

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 7701
OFFERED BY Ms. Miller-Meeks**

In lieu of the matter proposed to be inserted by the amendment, insert the following:

1 SEC. 1. FINDINGS.

2 Congress finds the following:

3 (1) In 2018, the Department of Labor launched
4 the nationwide Payroll Audit Independent Deter-
5 mination pilot program (referred to in this section as
6 “PAID pilot program”).

7 (2) The Secretary of Labor, acting through the
8 Administrator of the Wage and Hour Division, es-
9 tablished the PAID pilot program to complement en-
10 forcement and compliance assistance tools under-
11 taken by the Wage and Hour Division of the De-
12 partment of Labor.

13 (3) The Secretary has a longstanding practice
14 of providing self-audit and office audit programs, as
15 noted by Secretary Marty Walsh in a response for
16 the record following a hearing before the Committee
17 on Education and Labor of the House of Represent-
18 atives on June 9, 2021.

1 (4) The Wage and Hour Division, through the
2 PAID pilot program, worked with employers on a
3 voluntary basis to remedy unintentional violations of
4 the Fair Labor Standards Act of 1938 (29 U.S.C.
5 201 et seq.), which is the Federal statute estab-
6 lishing minimum wage, overtime pay, recordkeeping,
7 and youth-employment requirements affecting em-
8 ployees in the private sector and in Federal, State,
9 and local governments.

10 (5) The PAID pilot program yielded positive re-
11 sults for employers and employees. Between April 1,
12 2018, and September 15, 2019, the Wage and Hour
13 Division concluded 74 PAID pilot program cases,
14 representing less than one percent of all compliance
15 actions under the Fair Labor Standards Act of
16 1938, with a total of \$4,131,238 in back wages paid
17 to 7,429 employees through such PAID pilot pro-
18 gram cases.

19 (6) Self-audits through the PAID pilot program
20 by employers returned more back wages to employ-
21 ees in less time than compliance actions overall. In
22 fact, during the period described in paragraph (5)—

23 (A) the average back wages paid per case
24 for PAID pilot program cases (\$55,828) were

1 more than 4 times the average back wages paid
2 per compliance action (\$11,355);

3 (B) the average back wages paid per en-
4 forcement hour for PAID pilot program cases
5 (\$2,864) was more than 10 times greater than
6 the average back wages paid per enforcement
7 hour for compliance actions (\$279);

8 (C) on average, nearly 10 times more em-
9 ployees received back wages in each PAID pilot
10 program case than in investigations conducted
11 using traditional methods;

12 (D) self-audits through the PAID pilot
13 program averaged 19 hours per case as com-
14 pared to 41 hours per case for the Secretary
15 conducted using traditional methods; and

16 (E) self-audits through the PAID pilot
17 program reached employers that the Wage and
18 Hour Division would not typically prioritize for
19 enforcement, including government establish-
20 ments and industry sectors with higher wage
21 occupations.

22 **SEC. 2. DEFINITIONS.**

23 In this Act:

24 (1) **AFFECTED EMPLOYEE.**—The term “af-
25 fected employee” means an employee affected by a

1 violation of a minimum wage or overtime hours re-
2 quirement of the Fair Labor Standards Act of 1938
3 (29 U.S.C. 201 et seq.), excluding any employee
4 subject to prevailing wage requirements under the
5 H-1B, H-2B, or H-2A visa programs, subchapter
6 IV of chapter 31 of title 40, United States Code
7 (commonly referred to as the “Davis-Bacon Act”),
8 or chapter 67 of title 41, United States Code (com-
9 monly known as the “Service Contract Act”).

10 (2) ADMINISTRATOR.—The term “Adminis-
11 trator” means the Administrator of the Wage and
12 Hour Division of the Department of Labor.

13 (3) EMPLOYEE.—The term “employee”—

14 (A) has the meaning given such term in
15 section 3 of the Fair Labor Standards Act of
16 1938 (29 U.S.C. 203); and

17 (B) with respect to an employer, includes
18 a former employee of such employer.

19 (4) EMPLOYER.—The term “employer” has the
20 meaning given such term in section 3 of such Act.

21 (5) GOOD FAITH.—The term “good faith”
22 means, with respect to an employer applying for par-
23 ticipation in the Payroll Audit Independent Deter-
24 mination program established under section 4, that

1 such employer is not, at the time such employer sub-
2 mits an application for such program—

3 (A) under investigation by the Secretary
4 for an alleged violation of a minimum wage or
5 overtime hours requirement of the Fair Labor
6 Standards Act of 1938 (29 U.S.C. 201 et seq.);
7 or

8 (B) subject to a lawsuit related to an al-
9 leged violation of such a requirement.

10 (6) SECRETARY.—The term “Secretary” means
11 the Secretary of Labor.

12 (7) SELF-AUDIT.—The term “self-audit” means
13 an audit conducted by an employer to resolve inac-
14 curacies by the employer in the computation of
15 wages and overtime compensation required under
16 the Fair Labor Standards Act of 1938 within the
17 statute of limitations described in section 6(a) of the
18 Portal-to-Portal Act of 1947 (29 U.S.C. 255(a)).

19 **SEC. 3. PAYROLL AUDIT INDEPENDENT DETERMINATION**
20 **PROGRAM.**

21 (a) PROGRAM ESTABLISHMENT.—The Administrator
22 shall establish a Payroll Audit Independent Determination
23 program (referred to in this section as the “program”)
24 to foster collaboration with employers that inadvertently
25 violate the Fair Labor Standards Act of 1938 (29 U.S.C.

1 201 et seq.) to voluntarily remedy, within the statute of
2 limitations described in section 6(a) of the Portal-to-Portal Act of 1947, unpaid minimum wages or overtime com-
3 pensation owed to any affected employee under the Fair
4 Labor Standards Act of 1938.

5 (b) APPLICATION REQUIREMENTS.—

6 (1) RESOURCES FOR COMPLIANCE ASSIST-
7 ANCE.—Not later than 30 days after the date of en-
8 actment of this Act, the Administrator shall make
9 available to employers resources for assistance in
10 complying with the Fair Labor Standards Act of
11 1938, including content regarding wage and hour re-
12 quirements, which shall be offered online, through
13 printed materials, and through other outreach activi-
14 ties.

15 (2) APPLICATION.—An employer seeking to
16 participate in the program shall submit an applica-
17 tion to the Administrator that includes—

18 (A) materials related to and the results of
19 a self-audit, including—

20 (i) an identification of any practice of
21 such employer identified in a self-audit
22 that may violate a minimum wage or over-
23 time compensation requirement of the Fair
24 Labor Standards Act of 1938; and
25

1 (ii) a list of each employee who may
2 be an affected employee with respect to
3 such violation, including—

4 (I) the period of time such em-
5 ployee would be affected by such vio-
6 lation;

7 (II) payroll records related to
8 such employee for such period with in-
9 formation on the hours of work per-
10 formed by such employee;

11 (III) calculations of unpaid min-
12 imum wages or overtime compensation
13 owed to such employee under the Fair
14 Labor Standards Act of 1938 with a
15 description of the methodology of such
16 calculation and supporting evidence;
17 and

18 (IV) contact information for such
19 employee;

20 (B) an explanation of the scope of poten-
21 tial violations of a minimum wage or overtime
22 hours requirement of such Act for inclusion in
23 a release of claims under subsection (d);

24 (C) an assurance that any practice of such
25 employer that violates a minimum wage or over-

1 time hours requirement of the Fair Labor
2 Standards Act of 1938 that is identified in the
3 self-audit has been corrected to comply with
4 such Act;

5 (D) an assurance that such employer has,
6 prior to submitting such application, reviewed
7 the compliance assistance resources made avail-
8 able under paragraph (1) and all program in-
9 formation, terms, and requirements;

10 (E) an assurance that, on the date of sub-
11 mission of such application, such employer—

12 (i) is not involved in any litigation re-
13 garding any practice of such employer that
14 is identified in the self-audit; and

15 (ii) has not received any communica-
16 tions from an employee or a representative
17 of an employee seeking to litigate or settle
18 claims related to any such practice; and

19 (F) an assurance that no employee listed
20 in subparagraph (A)(ii) is subject to a pre-
21 vailing wage requirement under the H-1B, H-
22 2B, or H-2A visa programs, subchapter IV of
23 chapter 31 of title 40, United States Code
24 (commonly referred to as the “Davis-Bacon
25 Act”), or chapter 67 of title 41, United States

1 Code (commonly known as the “Service Con-
2 tract Act”).

3 (c) APPLICATION REVIEW AND APPROVAL.—

4 (1) REVIEW AND AMENDMENT.—The Adminis-
5 trator shall review each application submitted by an
6 employer under subsection (b)(2). As part of such
7 review, the Administrator shall—

8 (A) as necessary, consult with such em-
9 ployer regarding—

10 (i) the self-audit and supporting mate-
11 rials submitted in the application; and

12 (ii) the process for approval of such
13 application and settlement of unpaid min-
14 imum wages or overtime compensation
15 owed to any affected employee under the
16 Fair Labor Standards Act of 1938 (29
17 U.S.C. 201 et seq.);

18 (B) inform such employer in a timely man-
19 ner and prior to a determination on the ap-
20 proval of the application if additional informa-
21 tion is needed to assess the unpaid minimum
22 wages or overtime compensation owed to any
23 affected employee for the violations of such Act
24 identified in the application through the self-
25 audit; and

1 (C) provide such employer an opportunity
2 to amend such application to revise the scope of
3 the practices of such employer that violates a
4 minimum wage or overtime hours requirement
5 of the Fair Labor Standards Act of 1938 that
6 are identified in the application through self-
7 audit, to update the list of affected employees
8 with respect to the practices at issue in the self-
9 audit, and to update the calculations of unpaid
10 minimum wages or overtime compensation owed
11 to any affected employee as a result of such vio-
12 lations.

13 (2) APPROVAL.—

14 (A) IN GENERAL.—If the conditions under
15 subparagraph (B) are satisfied with respect to
16 an application submitted under subsection
17 (b)(2), the Administrator shall—

18 (i) approve the application—

19 (I) in the case the application
20 has not been amended under para-
21 graph (1)(C), not later than 30 days
22 after such submission; or

23 (II) in the case the application
24 has been amended under paragraph
25 (1)(C), not later than 30 days after

1 the date of submission of such amend-
2 ed application; and

3 (ii) supervise the settlement under
4 subsection (d), including the payment of
5 any unpaid minimum wages or overtime
6 compensation under the Fair Labor Stand-
7 ards Act of 1938 required through such
8 settlement.

9 (B) CONDITIONS FOR APPROVAL.—An ap-
10 plication submitted under subsection (b)(2)
11 shall be approved under subparagraph (A) if—

12 (i) within the scope of the violations
13 identified by the employer through the ap-
14 plication or an amendment to the applica-
15 tion under paragraph (1)(C), the Adminis-
16 trator verifies that the self-audit and cal-
17 culation of unpaid minimum wages or over-
18 time compensation owed to any affected
19 employee under the Fair Labor Standards
20 Act of 1938 submitted in such application
21 or amendment are accurate; and

22 (ii) the employer submitting the appli-
23 cation—

24 (I) is determined to be acting in
25 good faith regarding violations of the

1 Fair Labor Standards Act of 1938
2 identified in such application or
3 amendment;

4 (II) has not been found by the
5 Administrator or any court of law to
6 have violated a minimum wage or
7 overtime hours requirement of such
8 Act during the 5 years immediately
9 preceding submission of such applica-
10 tion; and

11 (III) has not been approved for
12 participation in the program prior to
13 the submission of such application,
14 unless—

15 (aa) such participation was
16 for a distinct violation of the
17 Fair Labor Standards Act of
18 1938 than the practice identified
19 in the self-audit under subsection
20 (b)(2); and

21 (bb) such employer has sub-
22 mitted the necessary materials
23 for the Administrator to verify
24 that such employer is not engag-
25 ing in the practice addressed by

1 the previous participation of the
2 employer in the program.

3 (d) SETTLEMENT.—

4 (1) IN GENERAL.—For each employer that sub-
5 mits an application under subsection (b)(2) that is
6 approved under subsection (c)(2), the Administrator
7 shall—

8 (A) provide to the employer a description
9 of the scope of the potential release of claims
10 for violations of minimum wage or overtime
11 hours requirements of the Fair Labor Stand-
12 ards Act of 1938 (29 U.S.C. 201 et seq.) and
13 a summary of any unpaid minimum wages or
14 overtime compensation owed to each affected
15 employee under such Act for such violations;
16 and

17 (B) issue a release form to each affected
18 employee of such employer that describes the
19 settlement terms, which shall include a written
20 explanation of—

21 (i) the waiver under paragraph
22 (2)(B); and

23 (ii) the right of the affected employee
24 receiving the offer for settlement to decline
25 the offer for settlement and preserve any

1 private right of action of the employee to
2 recover any unpaid minimum wages or
3 overtime compensation owed to the em-
4 ployee under the Fair Labor Standards
5 Act of 1938 as a result of such violations.

6 (2) ACCEPTANCE OF SETTLEMENT.—

7 (A) IN GENERAL.—An affected employee
8 offered a settlement through a release form
9 under paragraph (1)(B) may accept or decline
10 the offer.

11 (B) WAIVER OF PRIVATE RIGHT OF AC-
12 TION.—The acceptance by an affected employee
13 of an offer of settlement under subparagraph
14 (A) shall, upon payment in full of any amounts
15 owed to the employee under the settlement, con-
16 stitute a waiver by such employee of any right
17 such employee may have under section 16 of
18 the Fair Labor Standards Act of 1938 (29
19 U.S.C. 216) to a private right of action to re-
20 cover unpaid minimum wages or unpaid over-
21 time compensation, including any liquidated
22 damages, for the violations addressed by the
23 settlement.

24 (3) PAYMENT OF SETTLEMENT.—For each af-
25 fected employee that accepts a settlement through a

1 release form under paragraph (1)(B), the employer
2 shall—

3 (A) pay such employee the full amount of
4 unpaid minimum wages or overtime compensa-
5 tion owed to such employee under the Fair
6 Labor Standards Act of 1938 for the violations
7 addressed in the settlement; and

8 (B) submit proof of payment of such full
9 amount to the Administrator.

10 (e) ADDITIONAL REQUIREMENTS.—

11 (1) DENIALS.—In the case of an application
12 submitted by an employer under subsection (b)(2)
13 and not approved under subsection (c)(2), the Ad-
14 ministrator may not—

15 (A) use information submitted in the appli-
16 cation in an investigation against the employer;

17 (B) use the fact such employer applied to
18 the program as a basis for any future investiga-
19 tion, except in a case in which the Adminis-
20 trator has reason to believe that the health and
21 safety of an employee is at risk due to an al-
22 leged violation related to a requirement en-
23 forced by the Secretary involving child labor,
24 agricultural worker protections, or housing or

1 transportation requirements under the H-2A or
2 H-2B visa programs; or

3 (C) communicate to any affected employee
4 of such employer in response to receipt of such
5 application to notify such employee of the pri-
6 vate right of action of such employee to resolve
7 potential violations of the Fair Labor Standards
8 Act of 1938, particularly with respect to the
9 wage practices at issue in the self-audit.

10 (2) EXPANSION OF SCOPE.—The Administrator
11 may not expand the scope of the violations to be in-
12 vestigated or settled through an employer’s partici-
13 pation in the program beyond the violations identi-
14 fied by the employer in the application submitted by
15 the employer under subsection (b)(2) or the amend-
16 ed application submitted by the employer under sub-
17 section (c)(1)(C).

18 (3) NO PAYMENTS REQUIRED.—The Adminis-
19 trator may not require any form of payment by an
20 employer to apply, qualify, or participate in the pro-
21 gram.

22 (4) EXEMPTION FROM DISCOVERY.—Any infor-
23 mation submitted in an application to the program
24 under subsection (b)(2), or an amendment to such
25 application under subsection (c)(1)(C), may not be

1 subject to discovery in a Federal or State court pro-
2 ceeding without the consent of the employer that
3 submitted the application.

4 (f) RETALIATION.—Section 15(a)(3) of the Fair
5 Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is
6 amended by inserting before the semicolon the following:
7 “, or has accepted or declined to accept an offer for settle-
8 ment under section 303(d) of the Wage Theft Prevention
9 and Wage Recovery Act”.

