

117TH CONGRESS
2^D SESSION

H. R. 8473

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 HOUSE OF REPRESENTATIVES

JULY 21, 2022

Mrs. CAROLYN B. MALONEY of New York (for herself, Ms. ROSS, Mrs. DINGELL, Mr. CARSON, Mr. NADLER, and Mr. KHANNA) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

7 (a) IN GENERAL.—The Fair Labor Standards Act of
8 1938 (29 U.S.C. 201 et seq.) is amended—

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

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

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

19 “(b) HOURLY RATES.—

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

1 “(2) INCENTIVE BONUSES.—Nothing in this
2 section shall be construed to prohibit incentive-based
3 bonuses for employees employed in the garment in-
4 dustry.

5 “(c) JOINT AND SEVERAL LIABILITY OF BRAND
6 GUARANTORS.—

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

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

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

1 “(4) RULE OF CONSTRUCTION.—Nothing in
2 this subsection shall be construed to preclude a de-
3 termination of joint employment, in the garment in-
4 dustry or otherwise, for entities other than brand
5 guarantors.

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

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

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

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

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

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

23 “(3) a process to resolve disputes concerning
24 nonpayment of wages.

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

4 “(f) DEFINITIONS.—In this section:

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

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

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

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

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

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

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

10 “(6) GARMENT MANUFACTURING.—

11 “(A) IN GENERAL.—The term ‘garment
12 manufacturing’ means—

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

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

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

1 “(iv) any other form of preparation of
2 a garment described in clause (i) by any
3 person contracting for such preparation;
4 and

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

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

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

16 “(ii) cleaning, altering, or tailoring
17 any garment, including a section or compo-
18 nent of a garment, after the garment has
19 been sold at retail; or

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

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

25 (A) in subsection (a)—

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

3 (ii) by adding at the end the fol-
4 lowing:

5 “(6) to violate section 8.”; and

6 (B) by adding at the end the following new
7 subsection:

8 “(c) For the purposes of subsection (a)(6), it shall
9 be an affirmative defense to an action under such sub-
10 section against a brand guarantor (as defined in section
11 8(f)) if such brand guarantor shows no knowledge of the
12 violation of section 8 alleged in such action.”; and

13 (3) in section 16 (29 U.S.C. 216)—

14 (A) in subsection (b)—

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

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

1 (B) in subsection (c), by adding at the end
2 the following: “The authority and requirements
3 described in this subsection shall apply with re-
4 spect to a violation of section 8, as appropriate,
5 and the person in such violation shall be liable
6 for such legal or equitable relief as may be ap-
7 propriate to effectuate the purposes of such sec-
8 tion, including the payment of wages lost and
9 an additional equal amount as liquidated dam-
10 ages.”.

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

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

17 **SEC. 3. REGISTRATION OF GARMENT MANUFACTURERS**
18 **AND CONTRACTORS.**

19 (a) DEFINITIONS.—In this section:

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

23 (2) GARMENT CONTRACTOR; GARMENT INDUS-
24 TRY; GARMENT MANUFACTURER; GARMENT MANU-
25 FACTURING.—The terms “garment contractor”,

1 “garment industry”, “garment manufacturer”, and
2 “garment manufacturing” have the meanings given
3 such terms in section 8(f) of the Fair Labor Stand-
4 ards Act of 1938 (29 U.S.C. 208(f)).

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

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

21 (c) REGISTRATION REQUIREMENTS.—

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

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

3 (B) photographic verification of the iden-
4 tify of—

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

7 and

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

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

16 (D) payment of the applicable registration
17 fee described in paragraph (3).

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

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

23 (B) The name, residential address, and
24 phone number of all production employees of

1 the garment manufacturer or garment con-
2 tractor.

3 (C) The name, residential address, phone
4 number, and social security number of—

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

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

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

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

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

1 (F) A statement of how long the garment
2 manufacturer or garment contractor has been
3 in business in the garment industry.

4 (G) If applicable, the tax identification
5 number of the garment manufacturer or gar-
6 ment contractor.

7 (H) A statement of the status of the gar-
8 ment manufacturer or garment contractor as a
9 manufacturer or contractor.

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

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

20 (I) The garment manufacturer or gar-
21 ment contractor.

22 (II) Any owner of or any partner of
23 the garment manufacturer or garment con-
24 tractor.

1 (III) In the case the garment manu-
2 facturer or garment contractor is a cor-
3 poration, any officer of the corporation or
4 any of the 10 largest shareholders of the
5 corporation.

6 (ii) If any person or entity described in
7 any of subclauses (I) through (III) of clause (i)
8 has violated the Fair Labor Standards Act of
9 1938 within the period described in such clause,
10 a statement of the nature of such violation and
11 the date on which such violation occurred.

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

17 (3) REGISTRATION FEE.—

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

21 (B) PRORATED FEES.—The Secretary may
22 prorate the registration fee under subparagraph
23 (A) for any registration described in subsection
24 (d)(2)(B)(i).

1 (C) USE.—The Secretary shall use the
2 total amount of each registration fee required
3 under this subsection for carrying out this sec-
4 tion.

5 (d) SUBMISSION.—

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

11 (2) TIMING.—

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

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

- 1 (i) not later than 6 months after the
2 date on which the garment manufacturing
3 operations begin or the contractor enters
4 into the contract for such operations; and
5 (ii) annually thereafter on a date de-
6 termined by the Secretary.

7 (e) CERTIFICATES.—

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

12 (2) APPLICABILITY.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), each certificate issued under
15 paragraph (1) shall be effective for a period of
16 12 months.

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

22 (3) POSTING.—Each garment manufacturer or
23 garment contractor receiving a certificate under
24 paragraph (1) shall post such certificate in a place

1 where it may be read by any employee of the manu-
2 facturer or contractor during the workday.

3 (4) SUSPENSION OR REVOCATION.—The Sec-
4 retary may suspend or revoke a certificate of reg-
5 istration issued under paragraph (1) if the garment
6 manufacturer or garment contractor that submitted
7 the registration—

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

10 (B) has failed to comply with this Act or
11 any regulation under this Act.

12 (f) RECORDKEEPING.—The Secretary shall, through
13 regulations, establish requirements for recordkeeping for
14 all garment manufacturers and garment contractors en-
15 gaging in the garment industry in order to assist in en-
16 forcing the requirements of this section.

17 (g) ENFORCEMENT.—

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

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

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

1 (B) whether the violation of the person
2 was committed in good faith;

3 (C) the gravity of the violation;

4 (D) the history of any previous violations
5 of the person under this section; and

6 (E) the history of the person in complying
7 with the recordkeeping requirements under sub-
8 section (f).

9 (h) REGULATIONS.—The Secretary may prescribe
10 such regulations or other guidance as may be necessary
11 to carry out this section.

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

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

16 (b) UNDERSECRETARY.—

17 (1) IN GENERAL.—The Secretary of Labor shall
18 appoint an Undersecretary of the Garment Industry
19 (referred to in this section as the “Undersecretary”)
20 to head the Office.

21 (2) FUNCTIONS.—The Undersecretary shall—

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

1 (B) carry out the national domestic gar-
2 ment manufacturing support program under
3 section 5; and

4 (C) provide assistance to the Administrator
5 of the Wage and Hour Division in enforcing
6 section 8 of the Fair Labor Standards Act of
7 1938 (29 U.S.C. 208).

8 (c) AUTHORIZATION OF APPROPRIATIONS.—

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

11 (A) \$10,000,000 for fiscal year 2022, to
12 establish the Office and carry out the functions
13 described in subparagraphs (A) and (C) of sub-
14 section (b)(2); and

15 (B) \$3,000,000 for each of fiscal years
16 2023 through 2027, to carry out the functions
17 described in subparagraphs (A) and (C) of sub-
18 section (b)(2).

19 (2) AVAILABILITY.—Any sums appropriated
20 under the authorization contained in this subsection
21 shall remain available, without fiscal year limitation,
22 until expended.

23 **SEC. 5. NATIONAL DOMESTIC GARMENT MANUFACTURING**
24 **SUPPORT PROGRAM.**

25 (a) DEFINITIONS.—In this section:

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

3 (A) a garment manufacturer that is incor-
4 porated in and performs garment manufac-
5 turing within the United States; or

6 (B) a nonprofit organization that provides
7 workforce development opportunities with re-
8 spect to the garment industry.

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

15 (3) SECRETARY.—The term “Secretary” means
16 the Secretary of Labor, acting through the Under-
17 secretary of the Garment Industry appointed under
18 section 4(b).

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

23 (c) APPLICATION.—An eligible entity seeking a grant
24 under this section shall submit to the Secretary an appli-

1 cation at such time, in such manner, and containing such
2 information as the Secretary may require, including—

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

5 (2) an implementation plan of such project that
6 reflects the expected participation of, and partner-
7 ship with, applicable labor organizations and rel-
8 evant community stakeholders.

9 (d) AWARD.—

10 (1) SELECTION.—In awarding grants under
11 this section to eligible entities, the Secretary shall
12 give priority to eligible entities—

13 (A) with a workforce that is covered by a
14 collective bargaining agreement;

15 (B) that are certified by a State in which
16 such eligible entity operates as minority-owned
17 businesses, women-owned businesses, or vet-
18 eran-owned businesses; or

19 (C) who have operated as a garment man-
20 ufacturer within the United States for more
21 than 5 years.

22 (2) AMOUNT.—The amount of a grant awarded
23 under this section may not be more than
24 \$5,000,000.

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

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

6 (2) the acquisition of relevant tools and equip-
7 ment for garment manufacturing in the United
8 States;

9 (3) the acquisition of, and capital improvements
10 to, facilities for garment manufacturing in the
11 United States and to promote the health and safety
12 of employees in such facilities; or

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

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

21 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
22 authorized to be appropriated \$40,000,000 to carry out
23 this section.

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

2 (a) IN GENERAL.—Subpart D of part IV of sub-
3 chapter A of chapter 1 of the Internal Revenue Code of
4 1986 is amended by adding at the end the following new
5 section:

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

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

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

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

16 “(A) eligible expenses paid or incurred by
17 the taxpayer in connection with the elimination
18 of any business unit of the taxpayer (or of any
19 member of any expanded affiliated group in
20 which the taxpayer is also a member) located
21 outside the United States, and

22 “(B) eligible expenses paid or incurred by
23 the taxpayer in connection with the establish-
24 ment of any business unit of the taxpayer (or
25 of any member of any expanded affiliated group

1 in which the taxpayer is also a member) located
2 within—

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

6 “(ii) a low-income community (as de-
7 scribed in section 45D(e)),

8 if such establishment constitutes the relocation
9 of the business unit so eliminated. For purposes
10 of the preceding sentence, a relocation shall not
11 be treated as failing to occur merely because
12 such elimination occurs in a different taxable
13 year than such establishment.

14 “(2) ELIGIBLE EXPENSES.—The term ‘eligible
15 expenses’ means—

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

18 “(B) permit and license fees, lease broker-
19 age fees, equipment installation costs, and, to
20 the extent provided by the Secretary, other
21 similar expenses.

22 Such term does not include any compensation which
23 is paid or incurred in connection with severance
24 from employment and, to the extent provided by the
25 Secretary, any similar amount.

1 “(3) BUSINESS UNIT.—The term ‘business unit’
2 means—

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

6 “(B) any line of business, or functional
7 unit, which is part of any trade or business de-
8 scribed in subparagraph (A).

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

22 “(5) EXPENSES MUST BE PURSUANT TO
23 INSOURCING PLAN.—Amounts shall be taken into ac-
24 count under paragraph (1) only to the extent that
25 such amounts are paid or incurred pursuant to a

1 written plan to carry out the relocation described in
2 paragraph (1).

3 “(6) OPERATING EXPENSES NOT TAKEN INTO
4 ACCOUNT.—Any amount paid or incurred in connec-
5 tion with the on-going operation of a business unit
6 shall not be treated as an amount paid or incurred
7 in connection with the establishment or elimination
8 of such business unit.

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

23 “(d) CREDIT ALLOWED UPON COMPLETION OF
24 INSOURCING PLAN.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), eligible insourcing expenses shall be taken
3 into account under subsection (a) in the taxable year
4 during which the plan described in subsection (b)(5)
5 has been completed and all eligible insourcing ex-
6 penses pursuant to such plan have been paid or in-
7 curred.

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

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

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

24 (b) CREDIT TO BE PART OF GENERAL BUSINESS
25 CREDIT.—Subsection (b) of section 38 of such Code is

1 amended by striking “plus” at the end of paragraph (32),
2 by striking the period at the end of paragraph (33) and
3 inserting “, plus”, and by adding at the end the following
4 new paragraph:

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

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

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

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

14 (e) APPLICATION TO UNITED STATES POSSES-
15 SIONS.—

16 (1) PAYMENTS TO POSSESSIONS.—

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

1 formation provided by the government of the re-
2 spective possession.

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

19 (2) COORDINATION WITH CREDIT ALLOWED
20 AGAINST UNITED STATES INCOME TAXES.—No cred-
21 it shall be allowed against United States income
22 taxes under section 45U of such Code to any per-
23 son—

1 (A) to whom a credit is allowed against
2 taxes imposed by the possession by reason of
3 such section, or

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

6 (3) DEFINITIONS AND SPECIAL RULES.—

7 (A) POSSESSIONS OF THE UNITED
8 STATES.—For purposes of this section, the
9 term “possession of the United States” includes
10 the Commonwealth of Puerto Rico and the
11 Commonwealth of the Northern Mariana Is-
12 lands.

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

22 (C) TREATMENT OF PAYMENTS.—For pur-
23 poses of section 1324(b)(2) of title 31, United
24 States Code, the payments under this section
25 shall be treated in the same manner as a refund

1 due from sections referred to in such section
2 1324(b)(2).

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