

PROVIDING FOR THE CONSIDERATION OF H.R. 3136, THE  
CONTRACT WITH AMERICA ADVANCEMENT ACT OF 1996

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MARCH 27, 1996.—Referred to the House Calendar and ordered to be printed

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Mr. SOLOMON, from the Committee on Rules,  
submitted the following

REPORT

[To accompany H. Res. 391]

The Committee on Rules, having had under consideration House Resolution 391, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration in the House of H.R. 3136, the "Contract With America Advancement Act of 1996," as modified by the amendments designated in this report, under a closed rule. All points of order are waived against the bill except for section 425(a) of the Budget Act (unfunded mandates). The rule orders the previous question to final passage without intervening motion except: (1) one hour of debate divided equally between the chairman and ranking minority member of the Committee on Ways and Means; (2) an amendment if offered by the chairman of the Ways and Means Committee, without intervening point of order (except sec. 425(a) of the Budget Act relating to unfunded mandates), not subject to a demand for a division of the question, and debatable for ten minutes, divided equally between the proponent and an opponent; and (3) one motion to recommit which, if containing instructions, may only be offered by the Minority Leader or his designee.

The rule further provides that if the Clerk has, before March 30, 1996, received a message from the Senate that the Senate has adopted the conference report on S. 4, the Line Item Veto Act, then the Clerk shall delete title II (the Line Item Veto Act) from the engrossment of the bill, unless amended, and the House shall be considered to have adopted the conference report.

The amendments designated in this report to be considered as adopted are (1) amendment No. 2 printed in the Congressional Record of March 26, 1996 (pp. H 2870–74), a substitute Title III, “Small Business Regulatory Fairness,” as modified by further technical changes printed in this report; and (2) modifications in the monthly exempt amount for the Social Security earnings limit in Title I, the “Social Security Earnings Limitation Amendments.”

SUMMARY OF AMENDMENT NO. 1 TO BE CONSIDERED AS ADOPTED  
BY THE RULE

(PROVIDING FOR A SUBSTITUTE TITLE III, “SMALL BUSINESS  
REGULATORY FAIRNESS”)

*Subtitle A—Regulatory compliance simplification*

Agencies would be required to publish easily understood guides to assist small businesses in complying with regulations and provide them informal, non-binding advice about regulatory compliance. The subtitle creates permissive authority for Small Business Development Centers to offer regulatory compliance information to small businesses and to establish resource centers of reference materials. The agencies are directed to cooperate with states to create guides that fully integrate federal and state requirements on small businesses.

*Subtitle B—Regulatory enforcement reforms*

This subtitle creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at the Small Business Administration to give small businesses a confidential means to comment on and rate the performance of agency enforcement personnel. It also creates Regional Small Business Regulatory Fairness Boards at the Small Business Administration to coordinate with the Ombudsman and to provide small businesses a greater opportunity to come together on a regional basis to assess the enforcement activities of the various federal regulatory agencies.

The subtitle directs all federal agencies that regulate small businesses to develop policies or programs providing for waivers or reductions of civil penalties for violations by small businesses, under appropriate circumstances.

*Subtitle C—Equal Access to Justice Act amendments*

The Equal Access to Justice Act (EAJA) provides a means for prevailing small parties to recover their attorneys’ fees and costs in a wide variety of civil and administrative actions between small parties and the government. This subtitle amends the EAJA to allow small entities to recover the fees and costs attributable to a demand by the agency which is excessive and unreasonable under the facts and circumstances of the case. The small entity would not be required to prevail in the underlying action; the final outcome must be, however, to require payment of an amount substantially less than what the agency sought to recover.

The amendment also increases the maximum hourly rate for attorneys’ fees under the EAJA from \$75 to \$125.

*Subtitle D—Regulatory Flexibility Act amendments*

The Regulatory Flexibility Act (5 U.S.C. §§ 601–612) was first enacted in 1980. Under its terms, federal agencies are directed to consider the special needs and concerns of small entities—small businesses, small local governments, farmers, etc.—whenever they engage in a rulemaking subject to the Administrative Procedure Act. The agencies must then prepare and publish a regulatory flexibility analysis of the impact of the proposed rule on small entities, unless the head of the agency certifies that the proposed rule will not “have a significant economic impact on a substantial number of small entities.”

Under current law, there is no provision for judicial review of agency action under the Act. This makes the agencies completely unaccountable for their failure to comply with its requirements. Subtitle D of the Hyde amendment gives teeth to current law by specifically providing for judicial review of selected portions of the Act.

In addition, subtitle D enlarges the scope of rules to which the Regulatory Flexibility Act applies by defining a rule to include interpretative rules involving the internal revenue laws.

Finally, subtitle D establishes a small business advocacy review panel which would provide small business participation in the rule-making process. For proposed rules with a significant economic impact on a substantial number of small entities, the Environmental Protection Agency and the Occupational Safety and Health Administration would have to collect advice and recommendations from small businesses to better inform those agencies’ regulatory flexibility analysis on the potential impacts of a rule.

*Subtitle E—Congressional Review of Agency Rulemaking*

Subtitle E provides an expedited procedure whereby Congress may review rules to determine whether they should be “vetoed” prior to taking effect. Each agency would be required to submit to Congress a copy of each new rule, along with a report describing its contents. If a rule is a “major rule” (i.e., one with an annual effect on the economy of \$100 million or more, or similar impact) the effectiveness of the rule is stayed for 60 days in order to allow Congress to act. Non-major rules would not be stayed, but would be subject to the review process.

In the event that Congress does not believe the rule should take effect, each chamber must pass a joint resolution of disapproval, which must then be signed by the President. The subtitle creates an expedited procedure for consideration of the joint resolution in the Senate, which continues in effect for 60 session days after receipt of the rule from the agency.

SUMMARY OF AMENDMENT NO. 2 TO BE CONSIDERED AS ADOPTED  
BY THE RULE

(PROVIDING AN AMENDMENT TO TITLE I OF THE BILL, “SOCIAL SECURITY EARNINGS LIMITATION AMENDMENTS”)

Amendment No. 2 modifies the monthly exempt amount for purposes of the Social Security earnings limit.

## COMMITTEE VOTES

Pursuant to clause 2(l)(2)(B) of House rule XI the results of each rollcall vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

## RULES COMMITTEE ROLLCALL NO. 305

Date: March 27, 1996.

Measure: Rule for the consideration of H.R. 3136, the Contract With America Advancement Act.

Motion By: Mr. Moakley.

Summary of Motion: Strike all titles from the bill except Title IV raising the debt ceiling.

Results: Rejected, 3 to 8.

	Yea	Nay	Present
Vote by Member:			
Quillen .....		X	
Dreier .....		X	
Goss .....		X	
Linder .....		X	
Pryce .....		X	
Diaz-Balart .....		X	
McInnis .....		X	
Waldholtz .....			
Moakley .....	X		
Frost .....	X		
Hall .....	X		
Solomon .....		X	

The amendments to be considered as adopted are as follows:

(1) The amendment printed in the Congressional Record of March 26, 1996, by Representative Hyde of Illinois and numbered 2 pursuant to clause 6 of rule XXIII, modified by the following:

In section 331(a), section 504(a) of title 5, U.S. Code as proposed to be amended is amended in the new paragraph (4) by striking the words "brought by an agency" and inserting in lieu thereof "arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement".

In section 331(a), section 504(a) of title 5, U.S. Code as proposed to be amended is amended in the new paragraph (4) by adding at the end of the paragraph the following new sentence: "Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance."

In section 332(a), section 2412(d)(1) of title 28, United States Code as proposed to be amended is amended in the new subparagraph (D) by inserting after "United States" the first time it appears the following: "or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5".

In section 332(a), section 2412(d)(1) of title 28, United States Code as proposed to be amended is amended by adding at the end of the new subparagraph (D) the following new sentence: "Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance."

In section 341(a)(1)(A), delete the words "of general applicability".

In section 344(e)(1), delete the words “; or in developing a final rule, the extent to which the covered agency took into consideration the comments filed by the individuals identified in subsection (b) (2)”.

(2) Page 2, line 21, strike “\$1,166.66<sup>2/3</sup>” and insert “\$1,041.66<sup>2/3</sup>”.

Page 2, line 23, strike “\$1,250.00” and insert “\$1,125.00”.

Page 3, line 3, strike “\$1,333.33<sup>1/3</sup>” and insert “\$1,208.33<sup>1/3</sup>”.

Page 3, line 6, strike “\$1,416.66<sup>2/3</sup>” and insert “\$1,291.66<sup>2/3</sup>”.

Page 3, line 8, strike “\$1,500.00” and insert “\$1,416.66<sup>2/3</sup>”.

