

117TH CONGRESS
2D SESSION

S. _____

To amend the Fair Labor Standards Act of 1938 to prohibit employers from paying employees in the garment industry by piece rate, to require manufacturers and contractors in the garment industry to register with the Department of Labor, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Fair Labor Standards Act of 1938 to prohibit employers from paying employees in the garment industry by piece rate, to require manufacturers and contractors in the garment industry to register with the Department of Labor, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fashioning Account-
5 ability and Building Real Institutional Change Act” or the
6 “FABRIC Act”.

1 **SEC. 2. PAYMENT AND LIABILITY REQUIREMENTS IN THE**
2 **GARMENT INDUSTRY.**

3 (a) IN GENERAL.—The Fair Labor Standards Act of
4 1938 (29 U.S.C. 201 et seq.) is amended—

5 (1) by inserting after section 7 (29 U.S.C. 207)
6 the following:

7 **“SEC. 8. REQUIREMENTS FOR THE GARMENT INDUSTRY.**

8 “(a) PROHIBITION AGAINST PAYMENT BY PIECE
9 RATE.—No employer shall pay an employee employed in
10 the garment industry, who in any workweek is engaged
11 in commerce or in the production of goods for commerce,
12 or is employed in an enterprise engaged in commerce or
13 in the production of goods for commerce, by the piece or
14 unit, or by piece rate.

15 “(b) HOURLY RATES.—

16 “(1) IN GENERAL.—An employer shall pay each
17 employee employed in the garment industry, who in
18 any workweek is engaged in commerce or in the pro-
19 duction of goods for commerce, or is employed in an
20 enterprise engaged in commerce or in the production
21 of goods for commerce, at an hourly rate that is not
22 less than the rate in effect under section 6(a)(1).

23 “(2) INCENTIVE BONUSES.—Nothing in this
24 section shall be construed to prohibit incentive-based
25 bonuses for employees employed in the garment in-
26 dustry.

1 “(c) JOINT AND SEVERAL LIABILITY OF BRAND
2 GUARANTORS.—

3 “(1) IN GENERAL.—A brand guarantor who
4 contracts with an employer of an employee described
5 in paragraph (2) for the performance of services in
6 the garment industry shall share joint and several li-
7 ability with such employer for any violations of the
8 employer under this Act involving such employee.

9 “(2) EMPLOYEES.—An employee described in
10 this paragraph is any employee employed in the gar-
11 ment industry who in any workweek is engaged in
12 commerce or in the production of goods for com-
13 merce, or is employed in an enterprise engaged in
14 commerce or in the production of goods for com-
15 merce.

16 “(3) SUBCONTRACTS.—For purposes of para-
17 graph (1), an employer of an employee described in
18 paragraph (2) includes any other person who,
19 through 1 or more subcontracts, subcontracts with
20 the employer of such an employee for the perform-
21 ance of services in the garment industry.

22 “(4) RULE OF CONSTRUCTION.—Nothing in
23 this subsection shall be construed to preclude a de-
24 termination of joint employment, in the garment in-

1 industry or otherwise, for entities other than brand
2 guarantors.

3 “(d) NONAPPLICABILITY.—Subsections (a) and (b)
4 shall not apply for purposes of an employee employed in
5 the garment industry who is covered by a bona fide collec-
6 tive bargaining agreement that expressly provides for—

7 “(1) wages, hours of work, and working condi-
8 tions of the employee;

9 “(2)(A) a wage rate for all hours worked by the
10 employee in excess of 40 hours in a week that is
11 greater than one and one-half times the regular rate
12 at which such employee is employed; and

13 “(B) a minimum hourly rate of pay for the em-
14 ployee that is not less than 10 percent more than
15 the higher of—

16 “(i) the minimum wage rate under an ap-
17 plicable State law; or

18 “(ii) the minimum wage rate in effect
19 under section 6(a)(1); and

20 “(3) a process to resolve disputes concerning
21 nonpayment of wages.

22 “(e) REGULATIONS.—The Secretary may prescribe
23 such regulations or other guidance as may be necessary
24 to carry out this section.

25 “(f) DEFINITIONS.—In this section:

1 “(1) BRAND GUARANTOR.—The term ‘brand
2 guarantor’ means any person contracting for the
3 performance of garment manufacturing, including
4 through licensing of a brand or name, regardless of
5 whether the party with whom the person contracts
6 performs the manufacturing operations or hires gar-
7 ment contractors to perform the manufacturing op-
8 erations.

9 “(2) GARMENT.—The term ‘garment’ includes
10 any article of wearing apparel or accessory designed
11 or intended to be worn by an individual, including
12 clothing, hats, gloves, handbags, hosiery, ties, scarfs,
13 and belts.

14 “(3) GARMENT CONTRACTOR.—The term ‘gar-
15 ment contractor’—

16 “(A) means any person who, with the as-
17 sistance of an employee or any other individual,
18 is primarily engaged in garment manufacturing
19 for another person, including for another gar-
20 ment contractor, a garment manufacturer, or a
21 brand guarantor; and

22 “(B) includes a subcontractor that is pri-
23 marily engaged in garment manufacturing.

1 “(4) GARMENT INDUSTRY.—The term ‘garment
2 industry’ means the industry of garment manufac-
3 turing.

4 “(5) GARMENT MANUFACTURER.—The term
5 ‘garment manufacturer’ means any person who is
6 engaged in garment manufacturing who is not a gar-
7 ment contractor.

8 “(6) GARMENT MANUFACTURING.—

9 “(A) IN GENERAL.—The term ‘garment
10 manufacturing’ means—

11 “(i) sewing, cutting, making, proc-
12 essing, repairing, finishing, assembling,
13 pressing, or dyeing a garment, including a
14 section or component of a garment, de-
15 signed for or intended to be worn by an in-
16 dividual, which is to be sold or offered for
17 sale or resale;

18 “(ii) altering the design, or causing
19 another person to alter the design, of a
20 garment described in clause (i):

21 “(iii) affixing a label to a garment de-
22 scribed in clause (i);

23 “(iv) any other form of preparation of
24 a garment described in clause (i) by any

1 person contracting for such preparation;
2 and

3 “(v) any other operation or practice
4 as may be identified in regulations issued
5 by the Secretary consistent with the pur-
6 poses of this section.

7 “(B) EXCLUSIONS.—The term ‘garment
8 manufacturing’ does not include—

9 “(i) manufacturing of garments by an
10 individual who manufactures the garments
11 by his or her self without the assistance of
12 a garment contractor, employee, or any
13 other individual;

14 “(ii) cleaning, altering, or tailoring
15 any garment , including a section or com-
16 ponent of a garment, after the garment
17 has been sold at retail; or

18 “(iii) any other form of manufac-
19 turing as may be identified in regulations
20 issued by the Secretary consistent with the
21 purposes of this section.”.

22 (2) in section 15 (29 U.S.C. 215(a))—

23 (A) in subsection (a)—

24 (i) in paragraph (5), by striking the
25 period and inserting “; or”; and

1 (ii) by adding at the end the fol-
2 lowing:

3 “(6) to violate section 8.”; and

4 (B) by adding at the end the following new
5 subsection:

6 “(c) For the purposes of subsection (a)(6), it shall
7 be an affirmative defense to an action under such sub-
8 section against a brand guarantor (as defined in section
9 8(f)) if such brand guarantor shows no knowledge of the
10 violation of section 8 alleged in such action.”; and

11 (3) in section 16 (29 U.S.C. 216)—

12 (A) in subsection (b)—

13 (i) by inserting after the third sen-
14 tence the following: “Any person who vio-
15 lates section 8 shall be liable for such legal
16 or equitable relief as may be appropriate to
17 effectuate the purposes of such section, in-
18 cluding the payment of wages lost and an
19 additional equal amount as liquidated dam-
20 ages.”; and

21 (ii) in the last sentence, by inserting
22 before the period at the end “or 8”; and

23 (B) in subsection (c), by adding at the end
24 the following: “The authority and requirements
25 described in this subsection shall apply with re-

1 spect to a violation of section 8, as appropriate,
2 and the person in such violation shall be liable
3 for such legal or equitable relief as may be ap-
4 propriate to effectuate the purposes of such sec-
5 tion, including the payment of wages lost and
6 an additional equal amount as liquidated dam-
7 ages.”.

8 (b) CONFORMING AMENDMENT.—Section 10 of the
9 Fair Labor Standards Act of 1938 (29 U.S.C. 210) is re-
10 pealed.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on the date that is 6 months
13 after the date of enactment of this Act.

14 **SEC. 3. REGISTRATION OF GARMENT MANUFACTURERS**
15 **AND CONTRACTORS.**

16 (a) DEFINITIONS.—In this section:

17 (1) EMPLOYEE.—The term “employee” has the
18 meaning given the term in section 3 of the Fair
19 Labor Standards Act of 1938 (29 U.S.C. 203).

20 (2) GARMENT CONTRACTOR; GARMENT INDUS-
21 TRY; GARMENT MANUFACTURER; GARMENT MANU-
22 FACTURING.—The terms “garment contractor”,
23 “garment industry”, “garment manufacturer”, and
24 “garment manufacturing” have the meanings given

1 such terms in section 8(f) of the Fair Labor Stand-
2 ards Act of 1938 (29 U.S.C. 208(f)).

3 (3) PRODUCTION EMPLOYEE.—The term “pro-
4 duction employee”, with respect to a garment manu-
5 facturer or garment contractor, means any employee
6 of the manufacturer or contractor who is engaged in
7 the garment industry.

8 (4) SECRETARY.—The term “Secretary” means
9 the Secretary of Labor, acting through the Under-
10 secretary of the Garment Industry appointed under
11 section 4(b).

12 (b) REQUIREMENT TO REGISTER WITH THE DE-
13 PARTMENT OF LABOR.—Beginning on the date that is 6
14 months after the date of enactment of this Act, no gar-
15 ment manufacturer or garment contractor shall engage in
16 the garment industry during any year unless the manufac-
17 turer or contractor has registered for such year with the
18 Secretary in accordance with this section.

19 (c) REGISTRATION REQUIREMENTS.—

20 (1) IN GENERAL.—A garment manufacturer or
21 garment contractor registering under this section
22 shall submit to the Secretary—

23 (A) a form, in writing, containing the in-
24 formation described in paragraph (2);

1 (B) photographic verification of the iden-
2 tify of—

3 (i) each owner or partner of the gar-
4 ment manufacturer or garment contractor;
5 and

6 (ii) in the case the garment manufac-
7 turer or garment contractor is a corpora-
8 tion, each officer of the corporation;

9 (C) verification that the garment manufac-
10 turer or garment contractor has in effect a
11 workers' compensation insurance policy for all
12 production employees of the manufacturer or
13 contractor; and

14 (D) payment of the applicable registration
15 fee described in paragraph (3).

16 (2) INFORMATION IN FORM.—The information
17 described in this paragraph is each of the following:

18 (A) A statement of whether the garment
19 manufacturer or garment contractor is a sole
20 proprietorship, partnership, or corporation.

21 (B) The name, residential address, and
22 phone number of all production employees of
23 the garment manufacturer or garment con-
24 tractor.

1 (C) The name, residential address, phone
2 number, and social security number of—

3 (i) each owner or partner of the gar-
4 ment manufacturer or garment contractor;

5 (ii) if applicable, each officer of the
6 garment manufacturer or garment con-
7 tractor; and

8 (iii) if applicable, each of the 10 larg-
9 est shareholders of the garment manufac-
10 turer or garment contractor.

11 (D) The name, residential address, and so-
12 cial security number of each person with a fi-
13 nancial interest in the business of the garment
14 manufacturer in the garment industry, and the
15 amount of that interest (if any).

16 (E) In the case in which the garment man-
17 ufacturer or garment contractor is a corpora-
18 tion, a statement ensuring that no shares of the
19 corporation are listed on a national securities
20 exchange or regularly quoted in an over-the-
21 counter market by one or more members of a
22 national or an affiliated securities association.

23 (F) A statement of how long the garment
24 manufacturer or garment contractor has been
25 in business in the garment industry.

1 (G) If applicable, the tax identification
2 number of the garment manufacturer or gar-
3 ment contractor.

4 (H) A statement of the status of the gar-
5 ment manufacturer or garment contractor as a
6 manufacturer or contractor.

7 (I) A statement of whether the garment
8 manufacturer or garment contractor has con-
9 tracted with a labor organization, and, if so, the
10 name and address of such labor organization.

11 (J)(i) A statement as to whether, within
12 the preceding 3-year period, any of the fol-
13 lowing persons or entities have been found by a
14 court or the Secretary to have violated the Fair
15 Labor Standards Act of 1938 (29 U.S.C. 201
16 et seq.):

17 (I) The garment manufacturer or gar-
18 ment contractor.

19 (II) Any owner of or any partner of
20 the garment manufacturer or garment con-
21 tractor.

22 (III) In the case the garment manu-
23 facturer or garment contractor is a cor-
24 poration, any officer of the corporation or

1 any of the 10 largest shareholders of the
2 corporation.

3 (ii) If any person or entity described in
4 any of subclauses (I) through (III) of clause (i)
5 has violated the Fair Labor Standards Act of
6 1938 within the period described in such clause,
7 a statement of the nature of such violation and
8 the date on which such violation occurred.

9 (K) In the case of a contractor, a state-
10 ment of whether the contractor has subcon-
11 tracted for the cutting, sewing, dying, or assem-
12 bling of textiles or apparel or sections or com-
13 ponents of apparel.

14 (3) REGISTRATION FEE.—

15 (A) IN GENERAL.—The registration fee re-
16 quired under this subsection for each year shall
17 be \$200.

18 (B) PRO RATED FEES.—The Secretary
19 may prorate the registration fee under subpara-
20 graph (A) for any registration described in sub-
21 section (d)(2)(B)(i).

22 (C) USE.—The Secretary shall use the
23 total amount of each registration fee required
24 under this subsection for carrying out this sec-
25 tion.

1 (d) SUBMISSION.—

2 (1) CONSOLIDATION.—Each division, subsidiary
3 corporation, or related company of a garment manu-
4 facturer or garment contractor may, at the option of
5 the manufacturer or contractor, be named and in-
6 cluded under 1 registration under this section.

7 (2) TIMING.—

8 (A) IN GENERAL.—Except as provided
9 under subparagraph (B), each registration sub-
10 mitted under this section shall be filed not later
11 than the date that is 6 months after the date
12 of enactment of this Act and annually there-
13 after on a date determined by the Secretary.

14 (B) NEW MANUFACTURERS OR CONTRAC-
15 TORS.—In the case of a garment manufacturer
16 or garment contractor that begins garment
17 manufacturing operations or enters into a con-
18 tract for such operations for the first time after
19 the date of enactment of this Act, the registra-
20 tion required under this section shall be sub-
21 mitted—

22 (i) not later than 6 months after the
23 date on which the garment manufacturing
24 operations begin or the contractor enters
25 into the contract for such operations; and

1 (ii) annually thereafter on a date de-
2 termined by the Secretary.

3 (e) CERTIFICATES.—

4 (1) IN GENERAL.—The Secretary shall issue a
5 certificate of registration to each garment manufac-
6 turer or garment contractor that submits a registra-
7 tion meeting the requirements under this section.

8 (2) APPLICABILITY.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (B), each certificate issued under
11 paragraph (1) shall be effective for a period of
12 12 months.

13 (B) NEW MANUFACTURERS OR CONTRAC-
14 TORS.—A certificate with respect to a registra-
15 tion submitted under subsection (d)(2)(B)(i)
16 shall be effective until the following registration
17 date as determined by the Secretary.

18 (3) POSTING.—Each garment manufacturer or
19 garment contractor receiving a certificate under
20 paragraph (1) shall post such certificate in a place
21 where it may be read by any employee of the manu-
22 facturer or contractor during the workday.

23 (4) SUSPENSION OR REVOCATION.—The Sec-
24 retary may suspend or revoke a certificate of reg-
25 istration issued under paragraph (1) if the garment

1 manufacturer or garment contractor that submitted
2 the registration—

3 (A) has knowingly made any misrepresen-
4 tation in the application for such certificate; or

5 (B) has failed to comply with this Act or
6 any regulation under this Act.

7 (f) RECORDKEEPING.—The Secretary shall, through
8 regulations, establish requirements for recordkeeping for
9 all garment manufacturers and garment contractors en-
10 gaging in the garment industry in order to assist in en-
11 forcing the requirements of this section.

12 (g) ENFORCEMENT.—

13 (1) IN GENERAL.—The Secretary may impose a
14 civil money penalty of not more than \$50,000,000
15 against any person who violates a requirement under
16 this section.

17 (2) CONSIDERATIONS.—In assessing the
18 amount of a penalty under this subsection, the Sec-
19 retary shall give consideration to—

20 (A) the size of the business of the person;

21 (B) whether the violation of the person
22 was committed in good faith;

23 (C) the gravity of the violation;

24 (D) the history of any previous violations
25 of the person under this section; and

1 (E) the history of the person in complying
2 with the recordkeeping requirements under sub-
3 section (f).

4 (h) REGULATIONS.—The Secretary may prescribe
5 such regulations or other guidance as may be necessary
6 to carry out this section.

7 **SEC. 4. UNDERSECRETARY OF THE GARMENT INDUSTRY.**

8 (a) IN GENERAL.—There is established in the De-
9 partment of Labor the Office of the Garment Industry (re-
10 ferred to in this section as the “Office”).

11 (b) UNDERSECRETARY.—

12 (1) IN GENERAL.—The Secretary of Labor shall
13 appoint an Undersecretary of the Garment Industry
14 (referred to in this section as the “Undersecretary”)
15 to head the Office.

16 (2) FUNCTIONS.—The Undersecretary shall—

17 (A) carry out section 3 using sums appro-
18 priated under subsection (c);

19 (B) carry out the national domestic gar-
20 ment manufacturing support program under
21 section 5; and

22 (C) provide assistance to the Administrator
23 of the Wage and Hour Division in enforcing
24 section 8 of the Fair Labor Standards Act of
25 1938 (29 U.S.C. 208).

1 (c) AUTHORIZATION OF APPROPRIATIONS.—

2 (1) IN GENERAL.—There are authorized to be
3 appropriated to the Secretary of the Labor—

4 (A) \$10,000,000 for fiscal year 2022, to
5 establish the Office and carry out the functions
6 described in subparagraphs (A) and (C) of sub-
7 section (b)(2); and

8 (B) \$3,000,000 for each of fiscal years
9 2023 through 2027, to carry out the functions
10 described in subparagraphs (A) and (C) of sub-
11 section (b)(2).

12 (2) AVAILABILITY.—Any sums appropriated
13 under the authorization contained in this subsection
14 shall remain available, without fiscal year limitation,
15 until expended.

16 **SEC. 5. NATIONAL DOMESTIC GARMENT MANUFACTURING**
17 **SUPPORT PROGRAM.**

18 (a) DEFINITIONS.—In this section:

19 (1) ELIGIBLE ENTITY.—The term “eligible enti-
20 ty” means an entity that is—

21 (A) a garment manufacturer that is incor-
22 porated in and performs garment manufac-
23 turing within the United States; or

1 (B) a nonprofit organization that provides
2 workforce development opportunities with re-
3 spect to the garment industry.

4 (2) GARMENT INDUSTRY; GARMENT MANUFAC-
5 TURER; GARMENT MANUFACTURING.—The terms
6 “garment industry”, “garment manufacturer”, and
7 “garment manufacturing” have the meanings given
8 such terms in section 8(f) of the Fair Labor Stand-
9 ards Act of 1938 (29 U.S.C. 208(f)).

10 (3) SECRETARY.—The term “Secretary” means
11 the Secretary of Labor, acting through the Under-
12 secretary of the Garment Industry appointed under
13 section 4(b).

14 (b) IN GENERAL.—From amounts made available
15 under subsection (g), the Secretary shall award grants, on
16 a competitive basis, to eligible entities to support garment
17 manufacturing in the United States.

18 (c) APPLICATION.—An eligible entity seeking a grant
19 under this section shall submit to the Secretary an appli-
20 cation at such time, in such manner, and containing such
21 information as the Secretary may require, including—

22 (1) a description of the project that the eligible
23 entity proposes to carry out using such grant; and

24 (2) an implementation plan of such project that
25 reflects the expected participation of, and partner-

1 ship with, applicable labor organizations and rel-
2 evant community stakeholders.

3 (d) AWARD.—

4 (1) SELECTION.—In awarding grants under
5 this section to eligible entities, the Secretary shall
6 give priority to eligible entities—

7 (A) with a workforce that is covered by a
8 collective bargaining agreement;

9 (B) that are certified by a State in which
10 such eligible entity operates as a minority-
11 owned businesses, women-owned businesses, or
12 veteran-owned businesses; or

13 (C) who have operated as a garment man-
14 ufacturer within the United States for more
15 than 5 years.

16 (2) AMOUNT.—The amount of a grant awarded
17 under this section may not be more than
18 \$5,000,000.

19 (e) USE OF FUNDS.—An eligible entity receiving a
20 grant under this section shall use the grant funds to sup-
21 port—

22 (1) investments in training and workforce devel-
23 opment for employees within the garment industry;

1 (2) the acquisition of relevant tools and equip-
2 ment for garment manufacturing in the United
3 States;

4 (3) the acquisition of, and capital improvements
5 to, facilities for garment manufacturing in the
6 United States and to promote the health and safety
7 of employees in such facilities; or

8 (4) efforts to assist in educating employees
9 about rights under this Act and other relevant Fed-
10 eral, State, or local laws.

11 (f) REPORT.—Not later than 6 months after the date
12 on which an eligible entity receives a grant under this sec-
13 tion, the eligible entity shall submit to the Secretary a re-
14 port that includes an account of the use of grant funds
15 awarded under this section.

16 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
17 authorized to be appropriated \$40,000,000 to carry out
18 this section.

19 **SEC. 6. CREDIT FOR INSOURCING EXPENSES.**

20 (a) IN GENERAL.—Subpart D of part IV of sub-
21 chapter A of chapter 1 of the Internal Revenue Code of
22 1986 is amended by adding at the end the following new
23 section:

1 **“SEC. 45U. CREDIT FOR INSOURCING EXPENSES.**

2 “(a) IN GENERAL.—For purposes of section 38, the
3 insourcing expenses credit for any taxable year is an
4 amount equal to 30 percent of the eligible insourcing ex-
5 penses of the taxpayer which are taken into account in
6 such taxable year under subsection (d).

7 “(b) ELIGIBLE INSOURCING EXPENSES.—For pur-
8 poses of this section—

9 “(1) IN GENERAL.—The term ‘eligible
10 insourcing expenses’ means—

11 “(A) eligible expenses paid or incurred by
12 the taxpayer in connection with the elimination
13 of any business unit of the taxpayer (or of any
14 member of any expanded affiliated group in
15 which the taxpayer is also a member) located
16 outside the United States, and

17 “(B) eligible expenses paid or incurred by
18 the taxpayer in connection with the establish-
19 ment of any business unit of the taxpayer (or
20 of any member of any expanded affiliated group
21 in which the taxpayer is also a member) located
22 within—

23 “(i) a HUBZone (as defined in sec-
24 tion 31(b) of the Small Business Act (15
25 U.S.C. 657a(b))), or

1 “(ii) a low-income community (as de-
2 scribed in section 45D(e)),
3 if such establishment constitutes the relocation
4 of the business unit so eliminated. For purposes
5 of the preceding sentence, a relocation shall not
6 be treated as failing to occur merely because
7 such elimination occurs in a different taxable
8 year than such establishment.

9 “(2) ELIGIBLE EXPENSES.—The term ‘eligible
10 expenses’ means—

11 “(A) any amount for which a deduction is
12 allowed to the taxpayer under section 162, and

13 “(B) permit and license fees, lease broker-
14 age fees, equipment installation costs, and, to
15 the extent provided by the Secretary, other
16 similar expenses.

17 Such term does not include any compensation which
18 is paid or incurred in connection with severance
19 from employment and, to the extent provided by the
20 Secretary, any similar amount.

21 “(3) BUSINESS UNIT.—The term ‘business unit’
22 means—

23 “(A) any trade or business within the gar-
24 ment industry (as defined in section 8(f) of the
25 Fair Labor Standards Act of 1938), and

1 “(B) any line of business, or functional
2 unit, which is part of any trade or business de-
3 scribed in subparagraph (A).

4 “(4) EXPANDED AFFILIATED GROUP.—The
5 term ‘expanded affiliated group’ means an affiliated
6 group as defined in section 1504(a), determined
7 without regard to section 1504(b)(3) and by sub-
8 stituting ‘more than 50 percent’ for ‘at least 80 per-
9 cent’ each place it appears in section 1504(a). A
10 partnership or any other entity (other than a cor-
11 poration) shall be treated as a member of an ex-
12 panded affiliated group if such entity is controlled
13 (within the meaning of section 954(d)(3)) by mem-
14 bers of such group (including any entity treated as
15 a member of such group by reason of this para-
16 graph).

17 “(5) EXPENSES MUST BE PURSUANT TO
18 INSOURCING PLAN.—Amounts shall be taken into ac-
19 count under paragraph (1) only to the extent that
20 such amounts are paid or incurred pursuant to a
21 written plan to carry out the relocation described in
22 paragraph (1).

23 “(6) OPERATING EXPENSES NOT TAKEN INTO
24 ACCOUNT.—Any amount paid or incurred in connec-
25 tion with the on-going operation of a business unit

1 shall not be treated as an amount paid or incurred
2 in connection with the establishment or elimination
3 of such business unit.

4 “(c) INCREASED DOMESTIC EMPLOYMENT REQUIRE-
5 MENT.—No credit shall be allowed under this section un-
6 less the number of full-time equivalent employees of the
7 taxpayer for the taxable year for which the credit is
8 claimed exceeds the number of full-time equivalent em-
9 ployees of the taxpayer for the last taxable year ending
10 before the first taxable year in which such eligible
11 insourcing expenses were paid or incurred. For purposes
12 of this subsection, full-time equivalent employees has the
13 meaning given such term under section 45R(d) (and the
14 applicable rules of section 45R(e)). All employers treated
15 as a single employer under subsection (b), (c), (m), or (o)
16 of section 414 shall be treated as a single employer for
17 purposes of this subsection.

18 “(d) CREDIT ALLOWED UPON COMPLETION OF
19 INSOURCING PLAN.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), eligible insourcing expenses shall be taken
22 into account under subsection (a) in the taxable year
23 during which the plan described in subsection (b)(5)
24 has been completed and all eligible insourcing ex-

1 penses pursuant to such plan have been paid or in-
2 curred.

3 “(2) ELECTION TO APPLY EMPLOYMENT TEST
4 AND CLAIM CREDIT IN FIRST FULL TAXABLE YEAR
5 AFTER COMPLETION OF PLAN.—If the taxpayer
6 elects the application of this paragraph, eligible
7 insourcing expenses shall be taken into account
8 under subsection (a) in the first taxable year after
9 the taxable year described in paragraph (1).

10 “(e) POSSESSIONS TREATED AS PART OF THE
11 UNITED STATES.—For purposes of this section, the term
12 ‘United States’ shall be treated as including each posses-
13 sion of the United States (including the Commonwealth
14 of Puerto Rico and the Commonwealth of the Northern
15 Mariana Islands).

16 “(f) REGULATIONS.—The Secretary shall prescribe
17 such regulations or other guidance as may be necessary
18 or appropriate to carry out the purposes of this section.”.

19 (b) CREDIT TO BE PART OF GENERAL BUSINESS
20 CREDIT.—Subsection (b) of section 38 of such Code is
21 amended by striking “plus” at the end of paragraph (32),
22 by striking the period at the end of paragraph (33) and
23 inserting “, plus”, and by adding at the end the following
24 new paragraph:

1 “(34) the insourcing expenses credit determined
2 under section 45U(a).”.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1
5 of such Code is amended by adding at the end the fol-
6 lowing new item:

 “Sec. 45U. Credit for insourcing expenses.”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to amounts paid or incurred after
9 the date of the enactment of this Act.

10 (e) APPLICATION TO UNITED STATES POSSES-
11 SIONS.—

12 (1) PAYMENTS TO POSSESSIONS.—

13 (A) MIRROR CODE POSSESSIONS.—The
14 Secretary of the Treasury shall make periodic
15 payments to each possession of the United
16 States with a mirror code tax system in an
17 amount equal to the loss to that possession by
18 reason of section 45U of the Internal Revenue
19 Code of 1986. Such amount shall be determined
20 by the Secretary of the Treasury based on in-
21 formation provided by the government of the re-
22 spective possession.

23 (B) OTHER POSSESSIONS.—The Secretary
24 of the Treasury shall make annual payments to
25 each possession of the United States which does

1 not have a mirror code tax system in an
2 amount estimated by the Secretary of the
3 Treasury as being equal to the aggregate bene-
4 fits that would have been provided to residents
5 of such possession by reason of section 45U of
6 such Code if a mirror code tax system had been
7 in effect in such possession. The preceding sen-
8 tence shall not apply with respect to any posses-
9 sion of the United States unless such possession
10 has a plan, which has been approved by the
11 Secretary of the Treasury, under which such
12 possession will promptly distribute such pay-
13 ment to the residents of such possession.

14 (2) COORDINATION WITH CREDIT ALLOWED
15 AGAINST UNITED STATES INCOME TAXES.—No cred-
16 it shall be allowed against United States income
17 taxes under section 45U of such Code to any per-
18 son—

19 (A) to whom a credit is allowed against
20 taxes imposed by the possession by reason of
21 such section, or

22 (B) who is eligible for a payment under a
23 plan described in paragraph (1)(B).

24 (3) DEFINITIONS AND SPECIAL RULES.—

1 (A) POSSESSIONS OF THE UNITED
2 STATES.—For purposes of this section, the
3 term “possession of the United States” includes
4 the Commonwealth of Puerto Rico and the
5 Commonwealth of the Northern Mariana Is-
6 lands.

7 (B) MIRROR CODE TAX SYSTEM.—For pur-
8 poses of this section, the term “mirror code tax
9 system” means, with respect to any possession
10 of the United States, the income tax system of
11 such possession if the income tax liability of the
12 residents of such possession under such system
13 is determined by reference to the income tax
14 laws of the United States as if such possession
15 were the United States.

16 (C) TREATMENT OF PAYMENTS.—For pur-
17 poses of section 1324(b)(2) of title 31, United
18 States Code, the payments under this section
19 shall be treated in the same manner as a refund
20 due from sections referred to in such section
21 1324(b)(2).