receive the benefits that they deserve.

(2) Under the current system, if a farmer cannot find available American workers and does need to find temporary foreign help through H–2A visas, he or she must navigate a maze of complex regulations, so much so that it takes a 300-page guidebook to explain the process.

He or she also has little assurance that, even after successfully completing the forms and initiating the process, that the Department of Labor will approve or deny the petitions in a timely manner.

It may seem notable that we are all here together, in a bipartisan manner, from every geographic region of our great Nation.

In the past, discussion of the H–2A program has broken down into a partisan, polarized, gridlocked debate, and no one wins. Wages are still low for workers, and growers still need legal reliable help.

I commend my colleagues, Senator WYDEN, Senator BUMPERS, Senators SMITH, CRAIG, and GORTON for helping bring common sense reality to the table, and together, crafting a bill that helps all sides.

I thank Senator ABRAHAM for holding a fair, educational and timely hearing on this issue, and for bringing all sides together to discuss what works and what doesn't work under the current system.

We, as a bipartisan group, want to accomplish several goals, and I ask my colleagues in the Senate to support what we feel will bring order to the current chaos, bring honor to the farming community, and bring needed benefits to hard working farmworkers. Our goals are simple:

1. Make the H–2A system simple. With our agricultural registry, anyone can start the process by picking up the phone.

Turnaround time can be counted in minutes and hours instead of weeks or months. Give our farmers the chance to choose between legal domestic workers, and legal foreign workers, with the domestic workers getting the first choice at all jobs. But the choice can be made to have a legal workforce.

2. Ensure that American workers get the first choice of every job opening. Under the Registry system—not a single foreign worker will come to the United States until every domestic worker on the Registry is employed in the area he or she has requested.

American farmworkers will be able to easily link together a year's worth of work—moving from Florida to Kentucky to New England, if that is what they want.

3. Ensure that American workers receive premium wages and benefits. Under the Registry program, every legal domestic worker is guaranteed at least prevailing wage, plus a 5 percent premium.

The growers will pay a higher price than they may be paying currently, but they have the added value of knowing with certainty that they are not vulnerable to INS enforcement action. Registry workers also will receive housing benefits, either on-site housing, or a housing allowance.

4. Put a stop to the horrible practice of smuggling human lives. Under the current state of affairs, every day, human beings are dying—crammed into the back of vans, dehydrating in the California deserts, or murdered for the thousand dollars they are willing to pay for a secretive trip across the border and a set of false documents.

They are drawn here by the jobs, many of them farmwork jobs. They put their lives on the line to work in an underground economy. They keep food on our table, and our economy growing.

Let us take this underground system above ground. Offer a simple, reliable way to bring temporary, legal foreign workers here, paid at wages that will not disadvantage any American workers and protected by all labor laws and standards.

5. Don't hurt any other immigration category. All of this can be accomplished without taking away from any current immigration numbers.

H-2A workers workers, by definition, are in our country for temporary, seasonal work—and they return home

when the job is done. They will not swell the population of the United States, or become a burden on our social safety net.

They will work side by side with the domestic workforce in one of the most important, but difficult, jobs in our society: putting fresh fruit, fresh vegetables, perishable delicacies on our plates each and every meal.

Please join me in this bipartisan effort to simplify this complex system.

By Mr. MOYNIHAN (for himself, Mr. D'AMATO, and Mr. SPECTER):

S. 2338. A bill to amend the Harmonized Tariff Schedule of the United States to provide for equitable duty treatment for certain wool used in making suits; to the Committee on Finance.

LEGISLATION TO PROVIDE EQUITABLE TREATMENT FOR CERTAIN WOOL FABRIC

● Mr. MOYNIHAN. Mr. President, today I introduce a bill to correct a glaring competitive imbalance that has arisen because of an anomaly in our tariff schedule. Hickey-Freeman has produced fine tailored suits in Rochester, New York since 1899. Nearly a century. However, the U.S. tariff schedule currently makes it difficult for Hickey-Freeman to continue producing such suits in the United States.

The facts are straight-forward. Companies like Hickey-Freeman that must import the very high quality wool fabric used to make men's and boys' suits pay a tariff of 31.7 percent. They compete with companies that import finished wool suits from a number of countries. If these imported suits are from Canada, the importers pay no tariff whatever. If the suits are imported from Mexico, the tariff is 11 percent. From other countries, the importers pay a duty of 20.2 percent. Clearly, domestic manufacturers of wool suits are put at a significant price disadvantage. Indeed, the tariff structure provides an incentive to import finished suits from abroad, rather than manufacture them in the United States.

The bill I am introducing today, along with Senators D'AMATO and SPECTER, would correct this problem, at least temporarily. It suspends through December 31, 2004 the duty on the finest wool fabrics (known in the trade as Super 90s or higher grade—fabrics that are produced in only very limited quantities in the United States. And it would reduce the duty for slightly lower grade but still very fine wool fabric (Super 70's and Super 80's) to 20.2 percent—the same duty as on finished wool suits. The bill also provides that, in the event the President proclaim a duty reduction on wool suits, corresponding changes would be made to the tariffs applicable to 'Super 70's' and 'Super 80's' grade wool fabric.

This bill would correct a troublesome tariff inversion that puts U.S. wool suit producers at a serious competitive disadvantage. It is a small step toward modifying a tariff schedule that favors foreign producers of wools suits at the expense of U.S. suit makers. I therefore urge my colleagues to join me in supporting its adoption, and ask for unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 2338

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

SECTION 1. DUTY TREATMENT OF CERTAIN FABRICS.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended—

(1) by adding at the end of the U.S. notes the following new note:

''13. For purposes of headings 9902.51.11 and 9902.51.12, the term 'suit' has the same meaning such term has for purposes of headings 6203 and 6204.''; and

(2) by inserting in numerical sequence the following new headings:

''9902.51.11	Fabrics, of carded or combed wool or fine animal hair, all the foregoing certified by the importer as 'Super 70's' or 'Super 80's' intended for use in making suits, suit-type jackets or trousers (provided for in subheadings 5111.11.70, 5111.19.60, 5112.11.20, or 5112.19.90)	20.2%	No change	No change	On or before 12/31/2004
9902.51.12	Fabrics, of carded or combed wool or fine animal hair, all the foregoing certified by the importer as 'Super 90's' or higher grade intended for use in making suits, suit-type jackets or trousers (provided for in subheadings 5111.11.70, 5111.19.60, 5112.11.20, or 5112.19.90)	Free	Free (CA, IL, MX)	No change	On or before 12/31/2004''.

(b) STAGED RATE REDUCTION.—Any staged reduction of a rate of duty set forth in heading 6203.31.00 of the Harmonized Tariff Schedule of the United States that is proclaimed by the President shall also apply to the corresponding rate of duty set forth in heading 9902.51.11 of such Schedule (as added by subsection (a)).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.●

● Mr. D'AMATO. Mr. President, today I support this important legislation to eliminate tariff duties on certain wool fabrics. Currently, there exists a disparity in the tariff schedule which forces companies like Hickey-Freeman, in Rochester, New York and Learbury in Syracuse, New York, who import very high quality wool fabric, to pay a tariff of 31.7 percent.

These same finished suits imported from Canada come into the United States tariff free. If the suits are imported from Mexico, there is an 11 percent tariff and from other countries, the tariff rate is 20.2 percent. This inverted tariff schedule actually provides an incentive to import suits rather than produce them here in the United States with domestic labor and domestic wool.

This straightforward, clear legislation would suspend through December 31, 2004 the duty on the finest wool fabrics (known specifically as Super 90s weight or higher grade wool). These higher quality fabrics are produced in very limited quantities in the United States, so this tariff reduction would have no negative impact on domestic producers.

Clearly, if there were enough of this wool fabric produced domestically, there would be no need for this legislation since suitmakers would not need to import wool and pay the extortionately high rate of 31.7 percent. Indeed, if the U.S. suit manufacturing industry is allowed to compete fairly with imported suits, and not forced to reduce costs just to pay for inverted tariff rates, domestic wool use will actually increase with the additional suits that will be manufactured in the United States.

Additionally, the provision would reduce the duty for slightly lower grade, fine wool fabric (Super 70s and 80s) to 20.2 percent—the same duty as on finished wool suits.

Mr. President, under current law, if two fabric buyers, one American and the other Canadian, purchase fabric from a foreign country, say Italy, they each pay the exact same price. Yet when they bring the fabric back to their country to be made into suits that is where the problem occurs.

The American is forced to pay a tariff of 31.7 percent on the imported fabric, which then must be absorbed into the cost of the suit, or eaten by the manufacturer. The Canadian buyer pays no tariff. Additionally, the Canadian suit maker can then export to the U.S., and because of the NAFTA agreement, they pay no tariff. As a result, Canadian shipments of men's suits into the United States has gone from 0 to 1.5 million in only ten years.

Mr. President, I am extremely concerned with the current wool tariff because this inverted tariff policy has negatively impacted U.S. jobs. U.S. production has fallen by 40 percent and jobs by 50 percent. And, Mr. President, this additional tariff raises the costs for consumers as well.

I am proud to join with Senators MOYNIHAN and SPECTER in this important legislation, and look forward to its early passage and enactment into law.●

● Mr. SPECTER. Mr. President, today I join my colleagues, Senators DANIEL PATRICK MOYNIHAN and ALFONSO

D'AMATO, to introduce a bill that will keep high paying jobs in the domestic tailored wool apparel industry in America. This bill will suspend the duty on certain high quality wool fabrics used in American garment manufacturing.

The duty rates on imported wool fabrics continued to be among the highest rates imposed on products in the U.S. tariff schedules. Because the duty on these fabrics exceeds the duty on imported garments by about 20 percent, the duty schedule penalizes those American companies which keep their production here in the U.S.

A special ''finished product'' concession made in the Canada Free Trade Agreement (and later NAFTA) has greatly exacerbated the problem. The concession allows Canadian companies to use imported, duty-free wool fabric to manufacture men's suits, which are in turn shipped duty-free into the U.S. As a result, over the past decade Canadian shipments of suits into the U.S. have surged from nearly zero to approximately one and a half million units shipped annually.

During the same time frame, production by the U.S. tailored clothing industry has dropped 40 percent and the number of employees has been cut in almost half, from 58,000 to 30,000 employees. In my home state of Pennsylvania, the high-end tailored men's clothing industry provides high paying jobs in the cities of Reading, Ashland, Easton, Shippensberg and Philadelphia, but since 1991, Pennsylvania has lost over 3000 jobs due to plant closings.

This duty has a real, direct and substantial effect on American jobs. Suspension of the duty on these fabrics will level the playing field with foreign manufacturers and allow the U.S. industry to compete, saving American jobs. I therefore urge my colleagues to join me in supporting its adoption.●

Mr. GRAHAM. Mr. President, earlier today a group of my colleagues representing both sides of the aisle joined together to announce that we would be introducing legislation to increase the security in the retirement of Americans. I want to especially recognize my colleague, Senator GRASSLEY, who has put a tremendous amount of effort into this legislation and, through his position as Chair of the Aging Committee, has demonstrated his commitment to the well-being of older Americans. Senator GRASSLEY and I recognize that for our Nation to solve what would be one of this generation's greatest challenges, building a retirement security for today's workers, we need to move in a commonsense, bipartisan fashion.

Many of the original cosponsors of this bill were key in crafting the sections of this legislation. Senator GRASSLEY's efforts have expanded fairness for women and families and focused on the benefits of retirement education. Senator BAUCUS has brought the ideas that expanded pension coverage and eased administration burdens on America's small businesses. Portability, so important as we become a more mobile society, received the specific attention of Senator JEFFORDS. All businesses will have the hard work of Senator HATCH to thank for many of the regulatory relief and administrative simplification elements of this bill. And Senator BREAUX, who focused on the big picture of retirement security leading the CSIS task force, has incorporated some of his ideas and the ideas of that task force into the legislation that we introduced this evening.

Throughout this process of putting the bill together, our principal task has been one to listen and attempt to understand what we were hearing. We listened at the recent SAVER Summit, which was held here in Washington, DC, held at the direction of this Congress. We listened at town hall meetings throughout our States. We have listened at the Retirement Security Summit, which I held in January of this year in Tampa, FL, and the Women's Summit, which I held in Orlando in April.

The ideas have come from pension actuaries, tax attorneys, Cabinet leaders, and some of the best ideas from everyday Americans. I want to thank those who have endorsed our proposal.

Mr. President, with reason, much of the public debate has now focused on President Clinton's call to ''Save Social Security first.'' I wish to say, as the Senator from New Hampshire has just commented, I, too, benefited by the remarks that were made this evening by the Senator from Minnesota on what is happening on a global basis, in terms of meeting the type of problems which we face in providing retirement security for Americans. We all agree, on both sides of the aisle, that we need to assure that Social Security is as viable for my nine grandchildren and all of their peers, as it was for my parents and will be for me. However, Social Security is only one part of the picture. Pensions and personal savings will make up an ever-increasing part of retirement security. So, when Congress takes action to assure the future of Social Security, we are only addressing one-third of the problem. Our bill addresses the other two-thirds of the problem.

Social Security will play less of a role for each succeeding generation of Americans. We must develop personal savings. We must assure that years of work pay off in reliable pensions. Our bill will help hard-working Americans build personal retirement savings through their employers, through 401(k)s, through payroll deduction IRAs, through higher limits on savings. The employers and workers both will win. Employers get simpler pension systems with less administrative burden and more loyal employees, and workers build a secure retirement and watch savings accumulate over their years of work.

How, specifically, will our bill help? The first focus of our bill is small business. The reason for this primary focus is because this is where the greatest difficulties in achieving retirement security are lodged.

Fifty-one million American workers have no retirement plan at work—51 million Americans without any retirement plan at the place of their employment; 21 million of these employees work in small businesses. The problem: Statistics indicate that only a small percentage of workers in firms of less than 100 employees have access to a retirement plan.

This chart indicates that there is a direct correlation between the number of employees in a business and the likelihood that there will be a pension retirement plan. Firms with less than 25 employees have a retirement plan of 20.2 percent. Firms of 100 or more have a proportion of retirement plans of almost 85 percent.

We are particularly focusing our attention on these smallest firms which are the least likely to have retirement plans, but which are the fastest growing segment of our economy. In the State of Florida, these firms of less than 25 have represented well over 70 percent of the job growth in our State in the last 5 years.

We take a step forward in eliminating one of the principal hurdles that small businesses face when establishing a pension plan.

What is that problem? It is the Federal Government having two hands: On the one hand, the Federal Government is encouraging these businesses to start pension plans, but when they hand out the second hand, they find that the Federal Government wants a palm turned up because the Federal Government is asking for up to $1,000 for a small business to register its plan with the Internal Revenue Service.

We eliminate this fee for small businesses. We need to encourage small businesses to start plans, not discourage them with high registration fees.

Mr. President, the second target of our legislation is women and families. Historically speaking, women live longer than men. Therefore, they need greater savings for retirement because they will have to stretch those savings over more years of life. Yet, our pension and retirement laws do not reflect this fundamental reality. Women are more mobile than men, moving in and out of the workforce due to family responsibilities. Thus, they are less likely to vest in a retirement system. Most retirement systems require a minimum period of time before the employee becomes eligible and has a legal entitlement to the retirement funds. Women are the least likely to meet those minimum years of employment.

As this chart indicates, of women retirees today, 68 percent of women who retire have no retirement benefits; fewer than 32 percent have a pension for their retirement.

Currently, two-thirds of working women are employed in sectors of the economy that are unlikely to offer a retirement plan—service and retail and small businesses.

What is the solution? In an effort to address one of the problems of preparing for a longer life expectancy, we realistically adjust upward the age at which you must start withdrawing funds from your own 401(k) or other similar pension instrument.

Under the current law, you must, you are obligated to start withdrawing money from your retirement plan once you reach the age of 70½, 70 years and 6 months. At the age of 70 years and 6 months, you are obligated to commence the process of withdrawing funds from your retirement plan. However, a woman at the age of 70 can still have three decades to look forward to in retirement. I know this because I represent many of these wonderful people in my State of Florida.

At the retirement summit I hosted in Tampa, several retirees mentioned that they wanted to keep their money in retirement savings for as long as possible. We propose to raise the 70 years and 6 months age to 75 for mandatory distribution. We do this for both genders, because I am happy to say that men are also living longer. It just happens that women will be the most affected group of Americans by this proposal.

We go beyond raising the age from 70 years and 6 months to 75 years by also providing that $300,000 of any defined benefit contribution plan will be exempt from minimum distribution rules.

This accomplishes several important objectives: Simplifying the bureaucracy for thousands of Americans who have less than $300,000 in their retirement fund, and protecting a vital nest egg for the last years of retirement so that items such as long-term care and other expenses that are part of the aging process can be covered.

Next, Mr. President, we deal with the issue of increasing portability. Over an average 40-year career, the current U.S. worker will have seven different employers. This represents a dramatic shift from the current worker's employment pattern from that of their grandparents where it was common for a person to commence their career and end their career with the same employer.

We have the possibility of a generation of American workers who retire with many small retirement accounts, creating a complex maze of statements and features different for each account.

The solution that we propose includes addressing one element of this by allowing employees, such as teachers, who happen to move from one State to another, to buy into their current locality's defined benefit pension system through the purchase of service credits so that when they retire, they will have one retirement account. It is easier to monitor, less complicated to maintain records about and builds a more secure retirement for the worker.

The next issue that our legislation confronts is that of reducing red tape and administrative complexities. As I mentioned earlier, 51 million Americans have no pensions. The main obstacle that companies face in establishing a retirement program is often bureaucratic administrative burden.

For example, for a small plan, the plan that would deal with companies that have 25 or fewer employees—in this case, the specific example is for a plan with 15 employees—it costs $228 per employee per year just to comply with all the forms, tests and regulations required to maintain a pension plan.

We have a commonsense remedy to one of the most vexing problems in pension administration: figuring out how much money to contribute to the company's plan. It is a complex formula of facts, statistics and assumptions under the current law. We want to be able to say to plans that you have no problem with underfunding. To help make these calculations, you can use the prior year's data to make the proper contribution, and if you do so, you will not be subject to any after-the-fact sanctions. You don't have to re-sort through the numbers each and every year. If your plan is sound, use reliable data from the previous year and then verify when all the final details are available. Companies will be able to calculate and then budget, not wait until figures and rates out of their control are released by external sources.

Another issue is pension security. Under current law, companies cannot fully fund their pension determination liability; that is, provide for a sufficient amount of funding in their pension retirement trust fund to be able to fund that particular pension to its full actuarial amount.

The inability to do so puts workers at risk that the appropriate funds will not be available when their workforce retires. Solution? It makes little sense for the Federal Government to discourage companies from fully funding their pension plans. We propose to repeal this limit, the limit that keeps companies from fully funding their plan. In last year's tax bill we phased this limit up. Now we have a chance to take the final step and allow companies the flexibility to put more money in their pension plans when their economic circumstances allow.

The next provision in our legislation, Mr. President, encourages retirement education. The unfortunate reality is that many Americans do not prepare for retirement because they just do not know that they need to. It has been said in jest, but unfortunately it happens in too many cases—it is true—that Americans spend more time planning a 2-week summer vacation than they do 20 or 30 or more years of retirement.

Studies show that with education, participation rates in retirement savings vehicles jump dramatically. Eighty-one percent of Americans say retirement education has encouraged them to earmark more money for the future. So as Americans have a better understanding of what is involved in retirement—the financial aspects of retirement, the issues of personal health, issues of utilization of leisure time, and all of the other challenges that come in retirement—Americans respond as we would expect, with intelligence and appropriate steps to protect their and their families' interests.

Our solution is to let the Federal Government serve as a role model. Programs already in place to educate our own Federal employees about the need to prepare for retirement should be broadly shared with other firms, both private and public. We ask that the paradigm for these discussions be made available to the general public so that they can be used by American workers who are employed by organizations beyond the Federal Government.

We also ask that the Small Business Administration, which is so helpful to America's entrepreneurs in getting ventures off the ground and expanding when times are right, be involved in outreach in the retirement arena. Through web sites, brochures, whatever means they feel best, the Small Business Administration can help spread the word on what has already been accomplished—simple accounts, payroll deduction IRAs, and more—and keep businesses up to date with each opportunity to save for a secure retirement.

Mr. President, I thank my colleagues who have worked so hard on this measure. I ask for the support of those in this Chamber on this important legislation.

Mr. GRASSLEY. Mr. President, I rise to join my colleagues, Senator GRAHAM, Senator HATCH, Senator BREAUX, Senator BAUCUS, and Senator JEFFORDS to introduce bipartisan pension reform legislation. This legislation, the Pension Coverage and Portability Act of 1998, will go a long way toward improving the pension system in this country.

Promoting retirement income security seems to be on everyone's mind these days if the number of pension bills now pending in Congress is any indication. But I think that our leaders need to understand that pension legislation should be a priority for prompt action by Congress and the President.

Let me try to explain: For better or worse, the most important component of retirement income is the Social Security program. But our nation is about to experience a demographic shift of very large proportions that will have a very negative impact on Social Security. My state is already feeling the impact of this shift.

The state of Iowa has the most people over the age of 85 as a percent of the population. Iowa has the third highest percentage of people over the age of 65. There is a popular statistic relating to the incomes of elderly households we hear a lot—that Social Security is the most important source of income for more than 80 percent of elderly Americans. Knowing the demographics of my state, you can imagine

how often I hear about Social Security and the feeling that Social Security isn't enough.

It's hard to tell an 82 year old widow that Social Security was never supposed to be enough. Future retirees seem to understand this, as we have seen a number of surveys indicating that Gen Xers do not believe Social Security will be the most important source of income once they retire.

But their income will have to come from somewhere. Many workers will be able to rely on increased income from pensions. Unfortunately, right now, one half of our workforce is not participating in a pension plan.

Mr. President, you know the statistics just as well as I do. Coverage levels have been consistent over the last decade but among small employers, coverage is low.

In June, the Employee Benefit Research Institute released the Small Employer Retirement Survey. This survey is very instructive for legislators.

Small employers identified three main reasons for not offering a plan. The first reason is that small employers believe their employees prefer increased wages or other types of benefits. The second reason employers don't offer plans is the administrative costs. And the third most important reason for not offering a plan: uncertain revenue, which makes it difficult to commit to a plan.

Combine these barriers with the responsibilities of a small employer, and we can understand why coverage among small employers has not increased. Small employers who may just be starting out in business are already squeezing every penny. These employers are also people who open up the business in the morning, talk to customers, do the marketing, pay the bills, and just do not know how they can take on the additional duties, responsibilities, and liabilities of sponsoring a pension plan.

I firmly believe that an increase in the number of people covered by pension plans will occur only when small employers have more substantial incentives to establish pension plans.

The Pension Coverage and Portability Act contains provisions which will provide more flexibility for small employers, relief from burdensome rules and regulations, and a tax incentive to start new plans for their employees. One of the new top heavy provisions we have endorsed is an exemption from top heavy rules for employers who adopt the 401(k) safe harbor. This safe harbor will take effect in 1999. When the Treasury Department wrote the regulations and considered whether safe harbor plans should also have to satisfy the top heavy rules, they answered in the affirmative. As a result, a small employer would have to make a contribution of 7 percent of pay for each employee, a very costly proposition.

My colleagues and I also have included a provision which repeals user fees for new plan sponsors seeking determination letters from the IRS. These fees can run from $100 to more than $1,000, depending on the type of plan. Given the need to promote retirement plan formation, we believe this ''rob Peter to pay Paul'' approach needs to be eliminated.

We have also looked at the lack of success of SIMPLE 401(k) plans. A survey by the Investment Company Institute found that SIMPLE IRAs have proven successful, with almost 100,000 participants. However, SIMPLE 401(k)s just haven't taken off. A couple of the reasons may be that the limits on SIMPLE 401(k)s are tighter than for the IRAs.

Our bill equalizes the compensation limits for these plans; in addition, we have also increased the annual limit on both SIMPLEs to $8,000.

One of the more revolutionary proposals is the creation of a Salary Reduction SIMPLE with a limit of $4,000. Unlike other SIMPLEs, the employer makes no match or automatic contributions. The employer match is usually a strong incentive for a low-income employee to participate in a savings plan. We hope that small employers will look at this SIMPLE as a transition plan, in place for just a couple of years during the initial stages of business operation—then adopt a more expansive plan when the business is profitable.

The other targeted areas in the legislation include: Enhancing pension coverage for women.

Women are more at risk of living in poverty as they age. They need more ways to save because of periodic departures from the workforce. To increase their saving capacity, we have also included a proposal similar to legislation I sponsored earlier this year, S. 1856, the Enhanced Savings Opportunities Act. Like S. 1856, the proposal repeals the 25% of salary contribution limit on defined contribution plans. This limit has seriously impeded savings by women, as well as low- and mid-salary employees.

I prefer this approach to a catch-up provision. Catch-ups would most likely be voluntary on the part of the employer, do not encourage savings over working life, and do not necessarily help low and mid-salary people. Repealing 415(c) is a simplifier, and will allow anyone covered by a defined contribution plan to benefit.

The bill also contains proposals which promote new opportunities to rollover accounts from an old employer to a new employer. The lack of portability among plans is one of the weak links in our current pension system. This new bill contains technical improvements which will help ease the implementation of portability among the different types of defined contribution plans.

Finally, I would like to point out a couple of other provisions in the bill. The first is the new requirement that plan sponsors automatically provide benefit statements to their participants on a periodic basis. For defined contribution plans, the statement would be required annually. For defined benefit plans, a statement would be required every three years. There is a very strong lack of understanding among participants about how their pensions work. There is also a high percentage of people who have done nothing to plan for their retirement.

Providing clear and understandable benefit statements to pension plan participants would encourage people to think about how much money they can expect to receive in retirement. Further, a benefit statement will help people ensure that the information their employer maintains about them is accurate. Almost 80 percent of employers who sponsor defined benefit plans are providing some type of benefit statement automatically. All participants need these statements.

This provision joins other proposals in a new section targeted at encouraging retirement education. Education can make a difference to workers. In fact, in companies which provide investment education, we know workers benefitted because many of them changed their investment allocations to more accurately reflect their investment horizons.

A new provision that I encourage my colleagues to carefully consider targets the problem of participation by proposing an incentive for negative enrollment or ''opt-out'' plans. My staff and I were familiar with the example set by McDonald's Corp. which utilizes opt-out plans for their employees. But McDonald's was concerned that they might get in trouble with government regulators for operating their plan as an opt-out. President Clinton announced that McDonald's plan was legal—and encouraged other employers to try opt-out plans. This bill includes an incentive for employers to create opt-out plans that we hope will increase participation among low-salary workers.

This legislation joins a number of other strong proposals now pending in the House and here in the Senate. This legislation includes provisions which reflect some of those same proposals. I want to commend the sponsors of those bills. Our legislation has a lot in common with these other pension bills and we need to push for fast and favorable consideration of, at a minimum, the similar provisions in our legislation.

We have a window of opportunity to act. The Baby Boomers are coming. The letters from AARP are starting to arrive in their mailboxes. The Social Security Administration is starting to stagger the delivery of benefit checks in preparation for their retirement. Many elderly households rely too heavily on Social Security. Future retirees will not be able to rely on all of the benefits now provided by Social Security. We can look to the pension system to pick up where Social Security leaves off, but we need to act.

I thank the other co-sponsors of this legislation for all of their work, and I encourage our colleagues to give strong consideration to co-sponsoring this bill. With concerted, bipartisan action, we can improve the pension system. Pensions for today's workers will substantially improve the retirement outlook for millions of Americans. But we have some work to do if pensions are going to fulfill their promise.

Mr. BAUCUS. Mr. President, most people my age have known the heartache of having to watch their parents grow old. It is a sad day in a person's life when they see their father get his first gray hair. Or the day you notice lines in your mother's face where previously, there were none.

This aging process is made worse by the scary and very real possibility that too many people who will become senior citizens in the next several years are not at all prepared for the transition from work to retirement.

To be honest, it isn't our parents who we need to worry about so much. They survived the Depression. They know what it takes to get by during the lean years—it takes planning and saving. Putting money aside, when it might be easier to spend it in the moment.

Those are the values that our parents live by. They are the values we would do well to heed. And even better to teach those who will follow us.

We as a nation have lost our imperative to save. Personal savings rates have dropped to 3.8 percent of our Gross Domestic Product, the lowest in 58 years.

Fifty-one million Americans in our nation's workforce have no pension coverage. But statistics like those don't tell the whole story. They don't do justice to the hardscrabble struggles that real people go through every day. Struggles that involve agonizing questions like: ''Should I eat today or take my medication?'' or ''Will I be able to heat my house this winter?''

Make no mistake, our nation's lack of saving for retirement is a tragedy in the making.

That is why I am so proud to join my colleagues in introducing this legislation.

A bill that will make it easier for Americans to put money aside, and a bill that will help move pension issues to the forefront of Americans' minds. A bill that will:

Expand coverage for small businesses because they have a harder time affording health care and retirement plans;

Enhance pension fairness for women because they fall into categories that have a harder time saving;

Increase the portability of pension plans so that when you change jobs you don't have to worry about where your savings will go;

Strengthen pension security and enforcement so you can rest easy at night, knowing your money is safe;

Reduce red tape so it's easier for employers to give their workers retirement options;

And encourage retirement education so that husbands and wives, parents and children, talk to each other—make plans for their future. And know what to expect tomorrow and down the road.

One aspect of the bill I am particularly proud of are the small business provisions. Thirty-eight million of the people in this country who do not have a pension plan work at small businesses. Eighty percent of all small business employees have no pension coverage.

In my state of Montana, more than 95 percent of our businesses are small businesses. And almost 9 out of 10 offer no pension plans. We cannot let these hard-working Americans down.

Currently, most small businesses can't afford pension plans. They would like to, but they just can't make ends meet.

Our bill makes it a smart business decision for small business owners to offer retirement plans.

I have made it my priority to work with members of the small business community, both back in Montana and nationally, to identify legislative solutions that will most readily enable small businesses to offer pension plans to their employees. While this bill does not include every recommendation we received, it does represent a collection of high-priority proposals which we believe could be supported by a bi-partisan majority of Congress.

The major provisions in this bill which would help small businesses start and maintain pension plans include the following:

To help make pension plans more affordable we have included two new tax credits: one to help defray start-up costs and the other to defray the cost of employer contributions to pension plans;

In addition, we provide for the elimination of some fees.

To address the problems the small business community has identified as a major impediment to establishing pension plans, we make significant changes in the top-heavy rules that limit employer contributions to plans.

To address concerns of our smallest businesses, who want to provide pensions but can only afford 'start-up' plans at first, we provide increases in income limits that apply to SIMPLE pension plans, along with a new, salary-reduction SIMPLE plan;

And for those employers that want to provide the security of a defined benefit plan for their employees but cannot because of the increased regulatory burden, we create a simplified defined benefit plan for small business.

These provisions are designed to address the problems of cost and complexity that are a barrier to so many small businesses. They will help small employers establish a pattern of saving for themselves and their employees.

Mr. President, I hope the Pension Coverage and Portability Act will spearhead a national debate on how to improve employer-provide pensions in this country.

This debate is essential if we are to achieve our goal of making America in the next century, not only strong as a nation, but strong as a community of individuals confident in the security of their financial futures.

This is a good, bi-partisan bill. It takes the positive steps we as a nation need to put our future in safe hands.

I am eager for the coming debate on this bill.

I hope it sparks a debate in the coffee shops and kitchen tables all across the country. Working together, and with this bill, we can turn a nation of spenders, into a nation of savers.

Mr. GRAHAM. Mr. President, I ask unanimous consent to have printed in the RECORD letters from the Profit Sharing 401(k) Council of America, the American Society of Pension Actuaries, the Association of Private Pension and Welfare Plans, and the National Association of State Retirement Administrators, all of whom endorse this legislation.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

PROFIT SHARING 401(K)
COUNCIL OF AMERICA,
Chicago, IL, July 21, 1998.

THE PENSION COVERAGE AND PORTABILITY ACT OF 1998

The Profit Sharing/401(k) Council of America commends Senators GRAHAM, GRASSLEY, BAUCUS, BREAUX, JEFFORDS, D'AMATO, HATCH, and KERREY for this comprehensive reform and updating of the regulation of private pensions. We believe that this legislation identifies and removes many barriers to increasing retirement security for working Americans. Areas of particular interest to our members include the modification of top-heavy rules, the elimination of the percentage of salary limit, and the removal of elective deferrals from the employer deduction calculation.

The Profit Sharing/401(k) Council of America (PSCA) is a non-profit association that for the past fifty years has represented companies that sponsor profit sharing and 401(k) plans for their employees. PSCA has approximately 1200 company-members who employ approximately 3 million plan participants throughout the United States. PSCA's members range in size from a six employee parts distributor to firms with hundreds of thousands of employees.

We look forward to working together to achieve implementation of this important bill.

AMERICAN SOCIETY OF
PENSION ACTUARIES,
Arlington, VA, July 21, 1998.

Hon. BOB GRAHAM,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: On behalf of the American Society of Pension Actuaries, I am writing to express our strong support for the Pension Coverage and Portability Act of 1998. This comprehensive legislation recognizes the important role played by the private pension system in providing retirement savings for Americans.

By simplifying the complicated tax laws governing retirement plans, your legislation is a significant step in the right direction that will encourage retirement plan formation and expansion. Current law, and the thousands of pages of accompanying regulations, have gone too far. Though intended to

increase access to private pension savings, these laws and regulations have actually had an opposite effect, leaving millions of American workers without an easy way to save adequately for retirement.

ASPA represents over 3,000 pension professionals who provide services to approximately one-third of the qualified retirement plans in the United States. The vast majority of these plans are maintained by small businesses. Our members have first-hand knowledge of the existing regulatory barriers preventing retirement plan formation and retention by employers. We believe the provisions in your legislation, including the new simplified defined benefit plan for small business called the SAFE plan, the elimination of the 25 percent of compensation limit on plan contributions, and the relaxation of the top-heavy rules, will encourage employers to offer pension plans for their employees, and will make it easier for employees to increase their own retirement savings.

Again, ASPA thanks you for your work on retirement issues. The Pension Coverage and Portability Act sends a strong message that current regulations have gone too far. We look forward to working with you to move this bill through the legislative process.

Sincerely,

BRIAN GRAFF,
Executive Director.

ASSOCIATION OF PRIVATE PENSION AND WELFARE PLANS
Washington, DC, July 21, 1998.

Hon. BOB GRAHAM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: I am writing on behalf of the Association of Private Pension and Welfare Plans (APPWP) to express our support for the Pension Coverage and Portability Act. We commend you for your leadership in addressing the need to strengthen the employer-sponsored retirement system. The APPWP is the national trade association for companies concerned about federal legislation and regulations affecting all aspects of the employee benefits community. APPWP members either sponsor directly or provide to employee benefit plans covering more than 100 million Americans.

Your legislation represents a significant step towards improving the rules governing the employer sponsored retirement system upon which millions of Americans rely for a majority of their retirement income. More specifically, we believe that passage of this legislation will expand coverage, particularly among small businesses, allow employers to design their plans to more effectively meet their workers' needs and increase portability and preservation of retirement income.

In particular, we are pleased that you recognize the need to include provisions that reduce the complexity and improve the incentives for maintaining a retirement plan such as repeal of the ''same desk rule,'' relief from the overly restrictive ''anti-cut back rules,'' modification of the top-heavy and minimum distribution rules, simplification of the ESOP dividend reinvestment rules and relief from the anomalies of the mechanical nondiscrimination rules.

However, as you continue your work on an improved employer-sponsored retirement system, we urge you to consider two major savings incentives that regrettably have not been included in the bill. As we discussed with you when you spoke to our Board of Directors last September, increasing the contribution limits and adding a ''catch-up'' contribution provision would encourage plan participants to save more for retirement. The need for American workers to save more effectively was recently highlighted at the National Summit on Retirement Savings and we believe it is critical that Congress acknowledge its importance by providing increased incentives. As you have recognized by the Pension Coverage and Portability Act, the employer-sponsored retirement system plays a vital role in assuring that Americans have adequate retirement incomes. We look forward to working with you to improve the savings incentives in employer-sponsored retirement plans.

Sincerely,

JAMES A. KLEIN,
President.

NATIONAL ASSOCIATION OF STATE RETIREMENT ADMINISTRATORS,
Washington, DC, July 21, 1998.

Hon. BOB GRAHAM,
Senate Hart Office Building, Washington, DC.

RE: Support Public Pension Portability Provisions the Senate Bipartisan Pension Tax Package

DEAR SENATOR GRAHAM: On behalf of our nation's State retirement plans and the millions of public employees, retirees and beneficiaries who they cover, the National Association of State Retirement Administrators (NASRA) supports public pension provisions contained in the Senate Bipartisan Pension Tax Package.

In particular, we support provisions in your legislation that promote portability between various defined contribution and deferred compensation plans, and that allow funds from all of these plans to be used to purchase permissive service credits in public defined benefit plans. We also applaud provisions that would remove certain pension limitations.

All of these provisions would help employees build and strengthen their retirement savings, especially those who have worked among various public, non-profit and private institutions. Our organization is very grateful for your leadership on former public pension legislation, and commends you on your continued work in this area.

Sincerely,

M. DEE WILLIAMS,
President.
RICHARD E. SCHUMACHER,
Immediate Past President, Chair, Legislative Committee.

● Mr. JEFFORDS. Mr. President, I am glad to cosponsor the Pension Coverage and Portability Act of 1998, (PCPA). I cosponsored the predecessor bill, S. 889 with senators GRAHAM, HATCH, and others, and PCPA is a natural follow-on to S. 889.

This bill will encourage pension plan sponsorship among small businesses and make it easier for the small business man or woman to have greater confidence in government oversight of their plan and that they will not have to constantly hire services of actuaries, accountants and tax attorneys and investment advisers once they establish it. The bill makes it easier to implement a payroll deduction IRA, it provides for a simplified defined benefit pension plan, it allows a payroll deduction SIMPLE plan with limits twice as high as those currently available to IRAs, it eliminates IRS registration fees for new plans and provides a tax credit for plan start up, as well as many other things.

The bill also eases the top-heavy rules. In the days when the only small pension plans belonged to doctor's and lawyer's offices, the top heavy rules were needed to assure non-discrimination in provision of benefits. But instead of expanding coverage, the top heavy rules now tend to impose harsh requirements on the small business owner which deters him or her from even offering a plan. This bill makes changes to the top heavy rules in constructive and thoughtful ways, such as by changing the family aggregation rules, taking employee elective contributions into account for purposes of meeting the standards and simplifying the definition of 'key employee'.

The bill makes pension plans more portable, a feature that is desperately needed in today's highly mobile workforce. Senator GRAHAM has incorporated the body of S. 2329, the bill that he, Senator BINGAMAN and I introduced recently, as Title III of PCPA. Our bill eases rollovers, allows rollovers of after-tax contributions, waives the 60-day rule under certain circumstances, modifies the ''same-desk'' rule, rationalizes distribution rules and allows governmental workers to purchase service credit with defined contribution plan money to increase their benefits in their defined benefit plans. This bill makes essentially the same changes.

In addition to encouraging plan sponsorship among small businesses and facilitating pension portability, the bill encourages retirement savings education. It also reduces the regulatory burdens associated with maintaining a plan, such as providing coverage test flexibility and freedom from the requirement to use mechanical nondiscrimination testing rules.

Although I believe the vast majority of this measure takes positive steps forward, I do have some misgivings about the staffing firms provision included in section 108. I am cosponsoring PCPA despite the inclusion of section 108 in the bill, but I hope that Senator GRAHAM and the other cosponsors will work with me to air the issues and try to address the concerns of those who oppose this provision in as constructive a manner as is appropriate.●

ADDITIONAL COSPONSORS

S. 10

At the request of Mr. ENZI, his name was withdrawn as a cosponsor of S. 10, a bill to reduce violent juvenile crime, promote accountability by juvenile criminals, punish and deter violent gang crime, and for other purposes.

S. 657

At the request of Mr. DASCHLE, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 657, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive military retired pay concurrently with veterans' disability compensation.

S. 769

At the request of Mr. LAUTENBERG, the name of the Senator from Iowa