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.

Congress finds the following:

(1) In 2018, the Department of Labor launched the nationwide Payroll Audit Independent Determination pilot program (referred to in this section as “PAID pilot program”).

(2) The Secretary of Labor, acting through the Administrator of the Wage and Hour Division, established the PAID pilot program to complement enforcement and compliance assistance tools undertaken by the Wage and Hour Division of the Department of Labor.

(3) The Secretary has a longstanding practice of providing self-audit and office audit programs, as noted by Secretary Marty Walsh in a response for the record following a hearing before the Committee on Education and Labor of the House of Represent-
(4) The Wage and Hour Division, through the PAID pilot program, worked with employers on a voluntary basis to remedy unintentional violations of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), which is the Federal statute establishing minimum wage, overtime pay, recordkeeping, and youth-employment requirements affecting employees in the private sector and in Federal, State, and local governments.

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

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

(A) the average back wages paid per case for PAID pilot program cases ($55,828) were
more than 4 times the average back wages paid per compliance action ($11,355);

(B) the average back wages paid per enforcement hour for PAID pilot program cases ($2,864) was more than 10 times greater than the average back wages paid per enforcement hour for compliance actions ($279);

(C) on average, nearly 10 times more employees received back wages in each PAID pilot program case than in investigations conducted using traditional methods;

(D) self-audits through the PAID pilot program averaged 19 hours per case as compared to 41 hours per case for the Secretary conducted using traditional methods; and

(E) self-audits through the PAID pilot program reached employers that the Wage and Hour Division would not typically prioritize for enforcement, including government establishments and industry sectors with higher wage occupations.

SEC. 2. DEFINITIONS.

In this Act:

(1) AFFECTED EMPLOYEE.—The term “affected employee” means an employee affected by a
violation of a minimum wage or overtime hours re-
requirement of the Fair Labor Standards Act of 1938
(29 U.S.C. 201 et seq.), excluding any employee
subject to prevailing wage requirements under the
H–1B, H–2B, or H–2A visa programs, subchapter
IV of chapter 31 of title 40, United States Code
(commonly referred to as the “Davis-Bacon Act”),
or chapter 67 of title 41, United States Code (com-
monly known as the “Service Contract Act”).

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

(3) EMPLOYEE.—The term “employee”—

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

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

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

(5) GOOD FAITH.—The term “good faith”
means, with respect to an employer applying for par-
ticipation in the Payroll Audit Independent Deter-
mination program established under section 4, that
such employer is not, at the time such employer submits an application for such program—

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

(B) subject to a lawsuit related to an alleged violation of such a requirement.

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

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

SEC. 3. PAYROLL AUDIT INDEPENDENT DETERMINATION PROGRAM.

(a) PROGRAM ESTABLISHMENT.—The Administrator shall establish a Payroll Audit Independent Determination program (referred to in this section as the “program”) to foster collaboration with employers that inadvertently violate the Fair Labor Standards Act of 1938 (29 U.S.C.
201 et seq.) to voluntarily remedy, within the statute of
limitations described in section 6(a) of the Portal-to-Port-
al Act of 1947, unpaid minimum wages or overtime com-
pensation owed to any affected employee under the Fair

(b) Application Requirements.—

(1) Resources for Compliance Assistance.—Not later than 30 days after the date of en-
actment of this Act, the Administrator shall make
available to employers resources for assistance in
complying with the Fair Labor Standards Act of
1938, including content regarding wage and hour re-
quirements, which shall be offered online, through
printed materials, and through other outreach activi-
ties.

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

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

(i) an identification of any practice of
such employer identified in a self-audit
that may violate a minimum wage or over-
time compensation requirement of the Fair
Labor Standards Act of 1938; and
(ii) a list of each employee who may be an affected employee with respect to such violation, including—

(I) the period of time such employee would be affected by such violation;

(II) payroll records related to such employee for such period with information on the hours of work performed by such employee;

(III) calculations of unpaid minimum wages or overtime compensation owed to such employee under the Fair Labor Standards Act of 1938 with a description of the methodology of such calculation and supporting evidence; and

(IV) contact information for such employee;

(B) an explanation of the scope of potential violations of a minimum wage or overtime hours requirement of such Act for inclusion in a release of claims under subsection (d);

(C) an assurance that any practice of such employer that violates a minimum wage or over-
time hours requirement of the Fair Labor Standards Act of 1938 that is identified in the self-audit has been corrected to comply with such Act;

(D) an assurance that such employer has, prior to submitting such application, reviewed the compliance assistance resources made available under paragraph (1) and all program information, terms, and requirements;

(E) an assurance that, on the date of submission of such application, such employer—

(i) is not involved in any litigation regarding any practice of such employer that is identified in the self-audit; and

(ii) has not received any communications from an employee or a representative of an employee seeking to litigate or settle claims related to any such practice; and

(F) an assurance that no employee listed in subparagraph (A)(ii) is subject to a prevailing wage requirement under the H–1B, H–2B, or H–2A visa programs, subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the “Davis-Bacon Act”), or chapter 67 of title 41, United States
Code (commonly known as the “Service Contract Act”).

(c) Application Review and Approval.—

(1) Review and Amendment.—The Administrator shall review each application submitted by an employer under subsection (b)(2). As part of such review, the Administrator shall—

(A) as necessary, consult with such employer regarding—

(i) the self-audit and supporting materials submitted in the application; and

(ii) the process for approval of such application and settlement of unpaid minimum wages or overtime compensation owed to any affected employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.);

(B) inform such employer in a timely manner and prior to a determination on the approval of the application if additional information is needed to assess the unpaid minimum wages or overtime compensation owed to any affected employee for the violations of such Act identified in the application through the self-audit; and
(C) provide such employer an opportunity to amend such application to revise the scope of the practices of such employer that violates a minimum wage or overtime hours requirement of the Fair Labor Standards Act of 1938 that are identified in the application through self-audit, to update the list of affected employees with respect to the practices at issue in the self-audit, and to update the calculations of unpaid minimum wages or overtime compensation owed to any affected employee as a result of such violations.

(2) APPROVAL.—

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

(i) approve the application—

(I) in the case the application has not been amended under paragraph (1)(C), not later than 30 days after such submission; or

(II) in the case the application has been amended under paragraph (1)(C), not later than 30 days after
the date of submission of such amended application; and

(ii) supervise the settlement under subsection (d), including the payment of any unpaid minimum wages or overtime compensation under the Fair Labor Standards Act of 1938 required through such settlement.

(B) CONDITIONS FOR APPROVAL.—An application submitted under subsection (b)(2) shall be approved under subparagraph (A) if—

(i) within the scope of the violations identified by the employer through the application or an amendment to the application under paragraph (1)(C), the Administrator verifies that the self-audit and calculation of unpaid minimum wages or overtime compensation owed to any affected employee under the Fair Labor Standards Act of 1938 submitted in such application or amendment are accurate; and

(ii) the employer submitting the application—

(I) is determined to be acting in good faith regarding violations of the
Fair Labor Standards Act of 1938
identified in such application or amendment;

(II) has not been found by the Administrator or any court of law to have violated a minimum wage or overtime hours requirement of such Act during the 5 years immediately preceding submission of such application; and

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

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

(bb) such employer has submitted the necessary materials for the Administrator to verify that such employer is not engaging in the practice addressed by
the previous participation of the employer in the program.

(d) SETTLEMENT.—

(1) IN GENERAL.—For each employer that submits an application under subsection (b)(2) that is approved under subsection (c)(2), the Administrator shall—

(A) provide to the employer a description of the scope of the potential release of claims for violations of minimum wage or overtime hours requirements of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and a summary of any unpaid minimum wages or overtime compensation owed to each affected employee under such Act for such violations; and

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

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

(ii) the right of the affected employee receiving the offer for settlement to decline the offer for settlement and preserve any
private right of action of the employee to
recover any unpaid minimum wages or
overtime compensation owed to the em-
ployee under the Fair Labor Standards
Act of 1938 as a result of such violations.

(2) ACCEPTANCE OF SETTLEMENT.—

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

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

(3) PAYMENT OF SETTLEMENT.—For each af-
fected employee that accepts a settlement through a
release form under paragraph (1)(B), the employer shall—

(A) pay such employee the full amount of unpaid minimum wages or overtime compensation owed to such employee under the Fair Labor Standards Act of 1938 for the violations addressed in the settlement; and

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

(e) ADDITIONAL REQUIREMENTS.—

(1) DENIALS.—In the case of an application submitted by an employer under subsection (b)(2) and not approved under subsection (c)(2), the Administrator may not—

(A) use information submitted in the application in an investigation against the employer; and

(B) use the fact such employer applied to the program as a basis for any future investigation, except in a case in which the Administrator has reason to believe that the health and safety of an employee is at risk due to an alleged violation related to a requirement enforced by the Secretary involving child labor, agricultural worker protections, or housing or
transportation requirements under the H–2A or
H–2B visa programs; or

(C) communicate to any affected employee
of such employer in response to receipt of such
application to notify such employee of the pri-

tive right of action of such employee to resolve
potential violations of the Fair Labor Standards
Act of 1938, particularly with respect to the
wage practices at issue in the self-audit.

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

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

(4) EXEMPTION FROM DISCOVERY.—Any infor-
information submitted in an application to the program
under subsection (b)(2), or an amendment to such
application under subsection (c)(1)(C), may not be
subject to discovery in a Federal or State court proceeding without the consent of the employer that submitted the application.

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